



Basin 10 & 14
Capacity
Improvements
Audit 2023-U1

December 2023



BASIN 10 & 14 CAPACITY IMPROVEMENTS (2023-U1)

BACKGROUND

The City of Fort Smith has a population of approximately 89,000 citizens. Water Utilities' mission is "We are a unified team committed to delivering reliable, high-quality drinking water and water reclamation services for the City of Fort Smith and the River Valley." The City has approximately 627 miles of sanitary sewer lines, 23 pump stations, and two wastewater treatment plants.

Water Utilities utilizes e-Builder, a project management software program, to manage its water and sewer projects. Water Utilities implemented Standard Operating Procedures (SOP) for the Engineering Department Work Flow Process. The use of e-Builder and the SOP are the only resources that Water Utilities currently uses to ensure processes and documents for each project are reviewed, are complete and accurate, and are retained and available to staff and management as needed.

The Basin 10 & 14 Capacity Improvements is a Consent Decree Project. This project has four city project numbers, 18-16 (phase 1 design), 18-17 (phase 2 design), 21-22 (phase 1, schedule 1 construction and construction observation), and 23-07 (phase 3 design). Project 21-22, phase 1, schedule 1 is funded by American Rescue Plan Act (ARPA) funds. Construction projects funded with Federal funds have specific guidelines that must be followed and are subject to the annual single audit.

The City received \$21,220,634 in ARPA funds, of those funds, \$13,508,990 were allocated to the Basin 10 & 14 Capacity Improvements Project, Phase 1, schedule 1. The total expenditures for the project through September 30, 2023, is \$12,891,872. (*SLFRF Compliance Report, Qtr. 3, 2023*)

Project 18-16-ED1, Basin 10 and 14 Capacity Improvements, Phase I was to design for the replacement of the existing P Street Interceptor Sewer between Martin Luther King Park at North 18th Street and the connection point to the Sub-Basin P007 Capacity Improvements near the intersection of North 32nd Street and North M Street. The Board of Directors approved Project 18-16-ED1 by Resolution R-119-18 on August 21, 2018.

Project 18-17-ED1, Basin 10 and 14 Capacity Improvements, Phase II was to design the replacement of the existing P Street Interceptor Sewer starting at the end the proposed end of the Basin 10 and 14 Capacity Improvements, Phase I Project located near the intersection of North 32nd Street and North M Street and extending to Rogers Avenue. The Board of Directors approved Project 18-17-ED1 by Resolution R-120-18 on August 21, 2018.

Project 21-22 is for construction and construction observation of Phase I, Basin 10 & 14 Capacity Improvements. The Board of Directors approved Project 21-22-C1 (construction) by Resolution R-109-22 on July 19, 2022 and Project 21-22-EC1 (construction observation) by Resolution R-119-22 on August 2, 2022. The bid was awarded to McKee Utility Construction, Inc. for \$12,824,091. The project is currently ongoing and McKee has completed \$12,457,576.15 (97%) of the construction contract for work performed through September 30, 2023.

Project 23-07, Basin 10 & 14 Capacity Improvement, Phase 3 Project includes the replacement of approximately 1,250 linear feet of 12-inch diameter sewer mains with a 24-inch diameter sewer main. The Project Area is located south of Rogers Avenue (Arkansas Highway 22) and east of Old Greenwood Road. The Board of Directors approved Project 23-07-ED1 by Resolution R-75-23 on April 18, 2023. Bid and Construction on this phase is pending.

AUDIT SCOPE AND OBJECTIVES

The scope of the audit covers activities and transactions for the Basin 10 & 14 Capacity Improvements that occurred during the calendar years 2022 and 2023 through September 30th. This project was identified during the risk assessment and is included in the 2023 Audit Plan.

Our audit objectives, as refined during research and the risk assessment process occurring throughout the course of our work, were as follows:

1. Project funding and accounting treatment (ARPA funds) are appropriate.
2. Comprehensive policies and procedures for Construction Management have been established and are followed by staff.
3. Construction project bids were awarded in compliance with applicable rules.
4. The City has an effective system of controls in place that assist in appropriately managing construction-related costs.
5. Changes from the initial contract award amount and the final contract price were appropriately negotiated and documented.
6. City facilities and construction projects are adequately protected from liability by insurance and bonding and;
7. Project Engineers and Contractors complied with the provisions stated in the contract.

CONCLUSIONS AND SIGNIFICANT ISSUES

We believe that we have obtained sufficient and appropriate evidence to adequately support the conclusions provided below as required by professional standards. Each conclusion is aligned with the related Audit Objective for consistency and reference. For detailed findings, recommendations, management responses, comments and assessment of responses see the “Detailed Findings, Recommendations, Management Responses, and Assessment of Responses” section of this report.

