



Mayor

Mattie Parker

Council Members

Carlos Flores, District 2^{††}

Michael D. Crain, District 3

Charlie Lauersdorf, District 4

Gyna Bivens, District 5

Jared Williams, District 6^{††}

Macy Hill, District 7

Chris Nettles, District 8

Elizabeth M. Beck, District 9

Alan Blaylock, District 10[†]

Jeanette Martinez, District 11^{††}

[†] Audit Committee Chair

^{††} Audit Committee Member

INTERNAL AUDIT REPORT

Construction – Transportation and Public Works

January 17, 2024

Audit Staff

David A. Medrano
City Auditor

01/17/2024

Date

Brian Burklund
Assistant City Auditor

01/17/2024

Date

Vanessa C. Martinez
Audit Manager

01/17/2024

Date

William K M Mafi
Senior Auditor

01/17/2024

Date





This Construction – Transportation and Public Works Audit was performed in accordance with the approved schedule of engagements identified in the Department of Internal Audit Fiscal Year 2024 Annual Audit Plan.

Executive Summary

We found that generally, construction of the Hazardous Road Overtopping Mitigation Project (Shoreview Drive Culvert Improvements) located at Shoreview Drive and Bomber Road in Council District 7 and managed by the City's Transportation and Public Works (TPW) Department was performed and completed in accordance with the contract terms and applicable laws.

However, we observed the following areas for improvement:

- there was no evidence to support the scope of work on a change order, resulting in a possible overpayment of \$9,216.68;
- the planned project completion date was exceeded with no change order filed;
- contractor's affidavits stating their compliance with Texas Government Code, Chapter 2258 Prevailing Wage Rates were not on file at the beginning of the audit; and
- failure to monitor and issue a "Not Meeting Goal Letter", when the contractor did not meet the City's Minority and Women's Business Enterprise (M/WBE) goal.

Our audit findings are discussed in further detail within the [Detailed Audit Findings](#) section of this report.

Table of Contents

Background	1
Objectives.....	2
Scope	2
Methodology.....	2
Audit Results	3
Acknowledgments	5
Overall Risk Evaluation	6
Detailed Audit Findings	6

Background

The City of Fort Worth (City) publicly advertised and, after due process, contracted the lowest bidder, IBCTX, LLC, to construct Hazardous Road Overtopping Mitigation Project (Shoreview Drive Culvert Improvements) located at Shoreview Drive and Bomber Road in Council District 7. The purpose of this construction project was to mitigate hazardous flooding of the roadway during significant rain events. The Transportation and Public Works (TPW) Department was responsible for managing the project.

The resultant contract (No. 55734) for \$1,658,900.00, was executed on May 18, 2021. Per the contract, construction would be complete for final acceptance within 180 days from construction commencement on July 7, 2021.

Before



Source: TPW Headlight, dated July 8, 2021

After



Source: Internal Audit, captured on July 6, 2023

Objectives

The objectives of this audit were to determine whether:

- the construction project was completed in accordance with contract terms; and,
- the project was performed in accordance with contract terms and applicable laws.

Scope

Construction contracts completed in FY2022 by the City's Transportation and Public Works Department.

- Internal Audit reviewed the population of contracts and selected contract no. 55734, for Hazardous Road Overtopping Mitigation Project (Shoreview Drive Culvert Improvements), to test.

Methodology

To achieve the audit objectives, the Department of Internal Audit performed the following:

- interviewed Transportation and Public Works Department personnel;
- reviewed contract terms and related laws;
- verified compliance with bonding and insurance requirements, City policies and procedures, and Minority and Women's Business Enterprise (M/WBE) terms;
- reviewed compliance with Texas Government Code, Chapter 2258 Prevailing Wage Rates;
- compared quantities charged to the City with quantities projected in the bid and budget;
- reconciled days allowed per contract and change orders to final count of days;
- reviewed bidding and contract awarding processes;
- reviewed daily inspection logs and laboratory material quality inspection reports, and notes;
- reviewed the final inspection "punch list" and closeout processes; and,
- evaluated internal controls related to construction contracts and projects.

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.



