



OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION

Performance Audit Report

For the period of July 1, 2013 through June 30, 2018

Cindy Byrd, CPA
State Auditor & Inspector

Oklahoma Department of Wildlife Conservation

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2300 N. Lincoln Blvd., Room 123, Oklahoma City, OK 73105 | 405.521.3495 | www.sai.ok.gov

May 23, 2019

TO THE OKLAHOMA DEPARTMENT OF WILDLIFE CONSERVATION COMMISSION AND DIRECTOR J.D. STRONG

Pursuant to your request and in accordance with the requirements of 74 O.S. § 213.2(B), we performed an audit with respect to the Oklahoma Department of Wildlife Conservation for the period July 1, 2013 through June 30, 2018.

The objective of our audit was to determine if the Wildlife Division of the Oklahoma Department of Wildlife Conservation complied with the agency's approved purchasing policies and procedures and state purchasing laws for certain expenditures. The results of this audit are presented in the accompanying report.

We also wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our engagement.

This report is a public document pursuant to the Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.) and shall be open to any person for inspection and copying.

Sincerely,

Cindy Byrd, CPA

OKLAHOMA STATE AUDITOR & INSPECTOR





Executive Summary

Objective

The objective of this audit was to determine if the Oklahoma Department of Wildlife Conservation – Wildlife Division complied with the Agency's approved purchasing policies and procedures and the state purchasing laws for expenditures coded as 545110 - *Purchase of Land Improvements* and code 533110 - *Maintenance and Repair of Grounds* in the State-Wide Accounting System during the period July 1, 2013 through June 30, 2018.

Engagement Background

This audit was conducted at the request of the director of the Oklahoma Department of Wildlife Conservation (ODWC), pursuant to 74 O.S. § 213.2(B), to address concerns related to the Agency's compliance with approved purchasing policies and procedures and relevant state statutes for expenditures related to land improvements or maintenance and repair of grounds. These expenditures are governed by the *Public Competitive Bidding Act of 1974*, which is enumerated in 61 O.S.§ 101 – 139 and administered by the Oklahoma Office of Management and Enterprise Services (OMES), Division of Capital Assets Management – Construction and Properties (DCAM-CAP).

What We Found

Non-Compliance with Approved Policies and Procedures

The Agency was not in compliance with its internal purchasing policies and procedures that were approved by the Central Purchasing Division of OMES. We noted multiple instances where records were not maintained in accordance with requirements, bid solicitation procedures were not followed, and required documentation was not submitted to DCAM-CAP.

Non-Compliance with State Statutes

The Agency was not in compliance with requirements of the *Public Competitive Bidding Act of 1974* due to missing documentation, no evidence that the contract was awarded to the lowest responsible bidder, and the issuance of a change order that increased the contract amount above the \$50,000 threshold, which would have required DCAM-CAP to handle the solicitation and award process.

• Unusual Trends or Relationships

There were multiple instances for a particular vendor (referred to as Vendor #1) where the amount of the successful bid exactly matched the amount on the internal requisition. In addition, in many cases Vendor #1 was already listed as the preferred vendor on the internal requisition prior to the Agency soliciting bids. This is further complicated by the fact that Vendor #1 is the brother of the ODWC employee who prepared the majority of the internal requisitions and in accordance with internal policy would approve the work performed by signing off on invoices submitted. These circumstances raise the questions of whether those projects were truly competitively bid or if the successful bidder had inside knowledge that allowed them to submit the winning bids. Finally, Vendor #1 consistently bid significantly less than other bidders (whose bids were often consistent with each other) on projects.

There were a few additional instances where other vendors were awarded contracts, their bids matched the internal requisition, and they were included as the preferred vendor prior to soliciting bids.

Although we were unable to determine if fraudulent activity had occurred, the issues noted are indicative of abuse. Fair and equitable bidding may have been circumvented due to inside information being provided to Vendor #1. Due to the concerns identified, this report and corresponding evidence will be forwarded to the Oklahoma Attorney General for further consideration.

