

Memorandum



DATE: September 20, 2023

TO: Sarah Standifer, Interim Director – Department of Dallas Water Utilities
Danielle Thompson, Director – Office of Procurement Services

SUBJECT: Independent Report on Agreed-Upon Procedures for: Attestation Engagement for the Department of Dallas Water Utilities Construction Project Procurement – Bachman Dam and Spillway Improvements Project – CIZ-DWU-23 113

Attached for your review is the *Independent Report on Agreed-Upon Procedures for: Attestation Engagement for the Department of Dallas Water Utilities Construction Project Procurement – Bachman Dam and Spillway Improvements Project – CIZ-DWU-23 113*. The Agreed-Upon Procedures are included in [Attachment 1](#). Exceptions were noted.

We have performed these procedures, which were agreed to by the Department of Dallas Water Utilities and the Office of Procurement Services, solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and the Office of Procurement Services' compliance with the requirements of Administrative Directive 4-05, *Contracting Standards and Procedures*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures.

If you have any questions, please contact me at (214) 670-3222 or by email at mark.swann@dallas.gov.

Sincerely,



Mark S. Swann
City Auditor

Independent Report on Agreed-Upon Procedures for: Attestation Engagement for the Department of
Dallas Water Utilities Construction Project Procurement – Bachman Dam and Spillway Improvements
Project – CIZ-DWU-23 113
September 20, 2023
Page 2 of 2

Attachment

C: Honorable Mayor and Members of the City Council

T.C. Broadnax, City Manager

Tammy Palomino, Interim City Attorney

Biliera Johnson, City Secretary

Kimberly Bizer Tolbert, Deputy City Manager

Jon Fortune, Deputy City Manager

Genesis Gavino, Chief of Staff to the City Manager

Jack Ireland, Chief Financial Officer

Joyce Williams, Director – Small Business Center

Sheri Kowalski, City Controller

Jeffrey Brill, Manager – Financial Compliance, Auditing, & Monitoring



Independent Report on Agreed-Upon Procedures for: Attestation Engagement for the Department of Dallas Water Utilities Construction Project Procurement – Bachman Dam and Spillway Improvements Project – CIZ-DWU-23 113

September 20, 2023

Mark S. Swann, City Auditor

Mayor

Eric Johnson

Mayor Pro Tem

Tennell Atkins

Deputy Mayor Pro Tem

Carolyn King Arnold

Council Members

Adam Bazaldua

Paula Blackmon

Zarin D. Gracey

Cara Mendelsohn

Jesse Moreno

Omar Narvaez

Jamie Resendez

Paul E. Ridley

Jaynie Schultz

Kathy Stewart

Chad West

Gay Donnell Willis



Executive Summary

Objective and Scope

The objective of the agreed-upon procedures attestation engagement is solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and Office of Procurement Services' compliance with Administrative Directive 4-05, *Contracting Standards and Procedures*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures.

The Department of Dallas Water Utilities requested this attestation in accordance with Administrative Directive 4-05, Section 9.5.5, *Attestation Engagement Requirement for All Construction Projects \$50 Million and Greater*.

Background

The Bachman Dam and Spillway Improvements construction project aims to meet Texas Commission on Environment Quality compliance dam safety program requirements for a dam with a high hazard rating classification and to align spillway system capacity with 2016 guidelines.

The dam was originally built in 1901 and has undergone several smaller maintenance upgrades from 2006 to 2023. The latest project would improve the infrastructure and capacity of the spillway, earthen embankment, and drain structure.

The base project was estimated to cost \$53 million. The project had a Minority and Women-Owned Business Enterprise goal of 32 percent.

The Department of Dallas Water Utilities is seeking approval from the City Council to award approximately \$43.2 million to Rebcon LLC, the lowest of four bid submissions.

Observations

Exceptions were noted for three of the 17 Agreed-Up Upon procedures.

See [Attachment 1](#) for the full list of procedures, the exceptions, and actions taken by management as a result of the exceptions.