AUDIT OBJECTIVE 1 – Project funding and accounting treatment are appropriate.

CONCLUSION - The use of ARPA funds and the accounting treatment are appropriate for the project as outlined in the Department of Treasury’s Compliance and Reporting Guidelines for State and Local Fiscal Recovery Funds. *(No Finding)*

AUDIT OBJECTIVE 2 - Comprehensive policies and procedures for Construction Management have been established and are followed by staff.

CONCLUSION - Water Utilities does not have comprehensive policies and procedures for Construction Management in place. Repeat finding from 2022-U2 Wastewater Pump Station Flood Remediation Project Audit and the 2019 Construction Contract Audit. *(See Finding #1)*

AUDIT OBJECTIVE 3 – Construction project bids were awarded in compliance with applicable rules.

CONCLUSION – The project was bid in accordance with the City of Fort Smith Purchasing Manual. The contractor was verified with the System of Award Management (SAM.gov) as required by the contract. *(No Finding)*

AUDIT OBJECTIVE 4 - The City has an effective system of controls in place that assist in appropriately managing construction-related costs.

CONCLUSION - Water Utilities employs an engineering firm to perform construction design and construction observation for major projects. This includes project cost estimates, project bid phase, and review and recommendation of contractor payment requests. *(No Finding)*

AUDIT OBJECTIVE 5 – Changes from the initial contract award amount and the final contract price were appropriately negotiated and documented.

CONCLUSION - Project is ongoing and final contract price has not been determined. *(No Finding)*

AUDIT OBJECTIVE 6 - City facilities and construction projects are adequately protected from liability by insurance and bonding.

CONCLUSION - Liability Insurance is not consistently verified and up to date. Repeat Finding, 2019 Construction Contract Audit and the 2022-U2 Wastewater Pump Station Flood Remediation Project Audit. *(See Finding 2).*

AUDIT OBJECTIVE 7– Project Engineers and Contractors complied with the provisions stated in the contract.

CONCLUSION - The contractor is not consistently in compliance with the provisions stated in the contract. The contractor worked outside of regular hours without prior approval. However, the contractor is paid for work completed for each line item and therefore the contractor bears the risk of any additional labor cost and not the City. *(See observation #7)*

DETAILED FINDINGS, RECOMMENDATIONS, MANAGEMENT RESPONSES, AND ASSESSMENT OF RESPONSES

FINDING # 1 - Water Utilities does not have a Comprehensive Project Management Manual in place and the Engineering Workflow Process SOP does not include processes for federally funded projects.

Background:

Internal Audit performed a walkthrough with the Water Utilities Engineering Team to gain an understanding of the Basin 10 & 14 Capacity Improvements project and the processes and procedures for the management of the project. Procedures to execute and monitor contracts are performed based on the experience and knowledge of the Engineering Team.

FINDING 1:

Repeat finding from the 2022 Wastewater Pump Station Remedial Measures audit and the 2019 Construction Audit. The Utility Department does not have a comprehensive manual of policies and procedures to manage the construction lifecycle processes of capital improvement projects within the Department. The Department's engineering team relies on team knowledge and experience to execute and manage projects, which may not consistently be performed across the team.

Water Utilities is in the process of writing/updating a Project Management Manual. Water Utilities implemented an Engineering Workflow Process SOP in August of 2022, however, the SOP does not include processes for federally funded projects. Federally funded projects may be subject to various laws and regulations such as the Davis Bacon Act, Project Employment and Local Impact reporting, non-discrimination provisions, wage rate laws and other federal laws including the Fair Labor Standards Acts of 1938, The Work Hours Act of 1962, the American Rescue Plan Act of 2021, and Title VI of the Civil Rights Acts of 1964.

RECOMMENDATIONS:

Water Utilities should continue and complete the Project Management Manual and should consider updating the Engineering Workflow Process to include processes for federally funded projects or develop an SOP for federally funded construction projects. Water Utilities should include documentation of funding laws and regulations in the project files (both hard copies and in e-Builder). Funding sources may have specific laws and regulations to be followed; this should be taken into consideration with each project. The project process and procedures followed by staff, engineers, and contractors should be adequately documented to ensure compliance with the rules and regulations specific to each project.

WATER UTILITIES' MANAGEMENT RESPONSE:

Water Utilities has a standard operating procedure (SOP) which it follows for projects. The federal requirements for ARPA funded projects differed slightly from standard federally funded projects. Staff

attended training from Arkansas Municipal League as well as other state agencies to ensure all rules pertaining to ARPA funds were followed.

The rules and regulation requirements for the ARPA funds are included in the contact manual for this project.

Water Utilities recognizes that future federal funded projects have requirements not covered in the current SOP. Water Utilities agrees that a Federal Funded Project SOP is needed and will begin developing the SOP.