What We Recommend

We recommend management review current state purchasing laws and the Agency's internal policy and procedures and implement a thorough and documented review process during the course of soliciting bids and awarding contracts to:

- 1. ensure all applicable processes, documents and reviews are incorporated to comply with state law and internal purchasing policies;
- 2. identify potentially unusual trends or relationships between requisitions, bids, solicitations and project awards which should be investigated further.

We further recommend that management communicate and reinforce expectations regarding ethical behavior related to the purchasing process.

ODWC Background

The Oklahoma Department of Wildlife Conservation (ODWC or the Agency) was created by Article XXVI of the Oklahoma Constitution. The mission of the ODWC is the management, protection, and enhancement of wildlife resources and habitat for the scientific, educational, recreational, aesthetic, and economic benefits to present and future generations of citizens and visitors to Oklahoma. The ODWC does not receive state appropriations. Under the Constitutional provisions, the ODWC is governed by the Wildlife Conservation Director under rules, regulations, and policies directed by an eight-member Oklahoma Wildlife Conservation Commission. Each of the eight members of the Commission is appointed by the Governor with the consent of the Oklahoma Senate. Each member represents one of the eight individual Districts in Oklahoma and is appointed for a term of eight years.

Board members as of February 2019 are:

Robert S. Hughes II	District 1
Bruce R. Mabrey	District 2
Bill Brewster	District 3
Leigh Gaddis	District 4
James V. Barwick	District 5
John P. Zelbst	District 6
Danny Robbins	District 7
John D. Groendyke	District 8

The Wildlife Division is responsible for managing Oklahoma's wildlife resources on public and private lands. The State of Oklahoma is divided into five different management regional areas where the wildlife division personnel oversee activities on about 64 wildlife management areas (WMA), covering over 1.5 million acres total statewide. Though the division operates and manages these lands primarily for hunting, many activities compatible with hunting also take place on Department lands. These activities include controlled grazing, agriculture leases, and low-density recreational activities such as fishing, hiking, horseback riding, nature study, photography, and environmental education. Each of the five regions includes a regional supervisor and at least one senior biologist; the northeast and southeast regions each have two senior biologists. In addition, each WMA within a region has one biologist.

Scope and Methodology

Our audit was conducted in response to 74 O.S. § 213.2(B), which authorizes the State Auditor and Inspector's office to audit the books and accounts of an agency at the written request of the chief executive officer of a governmental entity.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In planning and conducting our audit, we focused on the Agency's acquisition process for projects and expenditures related to the purchase of land improvements and maintenance and repair of grounds. Our detailed audit procedures focused on the period of July 1, 2013 through June 30, 2018.

Our procedures included identifying applicable state purchasing laws and regulations, reviewing the Agency's approved purchasing policies and procedures, interviewing key employees involved in the Agency's acquisition process, inspecting documents, and observing various operations within the Agency. Further details regarding our methodology are included under the conclusion.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, errors or fraud may occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

OBJECTIVE

Determine if the Oklahoma Department of Wildlife Conservation – Wildlife Division complied with the Agency's approved purchasing policies and procedures and the state purchasing laws for expenditures coded as 545110 - *Purchase of Land Improvements* and code 533110 - *Maintenance and Repair of Grounds* in the State-Wide Accounting System.

Conclusion

The ODWC is not in compliance with the *Public Competitive Bidding Act of* 1974 (61 O.S. §101 - §139) or internal purchasing policies and procedures approved by the Central Purchasing Division of OMES. In addition to the noncompliance issues detected, we also noted there were unusual trends in bids and project solicitations.

While we were unable to determine if fraudulent activity had occurred, the issues noted are indicative of abuse¹. Fair and equitable bidding may have been circumvented. Based on documents reviewed, it appears that inside information may have been provided to a particular vendor.

Objective Methodology

To accomplish our objective, we:

- Identified applicable state purchasing laws and regulations.
- Reviewed the Agency's internal purchasing policies and procedures.
- Documented our understanding of the Agency's acquisition process for projects and expenditures related to the purchase of land improvements and maintenance and repair of grounds.
- Randomly selected a sample of 30 purchase orders and judgmentally selected 30 purchase orders (total of 60 selected) from a population of 121 purchase orders to determine if purchases were in made in compliance with approved purchasing policies and procedures and applicable state laws.
- Judgmentally selected a sample of 57 claims from a population of 325 claims, selected from 8 authority orders, to determine if they were made in compliance with approved purchasing policies and procedures and applicable state laws.²
- Performed analytical procedures to determine whether there were any unusual trends or relationships between the bids and the project solicitations.

