

INTERNAL AUDIT REPORT

Procurement and Contract Review
For Infrastructure Contractors
March 4, 2014
Finalized: June 2, 2014

Review of the procurement, contracting, and allowable costs for the public infrastructure component of the Community Development Block Grant for Disaster Recovery (CDBG-DR) was conducted by the City of Minot Internal Auditors. The review consisted of a desk review of the procurement and contract documents stored in the electronic data base of SalesForce and the hard files at the City of Minot Finance Department, as well as two onsite visits to the Disaster Recovery Offices of CDM Smith. The onsite visits were conducted on February 20, 2014, and again on February 25, 2014. These onsite visits consisted of a review of the documents contained in the project files compiled by CDM Smith.

The City of Minot's Infrastructure Program Policies require all projects will be competitively bid in accordance with 24 CFR 85. CDM Smith, as the Program Administrator, is responsible for working with the City of Minot Public Works, City Engineer, and the Construction Engineer to insure all federal and state procurement and contracting laws are followed appropriately.

The City of Minot is required to ensure all costs paid entirely or in part with CDBG-DR funds are allowable. To be allowable a cost must be consistent with federal cost principles; HUD regulations; and other federal, state, and local statutes and regulations.

Upon arrival at the Disaster Recovery Offices, the auditors met with the Program Manager, for an entrance conference. The Program Manager was informed of the scope of the review and anticipated duration, and showed the auditors where the project folders were filed.

Key procurement and contracting objectives reviewed were:

- Ensuring procurement and agreement documents for the infrastructure construction projects contain all required clauses and information for compliance with CDBG-DR; and other federal, state, and local statutes and requirements. (Labor Standards Requirements were reviewed in a separate audit.)
- Ensuring Invoices (payment requests) submitted by each contractor for work performed on the construction projects are reviewed for accuracy and allowability of costs. At least two invoices were reviewed for every project except the 6th Street Underpass and Storm Drain project. The 6th Street Underpass and Storm Drain project was reviewed for procurement only because the contract was not awarded until January 14, 2014.
- Ensuring the City of Minot's accounts payable internal controls are working as designed to ensure accuracy of payments to contractors.
- Ensuring the amounts reported in DRGR are correct and correlate to the amounts recorded in the City of Minot's financial records.

All construction contracts, funded in whole or partially by CDBG-DR funds, and advertised and awarded during the annual period of January 1, 2013, through December 31, 2013, were reviewed and include the below projects with the corresponding contractors listed in the right hand column.

CDBG-DR Activity	Contractor
Imagine Minot Downtown Development Parking Facility – Central Parking Ramp. City of Minot Project # 3738.2	Shaw-Lundquist Construction
Imagine Minot Downtown Development	Shaw-Lundquist Construction

Parking Facility – Renaissance Parking Ramp. City of Minot Project # 3738.1	
6 th Street Underpass and Storm Drain Improvements, 6 th Street Underpass Pump Station. City of Minot Project #3236 and 3236.1	Mattson Construction
Master Lift Station. City of Minot Project 3580	John T. Jones
Control Lift Station. City of Minot Project 3580.1	John T. Jones
Roosevelt Lift Station. City of Minot Project 3580.2	Veit, Inc.
Walders Lift Station. City of Minot Project 3580.3	Veit, Inc.
Airport Lift Station. City of Minot Project 3580.4	Veit, Inc.
13 th Street Lift Station. City of Minot Project 3580.5	Veit, Inc.
Landfill Expansion. City of Minot Project #3458	Wagner Construction
Domestic Violence Shelter Infrastructure. City of Minot Project #3593	Wagner Construction

Overall, the procurement, contracting, and payment of infrastructure contracts appear to be handled in an organized and compliant manner. Procurement procedures do not restrict competition; and there are no unreasonable requirements, unnecessary experience requirements, or unnecessary bonding requirements. The bid openings occurred at the time and place set in the advertisements for bids. In all cases with bid tabulation in the file, the lowest responsible bidder was selected. The resulting contracts were awarded within a reasonable time frame.

Payments to contractors are subject to review and approval by the Construction Engineer, CDM Smith Financial Specialist, CDM Smith Financial Review, the City department responsible for the project, the CDBG-DR Invoice Accountant, and the City of Minot Comptroller; with the final approval coming from the City Council. The Internal Controls at the various points of approval were reviewed and found to be working as designed to find errors and problems before the invoices were paid.

The CDBG-DR Invoice Accountant reconciles the projects to the DRGR draw downs and from DRGR to the Quarterly Performance Report.

The review revealed some systemic issues appearing project wide and some project specific issues. These issues are recapped below categorized according to the objectives listed above.

Procurement and agreement documents must contain all required clauses and information for compliance with CDBG-DR; and other federal, state, and local statutes and requirements.

1. Bid tabulations and documentation of rejection of bids were not found in the electronic or hard files.

Issue A: The following projects did not include bid tabulations in the electronic or hard copy files reviewed: The Downtown Development Parking Facility, Renaissance and Central Structures.

