



Tajiguas Landfill Phase IIIB
Construction Contract



Audit Report

July 11, 2017



INTERNAL AUDIT DIVISION
SANTA BARBARA COUNTY AUDITOR-CONTROLLER

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ATTACHMENT:

Attachment A – Public Works’ Response to Audit Report

Overview

Introduction

The Internal Audit Division of the Auditor-Controller's Office performed an audit of the contracts of the Tajiguas Landfill Groundwater Protection System (the Project). Our work was limited to the area specified in the Objective and Scope section of this report. We believe the evidence we obtained provides a reasonable basis for the findings in this report.

Objective and Scope

The objective of our audit was to determine whether the County of Santa Barbara Public Works Department (Public Works) and companies contracted to perform services related to the construction of the Project complied with their contracts and Public Contract Code (PCC). The scope of our audit covered the Public Works Department's contracting process: contract planning, contract procurement, contract formation, and contract oversight related to the construction contract with Papich Construction, Inc. for Phase IIIB of the Project which Public Works awarded in March 2014 for \$5,765,038. We performed limited procedures to ensure certain records and approvals were on file regarding the quality of construction. However, the scope of this audit did not include the quality of materials and construction of the landfill liner.

Background

The Tajiguas Landfill is located within Santa Barbara County along the Gaviota coast. The purpose of the Project was to provide additional landfill air space. Landfill construction is subject to the California Public Contract Code. Phase IIIB of the Project included earthwork, groundwater protection liner system construction and placement, drainage control construction, and erosion control. Phase IIIB of the Project required the coordination of efforts from various entities as specified below:

- Public Works performed the Request for Bid and bid selection process. They were also involved in monitoring the progress of the Project and contract compliance.
- SWT Engineering, Inc. (SWT) was contracted to design the project specifications as well as to provide construction management services.
- Papich Construction, Inc. (Papich) was contracted to construct and install the elements of Phase IIIB.
- Geosyntec Consultants (Geosyntec) was contracted to monitor construction activities.

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- Central Coast Regional Water Quality Control Board, a State agency, certified that Phase IIIB of the Project was constructed in accordance with the approved plans and specifications. This certification is required before it can be used for waste disposal.

Construction of Phase IIIB was completed in October 2014. Phase IIIB of the project received conditional approval from the Central Coast Regional Water Quality Control Board to be used for waste disposal in March 2015.

Conclusion

Based on our audit, we noted opportunities for improvement over policies and procedures, compliance with regulations, documentation, and record retention. Public Works should implement the recommendations in this report.

Findings and Recommendations

Finding 1 – Policies and Procedures

Public Works did not provide us with written policies and procedures for reviewing submitted bids and determining the lowest responsive bidder. Public Works reviews the three lowest bids for mathematical accuracy but only reviews the lowest bid for completeness. As a result, Public Works does not notify bidders, other than the lowest bidder, that their submitted bid was incomplete. The Request for Bid documentation includes timeframes in which certain bid documentation must be submitted. The current Public Works review process may result in the disqualification of bidders for not submitting bid documents within the required timeframes specified in the Request for Bids. Additionally, this could affect the awarding of the contract if for some reason the lowest responsive bidder could not be awarded the contract.

We also noted that Public Works does not have written policies and procedures or a checklist on what contract monitoring Public Works staff performs, such as reviewing documentation provided by contractors. We did not see documentation evidencing whether a review of contractor construction records was performed by Public Works staff and who performed that review. Policies and procedures promote consistency and reduce opportunity for errors to occur. Lack of policies and procedures increase the risk of inconsistent practices and errors.

Recommendation: Public Works should develop written policies and procedures for determining the lowest and responsive bidder and over contract monitoring. These policies and procedures should include guidance on the elements of contractor documentation review.

Finding 2 – Request for Bids

We noted the Request for Bid documentation prepared by Public Works did not indicate the following information as required by the Public Contract Code:

- The necessary classification of contractor’s license needed in order to be awarded the contract as required by PCC §3300.
- That contractors needed to submit a Non-Collusion Declaration as required by PCC §7106. As a result, none of the contractors submitted a Non-Collusion Declaration.
- That all submitted bids should be sealed as required by PCC §20150.8. Sealed bidding ensures fair and open competition to ensure the best value is received. Although this requirement was not indicated in the Request for Bids, Public Works indicated that all bids received for Phase IIIB were sealed.

