



City of Austin



Office of the City Auditor

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Date: August 15, 2011
To: Mayor and Council
From: Ken Mory, City Auditor
Subject: MWH Contracting Risks

As you know, we include hours to respond to special requests from individual Council Members as part of our Strategic Audit Plan. This memo responds to a request from Council Member Spelman regarding information on MWH, a contractor the City is using for the Water Treatment Plant #4 construction project. Specifically, we were asked to review a report issued by the New Orleans Inspector General regarding an audit of a contract between the City of New Orleans and MWH and determine whether contracting issues raised in that audit might be of concern for the City of Austin.

To conduct this work, we examined the findings from the New Orleans audit, interviewed the City of Austin Purchasing Officer, and reviewed the contract between the City of Austin and MWH Constructors, the main contractor for Water Treatment Plant #4. Based on our review, we have not identified any significant contracting risks in the New Orleans report that are applicable to the City of Austin (see Exhibit 1 on the following page).

cc: City Manager
Chief Financial Officer
Purchasing Officer
Assistant City Manager over Capital Improvement Projects
Austin Water Utility Director

Exhibit 1: OCA Review of MWH Contracting Risks

#	New Orleans Report Finding	Review	Conclusion
1	New Orleans selected MWH through a flawed procurement process that failed to produce meaningful competition.	There was an extensive bidder's list; the Purchasing Officer indicated that the qualification conference was well attended and a detailed scope of work was developed and communicated. 6 bidders responded to the Request for Qualifications (RFQ).	N/A to COA
2	MWH was not required to submit a competitive cost proposal and the City of New Orleans has no assurance that MWH's fees are competitive.	In Texas, per the Purchasing Officer, this system is not used (City used RFQ process, no cost proposals). For this contract, the RFQ process was utilized and the selection criteria was based on qualifications.	N/A to COA
3	MWH has refused to provide evidence that it is honest in honoring its contractual obligation to charge the City its "most favored customer rates."	Such language is not used in City of Austin contracts and was not included in the MWH contract.	N/A to COA
4	New Orleans improperly paid MWH for negotiating the contract.	The City of Austin does not make prepayments.	N/A to COA
5	The contract did not require MWH to assign key personnel to infrastructure project.	The contract has a clause requiring the contractor to submit the "players" and their resumes and that any changes should be approved by the City.	N/A to COA
6	The contract calls for MWH to be paid on a time and materials basis, a form of compensation that presents a high risk of excessive charges.	The WTP contract payments are scope-based.	N/A to COA
7	The contract calls for MWH to be paid for expenses on a cost-plus-percentage-of-cost basis. A form of compensation that is specifically prohibited under FEMA rules.	This method is not used in City of Austin contracts, per the Purchasing Officer.	N/A to COA
8	The not-to-exceed contract was not based on realistic budget for the infrastructure project.	The Purchasing Officer asserted that the WTP project budget was realistic and adjusted appropriately.	N/A to COA
9	MWH's billing for capital projects provide no basis for allocating costs to specific projects or for keeping MWH's fees in line with overall project costs.	The WTP contract is performance-based and payments are made against deliverables.	N/A to COA
10	The City allowed MWH's fees to mount faster than the rate of progress on capital projects.	The WTP contract is a performance based contract, tied to milestones/deliverables.	N/A to COA
11	The state revolving fund has been depleted to expedite payments to MWH without regard for whether expenditures will be reimbursed.	The Purchasing Officer indicated that this practice is not used in Austin.	N/A to COA