INVESTIGATIVE AUDIT

Lead-Impacted Communities Relocation Assistance Trust

April 19, 2018

Oklahoma State
Auditor & Inspector
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April 19, 2018

TO THE CITIZENS OF THE STATE OF OKLAHOMA

Transmitted herewith is the final report of our Special Investigation of the Lead-Impacted Communities Relocation Assistance Trust Property Improvement Clearance Project for the period January 1, 2010 through June 30, 2012.

We performed this investigation, pursuant to a request from the Office of the Attorney General in accordance with the requirements of **74 O.S. § 18f**.

The objectives of our investigation primarily included, but were not limited to, the concerns noted in the Attorney General's request. Our findings related to these concerns are presented in detail in the accompanying report.

Sincerely,

Gary A. Jones, CPA, CFE
Oklahoma State Auditor & Inspector

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KEY INDIVIDUALS

Jack Dalrymple, Project Manager ..... LICRAT

Larry Roberts, Operations Manager ..... LICRAT

Dr. Mark Osborn, Trust Chairman ..... LICRAT

Jim Thompson, Trust Member (Deceased) ..... LICRAT

Virgil Jurgensmeyer, Trust Member ..... LICRAT

John Morrison, Administrator, Construction & Properties Division ..... DCS

David Mihm, Project Manager, Construction & Properties Division ..... DCS

Angela Hughes, Manager, Land Protection Division ..... DEQ

David Cates, Engineer, Land Protection Division ..... DEQ

Lloyd Stone, Owner ..... Stone's Backhoe Dozer & Trucking

Chris White, Owner ..... Vision Construction, CWF Enterprises, Inc.

Frank Close, Employee ..... Vision Construction, CWF Enterprises, Inc.

Objective One

Synopsis of Events

Before addressing the specific questions asked of us in the Attorney General's 74 O.S. § 18f request letter, the following timeline is presented to detail some of the activities, relationships, actions, and behaviors surrounding pre-bid activity, letting of bids, and the bid-award process for the March 2010 Property Improvement Clearance Project. The information detailed below is essential in aiding the understanding and assessment of each individual Concern addressed in detail following this Synopsis.

Property Improvement Clearance Project Payout
(Combined Contracts)

Contract Date	Bid Amount	Total Paid	Notes
October 2009	$599,988	$0	Lowest bid; contract never awarded
December 2009	10% of Contractor's Invoice	$36,128	Jack Dalrymple's Contract Payment;10% of amount awarded to Vision through Court settlement of void contract (less legal fees);
March 2010	$2,100,000	$366,283	Highest bid; partial completion payment to Vision; contract voided by Court
June 2010	N/A	$10,429	Mandated payment of legal fees relative to March 2010 bid-process lawsuit
September 2010 (paid out over time)	$305,472	$185,361	Dalrymple's Professional Services Contract for the December 2010 DCS Demolition Contract
December 2010 (paid out over time)	$3,050,786	$3,050,786	Contract completed through DCS; bid included alternate bid and option bid, both paid to CWF
Total Cost		**$3,648,987**	

The Lead-Impacted Communities Relocation Assistance Trust (LICRAT) Property Improvement Clearance Project process was set in motion with a Request for Proposal (RFP) issued on September 16, 2009. The initial bids were received on October 22, 2009, with the lowest bid submitted in the amount of $599,988. If the bid had been awarded and completed at this time, the cost to the Trust for completion of this project could have been less than $600,000.

As the following described events transpired, the contract – which, in the end, took almost two more years to complete – ended up costing the Trust, and ultimately the taxpayers, a total of $3,648,987.

September 16, 2009

The initial Property Improvement Clearance Project RFP was issued with the proposal of employing a contractor, through a professional-services contract, to clear property by means of demolition and salvage within the Tar Creek region. This RFP was issued requiring compliance with the Davis-Bacon Act. The Davis-Bacon Act is a federal law that requires

"prevailing wages" to be paid, which historically results in "union" wages being paid, frequently increasing the cost of federally-funded contracts.