Results:

Independent Agreed-Upon Procedures Report

The Office of the City Auditor conducted the procedures described in [Attachment 1](#), which were agreed to by the Department of Dallas Water Utilities and the Office of Procurement Services, solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and the Office of Procurement Services' compliance with the requirements of Administrative Directive 4-05, *Contracting Standards and Procedures*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures.

The Department of Dallas Water Utilities and Office of Procurement Services are responsible for the establishment and execution of operational procedures. The sufficiency of these agreed-upon procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described in [Attachment 1](#), either for the purpose for which this report has been requested or for any other purpose.

The Department of Dallas Water Utilities requested this attestation on March 7, 2023, and the Office of the City Auditor completed the agreed-upon procedures on August 31, 2023. Exceptions were noted for three of the 17 Agreed-Upon Procedures.

The purpose of this report on applying agreed-upon procedures is intended solely for the information and use of the Dallas City Council and City management and is not intended to be and should not be used by anyone other than these specified parties. Accordingly, this report is not suitable for any other purpose. The Office of the City Auditor was not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on compliance. Accordingly, the Office of the City Auditor does not express such an opinion or conclusion. Had additional procedures been performed, other matters might have been identified that would have been reported.

We are required to be independent of Dallas Water Utilities and the Office of Procurement Services and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements related to our agreed-upon procedures engagement. The agreed-upon procedures were conducted in accordance with the United States generally accepted government auditing standards which incorporate attestation standards established by the American Institute of Certified Public Accountants.

Signature:



Mark S. Swann, CPA
City Auditor
City of Dallas, Texas

September 20, 2023

ATTACHMENT 1: Agreed-Upon Procedures

Independent Report on Agreed-Upon Procedures for the Attestation Engagement for the Department of Dallas Water Utilities Construction Project Procurement – Bachman Dam and Spillway Improvements – CIZ-DWU-23 113.

September 20, 2023

Agreed-Upon Procedures

As stated in Administrative Directive 4-05, *Contracting Standards and Procedures*, Section 9.5.5 C. 4.

- a) Confirm the documentation to support the procurement is provided by the Department of Dallas Water Utilities, Office of Procurement Services, and other applicable City departments.

No Exceptions.

- b) Confirm the solicitation complied with Administrative Directive 4-05, *Contracting Standards and Procedures*, City ordinances, applicable State law, and departmental policies and procedures.

No Exceptions.

- c) Confirm the scope of work/specifications were written in a manner that promotes competition and competitive pricing.

Exception.

The experience requirements for bidders were not consistent between Volumes 1 and Volume 2 of the specifications. Having different experience requirements for bidders in two sections can reduce competition.

Dallas Water Utilities Management Comments or Actions Taken

Volume 1 of the specifications contains the Information to Bidders, Special Provisions, Bid Item Descriptions, Sample Contract, and Contract Bonds and Forms. The Special Provision S-8 addresses the experience requirements and has priority over the technical construction specifications in Volume 2 in case of discrepancies. This is addressed in the City of Dallas 2021 Addendum to NCTCOG, Section *105.5.1.1 COD. Priority of Contract Documents*.

It is also important to note that two addendums were issued prior to the receipt of bids revising S-8 Experience Record. These addendums were issued to address discrepancies and provide clarification regarding experience requirements. In retrospect, experience requirements should not have been provided in Volume 2 and this potential inconsistency will be addressed going forward by making sure experience requirements are listed only in Volume 1.

- d) Confirm the specifications identify the criteria for which the Department of Dallas Water Utilities could determine that a bid is responsive and responsible.

No Exceptions.

- e) Confirm that the Department of Dallas Water Utilities performed due diligence when developing the bid specifications by consulting with other departments, such as the City Attorney's Office, and documenting the consultation.

No Exceptions.

- f) Confirm the procurement was advertised appropriately in accordance with State law.

No Exceptions.

- g) Confirm the Department of Dallas Water Utilities and the Office of Procurement Services used appropriate commodity code(s) to send notifications to the vending community from the City's solicitation system.

