

# Memorandum



**DATE:** September 30, 2021

**TO:** Terry S. Lowery, Director – Department of Dallas Water Utilities  
Chhunny Chhean, Director – Office of Procurement Services

**SUBJECT:** Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities  
Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project  
CIZ-DWU-220 23

Attached for your review is the *Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project CIZ-DWU-220 23*. The Agreed-Upon Procedures are included in [Attachment 1](#). Five procedures were not performed as a result of the August 23, 2021, Dallas Water Utilities request to discontinue the agreed-upon attestation procedures. Dallas Water Utilities made the request after determining it would recommend canceling the current procurement because the bids received exceeded the available budget. Procedure (I) had two exceptions.

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 (Interim)*, 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@dallascityhall.com](mailto:mark.swann@dallascityhall.com).

Sincerely,



Mark S. Swann  
City Auditor

Attachment

C: Honorable Mayor and Members of City Council

T.C. Broadnax, City Manager

Christopher J. Caso, Interim City Attorney

Kimberly Bizer Tolbert, Chief of Staff

Majed A. Al-Ghafry, Assistant City Manager

M. Elizabeth Reich, Chief Financial Officer



Independent Report on Agreed-Upon Procedures  
for the Department of Dallas Water Utilities  
Construction Project Procurement – Elm Fork  
Water Treatment Plant Filter Complex Project  
CIZ-DWU-220 23

September 30, 2021

Mark S. Swann, City Auditor

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Mayor

Eric Johnson

Mayor Pro Tem

Chad West

Deputy Mayor Pro Tem

Jaime Resendez

Council Members

Carolyn King Arnold

Tennell Atkins

Adam Bazaldua

Paula Blackmon

B. Adam McGough

Cara Mendelsohn

Jesse Moreno

Omar Narvaez

Paul E. Ridley

Jaynie Schultz

Casey Thomas, II

Gay Donnell Willis



## Executive Summary

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### 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 (Interim)*, 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*.

Five procedures were not performed as a result of the August 23, 2021, Dallas Water Utilities request to discontinue the agreed-upon attestation procedures due to plans to cancel the current bids, because the bids received exceeded the available budget.

### Background

The Elm Fork Water Treatment Plant Filter Complex has been identified for replacement as part of Dallas Water Utilities' long-term water capital program planning. The Elm Fork Water Treatment Plant Filter Complex has reached the end of its useful life and the project plans to improve water quality and filtration efficiency.

The project was estimated to cost between \$130 million and \$145 million. The two bids received were for approximately \$237.3 million and \$252.5 million. Dallas Water Utilities determined that the bids received for the project exceeded the available budget.

With City Council approval, Dallas Water Utilities plans to cancel the current bids and phase or repackage the needed improvements to match the available budget.

### What We Found

At the time Dallas Water Utilities requested discontinuing the agreed-upon attestation procedures, 12 of the 17 agreed-upon procedures had been performed. Procedure (I) had two exceptions. Specifically, rules A and D of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*, were not followed.

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

## Results:

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### Independent Agreed-Upon Procedures Report

The Office of the City Auditor conducted 12 of the 17 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 Administrative Directive 4-05, *Contracting Standards and Procedures (Interim)*, 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 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 of agreed-upon procedures on March 16, 2021. After the Department of Dallas Water Utilities determined the bids received exceeded the available budget and planned to cancel the bids, the Department of Dallas Water Utilities requested the City Auditor discontinue the agreed-upon procedures effective August 23, 2021, and release a report based on the procedures performed.

Two exceptions were noted for Agreed-Upon Procedure (I). The procedure was to confirm the City received sealed bids/proposals within the due date and time, opened them, and subsequently read them in compliance with state law. The procurement did not comply with rules A and D of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*, which are required for compliance with state law. Management noted that it has taken actions to correct the two exceptions. See [Attachment 1](#) for the specific exceptions.

The purpose of this report 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.

The agreed-upon procedures were conducted in accordance with the United States generally accepted government auditing standards.

Signature:

A handwritten signature in blue ink, appearing to read "Mark S. Swann", with a long horizontal flourish extending to the right.

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

**September 30, 2021**

## ATTACHMENT 1: Agreed-Upon Procedures

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### Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project CIZ-DWU-220 23

September 30, 2021

#### Agreed-Upon Procedures

As stated in Administrative Directive 4-05, *Contracting Standards and Procedures, (Interim)* 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 (Interim)*, 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.

**No Exceptions.**

- (d) Confirm the specifications identify the criteria for with 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) If the Department of Dallas Water Utilities held a pre-proposal/pre-bid meeting, confirm the meeting was held.

**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.

**Exceptions.**

The bid process did not comply with rules A and D 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. The following discusses the exceptions to these rules.

**A. All users of the electronic system shall be assigned a unique user name and password.**

Two people shared an account used to review the bid documents. Using a shared account increases the risk that the City cannot track who accessed or potentially changed bid documents.

The account was created to give City departments one generic account they could use to obtain Office of Procurement Services support for their projects in the Bonfire procurement system. Two people shared the account in case the primary person was not available, and the Office of Procurement Services needed to respond to a department request.

**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.**

The encryption mechanism in the Bonfire procurement system was set to allow access to the submitted bids after the deadline for bid submission passed, but before the bid opening time, which was about one hour later. The bids were accessed by Dallas Water Utilities and Office of Procurement Services employees starting at 1:01 p.m., one minute after the bid submission deadline and before the 2:00 p.m. bid opening time.

Accessing submitted bids before the bid opening time increases the risk that bids can be changed to favor a bidder. The third-party company that operates the Bonfire procurement system confirmed that no bid documents were changed prior to the bid opening.

**Action Taken to Address the Exceptions**

Management in the Office of Procurement Services took the following corrective actions after being made aware of the two exceptions:

- A.** The generic account was restricted to one individual. No other individuals can access that generic account.

**D.** The Office of Procurement Services has changed its practices to not open bid documents until after the bid opening time. The Office of Procurement Services now places the project in a special mode in the Bonfire procurement system that restricts access to bid documents to other departments until after the bid opening time.

(m) Confirm the City received and evaluated the bids/proposals and found them to meet the minimum requirements/qualifications for low bid OR that the most advantageous proposer was determined based on the published evaluation criteria.

**Not Performed.**

(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, (Interim)*, 9.5.3.

**Not Performed.**

(o) Obtain a representation from the Department of Economic Development that the Department of Economic Development followed the City's Business Inclusion and Development policies outlined by City Council.

**Not Performed.**

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

**Not Performed.**

(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 currently excluded.

**Not Performed.**