This initial RFP was issued **without** "Quality Control" requirements, the implication of which will be shown throughout the following commentary. The RFP was issued **with** an assignment clause in the draft "Professional Services Contract" that would expressly prohibit assignment of the contract without "prior written authorization of the TRUST". This issue will also be set apart as relevant in the details of the January 30, 2010, and February 24, 2010, commentaries.

October 22-26, 2009

On October 22, bids were received from three vendors for the September 16, RFP. The bid amounts for each vendor were:

Vendor	DT Specialized Services	Kingston Environmental	Stone's Backhoe, Dozer & Trucking
Total Bid	$599,988.00	$646,550.94	Bid Not Totaled

In the weeks leading up to the opening of these bids, discussions were held between DEQ, EPA, and LICRAT officials as to whether the Davis-Bacon Act should apply to the Property Clearance demolition contract. In an October 26 email, EPA administrators communicated that they had determined that the Act would not be applicable to this demolition contract. Based on this determination, discussions were then held as to whether LICRAT should now rebid the contract.

Legal counsel for DEQ determined that LICRAT should rebid the contract since "a major condition has been changed that would materially affect the bid price (**in our favor**)". Based on this information, it is acknowledged that the new bid amounts submitted for the project should be less than the original bids. The October 22 bids were canceled.

November 3, 2009

There was a handwritten note found in LICRAT's files dated November 3, explaining that each bidder was called and advised that a revised RFP would be submitted for rebid based upon new information including the elimination of the Davis-Bacon Act, a more thorough description of the properties in the RFP, and the establishing of a local certified dump site for debris placement.

November 6, 2009

Jack Dalrymple writes a "Professional Services Proposal" addressed to LICRAT, proposing to be hired to provide Project Management and Quality Assurance for the upcoming Clearance Project. Included in his proposal was a "Quality Control" plan that the winning contractor would be required to submit for acceptance by the Trust.

The proposal included suggested compensation for Dalrymple's services as "10% of the successful contractor's bid proposal". As a result, the higher the awarded contract, the higher the compensation to be paid to Dalrymple.

November 10, 2009

In a board meeting held on November 10, it was discussed and suggested that, due to the increase in duties for the Trust Operations Manager, it would be beneficial to hire a project manager for the upcoming Property Clearance Project. LICRAT authorized the Trust Chairman, Mark Osborn, with the approval of the Property Disposal Committee (which consisted of three board members), to secure the services of a construction project manager to oversee the property clearance.

The actual wording in the meeting minutes was "to seek and secure" a project manager. This proposal was made in the trust meeting after Dalrymple's proposal letter had already been prepared on November 6. It could not be determined when the letter was presented or delivered to the Trust, only that was it was prepared prior to the "suggestion" that the Trust "seek" a project manager.

November 13, 2009

A letter was prepared by Chris White, owner of CWF Enterprises, proposing the hiring of CWF for asbestos-removal services. The letter was addressed to:

> Jack Dalrymple
> Project Manager
> Lead-Impacted Communities Relocation Assistance Trust

As of November 13, Dalrymple had not yet been hired as LICRAT's 'Project Manager'. He was purportedly not hired until November 24 during a Property Disposal Committee meeting. At the date of Chris White's letter, there should have been no knowledge of Dalrymple's possible employment with LICRAT.

November 24, 2009

The Property Disposal Committee met on November 24 with two of the three members, Jim Thompson and Virgil Jurgensmeyer, present. The Committee minutes documented that a discussion was held in review of the "written project proposal" prepared by Dalrymple. In the meeting, Jurgensmeyer moved to recommend that Dalrymple be hired as the Property Clearance Manager, Thompson seconded the motion, and both voted in favor.

As noted above, Dalrymple's proposal for the position was dated November 6, 18 days before this meeting and four days before the Trust even suggested the hiring of a project manager.