RESPONSIBLE PARTY: Lance McAvoy, Director of Water Utilities

ESTIMATED TIME OF COMPLETION: SOP written and implemented by end of 2024. This will allow research to ensure all requirements for federally funded projects are covered by the SOP.

ASSESSMENT OF RESPONSE: The estimated time of completion is unacceptable. The Davis-Bacon Act applies to all federally funded contracts more than \$2,000 and not just those contracts that are funded from ARPA. Management indicates that staff attended training to ensure all rules pertaining to ARPA funds were followed. While some additional research may be required, staff has already been trained and did research to include the rules and regulation requirements that were included in the contract manual.

FINDING # 2 - Water Utilities did not maintain on file a current certificate of liability insurance for the contractor during the construction period.

BACKGROUND:

The contract requires the contractor to purchase and maintain commercial liability and other insurance. Internal Audit reviewed the documents in the Water Utilities construction management software application, e-Builder, to verify that the contractor met the insurance requirements at all times during the construction project.

FINDING 2:

Water Utilities did not have on file a certificate of liability insurance for the contractor from May 01, 2023 through August 2023. The certificate of liability insurance for the period of 05/01/2023 through 05/01/2024 is dated 07/20/2023 and was uploaded into e-Builder on 08/07/2023. This is a repeat finding from the 2022-U2 Wastewater Pump Station Flood Remediation Project audit and the 2019 Construction Audit. The City could be held liable for damages for accidents that occur during a lapse of insurance coverage.

RECOMMENDATIONS:

Water Utilities should ensure all documents required by the contract are provided, verified, and uploaded to e-Builder in a timely manner. Water Utilities should consider updating their tracking process to ensure that City facilities and construction projects are protected by liability insurance at all times as specified in the contract.

WATER UTILITIES' MANAGEMENT RESPONSE:

Water Utilities agrees. Although the documents were received at a later time, it is important to ensure there are no lapse in insurance.

Staff is working on a plan to track and ensure all documentation is received and uploaded in a timely manner.

RESPONSIBLE PARTY: Lance McAvoy, Director of Water Utilities

ESTIMATED DATE OF COMPLETION: End of second quarter 2024.

ASSESSMENT OF RESPONSE: The estimated date of completion is unacceptable. This is a repeat finding from the Pump Station Flood Remediation Audit where management's response to finding # 6 included the following statement. *"A checklist is also employed to prevent future*

occurrences.” This response indicates that Water Utilities has a checklist in place to prevent lapses in insurance coverage but did not follow the procedure.

OBSERVATIONS

OBSERVATION # 1 – Internal Audit tested the cost of the project in e-Builder and Tyler Munis and found that there was a discrepancy of \$1,319.60. Internal Audit found that Water Utilities had charged that amount to the project in e-Builder but the cost did not flow through to the project in Tyler-Munis.

Water Utilities requested a Journal Entry to transfer the cost (\$1,319.16) of the three (3) meter boxes from 2101-529100 (Water/Sewer operating fund - inventory) to 6505ARPS-520200 (ARP Sewer - Construction Contracts).

The request for a journal entry did not include a project/project string. Therefore, the project was not charged for the cost of the meter boxes in Tyler-Munis. The cost was charged to the ARP Sewer-Construction Contracts revenue account only.

Internal Audit discussed the journal entry with Finance and Finance then contacted Water Utilities for the project/project string and made a correcting journal entry to charge the expense to the project.

Water Utilities should include a project/project string with all requests for journal entries that are to be expensed to a project to ensure that the cost is correct in both e-Builder and Tyler-Munis.

OBSERVATION # 2 – The contractor/engineer submitted pay estimate # 8 with the cost (\$2,250) for materials and labor for three (3) meter boxes, line item # 84.

COFS provided three (3) meter boxes from inventory to the contractor to be used for the project.

COFS is to receive credit for the meter boxes on a future pay estimate but has not received credit as of the latest pay estimate (# 11, dated 10/16/2023 for the period of 09/01/2023 through 09/30/2023).

Project is ongoing and final change order has not been processed.

OBSERVATION # 3 - The agreement states that it is subject to the Davis-Bacon Act. The Davis-Bacon Act requires that the contractor pay the prevailing wages for the job classification for each employee. The Davis-Bacon Act also requires the contractor to submit weekly certified payrolls. However, the Pre-Construction conference meeting summary, 11. B., states "Contractor to submit certified payrolls with each payment request.