Audit Results

Based on our audit results, we concluded that the Shoreview Drive Culvert Improvements project was advertised and awarded in compliance with City policies and State law, and that the construction was consistent with the plan diagrams. Furthermore, IBCTX, LLC complied with 1) insurance, 2) payment, performance, and two-year maintenance bond requirements specified within the contract. Moreover, laboratory inspection reports indicated that all sampled inputs conformed with the specified PSI and compaction standards. The construction was completed at a total cost of \$1,681,234.38, comprised of:

Unit price contract amount	\$ 1,658,900.00
Plus: Two change orders	<u>\$ 22,334.38</u>
Total	<u>\$ 1,681,234.38</u>

Source: City's Peoplesoft Financial records

However, we observed areas for improvement, as follows:

- Transportation and Public Works (TPW) did not comply with some of the controls and procedures stated in the contract and related general conditions, and consequently:
 - contractor was potentially overpaid by \$9,216.68;
 - the planned project completion date was exceeded, with no change order filed; and,
 - contractor's affidavits required for verification of compliance with Texas Government Code, Chapter 2258 Prevailing Wage Rates, were not on file.
- Lack of monitoring of M/WBE goals and proper follow-through when goals are not met.

Lastly, we did not consider the following as a finding; however, we believe it is worth mentioning to management:

- Although the two-year maintenance bond is currently valid, according to the bonding company, it will expire on January 31, 2024, while the City's Letter of Acceptance states that it will expire on July 28, 2024. We believe there is a risk of the City bearing avoidable maintenance costs if maintenance period defects are not determined and corrected before January 31, 2024. The maintenance bond document indicates that *"...Work is and will remain free from defects in materials or workmanship for and during the period of two (2) years after the date of Final Acceptance of the Work by the City (Maintenance Period);..."*

- TPW staff indicated that the following erosion-related damages we observed during this audit are going to be resolved through the maintenance bond, following a related twenty-month inspection:

Observed erosion area South of STA.11 (Originally Punch Listed)
Photos captured by Internal Audit on July 9, 2023



Observed erosion North of STA: 14, close to Bomber Road
Photos captured by Internal Audit on July 9, 2023



**Observed erosion on sections North of STA: 13
Photos captured by Internal Audit on August 28, 2023**



Acknowledgments

The Department of Internal Audit would like to thank the Transportation and Public Works and Diversity and Inclusion Departments personnel for their cooperation and assistance during this audit.

Overall Risk Evaluation

High	Medium	Low
No evidence to support the full scope of work performed as indicated on Change Order		
	Contract time extended without change orders	
	No review of contractor's compliance with prevailing wage rates	
	Failure to issue Not Meeting Goal Letter for missed M/WBE goal	

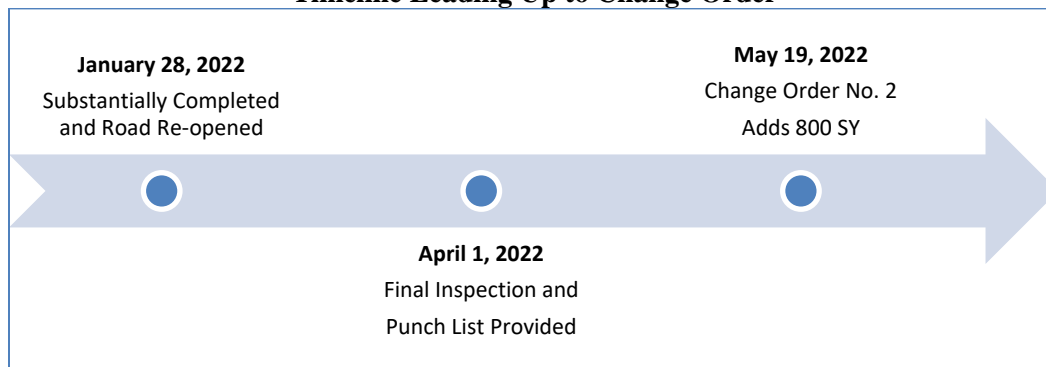
Detailed Audit Findings

1. No evidence to support the full scope of work performed as indicated on Change Order.

During an Internal Audit site visit with a City inspector to verify the measurements of Hydro-mulch, Seeding, and Soil Erosion Blanket, only 1,312.12 square yards (SY) were identified. The original bid item in the contract totaled 1,350 SY. There was no evidence supporting the need for the additional 800 SY of Hydro-mulch, Seeding, and Soil Erosion Blanket requested, approved, and paid for via Change Order No. 2.

