

Washington State Auditor's Office

Accountability Audit Report

**Island County Fire Protection District
No. 3**

Report Date
November 2, 2009

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WASHINGTON
BRIAN SONNTAG
STATE AUDITOR



**Washington State Auditor
Brian Sonntag**

January 19, 2010

Board of Commissioners
Island County Fire Protection District No. 3
Freeland, Washington

Report on Accountability

We appreciate the opportunity to work in cooperation with your District to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role to advocate for government accountability and transparency and to promote positive change.

Please find attached our report on Island County Fire Protection District No. 3's accountability and compliance with state laws and regulations and its own policies and procedures. Thank you for working with us to ensure the efficient and effective use of public resources.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Sonntag". The signature is stylized with a large, sweeping "B" and "S".

BRIAN SONNTAG, CGFM
STATE AUDITOR

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November 2, 2009

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Audit Summary

Island County Fire Protection District No. 3 November 2, 2009

ABOUT THE AUDIT

This report contains the results of our independent accountability audit of Island County Fire Protection District No. 3 for January 1, 2006, through December 31, 2008.

We evaluated internal controls and performed audit procedures on the activities of the District. We also determined whether the District complied with state laws and regulations and its own policies and procedures.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of noncompliance, misappropriation or misuse. The following areas were examined during this audit:

- Conflict of interest/ethics laws
- Gifts of public funds
- Bid law compliance
- Open Public Meetings Act

RESULTS

In most areas, the District complied with state laws and regulations and its own policies and procedures.

However, we identified two conditions significant enough to report as findings:

- The District did not comply with state bid law.
- The District did not comply with state conflict of interest law.

Related Reports

**Island County Fire Protection District No. 3
Island County
November 2, 2009**

FINANCIAL

Our opinion on the District's financial statements is provided in a separate report, which includes the District's financial statements.

Description of the District

Island County Fire Protection District No. 3 November 2, 2009

ABOUT THE DISTRICT

Island County Fire Protection District No. 3 serves approximately 65 square miles on the southern portion of Whidbey Island, one third of the island's total geographical area. The District is governed by an elected, three-member Board of Commissioners.

The District is administered by a Fire Chief appointed by the Commissioners. The District operated on budgets of \$1.7 million in 2006, \$2.3 million in 2007 and \$4.2 million in 2008. The District's fire prevention and suppression, emergency medical and rescue services are provided by seven full-time employees, two part-time employees and approximately 100 volunteer firefighters.

ELECTED OFFICIALS

These officials served during the audit period:

Board of Commissioners:

Mike Helland
Dennis Webster (resigned in December 2007)
Kenon Simmons (appointed in January 2008)
Robert Elliot

APPOINTED OFFICIALS

Fire Chief
Administrative Assistant

Dan Stout
Paula Schuler

DISTRICT CONTACT INFORMATION

Address: Island County Fire Protection District No. 3
5535 Cameron Road
Freeland, WA 98249

Phone: (360) 321-1533

Web site: www.icfd3.org

AUDIT HISTORY

The District is audited every three years. The District has been proactive in resolving issues we have brought to its attention and most issues are resolved prior to the next audit.

Schedule of Audit Findings and Responses

Island County Fire Protection District No. 3 November 2, 2009

1. The District did not comply with state conflict of interest laws.

Description of Condition

The District purchases equipment and computer, consulting and electrical services from a company owned by one of its volunteer fighters. The company was paid approximately \$96,000 in 2006, \$57,000 in 2007 and \$97,000 in 2008.

District staff asked the firefighter to prepare the annual communications budgets for the three years, which were adopted by the Commissioners. That budget includes expenditures for hardware, software and servicing needs of the District. The District then hired the firefighter's company to perform the work. By preparing the budget, the firefighter was acting as a municipal officer and therefore state conflict of interest laws apply to any contract between the District and the firefighter. Although the two parties did not have a contract, which is discussed further in Finding 2, state law defines a contract as any contract, sale, lease or purchase.

Cause of Condition

District staff stated it believed the firefighter's knowledge of the communication and computer systems at the District made him the best individual to determine the communications budget for each fiscal year.

Effect of Condition

The firefighter is beneficially interested in the contract. Also, not all interested parties were given the chance to bid on the work to ensure the District got the best price.

Recommendation

We recommend the District comply with state law by ensuring no contracts are made that represent a conflict or potential conflict of interest with any municipal officer.

District's Response

The District has removed the firefighter from the budget preparation portion of the effected budget areas.