December 18, 2009

J.D. Strong, State Secretary of the Environment, reviewed a draft contract for Dalrymple's employment and suggested that his compensation be capped at 10% of the amount invoiced by the contractor, up to a maximum of $60,000. Dalrymple had requested in his contract that compensation be 10% of the amount invoiced, with no capping. Strong's suggestion was not accepted; Dalrymple's contract was signed on December 18 with pay to be 10% of the amount invoiced, with no cap. Therefore, the higher the contract awarded, the higher the compensation for Dalrymple.

January 9-24, 2010

A review of e-mail communications between Dalrymple, Osborn, and Angela Hughes of DEQ shows that Dalrymple was responsible for rewriting the September 2009 RFP. With authorization to rewrite the new RFP, Dalrymple included very specific Quality Control requirements and a modified contract-assignment clause.

January 30, 2010

Dalrymple e-mailed a draft copy of the re-written RFP to Thompson, Hughes and Osborn. This draft included all the new Quality Control language that had been introduced initially in Dalrymple's Professional Services Proposal letter submitted during his hiring process. **To be specifically noted**, this draft included the same "Section 13" as in the original September 16, 2009, RFP, specifically defining **the assignment** of the contract as allowable only under "prior written authorization **of the TRUST**".

February 24, 2010

The second RFP was officially released, rewritten by Dalrymple. We could find no discussion or official review or approval of the RFP in the Trust minutes.

This RFP included all of the new Quality Control requirements to be met by the bidders, but, more importantly, the officially-issued RFP now included a change in Contract Section 13.

As noted above, in relation to assigning the contract, the draft copy sent to Thompson, Hughes, and Osborn for review included the assignment of the contract as allowable only under "**prior written authorization of the TRUST**".

The contract, as of February 24, now stated that the contract could not be assigned "without prior written authorization of the **Trust engineer**". As such, Dalrymple now had authority to assign the contract without the Trust's knowledge or approval.

March 17, 2010

The bid proposals were received in response to the February 24 RFP. Of the four bids submitted, Stone's Backhoe, Dozer and Trucking's was the highest at $2,100,000. *(See 'Concern A' concerning other bid amounts.)* Stone's bid amounts for most items in the RFP were now twice the amounts submitted just a few months earlier in the September 16, 2009, bid documents. A comparison is shown below.

Unit Cost / Unit Prices	October 2009 Bid	March 2010 Bid
Base Bid	$3.00 per square foot	$6.00 per square foot
Removal of well houses	$25 per well house	$150 per well house
Plugging of water wells	$200 per well	$1,300 per well
Septic System pump and fill	$200 per system	$400 per system

Additionally, Stone's bid proposal included a Quality Control plan that incorporated, word-for-word, portions of the quality-control language in Dalrymple's job proposal to the Trust months earlier. Stone's Quality Control plan was submitted as a document "owned" by Vision Construction; it included a confidentiality agreement signed by Lloyd Stone, the owner of Stone's, stating that he was not allowed to "disclose" the quality-control information submitted in his own bid.

As will be discussed later in 'Concern C', Stone's contract was subsequently assigned to Vision Construction.

March 24, 2010

A contract was signed by Osborn and Stone for the Property Clearance Project. The contract was for the highest bid submitted and was not reviewed, discussed, or approved by the Trust.