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Additionally, a List of Subcontractors form in the Request for Bid did not cite the proper landfill requirements. Although this did not impact the subcontractors required to be listed for this phase of the Project, using this form for other landfill projects could result in noncompliance with PCC §4104.

Recommendation: Public Works should ensure that all Request for Bid documentation contain the required elements as specified by Public Contract Code.

Finding 3 – Bid Award

Public Works notified the public of the bid opportunity for Phase IIIB of the Project in January 2014. Four bids were received for construction of Phase IIIB with unit costs listed for each bid item. Public Works was responsible for reviewing the bids and determining the lowest responsive bidder.

Although each bid received had varying unit costs, the following bid items had differences in unit costs between them in excess of \$50,000.

| Bid Item | Bidder 1 | Bidder 2 | Bidder 3 | Bidder 4 |
|--|--------------|--------------|--------------|--------------|
| Mobilization | \$ 815,204 | \$ 580,000 | \$ 436,000 | \$ 600,000 |
| Construction Support Tasks | \$ 127,500 | \$ 12,000 | \$ 19,000 | \$ 25,000 |
| Project Survey | \$ 155,800 | \$ 52,000 | \$ 40,000 | \$ 80,000 |
| Clearing, Grubbing, and Demolition | \$ 238,000 | \$ 20,000 | \$ 8,000 | \$ 20,000 |
| Construction Water Pump Generator, Mainfold, and Water Storage Tank System | \$ 131,800 | \$ 46,000 | \$ 55,000 | \$ 80,000 |
| Blasting | \$ 248,430 | \$ 993,720 | \$ 910,910 | \$ 1,159,340 |
| Unclassified Excavation to North Stockpile | \$ 326,250 | \$ 675,000 | \$ 652,500 | \$ 652,500 |
| Total Bid | \$ 5,565,038 | \$ 5,777,065 | \$ 5,816,304 | \$ 6,269,060 |

Although Papich (Bidder 1) had a total bid which was \$212,027 less than the next lowest bid, their bid contained seven bid items which had unit costs in excess of \$50,000 different than the other bidders.

As shown above, Papich’s bid contained unbalanced pricing including higher costs for some bid items and lower costs for others. Public Works accepted Papich’s bid as the lowest responsive bid and awarded them the Phase IIIB construction contract but notified the contractor that no

Findings and Recommendations

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price adjustments related to blasting would be made. However, we were not provided with documentation that Public Works evaluated unbalanced pricing (with exception to the notification related to blasting mentioned above) or performed a risk analysis which considered other factors that could be encountered by accepting a bid with unbalanced pricing. Although no price adjustments were made to blasting in this instance, accepting a bid with unbalanced pricing may result in increased risks associated with appropriate charges and project quality.

Recommendation: Public Works should document risks associated with bids which include unbalanced pricing and ensure that any risks are mitigated.

Finding 4 – Record Retention

During our audit we requested documentation from Public Works; however, they were unable to provide the following:

- That Public Works determined whether the contractor was ever convicted of violating Division 4 of the California Labor Code or Unemployment Insurance Code as recommended by PCC §2104.70.
- The Bidder's List from Phase IIIA.

Not maintaining complete records may result in audit findings from outside agencies, monetary repayment, and legal action.

Recommendation: Public Works should adhere to departmental record retention requirements.

Acknowledgements

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The responses from the Santa Barbara County Public Works Department to the findings and recommendations in this report, as well as any planned corrective actions, are presented as attachments to this report. We have not evaluated the validity of these comments.

We appreciate the courtesy extended to us by the Santa Barbara County Public Works Department. If we can be of further assistance, please contact us at (805) 568-2100.

