Public Works Contracting Process
Follow-up Report

November 2014

Office of the Auditor
Audit Services Division
City and County of Denver

Dennis J. Gallagher
Auditor
The **Auditor** of the City and County of Denver is independently elected by the citizens of Denver. He is responsible for examining and evaluating the operations of City agencies for the purpose of ensuring the proper and efficient use of City resources and providing other audit services and information to City Council, the Mayor and the public to improve all aspects of Denver’s government. He also chairs the City’s Audit Committee.

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**Audit Committee**

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<tr>
<th>Dennis Gallagher, Chair</th>
<th>Robert Bishop</th>
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<tr>
<td>Maurice Goodgaine</td>
<td>Jeffrey Hart</td>
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<td>Leslie Mitchell</td>
<td>Timothy O’Brien, Vice-Chair</td>
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<td>Rudolfo Payan</td>
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**Audit Staff**

| Audrey Donovan, Deputy Director, CIA, CGAP, CRMA |
| Chris Wedor, Audit Supervisor, MBA |

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**Office of the Auditor**

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[www.denvergov.org/auditor](http://www.denvergov.org/auditor)
Jose Cornejo, Manager of Public Works  
Department of Public Works  
City and County of Denver  
Re: Audit Follow-Up Report  

Dear Mr. Cornejo:

In keeping with professional auditing standards and the Audit Services Division’s policy, as authorized by D.R.M.C. § 20-276, our Division has a responsibility to monitor and follow-up on audit recommendations to ensure audit findings are being addressed and to aid us in planning future audits.

This report is to inform you that we have completed our follow up effort for the Public Works Contracting Process audit issued November 17, 2011. Our review determined that the Department has adequately implemented eleven of the recommendations made in the audit report, two recommendations were agreed with but not implemented, and the Department disagreed with one.

For your reference, this report includes a Highlights page that provides background and summary information on the original audit and the completed follow-up effort. Following the Highlights page is a detailed implementation status update for each recommendation. Although we did not update the status of recommendations that the Department disagreed with, these recommendations are included in the status update section as a reference.

This concludes audit follow-up work related to this audit. I would like to express our sincere appreciation to you and to Department personnel who assisted us throughout the audit and follow-up process. If you have any questions, please feel free to contact me at 720-913-5029 or Chris Wedor, Internal Audit Supervisor, at 720-913-5021.

Sincerely,

Kip Memmott, MA, CGAP, CRMA  
Director of Audit Services  

cc: Honorable Michael Hancock, Mayor  
    Honorable Members of City Council  
    Members of Audit Committee
Ms. Cary Kennedy, Deputy Mayor, Chief Financial Officer
Ms. Janice Sinden, Chief of Staff
Mr. David P. Edinger, Chief Performance Officer
Ms. Beth Machann, Controller
Mr. Scott Martinez, City Attorney
Ms. Janna Young, City Council Executive Staff Director
Mr. L. Michael Henry, Staff Director, Board of Ethics

To promote open, accountable, efficient and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.
We will monitor and report on recommendations and progress towards their implementation.
Public Works Contracting Process
Follow-up Report: November 2014

Of the fourteen recommendations made in the November 2011 audit report, the Department of Public Works has implemented eleven, did not implement two, and disagreed with one.

Background
The City and County of Denver’s Department of Public Works conducts capital improvement projects for the City and County of Denver. In 2010, the Department accounted for $148 million of the total capital expenditures ($314 million) for the City (excluding DIA). The Department handles more than 60 bid openings and works with more than 200 contractors and subcontractors for capital improvements annually. Additionally, the Department processes over 800 progress payments annually for construction contracts, professional services agreements, intergovernmental agreements and other Public Works contracts.

Purpose
The audit addressed the Department’s compliance with its policies and procedures for the completion of change orders for contracts involving a specific contractor, New Design Construction (NDC). Due to an abnormally high number of change orders observed by the Auditor’s Office related to NDC, auditors selected three construction projects performed by NDC to review and assess the department’s overall change order processes.