Summary of Concerns – Objective One				
Concern	**Topic**	**Statute Reference**	**Evidence for Violation of Statute**	**Page Number**
A	Competitive Bidding Act	61 O.S. § 101 *et seq.*	Yes	8
B	Lowest Bidder Chosen or Higher Bid Substantiated	61 O.S. § 117	Yes	9
C	Collusion Among Bidders Non-Collusion Affidavit	61 O.S. § 115 74 O.S. § 85.22	Yes	10
D	Conflict of Interest	61 O.S. § 114	No	13
E	Unlawful Disclosure	61 O.S. § 116	Yes	13
F	Obtaining Property by False Representation	21 O.S. § 1541.1 21 O.S. § 1541.2	No	14
G	Conspiracy Against State	21 O.S. § 424	Yes	14
H	Bribery/Kickbacks	21 O.S. §§ 381, 382 21 O.S. § 341 74 O.S. § 3401 *et seq.*	No	15
I	Open Meetings Act	25 O.S. § 314	Yes	16
J*	Contractor Bonding	61 O.S. 103(A)	Yes	17
K*	Federal Award Payments	OMB Circular A-87	Yes	17

*These Concerns were not part of the original Attorney General 74 O.S. § 18f request.

Concerns

The Attorney General's 74 O.S. § 18f request specifically defined nine "Concerns" to be addressed for the contract awarded by the Lead-Impacted Communities Relocation Assistance Trust in the March 2010 Property Improvement Clearance Project.

Each Concern is detailed verbatim as presented to us and highlighted in red print. Our findings and responses to these Concerns immediately follow.

Concern A ***Were bids solicited, received and contract awarded pursuant to the provisions of the Public Competitive Bidding Act of 1974 (as amended), 61 O.S. 2001, §§ 101 et seq.?***

Bids were solicited and received for the March 2010 LICRAT Property Improvement Clearance Project. However, the project was not awarded in accordance with the Public Competitive Bidding Act.

Bids were solicited through a 'Request for Proposal' dated February 24, 2010. A bid opening was held by LICRAT's Property Clearance Committee on March 17. Those in attendance at the bid opening were: Jack Dalrymple; Larry Roberts, LICRAT's Operations Manager; Lloyd Stone; Frank Close of Vision Construction; and David McAfee of DT Specialized Services.

The minutes from the Property Clearance Committee meeting asserted that the bids were opened and read aloud and that the decision to award the bid would be deferred until after reference checks were made and tabulation sheets completed. The bid amounts received were:

- DT Specialized Services, Inc. – $558,988
- Midwest Trucking - $861,671
- K & M Dirt Services – $1,447,971
- Stone's Backhoe, Dozer & Trucking - $2,100,000

Sometime between March 17 and March 24, the bid-review process was conducted, and the bid was ultimately awarded to the highest bidder, Stone's Backhoe, Dozer & Trucking. The bid evaluation and award process was not conducted in an open meeting, the contract was not awarded to the lowest bidder or approved by the Trust and no documentation or explanation as to why the lowest bidder was not chosen was documented at the time of the award.

The contractor choice was actually announced to the Trust Members in an e-mail from Amanda Storck of the Office of the Secretary of Environment, dated March 25, 2010. In addition, Osborn was notified of the contractor selection individually in an e-mail from Dalrymple dated March 25, 2010, although Osborn had already signed the project contract with Stone's on March 24.

It should be noted that DT Specialized Services sued LICRAT in District Court, claiming in a sworn affidavit by McAfee, the Vice President of the company, that the bids were not going to be read aloud until he insisted and that the awarding of the bid to the highest bidder was not adequately explained. As a result of these court proceedings, the bid process was halted, and all bids were voided.

Concern B ***If the contract was awarded to any bidder [other] than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?***

We found no "credible" written explanation why the Property Improvement Clearance Project was not awarded to the lowest bidder. We also found no publicized statement *executed in accompaniment with the contract* documenting the reason LICRAT awarded the contract to a bidder other than the lowest bidder.

A hearing was held May 5, 2010, in the District Court of Ottawa County to rule on alleged violations of the Open Meeting Act as it related to LICRAT's contract with Stone's. On the evening of May 4, LICRAT held a 'Special Meeting' at First National Bank and Trust of Miami. As the only item of business, the Trust voted to accept Stone's bid of $2,100,000, the highest bid submitted. At this "eleventh-hour" meeting, the Trust approved the following statement:

> That although the Stone Backhoe, Dozier and Trucking was not the low bid, it was by far the best bid and the only one which adequately addressed the requirements in the RFP regarding the quality control issues. [T]he bid of Stone Backhoe, Dozier and Trucking [is] approved as being the best bid for the project.