Respectfully Submitted,



Theodore A. Fallati, CPA, CPFO
Auditor-Controller

**COUNTY OF SANTA BARBARA
PUBLIC WORKS DEPARTMENT**

123 East Anapamu Street
Santa Barbara, California 93101
(805) 568-3000



SCOTT D. MCGOLPIN
Director

July 11, 2017

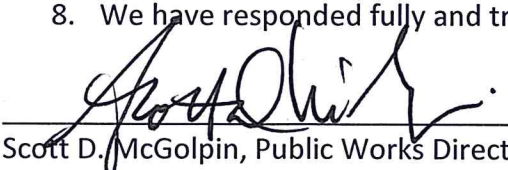
Theodore Fallati, CPA, CPFO
Auditor-Controller
PO Box 39
Santa Barbara, CA 93102

Dear Mr. Fallati:

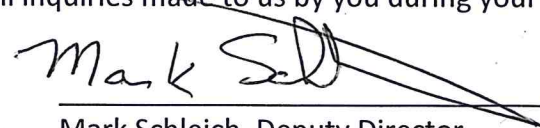
We are providing this letter in connection with your audit of the contracts for construction of Phase IIIB of the groundwater protection system at the Tajiguas Sanitary Landfill. We confirm that we are responsible for awarding and monitoring the department of Public Works' contracts related to the Tajiguas Sanitary Landfill.

We confirm, to the best of our knowledge and belief, as of July 11, 2017 the following representations made to you during your audit (attachment A):

1. We have made available to you all records and related data requested from us during your audit.
2. We acknowledge our responsibility for compliance with the laws and regulations applicable to the contracts under audit.
3. We acknowledge our responsibility for designing, implementing, and maintaining internal control relevant to compliance with laws and regulations of the contracts under audit.
4. We acknowledge our responsibility to prevent and detect fraud.
5. We have no knowledge of any fraud or suspected fraud affecting the entity involving management or others, including any communications from employees, former employees, or others.
6. To the best of our knowledge, with exception to any errors identified during your audit, we believe the information provided to you is complete and accurate.
7. No information has come to our attention subsequent to the period of your audit and through the date of this letter that would require correction to the information provided.
8. We have responded fully and truthfully to all inquiries made to us by you during your audit.



Scott D. McGolpin, Public Works Director



Mark Schleich, Deputy Director
Resource Recovery & Waste Management

AA/EEO Employer

Thomas D. Fayram, Deputy Director

Chris Sneddon, Deputy Director

Mark A. Schleich, Deputy Director

Julie A. Hagen, Deputy Director

Aleksandar Jevremovic, County Surveyor

Finding 1 – Policies and Procedures

Public Works did not provide us with written policies and procedures for reviewing submitted bids and determining the lowest responsive bidder. Public Works reviews the three lowest bids for mathematical accuracy but only reviews the lowest bid for completeness. As a result, Public Works does not notify bidders, other than the lowest bidder, that their submitted bid was incomplete. The Request for Bid documentation includes timeframes in which certain bid documentation must be submitted. The current Public Works review process may result in the disqualification of bidders for not submitting bid documents within the required timeframes specified in the Request for Bids. Additionally, this could affect the awarding of the contract if for some reason the lowest responsive bidder could not be awarded the contract.

We also noted that Public Works does not have written policies and procedures or a checklist on what contract monitoring Public Works staff performs, such as reviewing documentation provided by contractors. We did not see documentation evidencing whether a review of contractor construction records was performed by Public Works staff and who performed that review. Policies and procedures promote consistency and reduce opportunity for errors to occur. Lack of policies and procedures increase the risk of inconsistent practices and errors.

Recommendation: Public Works should develop written policies and procedures for determining the lowest and responsive bidder and over contract monitoring. These policies and procedures should include guidance on the elements of contractor documentation review.

Response to Finding 1: Public Works Department partially agrees with this recommendation. We currently follow procedures in public contract code PCC §20128 to determine the lowest responsible bidder and the PCC Alternative Procedure methods starting at §22030 to bid. A supplemental policies and procedures document will be developed with a check list of items to be used for determining the three lowest most responsible bidders, and Public Works Department will continue to follow Caltrans Construction Manual procedures during the construction contract time period. This will be implemented by September 1, 2017.

