

TC (7) Work Step

Review and assess the current process to determine if there are adequate internal controls in place which allow for the District to perform the appropriate "Vendor Due Diligence" prior to contracting with vendor(s). Perform a test of these internal controls to determine overall effectiveness.

Results of Testing

The results included here relate only to the vendor due diligence performed as it pertains to the vetting of vendors retained for construction and professional services contracts. The results of testing for contracting and bidding are included in TC (8) and TC (9), respectively.

The Director of Contract Administration became a full-time employee with the District beginning in July 2015.³⁶ Since then, processes and procedures have been documented related to the review and approval of construction contracts under \$45,000, construction contracts over \$45,000 (informal/formal bidding requirements), and professional services contracts. The procedures require an informal evaluation of vendors, including registration and license verification. A web-based plan room is used to communicate project specific information to potential vendors, including specific requirements that vendors must satisfy in order to be considered for projects. The District has conducted trainings for local-based companies to inform them of the requirements and steps to follow to be eligible to work on District projects.

Construction Contracts:³⁷

The District adopted procedures in October 2015 related to the vetting of vendors for construction contracts. These procedures require verification of vendor registration with the Department of Industrial Relations (DIR) and confirmation of the vendor's license with the Contractors State License Board (CSLB). Prequalification Evaluation Forms document the District's review of contractor qualifications, which includes reference checks for previous projects performed. Construction contracts exceeding \$175,000 require a formal bid process, which requires a thorough review of bid packages received. Bid information is summarized on the Bid Checklist, which documents vendor qualification information such as contractor license

³⁶ This is a new job description approved by the Board on 5/20/2015 created to meet the operational and business needs of the District's maintenance, operations, construction, and facilities improvement program.

³⁷ The District has adopted and follows the California Uniform Public Construction Cost Accounting Act (CUPCAA), which raises and simplifies informal quote thresholds and expedites bidding processes for construction contracts. Under CUPCAA, the District can negotiate construction contracts of \$45,000 and under and complete an informal bid process for construction contracts between \$45,000 and \$175,000.

verification. VLS selected a sample of construction contracts approved in fiscal year 2015/16 to determine whether the adopted procedures were followed.³⁸

1. VLS tested five construction contracts under \$45,000. The following results were noted:
 - a. District procedures indicate that, prior to contracting with a vendor, management will document their evaluation of proposals via the Prequalification Evaluation Form. Two of the five construction contracts tested did not include this documentation. See TC7-1 recommendation for this area.
 - b. A Proposal Approval Checklist is used to document additional vendor vetting for specified contracts. All of the contracts tested did not include a Proposal Approval Checklist. See TC7-1 recommendation for this area.
2. VLS tested two construction contracts over \$175,000, which required formal bidding. The following results were noted:
 - a. District procedures require that verification of contractor’s license information should occur. Although verification of contractor licenses was completed for the contracts tested, documentation that this occurred was not maintained. See TC7-2 recommendation for this area.

Professional Services Contracts:

The District adopted procedures in October 2015 related to the vetting of vendors for professional services contracts. Procedures for vendor selection include notice that proposals will be received via the District plan room (the link is available via the District website). Proposals received are reviewed by key bond program staff (Bond Program Manager, District Project Manager, Director of Contracts Administration, and Engineering Officer).³⁹ If accepted, an informal evaluation process is performed to ensure completeness. The informal evaluation includes the following key information: scope of project, dates expected for project, deliverables, expected staffing and cost information. Complete proposals will then be prepared for approval via the Proposal Approval Checklist. See TC7-4 recommendation for this area.

District procedures related to professional services contracts indicate that management review of proposals should occur and be documented via the Proposal Approval Checklist prior to ratification by the Board. For each of the thirteen professional services contracts tested for the 2015/16 fiscal year, a Proposal Approval Checklist form was not completed. According to the

³⁸ The testing period for both construction and professional service contracts was for contracts entered into between July 2015 and February 2016.

³⁹ SGI has historically served as the District’s bond program manager; however, the District has moved many of the program management functions in-house.

Contracts Administrator, the review and approvals were performed informally, and completion of the Proposal Approval Checklist began in April 2016. See TC7-3 recommendation for this area.

All Contract Types:

Although the District has procedures in place related to the due diligence of potential vendors, there is no documented mechanism in place to address potential conflicts of interest as part of the vendor vetting process. See TC7-5 recommendation for this area.