No Exceptions.

- h) Confirm the Department of Dallas Water Utilities and the Office of Procurement Services sent solicitation notices and addenda (if applicable) to the vending community with sufficient time for response.

No Exceptions.

- i) Confirm the Department of Dallas Water Utilities held a pre-bid meeting, if applicable.

No Exceptions.

- j) Confirm the specifications were posted for a reasonable period of time on the City's solicitation system.

No Exceptions.

- k) Confirm the Department of Dallas Water Utilities obtained appropriate nondisclosure and conflict of interest forms for any consultants and/or subject matter experts used in the procurement process, if applicable. Additionally, if applicable, confirm the Department of Dallas Water Utilities included conflict-of-interest and nondisclosure policy language in the scope of work/specifications.

No Exceptions.

- l) Confirm the City received sealed bids/proposals within the due date and time, opened them, and subsequently read them in compliance with State law.

Exception.

Electronic logs show the bid proposal sheets were accessed by an Office of Procurement Services representative before the bid opening time of 2:00 p.m. on July 14, 2023.

As a result, the bid opening did not comply with rules D and G of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*. The City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals* were established to comply with the state law for receiving electronic bids.

Rule D. All data shall be encrypted using a time-sensitive mechanism that allows the data to be decrypted only after the Bid Opening specified for each solicitation.

Rule G. The City's Purchasing Agent, or his/her designee(s), with an authorized password, and only after the Bid Opening date and time, can request the bid/proposal be opened and obtain the data in the bid/proposal.

Office of Procurement Services (OPS) Comments or Actions Taken

OPS has established a process to help ensure bids can only be opened by a minimum number of authorized staff and is confident the bids were not opened prior to the scheduled time.

OPS will revise the standard guidance and train authorized staff to ensure the Bonfire log does not contain activity prior to the scheduled bid opening that could be construed as the bids being accessed prior to the scheduled time. In addition, OPS

believes the cost of procuring a method for encrypting the bids is not feasible and will propose revising Rule D.

- m) Confirm the City received and evaluated the bids/proposals, and found them to meet the minimum requirements/qualifications for low bid.

Exception.

The City's design consultant determined that the lowest bidder did not fully meet the experience record requirements in the bid specifications. The design consultant recommended the lowest bidder despite this determination. The design consultant was responsible for evaluating the bidders' experience records.

Dallas Water Utilities Comments or Actions Taken

On July 26, 2023, the consultant engineer for the project provided a memo titled *Bachman Dam and Spillway Improvements Project Phase 2B, DWU Contract No. 23-113 Bid Evaluation and Recommendation of Award*. This detailed bid evaluation examined the experience record of all bidders and made a recommendation of award to the lowest bidder. The engineer found that the lowest bidder has performed at least three (3) projects of a similar nature and with similar components to the Bachman project on the order of \$20 Million in the past ten years, per the experience requirements in S-8 of the Special Provisions, issued in Addendum #3 on June 23, 2023. The engineer's evaluation also notes the favorable past experience of the contractor working for Dallas and their well-thought-out approach to the project based on a meeting held on July 20, 2023, prior to making the recommendation of award.

- n) Confirm the Department of Dallas Water Utilities performed due diligence when a bidder is disqualified or in the event of a bid protest by consulting with the City Attorney's Office and informed the City Council of a bid protest and response in accordance with Administrative Directive 4-05, *Contracting Standards and Procedures*, 9.5.3.

Not Applicable. No bidders were disqualified. No bid protests were received.

- o) Obtain a representation from the Small Business Center that the Small Business Center followed the City's Business Inclusion and Development policies outlined by the City Council.

No Exceptions.

- p) Confirm the Department of Dallas Water Utilities review and evaluation process confirmed the lowest bid or highest ranked supplier and that the Department of Dallas Water Utilities appropriately documented the determination.

No Exceptions.

- q) Confirm the Department of Dallas Water Utilities used the Federal System for Award Management website to confirm that the lowest responsible bidder is not excluded.

No Exceptions.