Finding 2 – Request for Bids

We noted the Request for Bid documentation prepared by Public Works did not indicate the following information as required by the Public Contract Code:

- The necessary classification of contractor's license needed in order to be awarded the contract as required by PCC §3300.
- That contractors needed to submit a Non-Collusion Declaration as required by PCC §7106. As a result, none of the contractors submitted a Non-Collusion Declaration.
- That all submitted bids should be sealed as required by PCC §20150.8. Sealed bidding ensures fair and open competition to ensure the best value is received. Although this requirement was not indicated in the Request for Bids, Public Works indicated that all bids received for Phase IIIB were sealed.

Additionally, a List of Subcontractors form in the Request for Bid did not cite the proper landfill requirements. Although this did not impact the subcontractors required to be listed for this phase of the Project, using this form for other landfill projects could result in noncompliance with PCC §4104.

Recommendation: Public Works should ensure that all Request for Bid documentation contain the required elements as specified by Public Contract Code.

Response to Finding 2: Public Works Department agrees with this recommendation. The Public Works Department will add the following elements to the Bid Package:

- We will include the requirement for a specific type of Contractor's license in the appropriate section.*
- We will include a declaration of Non-Collusion form in the Bid Package in the appropriate location for completion by the contractor.*
- We will make sure the word "sealed" is included in the appropriate section of the Bid Documents.*

This will be implemented by September 1, 2017.

Finding 3 – Bid Award

Public Works notified the public of the bid opportunity for Phase IIIB of the Project in January 2014. Four bids were received for construction of Phase IIIB with unit costs listed for each bid item. Public Works was responsible for reviewing the bids and determining the lowest responsive bidder.

Although each bid received had varying unit costs, the following bid items had differences in unit costs between them in excess of \$50,000.

(Chart Removed)

Although Papich (Bidder 1) had a total bid which was \$212,027 less than the next lowest bid, their bid contained seven bid items which had unit costs in excess of \$50,000 different than the other bidders.

As shown above, Papich's bid contained unbalanced pricing including higher costs for some bid items and lower costs for others. Public Works accepted Papich's bid as the lowest responsive bid and awarded them the Phase IIIB construction contract but notified the contractor that no price adjustments related to blasting would be made. However, we were not provided with documentation that Public Works evaluated unbalanced pricing (with exception to the notification related to blasting mentioned above) or performed a risk analysis which considered other factors that could be encountered by accepting a bid with unbalanced pricing. Although no price adjustments were made to blasting in this instance, accepting a bid with unbalanced pricing may result in increased risks associated with appropriate charges and project quality.

Recommendation: Public Works should document risks associated with bids which include unbalanced pricing and ensure that any risks are mitigated.

***Response to Finding 3:** Public Works Department partially agrees with this recommendation. We currently take steps to mitigate risk. We mitigate risk by using a Performance Bond and a Payment Bond both with 100% coverage. In addition, prior to making periodic progress payments, work is reviewed by staff to assure completeness before payment is recommended.*

We will make sure to document risks associated with bids and mitigate those risks, whenever possible. In addition any correspondence will be memorialized in writing and a copy placed in the contract file and given to the contractor. Mitigation may include contacting the contractor to ensure they are aware of the work required and their bid amounts for the work item, and putting in place processes to monitor specific risks. This will be implemented by September 1, 2017.

Finding 4 – Record Retention

During our audit we requested documentation from Public Works; however, they were unable to provide the following:

- That Public Works determined whether the contractor was ever convicted of violating Division 4 of the California Labor Code or Unemployment Insurance Code as recommended by PCC §2104.70.
- The Bidder's List from Phase IIIA.

Not maintaining complete records may result in audit findings from outside agencies, monetary repayment, and legal action.

Recommendation: Public Works should adhere to departmental record retention requirements.

***Response to Finding 4:** Public Works Department agrees with this recommendation. Public Works will verify conviction information with contractors and will place documentation in the contract file. Public Works will place a copy of the Bidder's List in the contract file. The Public Works Department's standard practice for important record retention is five years. This will be implemented by September 1, 2017.*