The contract had previously been signed and approved by Osborn on March 24, so this statement by the Trust six weeks later does not appear sufficient to meet statutory requirements of a "public agency *accompanying* its actions" with a credible explanation for why the Trust selected the highest bid submitted.

Concern C ***Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to, whether the winning bidder served as a "straw bidder" for an actual other person or entity], 61 O.S. Supp. 2008, § 115?***

There is evidence to suggest that Stone's Backhoe, Dozer & Trucking served as a "straw bidder" for Vision Construction.

Stone's Backhoe, Dozer & Trucking, as an independent contractor, was awarded LICRAT's Property Clearance Project with the highest bid submitted of $2,100,000. A significant portion of the bid evaluation process and award was based on a required 'Quality Control' plan to be proposed and implemented by the successful bidder. Stone's subcontracted with Vision Construction to supply this 'Quality Control' plan as part of Stone's bid package.

A portion of the 'Quality Control Manual' created by Vision Construction was word-for-word the same as the 'Professional Services Proposal" submitted by Dalrymple to LICRAT four months earlier, on November 6, 2009. That was prior to Dalrymple's being chosen as LICRAT's Project Manager.

Also included in Stone's bid was a "Confidentiality Agreement" signed by Stone stating that the 'Quality Control' plan he was submitting as part of his bid was a confidential document of Vision Construction. Stone agreed to not disclose the information in the Quality Control Plan to protect Frank Close and Vision. The specific clause in the contract read, "…any disclosure or use of same by reader may cause serious harm or damage to Quality Control Manager Frank Close and Vision Construction." The bid package containing this plan was purportedly Stone's bid, not Vision's.

Additionally, on March 23, 2010 – **before** Stone's was officially awarded the LICRAT contract, Stone signed two letters on Vision letterhead that appointed Frank Close as Stone's 'Quality Control Project Manager' and Chris White as Stone's 'Alternate Quality Control Project Manager'. These appointments granted Close and White the authority to "execute forms and reports" and "control time" for the project on behalf of Stone's.

On April 26, White wrote in an e-mail to Larry McBurnett of Tedford - Insurance Agency:

> **We** put the bid packet together as a team. We were short on time and Stone's said they already had approval for

> bonding, so **we let them** enter this as the primary contractor. …. At any rate, Stone's financial statements were not good enough to qualify for [bonding]. Had we known this upfront we would have entered the bid in our name to begin with. The only reason **we were awarded this contract** was because of the quality control manual that we prepared for the project. We were the only contractor that turned in a qualifying quality control plan. [Emphasis added]

Furthermore, on April 30, Stone's assigned the entire contract to CWF/Vision. (*Details of the assignment follow.)*

The association between Vision and Stone's – including the pre-bid discussions noted in the above e-mail, the inclusion of Vision's Quality Control manual in Stone's bid proposal, Stone's appointing of Vision's staff as quality-control managers, and ultimately assigning the entire contract to Vision/CWF – all provide evidence that Stone's possibly served as a "straw bidder" for Vision/CWF.

If so, was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, § 85.22?

A non-collusion affidavit was not submitted by Stone's that met the requirements of 74 O.S. § 85.22.

A "Contractor's Agent's Affidavit" form was incorporated into the uniform "Request for Proposal" utilized by LICRAT in soliciting bids for the Property Clearance Project. This affidavit form was submitted by Stone's **in lieu of** the non-collusion affidavit outlined in statute. This affidavit did not address collusion among bidders and, as such, did not meet the requirements of 74 O.S. § 85.22.