¹ According to Government Auditing Standards (GAO), abuse includes misuse of authority or position for personal financial interests for those of an immediate or close family member or business associate.

² Construction work for the claims selected was not physically inspected by the auditors.

Acquisition Process and Related Findings

Funding and Annual Budgets

The ODWC is a non-appropriated, user-pay/user-benefit agency that is funded either directly or indirectly by hunting and fishing license sales. To provide insight into the size of the department's annual budget, we have included totals recorded in the Combining Trial Balance (CTB) report obtained from the Statewide Accounting System. In fiscal year 2018 (FY 18), ODWC collected an estimated \$65.8 million in revenue.

The Agency's major revenue sources are:

- Annual wildlife and fishing license sales
- Federal Wildlife and Sport Fish Restoration grant revenues (based on a formula that includes the certified number of hunting and fishing licenses sold in the state)
- Interest income
- Other wildlife sales, agriculture and oil leases, and miscellaneous income including donations

Expenditures for FY 18 totaled \$61.3 million, of which \$12.63 million (20.6% of total budget) was expended by the Wildlife division. Of the \$12.63 million in expenditures for the division, \$952,868 (8%) were for projects with activity codes 545110 - *Purchase of Land Improvements* and 533110 - *Maintenance and Repair of Grounds*.

When the Agency prepares the annual budget, the Wildlife Division prepares a budget for each of the five regions of the state, as well as a budget for each WMA (total of 82).

According to the ODWC assistant director of administration and finance, budgets are fairly consistent year to year for each WMA. The assistant chief of the Wildlife division indicated that when preparing the budget, each WMA starts with a baseline that includes personnel cost and operations and maintenance. The baseline for operation and maintenance is based on the previous year's budget and that information is provided to the WMA by the accounting department. An increase in the budget could occur because of a new program or a large project that is to be funded by federal dollars, or an increase from the department's overall budget for projects or programs. When new projects or programs are budgeted, those increases are called permanent add-ons. The permanent add-ons become part of the budget baseline in the following years if the program is funded. Occasionally a WMA receives an increase in its budget for the sale of grazing cattle or hay revenue received in the previous year.

All projects with activity codes for Purchase *of Land Improvements* and *Maintenance and Repair of Grounds* are budgeted for each year (unless they are emergency projects); therefore, each regional supervisor, the Wildlife

division assistant chief, and the chief should be aware of the types of projects being requisitioned.

Project Award Process

All projects for expenditures with the account codes listed above are subject to the *Public Competitive Bidding Act of 1974* (61 O.S. §§ 101-139). Although a specific exemption listed in 61 OS § 103.7 allows the Wildlife Department to administer the competitive bidding process and let and award contracts that are \$25,000 or less, the department's internal policy and procedures still require that all projects over \$5,000 go through the DCAM-CAP division of OMES for awarding of the contracts.

When the Agency plans a project involving *Purchase of Land Improvements* and *Maintenance and Repair of Grounds*, the biologist or senior biologist prepares the purchase requisition and the regional supervisor approves it. The chief, assistant chief, or assistant director of operations then approves the requisition. The assistant director of operations only signs if neither the chief or assistant chief is available. The assistant chief explained that he is typically aware of the projects being requisitioned but should he have questions, he calls the regional supervisor for clarification prior to approving the requisition.

After the requisitions are approved, they are sent to the ODWC accounting department along with a list of prospective vendors. The list of vendors is put together by the biologist and includes vendors that are available for the type of work being requested and located within a certain region of the state, or vendors that have conducted previous work for the department.