We also noted that the request for 800 SY resulted from a punch list item identified during the final inspection. Article 21, Section D. of the CoFW Capital Delivery Manual indicates that during a final inspection “...*The site is walked and any remedial work is noted on a punch list created by the inspector*”. Also, article 14.05.A.2 of this contract indicates that: “*City will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.*”

Timeline Leading Up to Change Order



Source: Auditor generated from City records



Re-Measurements of Hydro-mulch, Seeding, and Soil Erosion Blanket

Total Area		Total Area Constructed, per Internal Audit measurements	Variance SY	Variance \$
in Bid	1,350 SY	1,312.12 SY	37.88 SY	\$416.68
Change Order	800 SY			
Billed and Paid for	2,150 SY		837.88 SY	\$9,216.68

Source: Auditor generated from City records

Consequently, the City may have overpaid the contractor by \$9,216.68. Although the payment was approved by the Inspector and the Project Manager, there was no evidence that quantities (SY) were validated prior to payment being processed. Step no. 255 of TPW's Work Process Map indicates that the Project Manager "...evaluates change request for validity..." and, step no. 266 indicates that the Inspector reviews the progress payment request, validates quantities, and approves for payment.

Recommendation 1A: *The Transportation and Public Works Director should require consistent compliance and maintenance of evidence that supports the work performed and approved by the inspectors.*

Auditee's Response: Agree. Transportation Public Works (TPW) believes that a contributing factor to this item is that the inspector and inspection supervisor for this project left the organization at approximately the same time and new staff were assigned to complete the project. The inspection team continues to experience high turnover which is consistent with the industry as a whole. Although the inspectors complete their reports daily in headlight and supervisors review weekly for accuracy and completeness, the learning curve for inspectors is quite steep and the importance of maintaining excellent construction records is key. In order to address this concern, TPW intends to develop a procedure for turning over a project from one inspector to another and request a full-time trainer position be added to this group as a part of the budget process for FY25.

A training session was held with the inspectors about measurements and how to document the quantities on 11/17/2023. A follow up training session for inspectors is scheduled for 01/19/2024. A Project Manager training was held on 11/30/2023.

Target Implementation Date: 01/19/2024

Responsibility: Lewis Gregory

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

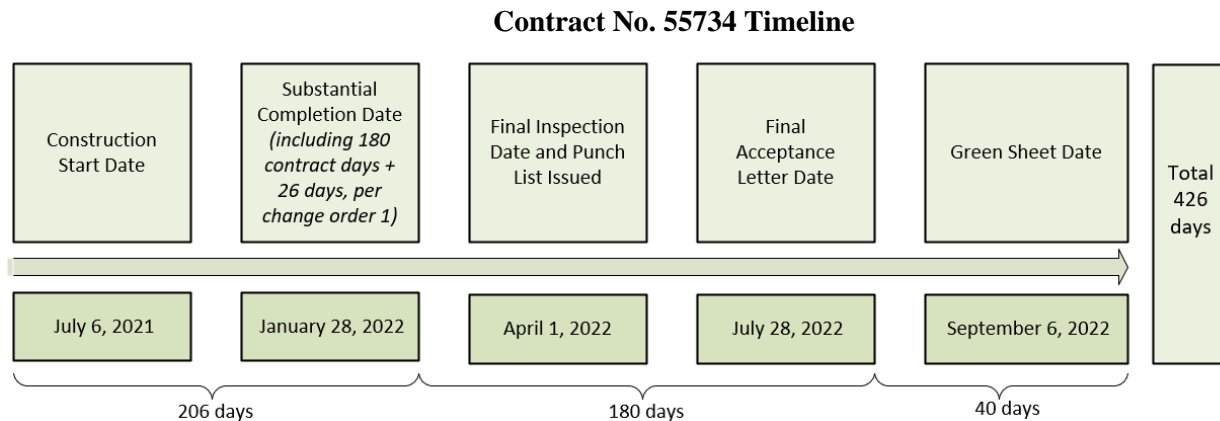
Applicable Assistant City Manager: Jesica McEachern

2. Contract time extended by 180 days without change order.

Article 6.04.A.3 of the General Conditions for this construction contract (no. 55734) directs that: "...Adjustments in Contract Time may only be made by a Change Order." Furthermore, Article 4.1 indicates that: "The Work will be complete for Final Acceptance within 180 days after the date when the Contract Time commences to run, as provided in Paragraph 2.03 of the General Conditions, plus any extension thereof allowed in accordance with Article 12 of the General Conditions."



There was no evidence of change orders processed when the contract time was extended by 180 days (from the date of substantial completion/when the road was re-opened and the date of the Final Inspection).



Source: Auditor-generated from City records

Internal Audit observed that the potential causes of these unauthorized time extensions include inconsistent adherence to the contract schedule, lack of recording important events evidenced by the absence of records of notice of request for final inspection, and exclusion of actual total contract days from the Green Sheet.