Additionally, 61 O.S. § 108 requires a bidder include with its bid an affidavit defining the nature of any partnership or business relationship with other parties involved in the project. The "Contractor's Agent's Affidavit" did not properly address business relationships or fulfill the requirements of 61 O.S. § 108. Any relationships should have been properly disclosed during the bid process. Even if an unfair advantage in the bidding process did not exist because of relationships between parties, there is an appearance that favoritism may exist when associations are not properly disclosed.

Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

LICRAT's demolition contract with Stone's Backhoe, Dozer & Trucking was assigned to CWF Enterprises, in apparent violation of 61 O.S. § 120, which states in part, "No public construction contract shall be assignable by the successful bidder without written consent of the governing body of the awarding public agency, evidenced by resolution."

CWF Enterprises submitted a letter to Jack Dalrymple on April 23, 2010, requesting he approve the assignment of Stone's contract with LICRAT to CWF Enterprises. On April 30, an assignment contract was executed between Stone's and CWF, approved by Dalrymple.

The progression of the assignment clause in LICRAT's contract with Stone's is problematic. The original RFP that was released on September 16, 2009, included a Section 13 "SUBLETTING, ASSIGNMENT AND TRANSFER" clause, which stated in part, "Therefore, except as provided in the proposal, subletting, assignment or transfer of any work, without prior written **authorization of the TRUST** is expressly prohibited." Authority for assignment of the contract at that point in time was with the TRUST and consistent with 61 O.S. § 120.

Jack Dalrymple submitted a draft of the re-worked RFP to Osborn, Thompson, and Hughes on January 30, 2010. This draft also included the exact language of the September 16, 2009, RFP as noted above, specifically that assignment of the contract is only by "…. **authorization of the TRUST**".

When the final RFP was released on February 24, 2010, the contract contained the following language as it related to assignment: "Therefore, except as provided in the proposal, subletting, assignment or transfer of any work, without prior written **authorization of the Trust engineer** is expressly prohibited."

The RFP, and subsequently Stone's contract with LICRAT, now had a clause giving the project engineer, Dalrymple, authority to approve contract assignments. Assigning of the contract from Stone's to Vision/CWF was completed on April 30.

This contract clause directly conflicts with state law, which requires a contract assignment to be by written consent of the governing body through a resolution. We could find no discussion, written consent, or resolution by the Trust approving this assignment. This contract assignment appears to be invalid under Oklahoma law.

It should also be noted that one of the reasons given for assignment of the contract between Stone's and CWF was that Stones could not obtain appropriate bonding. However, on the date of the contract assignment, April 30, 2010, White had not yet obtained bonding for CWF. His bond agreement was not signed until May 3. (*The issue of bonding is addressed in Concern J.)*

Concern D ***Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?***

There was no evidence of an illegal conflict of interest as such conflict is defined in 61 O.S. 2001, § 114.

There are several personal relationships and business contacts that exist between the parties involved in the LICRAT Property Clearance Project. A complete understanding of these relationships could possibly enhance the reader's understanding of the events surrounding the bid and award process.

In fact, some of these relationships could possibly provide an unfair advantage in the bid process; however, they do not appear to be a violation of this statute and, as such, we have directed our response to this Concern to be that no evidence of illegal conflicts exists.

Specifically, we did not find evidence that any "Trustee" or the "chief administrative officer" had any direct or indirect interest in the contract with Stone's Backhoe Dozer & Trucking or Vision Construction / CWF Enterprises.

Concern E ***Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?***

There is evidence that a possible unlawful disclosure of material fact occurred between Jack Dalrymple and Stone's Backhoe Dozer & Trucking in the preparation of Stone's bid.

The statute referenced above conveys that it is unlawful to possess information which is to be contained in a bid notice of a public agency, for use in preparing a bid, in advance of the date on which said bid notice is to be made equally and uniformly known to all prospective bidders.

