



MEMORANDUM

TO: Southwest Washington Regional Transportation Council Board of Directors
FROM: Matt Ransom, Executive Director 
DATE: March 28, 2016
SUBJECT: **Bus on Shoulder Feasibility Study – Evaluation of Recommended Contractor**

INTRODUCTION

The purpose of this memo is to briefly describe the review of the recommended contractor for the proposed Bus on Shoulder Feasibility Study.

RFQ Process Summary

- RTC advertised a Request for Qualifications (RFQ) solicitation in two trade journals covering Oregon and Washington in October 2015. RTC received three responses to this solicitation.
- A multi-agency team of six members representing the following agencies reviewed the RFQ responses according to pre-established criteria. Agencies consisted of Washington Department of Transportation, C-TRAN, Oregon Department of Transportation, TriMet, Oregon Metro, and RTC. The reviews were independently completed and represented the reviewer's own professional assessment based on a review of the written response to the RFQ solicitation and oral interviews.
- The recommended Contractor was the unanimous recommendation of the review team.
- RTC Staff completed a review of professional / project references for the contractor. References were positive and no anomalies or concerns were found.

Debarment Review

- The recommended contractor, David Evans and Associates, Inc., submitted a certification stipulating that they were NOT debarred from public contracting for federal aid contracts. This Certification was included with their RFQ response.
- RTC staff completed an independent query of applicable databases to verify the contractor status as presented. No anomalies were found.

Past Project Audits (Columbia River Crossing project)

At the March 1 RTC Board meeting, a line of query was introduced regarding David Evans and Associates, Inc. contracting as part of the Columbia River Crossing project. The following is a synthesis of the project audit completed by the Washington State Auditor's Office.

- David Evans and Associates, Inc. was the prime contractor with WSDOT on work related to the Columbia River Crossing project. The Audit assessed WSDOT and contractors files and agreements.
- The Audit was completed in April, 2014 and made recommendations for WSDOT regarding their contracting practices and interpreting FHWA procurement policies.
- WSDOT did request repayment of \$49,686 from David Evans and Associates, Inc. and/or its subcontractors on October 8, 2014.
- David Evans and Associates, Inc. remitted payment of \$49,686 to WSDOT in response to this request on February 4, 2015. This payment closed this matter with WSDOT.

Contractor History with RTC Projects

RTC has contracted directly with David Evans and Associates, Inc. for two recent studies. Those studies where David Evans and Associates, Inc. was a prime contractor for RTC include: 1) Clark County Freight Mobility Study (December 2010); and, 2) SR-35 Columbia River Crossing Scoping Study (1999). RTC staff provided project management oversight of these contracts and provided the following feedback.

- RTC project management staff provided anecdotal observations regarding overall contract performance, responsiveness, business practices, and contract oversight. For both projects, RTC staff surmised that the contractor performed well and within the scope of the contract. Business dealings with staff were responsive and the contractor provided accurate task deliverables and monthly project reports and invoices, etc.

Director's Findings Regarding Contractor Evaluation

Based on RTC's duty to provide an open and competitive solicitation of federally funded contracts; and, based on the eligibility criteria and processes established by the WSDOT LAG Manual and RTC's business practices, I find that:

- The recommended contractor was reviewed against other respondents to the duly advertised RFQ solicitation, and the contractor David Evans and Associates, Inc. was the unanimous recommendation of the six member review team.
- RTC verified contractor references with no anomalies found.
- David Evans and Associates, Inc. submitted the required Certification, attesting to their eligibility to contract with RTC for a project utilizing federal funds.
- The issues associated with the Columbia River Crossing audit and David Evans and Associates, Inc. involvement as the prime subcontractor were reviewed, and are not deemed substantive to the proposed RTC contract.
 - o The SAO audit found that WSDOT needed to establish improvements to their contracting practices and seek guidance interpreting FHWA procurement policies. The issues identified in that specific audit also affected other WSDOT projects across the state.

- The SAO audit recommended that WSDOT request return of certain payments made to David Evans and Associates, Inc and/or its subcontractors. That repayment was made and the matter was satisfactorily closed with WSDOT.