The department currently has two certified procurement officers (CPOs) who prepare all required documents for solicitation and then send them to CAP for contract awarding. When the CPOs receive the requisition, they use it to create the Statement of Work (SOW)³, and then prepare a "Bid for Solicitation", notifying each prospective vendor via email. Once the solicitation period closes, the CPO evaluates all bids on the "price," ensures all required forms are included in the bid packets and lists the vendors on a spreadsheet. The CPO uses an internally developed checklist to ensure all necessary documents are sent to CAP. The documents are sent to CAP via email and include the CPO's recommendation of who the contract should be awarded to.

We spoke with the OMES CAP contracting officer to gain an understanding of the process for awarding projects after receiving project

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³ Based on discussions with the ODWC accounting supervisor, the SOW for these projects has historically been somewhat vague. This is an issue they have already identified and are working to improve.

and solicitation information from ODWC CPOs. That process includes the following steps:

- CAP verifies that at least three vendors have submitted bids and agrees the amounts on the requisition, bidder solicitation, and M701 (requisition checklist).
- CAP creates the contract, sends it to the vendor via email, and sends copies to the Agency CPO and project manager.
- The vendor has 20 days to sign and notarize the contract. If the contract is not returned within the 20 days, the OMES CAP contracting officer will notify the Agency and they will reach out to the vendor to determine if they are still interested in the project. If still no response, CAP will contact the vendor. If still no response, a new vendor will be selected.
- Once the contract is returned by the vendor, the OMES CAP contracting officer creates the purchase order (PO) and sends it along with the contract to the director of CAP for signature.
- The PO is stamped with a "Notice to Proceed" date.
- The PO and form G 109 (Invoice Affidavit for Construction) are sent to the vendor, notifying them that work can begin.

Should the Agency have an emergency (requiring an emergency contract), they send a letter to the director of CAP outlining the emergency and the vendor they have selected, along with just cause for classifying the situation as an emergency. The director of CAP signs and approves a transmittal letter that is sent back to the Agency CPO so work can begin. All required documents are submitted to CAP at a later date.

Through a review of the Agency's approved purchasing policies and procedures and discussions with ODWC accounting supervisor and the OMES CAP contracting officer, we have identified the required documents to be completed based on the amount of the project being awarded:

Projects under \$2,500

All projects under \$2,500 are generally paid by p-card. The only requirement is that the biologist must complete the CAP Form M601 "Standard Contract for Minor Construction Work". The final invoice is approved by the biologist and their supervisor before submitting to the accounting department.

Projects between \$2,501 - \$5,000

For minor construction, repair, and/or labor not exceeding \$5,000, the contract is *awarded by the biologist* to any responsible supplier. The following forms are required to be completed by the biologist:

• Three Telephone bids, only for projects between \$2,500 and \$5,000. These bids are documented on the Telephone Bid Form;

- OMES, Construction and Property from M601;
- Copy of the vendor's liability insurance verification;
- Copy of workers' compensation verification, or CAP form A312D;
- Invoice signed by the biologist and their supervisor; and
- Claim jacket or p-card statement.

Projects between \$5,000 and \$50,000

Work costing \$5,000 to \$50,000 is considered a small project.

- The biologist completes a requisition form and receives the necessary approvals, they provide to the CPO a list of suppliers, supplier contact information, and specifications/scope of work to be provided.
- The CPO solicits a minimum of three written bids from potential suppliers. The request for bids states the scope of work to be provided, insurance requirements, specifications, and drawings as necessary to describe the intended work to be completed. The supplier may submit their bid by mail, fax, or email to be delivered by the deadline for receipt of responses. If all bids come back at an amount greater than the approved requisition amount, the CPO sends notice to the biologist and asks for their approval to increase the requisition amount.
- The CPO sends CAP the following: the requisition, CAP Form M701 Project Requisition Checklist and Fee Schedule, the invitation to bid documents, copies of the bids, and if applicable plans and specifications. The Agency recommends award to the lowest responsible bidder and includes that bidder's insurance certificate(s) and signed affidavit. As indicated above, although ODWC recommends the lowest bidder, CAP makes the final determination.
- The supplier can commence work upon the receipt of the work order/purchase order and "Notice to Proceed" from CAP.

Public Construction Projects: For projects exceeding \$50,000

All contracts in excess of \$50,000 must be submitted by the Agency CPO through the ePro process. The director of CAP assigns a CAP project manager and the Agency also has a project manager.