Auditor's Remarks

We appreciate the steps the District is taking to resolve this issue. We will review the condition during our next audit.

Applicable Laws and Regulations

RCW 42.23.020, Definitions, states:

For the purpose of chapter 268, Laws of 1961:

- (1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;
- (2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;
- (3) "Contract" shall include any contract, sale, lease or purchase;
- (4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality.

RCW 42.23.030, Interest in contracts prohibited – Exceptions, states:

No municipal officer shall be beneficially interested, directly or indirectly, in any contract which may be made by, through or under the supervision of such officer, in whole or in part, or which may be made for the benefit of his or her office, or accept, directly or indirectly, any compensation, gratuity or reward in connection with such contract from any other person beneficially interested therein.

RCW 42.23.070, Prohibited acts, states:

- (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.
- (2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the officer's services as such an officer unless otherwise provided for by law.
- (3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.
- (4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit.

Schedule of Audit Findings and Responses

Island County Fire Protection District No. 3 Island County November 2, 2009

2. The District did not comply with state bid laws.

Description of Condition

During our review of compliance with state bid law, we reviewed six professional services contracts and one public works project totaling approximately \$354,000. We identified the following areas of noncompliance:

- As noted in Finding 1, The District used one vendor to provide computer, consulting and electrical services. The vendor was paid approximately \$96,000 in 2006, \$57,000 in 2007 and \$97,000 in 2008. The District did not competitively procure these purchases. Further, the District does not have a formal written contract in place with this vendor to provide services.
- The District could not provide documentation showing it advertised its small works roster or vendor list twice a year with the local newspaper during 2006, 2007 or 2008.
- The District could not provide support showing vendors on the small works roster or vendor list have been given an opportunity to provide quotes for small work projects and equipment purchases.
- The District could not provide support showing a written finding for an emergency \$19,850 generator purchase that was made by the Commissioners and entered into record within two weeks following the purchase.
- The District entered into an inter-local agreement with another fire district in 2008 to purchase self-contained breathing apparatuses for approximately \$310,000. The District did not post the inter-local agreement on its Web site or file it with the Island County Auditor's Office.

Cause of Condition

The District was not aware it needed a contract with its vendor to provide computer, consulting and electrical services. In addition, the District was unaware it should maintain documentation proving it is advertising its small works roster and vendor list twice a year and that it is giving vendors an opportunity to provide quotes. The District was also not aware the governing body was required to approve an emergency purchase and enter the purchase into record within two weeks.

Additionally, the District was unaware that it needed to either post inter-local agreements on its Web site or file agreements with the County Auditor's Office.

Effect of Condition

The District cannot be assured it is receiving the best price for small works projects or equipment purchases or that all interested vendors are given an opportunity to provide quotes or bids.

In addition, without a contract, a vendor could charge any rate for services performed without any recourse by the District.

The public is not fully informed of emergency purchases if the purchases are not entered into record. Additionally, the public may not be aware of inter-local agreements if the District does not post them on its Web site or file them with the County Auditor's Office.

Recommendation

We recommend:

- The District maintains supporting documentation to prove it is adhering to all state competitive bid laws.
- The District ensures it has a contract for any professional or consulting service.
- The District ensures adequate training is provided to staff related to state bid law requirements.

District's Response

The District will maintain the proper support documentation.

The District will declare future emergency purchases

The District will establish contracts for future professional or consulting service it requests.

The District will post all current and future inter-local agreements on the districts Web site.

Auditor's Remarks

The District was very helpful during our investigation, and we appreciate its commitment to strengthening its policies and procedures. We are committed to providing any help we can to ensure strong control systems are in place.

Applicable Laws and Regulations

RCW 52.14.110, Purchases and public works - Competitive bids required - Exceptions, states:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

- (1) The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of ten thousand dollars. However, whenever the estimated cost does not exceed fifty thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;
- (2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of twenty thousand dollars, which includes the costs of labor, material, and equipment;
- (3) Contracts using the small works roster process under RCW 39.04.155; and
- (4) Any contract for purchases or public work pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

RCW 39.04.155, Small works roster contract procedures - Limited public works process – Definition, states:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who

have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works

roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

RCW 39.04.280, Competitive bidding requirements – Exemptions, states:

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

RCW 39.34.040, Methods of filing agreements - Status of interstate agreements - Real party in interest – Actions, states:

Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor or, alternatively, listed by subject on a public agency's web site or other electronically retrievable public source. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability there under, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state.