The CoFW Capital Delivery Project Management Manual states that “A critical goal of project management is to deliver the agreed project scope on schedule and within budget all while achieving a high-quality standard.” It was, therefore, important to ensure adherence to the contract time.

By not processing a change order for time extensions/delays and not recording the actual number of days the construction took on the green sheet: City management may not be made aware of delays and would not have an opportunity to consider claiming liquidated damages; and the City could risk setting a precedent for other contracts to be delayed without approval or consequences.

Recommendation 2A: *The Transportation and Public Works Director should require compliance with the change order and liquidated damages contract terms, to ensure the avoidance of unnecessary delays and optimization of project benefits to the City.*

Auditee’s Response: Partially agree. Section 14.05 B states: “No time charge will be made against the Contractor between said date of notification to the City of Substantial Completion and the date of final inspection.” The extension of contract time alleged above was after substantial completion of the contract was achieved and therefore, no time was charged against the contractor. In order to make this documentation clearer in the future, TPW has drafted templates to STOP time on a project and RESTART time, when warranted (initial draft is given in Attachment B). This will go through our stakeholder process.

Target Implementation Date: March 8, 2024

Responsibility: Michael Owen, PE

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jessica McEachern



Recommendation 2B: *The Transportation and Public Works Director should consider editing the Green Sheet template to include disclosure of the total number of days the construction took (i.e. contract dates versus actual dates) and where appropriate, an explanation of why liquidation damages were not billed and collected on the green sheet.*

Auditee's Response: Agree. Proposed edits to the green sheet document are given in Attachment C.

Target Implementation Date: 12/8/2023 [Completed]

Responsibility: Brian Brown

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jessica McEachern

3. There was no evidence of receipt of an affidavit or review of Contractor compliance with prevailing wage rates.

Article 6.07 F of the General Conditions for this Contract (No. 55734) indicates that: "...With each progress payment or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code..."

Based on our audit results, there was no evidence that the Contractor had been submitting an affidavit with each progress payment or payroll period. The expected payroll records were not readily available for audit in BIM360. Upon Internal Audit inquiry, TPW requested and received a retrospective payroll affidavit dated June 23, 2023 from the Contractor.

Internal Audit, thus, had no verifiable evidence that TPW had monitored and assured that the Contractor complied with the prevailing wage requirements. Internal Audit also observed that the Current Prevailing Wage Rate Table was not attached to the contract package.

Section. 2258.058 (a) of the Texas Government Code states that "...An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of this chapter." By not requesting payroll records in a timely manner, and by not monitoring the wages paid to the contractor's employees, the City would not be able to verify that the contractor complied with the state regulation.

Recommendation 3A: *The Transportation and Public Works Director should ensure that TPW staff receive the contractor's affidavit whereby the contractor states its compliance with Chapter 2258 of the Texas Government Code.*

Auditee's Response: Agree. TPW will ensure staff require the contractor to submit an affidavit of compliance with Chapter 2258 of the Texas Government Code as required by contract.

A training session was held on 11/17/2023 about the importance of following the contract documents for prevailing wage rates. Currently, most contracts require the affidavit to be provided with every estimate and that is what we should be doing unless the documents require something different. A follow up training session for inspectors is scheduled for 01/19/2024. A Project Manager training was held on 11/30/2023.

Target Implementation Date: 01/19/2024

Responsibility: Lewis Gregory, Lissette Acevedo



Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jesica McEachern

Recommendation 3B: *The Transportation and Public Works Director should ensure that TPW receive an affidavit of payroll to ensure performance of Section 6.07 F. of the General Conditions in Contract No. 55734.*

Auditee's Response: Agree. Staff agrees that the affidavit of payroll was received late. Moreover, a review of the certified payroll of the project in question was conducted on 11/21/2023 and it was determined that the wages paid during this contract exceeded the minimum prevailing wages established for City of Fort Worth projects during this contract. A copy of the prevailing wage rates for this project are given in Attachment E and a copy of the certified payroll for this project is given in Attachment F.

Target Implementation Date: 11/21/2023 [Completed]

Responsibility: Michael Wellbaum

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jesica McEachern

Recommendation 3C: *The Transportation and Public Works Director should ensure that all relevant documents are properly attached to all contract packages.*

Auditee's Response: Agree. TPW has revised 00 73 00 Supplementary Conditions to require that the affidavit from the contractor certifying compliance with the payment of prevailing wage rates be submitted at the end of the project, instead of submitting this affidavit with each progress payment. This document was posted on October 6, 2023

<https://apps.fortworthtexas.gov/ProjectResources/ResourcesP/02 - Construction Documents/Specifications/Div 00-General Conditions/00 73 00 Supplementary Conditions.docx>

TPW is proposing a change to the 00 72 00 General Conditions to require the prevailing wage affidavit to be submitted only at the end of the project. This change will need to go through a full stakeholder review process. If the stakeholders agree, this change will be made to the contract in March of 2024.