- After receiving approval from their supervisor for the project, the biologist submits an approved requisition form and related details to the CPO as discussed in the previous category.
- The CPO submits a requisition package (in accordance with the requirements outlined on the CAP Form M701 Project Requisition Checklist and Fee Schedule) to CAP requesting a public bid and contract award.
- CAP provides a bid evaluation form and the name of the apparent low bidder. Unless the department provides CAP with factual and verifiable information as to why the apparent low bidder is not

responsible, CAP awards the contract to the lowest responsible bidder.

Change Orders

Change orders or addenda to public construction contracts of \$1,000,000 or less cannot exceed a 15% cumulative increase in the original contract amount, and change orders or addenda to public construction contracts of over \$1,000,000 cannot exceed the greater of \$150,000.00 or a 10% cumulative increase in the original contract amount. A written justification for the increase must be submitted to the Department CPO. Any unit pricing publicly bid and included in the contract is not subject to the statutory change orders limitations.

Payments

The vendor submits invoices for services to the biologist, who reviews and then initials indicating that the invoice is correct and that the service was provided. Invoices are then submitted to the accounts payable division for payment.

Findings and Recommendations

Purchase Orders

We randomly selected a sample of 30 purchase orders and judgmentally selected 30 purchase orders from a population of 121 purchase orders. We evaluated these purchases to determine if they were made in compliance with approved purchasing policies and procedures and applicable state laws (described in the section above), and whether there were any unusual trends or relationships between the bids and the project solicitations.

Unusual trends noted:

- Thirteen bids that resulted in purchase orders were for the exact same amount originally listed on the internal requisition. Ten of the thirteen projects were awarded to Vendor #1. This is unusual for a typical bid solicitation.
- For eleven purchase orders, the internal requisition included the name of the vendor who was eventually awarded the bid as the suggested vendor *prior to* the bid solicitation. Eight of the eleven projects were awarded to Vendor #1.

Non-compliance with purchasing laws and regulations:

 Six purchase orders did not include a notice to proceed in the purchasing file.

- Three purchasing files did not include Form M701 and required supporting documentation.
- One purchasing file did not include evidence that the contract was awarded to the lowest responsible bidder.
- One purchasing file did not include a written bid from the contractor who received the award.
- One change order was exactly 15%⁴ (\$7,005) of the original contract of \$46,700, which caused the total purchase order amount to exceed \$50,000. A project exceeding \$50,000 would require the bidding and awarding process to be performed by DCAM-CAP.

Non-compliance with Agency policies and procedures:

- One purchasing file did not include three telephone quotes.
- One purchasing file did not include Form M601.

There were multiple instances for Vendor #1 where the amount of the successful bid exactly matched the amount on the internal requisition. In addition, in many cases Vendor #1 was already listed as the preferred vendor on the internal requisition prior to soliciting bids. This is further complicated by the fact that Vendor #1 is the brother of the ODWC employee who prepared nine of the ten internal requisitions in question. This raises questions regarding whether those projects were truly competitively bid or if the successful bidder had inside knowledge which allowed them to submit the winning bids.

Finally, Vendor #1 consistently bid significantly less than other bidders (whose bids were often consistent with each other) on projects. During the audit period, Vendor #1 was paid for 31 projects totaling \$358,812.89.

We also noted one instance in our testwork where Vendor #1 and another vendor both bid exactly the amount shown on the internal requisition. The project was awarded to the second vendor based on a coin toss performed at CAP⁵. (See spreadsheet in the appendix for more detail).

Although outside of the audit period, we noted a purchasing requisition for \$30,000 in Fiscal Year 2019 for a project to repair a low water bridge in the Cherokee Wildlife Management Area (WMA) located near Tahlequah, Oklahoma. Three vendors submitted bids for the project and Vendor #1 was awarded the bid. Noteworthy is that the amount and number of days to complete the project bid by Vendor #2 and Vendor #3 were relatively close to one another and the amount bid by Vendor #1 was

⁴ Cumulative changes that exceed the original contract price by more than 15% for contracts that are less than \$1,000.000 are prohibited by Oklahoma Statute, 61 OS 121(A).