Conclusion

Based on this contractor evaluation, the RTC staff recommendation to contract with David Evans and Associates, Inc. for the Bus on Shoulder Feasibility Study remains unchanged.

Attachments

- 1) Certification Regarding Ineligible Contractors (signed November 6, 2015)
- 2) Executive Summary: Washington State Auditor's Office report on Columbia River Crossing Project (April 23, 2104)

CERTIFICATION REGARDING INELIGIBLE CONTRACTORS

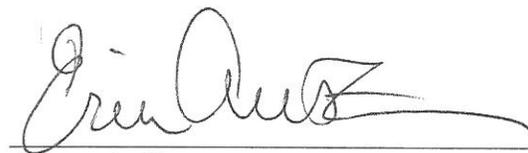
The David Evans and Associates, Inc. (Name of Proposer) certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the Proposer is unable to certify to any of the statements in this certification, such Proposer shall attach an explanation to this proposal.

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statement submitted on or with this certification and understands that the provisions of 31 U.S.C. Section 3801 Et Seq. are applicable thereto.



Authorized Official



Attorney's Signature

Mike Baker, PE

Printed Name

Erin Austin, Esq.

Printed Name

Vice President/Contract Manager

Title of Authorized Official

November 6, 2015

Date



Washington State Auditor's Office

Troy Kelley

Integrity • Respect • Independence

Columbia River Crossing Project

Report summary

Our audit identified several issues the Washington State Department of Transportation (WSDOT) should address to avoid overpaying contractors on future projects. While overall project spending was in line with what we would expect to find on a project of this size, we found consultants were overpaid by about \$1.7 million out of about \$137 million in payments. We also found that WSDOT did not sufficiently control more than \$15 million in questionable costs and may have overpaid for that work. The issues we identified also affected other WSDOT projects.

Project information

The bridge carrying Interstate 5 over the Columbia River is among the oldest major bridges in the region, with components dating from 1917 and 1958. For seismic safety alone, the bridge has been deemed in need of refurbishment or replacement.

From 2005 until 2013, WSDOT led a project to rebuild the bridge in partnership with Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA). By the time WSDOT stopped all new work on the project in the summer of 2013, the joint venture spent \$182 million, including funds from Washington, Oregon, and federal agencies.

Most project spending went to consultants engaged by WSDOT to provide expertise in the environmental review and preliminary engineering phases of the project. In May 2005, WSDOT signed a \$50 million agreement with David Evans and Associates (Evans) to perform work associated with necessary environmental studies. By the close of project activities in August 2013, Evans had received payments worth \$125.2 million. Other contracts worth more than \$11 million were put in place with other consulting firms. In most cases, subsidiary contracts were arranged under the primary consultants.

Why we did this audit

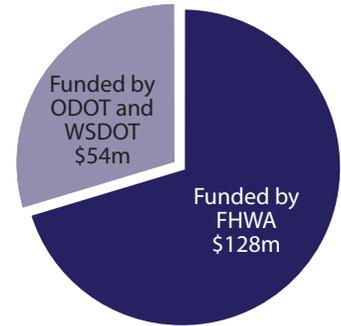
The Legislature required a forensic audit of the project to address concerns about its funding and expenses. The Joint Legislative Audit and Review Committee contracted with the State Auditor's Office to conduct the audit.

We examined three areas to determine whether WSDOT overpaid its consultants or paid for services that exceeded the contract or scope of its original solicitation:

1. Administrative costs
2. Rates for profit, overhead and labor
3. Work compared to task orders and to the original solicitation

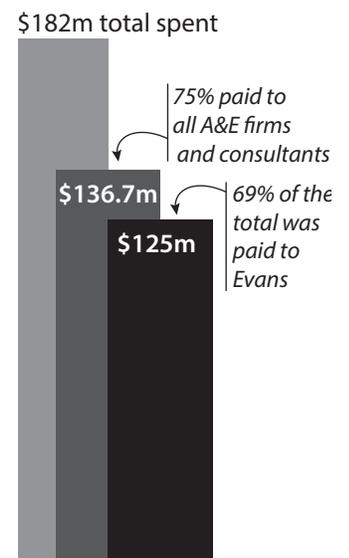
Total CRC spending between May 2005-August 2013 = \$182 million

Federal contributions cover almost 70% of costs for the environmental and preliminary engineering phases



Note: WSDOT indicates the amounts in this graph exclude \$5.9 million in CRC costs incurred by ODOT. WSDOT indicates these costs did not flow through its accounting system. These costs were not examined during this audit.