Highlights from Original Audit
Auditors examined key phases of the contracting process to determine where control failures and weaknesses exist. Systemic issues identified included questionable management override of controls, a lack of key documentation, and control failures with the change order process. Specifically, we found:

- The Department’s prequalification process does not prevent poor performing contractors from securing City contracts
- The Department’s adherence to a low-bid price acquisition methodology for certain contracts does not ensure best value or lower contract costs
- Failure to assess proposed contractor means and methods for appropriateness
- Minimal review of financial information in bid documents for item variations between bidders
- Legal settlements lack transparency when executed as change orders
- Change orders used as legal settlements lacked supporting documentation to support the settlement amount
- Use of change orders for legal settlements in effect bypassed City Council approval process
- Non-compliance with City rules and standards established for the construction process

Findings at Follow-up
Public Works has strengthened the prequalification process, revised the special permission rules, and improved dispute resolution processes. Further, the Department is now using and reviewing line items more carefully, timely resolving errors during the bidding process, and tracking information with the contract administrator. However, the Department is not using a central database to track pertinent contract information and is still in the process of developing a policy that will update City Council when change orders exceed a certain threshold.

For a complete copy of this report, visit www.denvergov.org/auditor
Audit Contact Person: Chris Wedor | 720.913.5021 | chris.wedor@denvergov.org
# Recommendations: Status of Implementation

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<th>Recommendation</th>
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<td>Finding: Mismanagement of New Design Construction Contracts Reveals Substantive Control Risks with the Department of Public Works Adherence to the City's Contracting Processes</td>
<td>Implemented</td>
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1. The Department of Public Works Prequalification Board should scrutinize prequalification applications by looking not only at an applicant’s financial capability and a list of projects from the last five years, but should require an applicant to submit proof of work performance quality.  
Public Works management implemented a new checklist for prequalification for applicants, which is currently used in all prequalification vetting. The process includes a five-year performance history review to include legal actions, debarment, suspension, or criminal convictions. This was presented to the Independent Audit Committee in 2012 by Public Works management.  
**Implemented**

2. The Department of Public Works Prequalification Board should ensure that it has a quality control process in place to ensure the accuracy and validity of contractors submitting information for prequalification status with the City to include; adopting a means of measuring the prequalification criteria and procedures to ensure that the quality of past work performance is reviewed as part of the pre-qualification process.  
Public Works management has reviewed and updated the special permission rules, which are now referred to as “Project Specific Permissions.” Additionally, renewal applications are updated as part of new quality control for repeat service contractors for the City.  
**Implemented**