TPW is currently working on updating our Prevailing Wage Rates which will require Council action.

Target Implementation Date: March 8, 2024

Responsibility: Michael Owen, PE

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jesica McEachern

Recommendation 3D: *The Transportation and Public Works Director should provide refresher training to relevant staff relating to the requirements in Chapter 2258 of the Texas Government Code.*

Auditee's Response: Agree. Refresher training was conducted 11/17/2023 and the inspector sign in sheet is given in Attachment A. A follow up inspector training session is scheduled for 01/19/2024. A Project Manager training was held on 11/30/2023.



Target Implementation Date: 01/19/2024

Responsibility: Lewis Gregory, Lissette Acevedo

Applicable Department Head: Lauren L Prieur, Transportation and Public Works Director

Applicable Assistant City Manager: Jesica McEachern

4. The City did not follow policy of issuing a letter of no compliance with the City goal.

Section 20-351 (k) (3) of the Fort Worth Code of Ordinances indicates that: *“If DVIN determines that the contractor failed to meet the business equity goal and the city made no changes that impacted the contractor’s ability to meet the business equity goal, it shall be considered a breach of the contract and DVIN may impose sanctions in accordance with this article.”*

The contractor committed to providing 8.45% Minority and Women’s Business Equity (M/WBE) participation in this project. The City’s M/WBE goal on this project was 8%. The contractor failed to achieve the City’s goal when they paid the M/WBE Sub-Contractors 6.99% (\$117,576.00) instead of the goal of 8% (\$134,498.72).

There was no evidence that Diversity & Inclusion (DVIN) staff monitored and followed up to ensure compliance with goals set in terms of the contract per Business Diversity Ordinance (BDE) and Texas Code Sec.2269.055(b)(2) rules. DVIN acknowledged that the contractor had not met the goal; and that, due to staff turnover, they had not yet issued the “Not Meeting Goal Letter” but were now (during the audit) going to issue the letter. Furthermore, DVIN indicated that they are going to introduce a process for reporting end-of-project M/WBE goal results to appropriate CoFW stakeholders.

There is no evidence that future bid evaluators have a record showing whether the competing vendors have honored their previous M/WBE goal commitments. Internal Audit observed that lack of constant monitoring and follow-up from Contract Compliance (DVIN), in spite of them having a tracking device (B2Gnow) which has an automatic audit feature that shows the status of the payments from the Prime contractor to the M/WBE subcontractor, might result in a low regard for the M/WBE goal by the Contractors.

Sec. 2161.182 (a) of the Texas Government Code requires a state agency that contracts for a construction project to make a good faith effort to increase the construction contract awards to historically underutilized businesses described by Section 2161.002 (c). Noncompliance may have resulted in a violation of CoFW Ordinance 25165-10-2021 and the principle of assisting historically disadvantaged enterprises.

Recommendation 4: *The Diversity & Inclusion Director should require consistent monitoring and issuing of “Not Meeting Goal Letters”, when applicable.*

Auditee’s Response: [Concur] A meeting was held at 2:00 PM with DVIN's entire Staff immediately after meeting with the Auditor's team. Reviewing contract #55734 with the team, we found a glitch in the B2GNow System. We found that when the Sr. Contract Compliance Specialist (SCCS) clicks on the link for "NOT MEETING GOAL LETTER," the B2GNow System errors and is not saving a copy of the email with the prime contractor record. The copy of the email should be visible in the system's MESSAGES tab as all other system communication and emails are stored. A Support Ticket #2597504 is submitted to B2GNow's support team.

Effective immediately, as a temporary remedy, the SCCS will click on the option to "send a copy to you by email" button at the same time they are sending the system email to the prime contractors. The SCCS will upload the email into B2GNow's DOC tab and label it "NOT MEETING GOAL LETTER."



Due to the B2GNow System glitch, there is no verifiable data to support that Staff needs to be consistent with this process. However, we appreciate the Auditing Team bringing this issue to our attention. The B2GNow Support Team is currently addressing the issue.

Target Implementation Date: 11/20/2023 – Pending Verification

Responsibility:

Applicable Department Head: Christina A Brooks, Diversity & Inclusion Director

Applicable Assistant City Manager: Fernando Costa