⁵ Oklahoma Administrative Code Title 260:115-7-36. Contract award (d) Evaluation tie. Whenever it is determined that two or more bids are equal, the State Purchasing Director shall determine the successful bidder by a coin toss.

much closer to the amount on the internal requisition. Bids were as follows (see next page):

	Bid Amount	# of Days
Vendor #1	\$29,485	14 days
Vendor #2	\$124,437	40 days
Vendor #3	\$125,000	45 days

Authority Orders (AFP)6

We judgmentally selected a sample of 57 claims from a population of 325 claims, selected from eight authority orders, to determine if they were made in compliance with approved purchasing policies and procedures and applicable state laws and whether there were any unusual trends or relationships between the expenditures and the project solicitations.

Unusual trends noted:

- One claim was for \$2,499, which is \$1 less than the \$2,500 threshold requiring three phone bids.
- One claim was for \$4,999, which is \$1 less than the \$5,000 threshold requiring an invitation to bid be sent to three bidders.

Non-compliance with Agency policy and procedures:

 One purchasing file did not contain evidence that the employee received three phone bids as required by internal policies and procedures.

Recommendation

We recommend management review current state purchasing laws and the Agency's internal policy and procedures and implement a thorough and documented review process during the course of soliciting bids and awarding contracts to:

- 1. ensure all applicable processes, documents and reviews are incorporated to comply with state law and internal purchasing policies;
- 2. identify potentially unusual trends or relationships between requisitions, bids, solicitations and project awards which should be investigated further.

⁶ "AFP's" or "Authority Orders" are restricted to purchases not to exceed \$5,000. This limit is established as the amount not requiring bidding/solicitations pursuant to Oklahoma Central Purchasing Division Administrative Rules OAC 580, specifically, 580:16-7-13 "State agencies shall make open market acquisitions not exceeding Five Thousand Dollars (\$5,000.00) that are fair and reasonable."

We further recommend that management communicate and reinforce expectations regarding ethical behavior related to the purchasing process.

APPENDIX

Requisition, Bid, and Award - Vendor 1										
Requisition Requested by	Biologist 1	Biologist 2	Biologist 1	Biologist 1	Biologist 1	Biologist 3				
Amount of Requisition	\$ 9,900.00					\$ 9,900.00		\$ 16,000.00	\$ 49,700.00	\$ 7,900.00
Number of Bids Received	7	15	2			2	2	2	2	2
Vendor and Bid Amount	Vendor 1	Vendor 2	Vendor 1	Vendor 1	Vendor 1	Vendor 1				
	\$ 9,900.00				\$ 39,400.00	\$ 9,900.00				
	Vendor 6	Vendor 1	Vendor 20	Vendor 20			Vendor 4			Vendor 5
	\$ 35,880.00	\$ 41,650.00	\$ 20,400.00	\$ 16,800.00		\$ 18,300.00	\$ 82,750.00	\$ 32,000.00		
										Vendor 5 did not
										bid on tractor,
										brushog, motor
	Vendor 5	Vendor 6		Vendor 5						patrol and operator.
	\$ 12,780.00			\$ 14,274.00			**Change Order			
	12,700.00	00,000.00		¥ 11,211.00			to add \$7,005 to			
	Vendor 4	Vendor 9		Vendor 7			contract			
•	\$ 19,800.00	\$ 49,000.00		\$ 16,800.00						
	Vendor 7	Vendor 10		Vendor 15						
	\$ 17,400.00	\$ 67,865.00		\$ 28,500.00						
	Vendor 3	Vendor 11								
	\$ 18,600.00	\$ 88,200.00								
	Vendor 8	Vendor 12								
	\$ 15,000.00	\$ 79,625.00								
		Vendor 13								
		\$ 56,350.00								
		Vendor 14								
		\$ 49,980.00								
		Vendor 5								
		\$ 52,430.00								
		Vendor 15								
		\$ 66,150.00								
		Vendor 16								
		\$ 73,500.00								
		Vendor 17								
		\$ 57,418.20								
		Vendor 18								
		\$ 46,060.00								
		Vendor 19								
		\$ 63,700.00								