WSDOT's CRC spending, May 2005-August 2013



Note: WSDOT indicates the amounts in this graph exclude \$5.9 million in CRC costs incurred by ODOT. WSDOT indicates these costs did not flow through its accounting system. These costs were not examined during this audit.

An agency policy overpaid primary consultants

In 2006, WSDOT adopted a policy that paid prime consultants a 4 percent markup on work performed by sub-consultants, which increased payments to Evans by \$1.45 million and to HDR by \$4,700. The policy was designed to reimburse primary consultants for administrative costs associated with their use of sub-consultants after WSDOT's Disadvantaged Business Enterprise program was struck down by a court in 2005. WSDOT approved the policy without obtaining written legal advice and applied it to all consultants, including those who had already been hired, such as Evans. The FHWA later determined the policy resulted in unwarranted profits.

We also found that WSDOT's Internal Audit Department questioned \$658,000 in such markups on two contracts related to other projects. Our analysis, in Appendix C of the full report, indicates that the policy likely had a larger effect on other WSDOT consulting contracts.

High rates for profit, overhead and labor

Consultants with low overhead rates benefit from the way WSDOT determines the profit markup it pays them, allowing them to exceed the typical markup that is paid by other states. While other states typically pay a 10 percent to 12 percent markup on labor and overhead, WSDOT pays a 29 percent to 31 percent markup on labor. To compare WSDOT markups to what other states pay, we calculated its labor markups as a percentage of a firm's combined labor and overhead costs. This comparison showed that eight consultants with low overhead rates earned markups that exceeded the 12 percent benchmark by 1 percent to 4 percent. These higher-than-typical markups added \$53,242 to the cost of the project. We also found that the same practice added more than \$467,000 in costs to consultant contracts on other WSDOT projects. We recommend WSDOT update the guidance used by its staff and local governments so they do not pay high profits.

Because other firms were not required to disclose their overhead, labor, and profit breakouts for \$12.3 million in charges, it is possible these firms also received excessive profits. Similarly, WSDOT lacked a contract rate table for one firm's labor charges that totaled more than \$400,000.

The nine firms that performed most CRC consulting work charged reasonable overhead and labor rates, including increases that were consistent with typical increases. However, one firm charged an overhead rate for one year that was partly based on costs that WSDOT's Internal Audit office had identified as unallowable. Ten firms charged rates that exceeded contract rates or were allowed unusually high labor rate increases. These conditions resulted in \$208,000 in excess labor costs and \$286,733 in questionable overhead charges.

Comparing work to task orders and solicitation

The FHWA reviewed all task orders through the Environmental Impact Statement record of decision in December 2011. We reviewed all task orders dated after the Columbia River Crossing after December 2011. Most work examined was consistent with approved task orders, and all task orders we examined were consistent with the scope described in the original solicitation.

However, we did identify two issues. More than \$2.3 million in work was added to two contract task orders three to 11 months after it was performed. While unauthorized work can be unnecessary and costly, this work was consistent with the services described in the original solicitation. We also identified three task orders with up to \$6.6 million in work that potentially exceeded the scope described in the vendor pre-proposal conference. We also determined that WSDOT could have better defined its deliverables for one task order totalling nearly \$7 million.

Recommendations in brief

The audit recommends WSDOT:

- Seek legal advice when considering policies that may conflict with state law and FHWA requirements or increase compensation beyond what has already been contractually established
- Take steps to avoid paying consultants higher than typical markups
- Recover \$49,686 of the \$1.7 million in excess costs, and contact FHWA to determine whether it must repay the agency for the federally funded portion of \$286,733 in questionable costs (but because WSDOT policy and contract negotiations caused most of the excess and questionable costs, they are likely unrecoverable)
- Improve contracting practices so the Department can better control the work of consultants.