- a) The first certified payroll submitted was payroll number 7. Certified payrolls should be numbered sequentially beginning with 1 for the first payroll period in which work was performed. Since no work was performed, nor should work have been performed prior to the Notice to Proceed date of November 14, 2022. The payroll for the week beginning November 14, 2022, should have been payroll number 1. Additionally, because no work was performed prior to November 14, 2022, there would not have been a need for Statements of Non-Performance prior to November 14, 2022. Furthermore, the Statements of Non-Performance for payrolls 1 through 4 are dated 08/16/2023.
- b) For a "certified payroll" to be certified it must include a signed Statement of Compliance. Only 13 of 47 Statements of Compliance submitted by the contractor were actually signed.

- c) The contractor submitted multiple certified payrolls for the same payroll period and submitted duplicate certified payrolls with separate pay estimates. The contractor did not submit certified payrolls with pay estimate # 2 and submitted certified payrolls that should have been submitted with pay estimate # 2 with pay estimate # 4. The certified payrolls that should have been submitted with pay estimate # 4 were missing. Internal Audit requested the missing certified payrolls, and Water Utilities was able to obtain them and upload them into e-Builder.
- d) The contractor submitted Statements of Non-Performance for two pay periods and then also submitted certified payrolls for the same pay period. Pay period # 44 was submitted twice, once with a statement of Non-Performance and then again as a certified payroll. Payroll # 48 is a Statement of Non-Performance for the week of August 24, 2023, through August 30, 2023, and then payroll # 49 is a certified payroll for the same week.
- e) Three of the certified payrolls (#51, #52, & #53) submitted by the contractor did not include a job classification for one employee.
- f) The certified payrolls did not include an individual identifying number for each employee until payroll number 49.
- g) The certified payrolls included workers that were not on site and therefore would not have been required to be included on the certified payroll. For example, a shop worker and an office employee.
- h) The number of workers listed on the certified payrolls was not consistent with the number of workers listed on the daily inspection logs for the same dates.

OBSERVATION # 4 - The Hawkins-Weir Engineers, Inc. (HW) agreement, scope of services, item # 8, states that HW will perform monthly payroll audits. HW performed two (2) payroll audits. While HW met the minimum requirements for employee interviews under the Davis-Bacon Act, the employee interview is only part of the payroll audit. HW did not perform the monthly payroll audits as outlined in the scope of services. HW does not submit itemized invoices; therefore, IA cannot corroborate that HW only billed the City for the wage audits performed. The HW agreement has a Not to Exceed amount, however, the City could pay for services not received.

The HW wage audits submitted do not indicate how the certified payroll was audited. This was not a specific requirement in the scope of services. However, IA cannot determine what was audited. There are no check marks, no initials, or anything to indicate the payroll worksheet was verified. There is no indication of where the payroll worksheet came from or what was done.

OBSERVATION # 5 - Wage rate and prevailing wage posters must be displayed on the job site. The City could not corroborate if the Davis-Bacon wage requirements were posted at the job site as required under the Davis-Bacon Act. One of the two wage audits performed by HW indicated that the prevailing wages were not posted at the job site.

OBSERVATION # 6 - A notice of substantial completion nor any other statement of substantial completion was not found in e-Builder. During the walkthrough Water Utilities indicated that the only item, to tie in a new water line, was remaining. The daily inspection logs indicate that this work was completed on September 27, 2023. The date of substantial completion sets the beginning date for the warranty period for the work performed.

OBSERVATION # 7 - The Engineer and the Contractor did not consistently comply with the provisions stated in the contract.

Article 6, paragraph 6.3 of the General Conditions of the contract specifies that the *“contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any legal holiday without engineer’s written consent”*. Article 11, paragraph 11.1.4 of the General Conditions of the contract specify *“The expenses of performing work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by the owner.”* Section 108, paragraph 108.05 of the Special Conditions of the contract specifies that *“all work that requires inspection shall be performed during City of Fort Smith regular working hours, and contractor will not permit overtime work or the performance of work on Saturday, Sunday, or any legal holiday as designated in subsection 101.01.C “Definitions” without Engineer’s written consent. Contractor to submit a written request to the Engineer for non-regular working hours 48 hours in advance of the start of such work.”* Additionally, the contractors work schedule as outlined in the pre-construction conference meeting summary stated the work schedule was *“Monday through Friday 7:00 a.m. – 5:00 p.m. Does not include holidays. Clean up and/or preparatory work allowed before and after. Any work outside this schedule shall be in writing. 48-hours advance notice is requested for work that will be performed outside of normal working hours.”*

Internal Audit reviewed the Request for Information forms, Daily Inspection Logs and Certified Payrolls to verify that the contractor had approval to work outside of regular business hours and to verify days and hours worked.

Change order number one allowed for two 12-hours shifts to be worked during tunneling operations. LP Sundance was the sub-contractor that performed tunneling operations. The daily inspection logs indicate that LP Sundance was on site from November 30, 2022, through February 22, 2023. The contractor continued to work more than eight hours per day after the tunneling operations were completed.