



# City and County of Denver

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*Dennis Gallagher*

Auditor

November 16, 2011

Honorable Michael Hancock, Mayor  
Honorable Chris Nevitt, Council President  
1437 Bannock Street  
Denver, CO 80202

Dear Mayor Hancock and Council President Nevitt:

It's broken and the process is being abused and exploited. It's broken and its costing Denver and our taxpayers money we can ill-afford. It's broken and it's time to fix it.

The audit I released today of the City's Public Works contracting process has me outraged as I am sure it will Denver's citizens and you. It is a performance audit that documents a shocking example of poor oversight, inadequate controls and City policies that lead to abuse of the system. The City's contract-bidding and change-order process is so poorly formulated and applied that the result can be inferior work at a higher cost to the City. It allows a contractor, if they wish, to exploit the process for their own financial gain and to the City's considerable financial disadvantage.

This is an institutionalized system that punishes proficient contractors who bid jobs honestly and fairly and rewards those who do not.

Our audit found instances where projects were left unfinished (with the city needing to spend additional money to complete the projects) while the contractor was paid significantly more than the original bid amount.

Moreover, the current process allows the circumvention of controls designed to prohibit abuse, ensure transparency, preserve the appropriate oversight role of City Council in approving construction expenditures and allows for the use of change orders to allocate funds to contractors in order to bypass the 'normal' settlement process.

This situation will continue unless substantial steps are taken to fix the problem.

Those steps must include not just an internal revision of procedures and implementation of real safeguards against abuse but the adoption of changes to the Denver Revised Municipal Code (D.R.M.C.) to ensure true reform of the process.

To promote open, accountable, efficient, and effective government by performing impartial reviews and other audit services that provide objective and useful information to improve decision making by management and the people.

We will monitor and report on recommendations and progress towards their implementation.

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The roadmap for this reform can be found in the findings and recommendations in the audit. As I have noted, however, implementation of those recommendations needs to be more than a 'tweaking' of internal controls and procedures. The power of the D.R.M.C. needs to be invoked through the passage of appropriate ordinances.

Most significantly an ordinance that revises the selection criteria to ensure that a contractor is bidding fairly and honestly; is actually qualified and capable of fulfilling the requirements of the project; that the City has the ability to delve into the means, methods or techniques the contractor intends to use to fulfill the contract; and most importantly that past performance be a key criteria.

Failure to assess a contractor's past performance can allow contractors with a history of poor performance and other problems, to bid continually on and be awarded multi-million dollar contracts with the City. Worse, reliance on low-bid as the sole criteria for awarding contracts creates an environment where they system can be manipulated to allow the submission of intentionally low bids to secure a contract with the intent of increasing the amount of the contract through subsequent change orders.

Even the Federal Government, never a bastion of cutting-edge reform, understands that reliance solely on a "low-bid" process is a flawed way to conduct business. The GAO has made a compelling case, as does today's audit, that changing to a bidding process that includes other contract-award criteria in addition to low bid is the best way to protect the City's interest and ensure the citizens are getting the best value for their money - the most bang for their taxpayer dollar.

If I can provide you with additional information or be of further assistance in your efforts to address this situation I am pleased to do so. But I urge you to proceed with all deliberate speed. Each day that passes is a day when the contracting process may be being abused and the potential for unnecessary construction expenditures can occur.

Denver's citizens deserve to have this scandalous situation addressed without delay.

Sincerely,



Dennis J. Gallagher  
Auditor