



## **Seattle Public Schools Office of Internal Audit**

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### **Internal Audit Report Alternative Subcontractor Selection Process**

Issue Date: December 3, 2019

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## Internal Audit Report

### Alternative Subcontractor Selection Process

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#### Introduction and Background

In accordance with the fiscal year 2020 capital audit plan, we reviewed the district's practices and procedures for the alternative subcontractor selection process on general contractor/construction manager (GCCM) projects. Construction related performance audits are designed to provide an independent and objective perspective to enhance district accountability and increase taxpayer confidence in Building Excellence (BEX) and Buildings, Technology, and Academics (BTA) capital programs.

In 2010 the legislature revised the state's GCCM contracting procedures to allow qualifications-based subcontracting for mechanical and electrical work. The law permits the selection of these trades early in the life of the project, through a process very similar to the process used by public entities to select a GCCM. Rather than award subcontract packages to the lowest responsible bidder, the public owner and the GCCM may select these subcontractors based on qualifications, fee, and general conditions. This allows the subcontractors to assist with preconstruction services and enables a team approach to solving problems on the project.

The alternative process is referred to as mechanical contractor/construction manager (MCCM) when it is used to select a mechanical subcontractor and electrical contractor/construction manager (ECCM) when it is used to select an electrical subcontractor. These methods are available only for mechanical and electrical trades and only for subcontracts that exceed \$3 million.

The public owner and the GCCM must determine that use of MCCM or ECCM is in the best interest of the public, which involves holding a public hearing. A notice of public hearing must be published in a local newspaper at least 14 days in advance justifying the need to use the alternative approach. The hearing provides the opportunity for verbal and written comments from the public about the justification, the evaluation criteria that will be used to select the subcontractor, and protest procedures. The public owner considers the comments and issues its final decision in the form of a "written final determination to all interested parties." Contracts are still awarded through a transparent, competitive process that includes a public solicitation of proposals, the formation of an evaluation committee, and the receipt of sealed fee and cost proposals. The GCCM and the selected firm negotiate a maximum allowable subcontract cost when the construction documents are 90 percent complete. Thus far, the district has used the alternative approach to subcontractor selection for two projects, Lincoln High School and Daniel Bagley Elementary School.

#### Audit Objective

Has the district implemented internal controls to ensure compliance with the alternative subcontractor selection process for GCCM projects?

#### Audit Scope and Methodology

To achieve the audit objective, we performed procedures that included

- Examining MCCM and ECCM solicitation, evaluation, and selection records for the Lincoln and Bagley projects.
- Testing controls, compliance, and performance aspects based on the GCCM alternative subcontractor selection process statute.
- Interviewing the Capital staff and construction managers who oversee the Lincoln and Bagley projects.



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### Results and Conclusion

The district has not implemented internal controls that ensure compliance with the alternative subcontractor selection process for GCCM projects. This is a new process for the district. However, upcoming projects where the district anticipates using MCCM and ECCM present an opportunity to establish controls and increase compliance based on that experience.

*Kimberly A. Fry*

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Capital Audit Program Manager

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### Findings and Recommendations

#### Overall Internal Controls

The district does not have controls in place to ensure compliance with statutes for the alternative selection of mechanical and electrical subcontractors on GCCM projects. Compliance with the statute is a joint effort between the district and the GCCM. However, the district relies significantly on the GCCM to follow procedures, including procedures intended to ensure that use of MCCM/ECCM is in the public's best interest.

#### Recommendation

We recommend Capital establish a set of standard procedures for using the alternative selection process and maintain within e-Builder documentation that demonstrates compliance.

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#### **Final Determinations**

After holding a public hearing and considering public comments about the use of MCCM or ECCM, a public body should issue a written final determination before proceeding to the next step in the procurement process, which is usually the solicitation of proposals for the mechanical or electrical work. If any revisions were made to the evaluation criteria or protest procedures based on public comments, they should be included in the final determination and incorporated into the public solicitation of proposals.

The district is yet to standardize the practice of issuing final determinations and has not implemented controls to make sure this step occurs. Furthermore, the district's current practice does not ensure that a final determination is issued before the public solicitation of proposals is published.

#### **Recommendation**

We recommend the district establish a standard process for issuing and disseminating final determinations and issue them before publicly advertising for proposals.

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#### **Early Selection of MCCM/ECCM**

When using the alternative selection process, the subcontractor should be selected “early in the life of the public works project.” The district is not yet consistent in its practice of selecting the MCCM or ECCM early enough to maximize the benefits of early selection. Bagley’s MCCM and ECCM were selected after the completion of design development, when final efforts to meet the schedule and budget have often been made. The request for qualifications emphasized the urgency of integrating the subcontractors into the project team for this reason.

#### **Recommendation**

We recommend Capital document and apply lessons learned from the MCCM and ECCM process, including how to optimize the timing of mechanical and electrical subcontractor selection on future projects.



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#### **Independent Cost Audit**

For the Lincoln project, the district used the early selection process to hire the MCCM. The Bagley project used this method to procure both mechanical and electrical work. State law requires public owners that use these alternative methods to undergo an independent cost audit to reconcile the negotiated maximum allowable subcontract cost to actual costs.

#### **Recommendation**

We recommend Capital have a cost audit of the Lincoln mechanical contract before final payment to the GCCM. We recommend Capital also have independent cost audits of Bagley's mechanical and electrical contracts in accordance with the district's GCCM contract.



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### **Management Response**

Capital will work with the construction managers to create a checklist that facilitates compliance with MCCM and ECCM requirements. We agree that the MCCM and/or ECCM should be hired earlier to reap the maximum benefits of early selection. We will identify lessons learned from MCCM and ECCM procurement and maintain documentation demonstrating compliance in e-Builder. Our Capital Audit Program Manager performs an annual audit of the district's implementation of revised public works statutes and will review our new procedures in the next audit.

Capital will begin the process for the Lincoln audit immediately and contract for the Bagley audit in accordance with the GCCM contract.