3. The Department of Public Works Prequalification Board should evaluate the effectiveness and efficiency of its review processes to ensure that they do not grant prequalification status to contractors with a history of poor performance, litigation, or unsafe practices on City projects.  
Public Works management has implemented new controls for the prequalification process that include a more comprehensive business legal background review. Additionally, the financial limits have been decreased to ensure minimal gaps between financial levels of work performed by contractors.  
**Implemented**
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<td>4. Although the General Contracting Conditions (Orange Book) grant the Manager of Public Works the authority to overturn the Board’s recommendations, the reason for the overturn should be clearly documented as mandated by Orange Book. Such cases of control overrides should be rare.</td>
<td>Public Works management has finalized the Memorandum of Understanding (MOU) between Aviation and Public Works, which now includes controls and procedures for when a decision is overturned. Further, rationale must be included in the MOU documenting the reason for overturned decisions.</td>
<td>Implemented</td>
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<td>5. The Department of Public Works should review contractor means and methods for the lowest responsive qualified bidder (hard bid), where practicable. Based on this review, the Department may use the non-responsive bid process to disqualify a bidder, when applicable.</td>
<td></td>
<td>Disagree</td>
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<td>6. City Engineers should conduct a thorough line item review, whereby they scrutinize, follow up on and, if appropriate, reject bid items appearing to be inaccurate or improbable before awarding the contract.</td>
<td>In accordance with the new updated “Green Book,” project managers must review line items and ensure that they are appropriate and reasonable for the work being bid on and performed.</td>
<td>Implemented</td>
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<td>7. The Department of Public Works should automatically reject contractor bids for project work when a mathematical error is found in the summation of the contractor’s bid submission packet.</td>
<td>During the bidding process, any error is immediately resolved and brought to the attention of the project manager or contract administrator to determine resolution and next steps based on the nature of the error.</td>
<td>Implemented</td>
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<td>8. The Department of Public Works should consider implementing a policy to update City Council when the cumulative dollar amount of change orders increase projects above a certain threshold of the original contract amount in order to maintain transparency and proper oversight of the project finances.</td>
<td>Public Works is still working with the City Attorney’s Office to complete this task. The Department had no anticipated completion date for this analysis or for what projects would be subjected to a dollar threshold.</td>
<td>Agree, Not Implemented</td>
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<td>9. The Department of Public Works should utilize the settlement process, where permitted as outlined in the Orange Book and D.R.M.C., as a means to negotiate disputes between contractors and the City to ensure a transparent, prompt, and equitable resolution to any dispute.</td>
<td>Public Works adheres to the guidelines in the “Green Book” and D.R.M.C. for all negotiations and disputes between contractors. Procedures are followed to ensure transparent resolution for all parties involved. Additionally, a policy statement was issued by Public Works management to staff that details the steps for dispute resolution.</td>
<td>Implemented</td>
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<td>10. The Department of Public Works should line itemize, in detail, all contractor and City concessions whenever a change order is used as the means of increasing the project dollar amount. Specifically, all Department change orders should include; all required signatures; and description of payment by line item.</td>
<td>Line items are completed to include detailed information for concessions and change orders. Additionally, a policy statement issued by Public Works management to staff, which details the steps for dispute resolution, addresses the specificity of line items in change orders.</td>
<td>Implemented</td>
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<td>11. The Department of Public Works should ensure that any additional work completed on the 38th and Holly and Rocky Mountain Ditch projects is bid as a separate project and not combined within any other projects or phases to account for all appropriate capital costs to the City.</td>
<td>This 38th and Holly project and the Rocky Mountain Ditch project were both completed as separate projects and not combined with any other projects.</td>
<td>Implemented</td>
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<td>12. The Department of Public Works should consider utilizing available technology (Data Housing Software) to track pertinent contract information in a central database.</td>
<td>Public Works tracks this information internally in its database based on projects that are housed with the contract administrator. No “central database” from a third-party program is in place. Rather, a spreadsheet is used to house the information.</td>
<td>Agree, Not Implemented</td>
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<td><strong>13.</strong> The Department of Public Works should implement a centralized and standard means of tracking both Department and contractor compliance with the Orange Book, up to and including the Manager of Public Works’ final disposition. At minimum, the following should be tracked: all pertinent contract-related correspondence and responses; the Department’s or contractor’s initial date of change request; the Department’s date of response or denial; and date and outcome of final disposition.</td>
<td>Public Works tracks this information with the contract administrator. Information can be requested by project as needed.</td>
<td>Implemented</td>
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<td><strong>14.</strong> The Department of Public Works should document and abide by timelines outlined in the Orange Book to ensure fair treatment of contractors and prompt resolution of project disputes.</td>
<td>Public Works abides by the new Green Book, the updated version of the Orange Book that includes procedures for fair treatment of contractors.</td>
<td>Implemented</td>
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Conclusion

We found that the Department has fully implemented eleven of our fourteen recommendations and that Public Works leadership assumes the responsibility for the risk associated with the two recommendations not implemented, as well as the recommendation with which the Department disagreed. As a result, we conclude our follow-up effort related to the Public Works Contracting Process Performance Audit.

On behalf of the citizens of the City and County of Denver, we thank staff and leadership from the Department for their cooperation during our follow-up effort and their dedicated public service.