New Score

Medium

Recommendations

- TC7-1. Ensure full implementation of the procedures related to construction contracts (as revised October 2015), including, but not limited to, completion of the Prequalification Evaluation Form and Proposal Approval Checklist.
- TC7-2. Ensure that the review of contractor's license information is documented and maintained for all construction contracts to demonstrate completion of this critical compliance step.
- TC7-3. Ensure full implementation of professional services contracting procedures (as revised October 2015), including, but not limited to, completion of management review prior to approval by the Board (where applicable), documentation indicating that this management review occurred, and completion of the Proposal Approval Checklist.
- TC7-4. Require formal documentation of the informal vendor proposal review and selection process for professional services contracts. Formal documents that should be retained include the rating of firms based on proposal documents received, the selection of firms for interviews and results of those interviews, the completion of background checks, and all other documentation relevant to justify the vendor selected.
- TC7-5. Incorporate a formal, documented process to perform a conflict of interest check for all vendors submitting proposals to the District for the bond program. In this process, the District should require vendors to disclose to the District as part of the proposal process the following information:
- a. Any potential familial relationships between the vendor or its employees and District Board members or employees,
 - b. Any potential financial interests between the vendor and District Board members or employees, and

- c. Contributions made to and/or gifts and entertainment purchased on behalf of District employees, Board members, or individuals/entities related to or affiliated with Board members or employees.

The disclosures made by the potential vendors should be reviewed by the District and compared to the District's conflict of interest policy. If potential conflicts are identified, the District must evaluate and determine whether (1) the potential conflict prohibits the vendor from conducting business with the District, or (2) if certain decision makers within the District must abstain or refrain from making decisions involving the vendor. If appropriate, the District should seek guidance from legal counsel.

Response by District

- TC7-1. The District continues to implement the proposal approval checklist and keeps an electronic and hard copy on file.
- TC7-2. The District keeps a printed copy of license verification from the California State License Board website on file.
- TC7-3. The District transitioned from an older professional services coversheet to the Proposal Approval Checklist in April 2016 to create a uniform process for all proposals. The District continues to improve and implement the Proposal Approval Checklist for all contracts.
- TC7-4. The District uses the Request for Qualification and Request for Proposal process to formally document vendor proposal review and selection.
- TC7-5: The District currently mandates the use of the Non-Collusion Affidavit for construction firms providing a proposal to the District. The District's standard Post Bid Meeting questions include "Is your company or any of its employees affiliated with the other companies that bid this project?" District contracts include the following language: "Vendor represents that the vendor has no existing interest and will not acquire interest, direct or indirect, which could conflict in any manner or degree with the performance of the Services and that no person having any such interest shall be employed by the vendor." Furthermore, District contracts also include a covenant against contingent fees clause:

"Architect warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Architect, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Architect, any fee, commission, percentage, brokerage fee, gift, or any other

consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the fee or consideration or to recover the full amount of such fee, commission, percentage fee, gift, or contingency.”

Finally, the District requires a written statement of conflict of interest in the standard RFQ/P forms:

“1.1.1. Conflicts of Interest. If applicable, provide a statement of any recent, current or anticipated contractual obligations that relate in any way to similar work, the Project, or the District that may have a potential conflict with the Firm’s ability to provide the Services described herein to the District. Firms cannot submit, propose, bid, contract, subcontract, consult, or have any other economic interests in the Project to which the Firm may provide Services. The Firm selected to provide the Services and any subsidiary, parent, holding company or affiliate of the selected Firm, may not perform any construction work or submit a bid for the Project.”

VLS’s Assessment of Response by District

VLS reviewed the District’s responses for TC7-1 and TC7-3 and agrees that the response and planned action is appropriate to address the recommendations made by VLS. Additional information related to the District response for select recommendations follows:

- TC7-2. Per discussion with the Director of Contracts Administration, the District began printing and keeping a copy of the license verification form from the California State License Board with the project files following VLS’s request to review the documents during controls testing. VLS agrees that the action taken is appropriate to address the recommendations made by VLS
- TC7-4. Procedures for professional services contracts indicate that an informal review is performed. Per the Director of Contracts Administration, there is no formal threshold limit identifying the projects for which formal documentation of the proposal review and selection process is retained.
- TC7-5. The specific elements identified in the recommendation to perform a conflict of interest check, in conjunction with the information identified by the District in their response, would strengthen vendor due diligence procedures.