Issue B: The Downtown Development Parking Facilities were advertised for bids three times with the first two groups of proposals being rejected. Documentation was not found explaining the reason for rejection of two groups of bids.

Recommendation: CDM Smith must update their contract document files to include bid tabulations, reason for rejecting any or all bids, and rationale for rebidding. The auditor requested the Program Manager update the files as noted above and copy the auditor with the documentation. **Justification:** The City of Minot's Federal Grant Procurement Policies and Procedures and 24 FR 85.36(b) 9 require the maintenance of records sufficient to detail the history of the procurement. The records will include contractor selection or rejection.

Resolution: The program manager supplied copies of memos from Lance Meyer, City Engineer, detailing the history of the bids rejected and awarded for the parking structures. Received bid tabulations for final bid opening on June 2, 2014.

2. Bids were advertised for two times instead of three, as required by state law, for the Landfill Expansion Project. The Director of Public Works was questioned as to why this RFP was only advertised twice. The Director of Public Works stated, in an email, the Minot Daily News was not advertising the RFP if their space was filled up. They would not notify the City and run the RFP for the next scheduled time. The Director noted the date of the writing of the advertisement was sent to the Minot Daily News on April 1, 2013, which would have allowed for third advertisement. The Director informed the auditor a meeting was held with Minot Daily News to stress the importance of advertising 3 times.

Justification: The North Dakota Century Code 48-01.2-02.1 requires for bids over \$100,000, the City shall advertise for bids by publishing for three consecutive weeks. The first publication of the advertisement must be at least twenty-one days before the date of the opening of bids.

Resolution: The issue was resolved by the Public Works Director, and will be monitored closely by Internal Audit.

3. Contractor proof of clearance date as evidenced by the debarment check from System for Award Management (SAM) is after the contract effective date for the following projects: Landfill Expansion, Wagner Construction; Domestic Violence Infrastructure, Wagner Construction; Roosevelt, Walders, Airport, and 13th Street Lift Stations, Veit & Company; and Master and Control Lift Stations, John T. Jones Construction.

Recommendation: CDM Smith must check contractor and subcontractor status prior to awarding of the contract or agreement to ensure they are not debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs.

Justification: Executive Order 12549, "Debarment and Suspension" and 24 CFR 85.35 require grantees must not make any award or permit any award at any tier to any party that is debarred or suspended or otherwise excluded from or ineligible for participation in federal assistance.

Resolution: The auditor previously informed the Program Manager the debarment check is very important and must be completed. A new Program Manager is now in place and the auditor again stated

the importance of checking contractor and subcontractor status. The last project awarded in 2013, the Renaissance and Central Parking facilities were checked before awarding. The auditor reviewed one project awarded in 2014, the 6th Street Underpass Storm Drain Project, and found it was awarded before the status was checked. Again, the auditor informed the Program Manager of this issue and was informed he has already checked the status for the contractor and subcontractors for a project to be awarded at the next council meeting. The auditor will review future contract awards for status check before the contract is awarded.

4. CDBG-DR required contract clauses have been left out of the following agreements: Renaissance and Central Parking Structures did not include a termination for convenience provision.

Recommendation: CDM Smith must ensure future RFPs and agreements contain all the required CDBG-DR clauses and since this contract is fairly new, the document should be amended to include a termination for convenience clause. **Termination clause has been forwarded to the City Engineer to be amended into the contract. The Program Manager was emailed on May 30, 2014, regarding the status of this amendment.**

Justification: Per 24 CFR 85.36 (i)(2) requires a termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement for all contracts in excess of \$10,000.

5. Several projects do not have entire contractor Section 3 Plans or in some cases updated tables in the electronic or hard copy files. The projects missing entire Section 3 Plans including tables A, B, C, and D are: The Downtown Parking Facilities, Renaissance and Central Parking Structures, Shaw-Lundquist Construction; Master and Control Lift Stations, John T. Jones Construction (there is a plan for Main Electric in the file); and the Landfill Expansion, Wagner Construction. One project did not have completed Tables A, B, C, and D: Domestic Violence Infrastructure, Wagner Construction.

Recommendation: CDM Smith must ensure complete contractor Section 3 Plans are included in the project files for Shaw-Lundquist Construction, John T. Jones Construction. The two completed projects are noted as non-compliant for Section 3 Plans. **Section 3 plans are attached for Shaw Lundquist and John T. Jones.**

Justification: Per 24 CFR 135.32 states, "Each recipient has the responsibility to comply with section 3 in its own operations, and ensure compliance in the operations of its contractors and subcontractors." The RFP documents include instructions and the format for completing a Section 3 Plan complete with the four tables listed above.

Resolution: **Section 3 plans have been received for Shaw Lundquist and John T. Jones. Copies are included in the audit file.**

An exit conference was held with the Disaster Recovery Program Manager on February 25, 2014, at 2:00 p.m. The above issues were discussed. The Program Manager was asked to update the files with the missing documents and copy to the auditor. As of the writing of this report the auditor received proof of debarment status check for the 6th Street Underpass.

Respectfully submitted

Karen Pocha-Melby, CPA
Internal Auditor

City of Minot