Dalrymple submitted a proposal to become the Project Manager for the upcoming Trust Property Clearance Project. His proposal was dated November 6, 2009, with a Professional Services contract signed on December 17. Dalrymple's proposal incorporated Quality Control

stipulations that would be required of the prospective contractor who would eventually be awarded the Trust Property Clearance Project bid. Detailed portions of Dalrymple's proposal were subsequently included in the Quality Control Plan submitted by Stone's as part of its bid package submitted on March 17, 2010. These circumstances give the appearance that this specific Quality Control information was by some means provided to Stone's and Vision Construction in advance, aiding in Stone's receiving the award of the Project bid.

The other bidders submitted "quality control" plans or procedures as part of their bid packets, attempting to address the RFP's "quality control" requirement; none of these plans included the language of Dalrymple's November 6, 2009, contract proposal.

Concern F ***Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, §1541.1 and 1541.2?***

We found no evidence that the successful bidder, Stone's Backhoe Dozer and Trucking, knowingly provided misstatements in its representations to the Trust in obtaining the Property Improvement Clearance Project bid.

Concern G ***Is there any evidence that two or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, §424?***

There is evidence that the Project Manager, the winning contractor, and the Quality Control subcontractor took action and made misrepresentations that could have impaired the Trust from awarding the Property Improvement Clearance Project to the lowest and best bidder.

The Property Improvement Clearance Project Request for Proposal was presented for bids on February 24, 2010. This proposal included specific and detailed Quality Control specifications not previously required for a 'Demolition Contract'. The bids were scored based on a "Quality Control Grading Score Sheet" with the requirements so specifically defined that the bid proposals submitted by all potential bidders except Stone's Backhoe, Dozer & Trucking were deemed "unresponsive".

Additionally, the Quality Control plan submitted by Stone's was a confidentially-protected document of Vision Construction and included specific details that were part of Dalrymple's proposed employment contract, which was submitted to the Trust before the bid proposal was written or issued. The inclusion of this predetermined information appears to have been an effort to exclude all bidders except Stone's.

In fact, in an e-mail written by White, the specific comment was made that "the only reason we were awarded this contract was because of the quality control manual that we prepared for the project. We were the only contractor that turned in a qualifying quality control plan." Additionally, the use of "we" in this statement gives the appearance of pre-calculation in the use of Stone's and a "quality control plan" to obtain the bid for the project.

Stone's bid was the highest at $2,100,000, thus providing evidence that the parties involved undertook actions to impair the Trust in its award to the lowest bidder. Also, the project was assigned to Vision Construction by Dalrymple without Board approval, thus further obstructing the Trust in its lawful function.

Concern H ***Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of something of value or gift to a public official or employee 21 O.S. 2001, §§ 381 & 382, 21 O.S. 2001, § 341 (First), or 74 O.S. 2001, § 3401 et seq.?***

The statutes referenced in this Concern define bribery, embezzlement, and kickbacks. We found no direct evidence that the transactions and activities incurred under the Property Improvement Clearance Project would meet the criteria defined in these statutes.

In view of the totality of circumstances and the significant amount of evidence accumulated, it appears that the March 2010 demolition contract was possibly directed to a preferred contractor and a subsequent preferred assignee by LICRAT's project manager. Part of the circumstances includes the tacit approval of this process by at least the Trust chairman (the self-admitted close, personal friend of the project manager), who signed the original contract for LICRAT.

However, our review of the bank records of both the contractor (Stone's) and the subsequent assignee of the contract (CWF/Vision) did not reveal any ***direct*** payments to, or the supplying of other ***apparent*** benefits to, any LICRAT board member or "a public official or employee" that would seem to meet the definitions described in the above statutes.

Concern I ***Is there any evidence of an Open Meeting violation by the LICRAT Trustees in the awarding of the contract, 25 O.S. 2001, § 314?***

There is evidence that LICRAT violated the Open Meeting Act in the awarding of the contract by failing to properly post notice or conduct any public meeting at which the contract bids received by the Trust were analyzed, considered, discussed, or acted upon.

In an email from Dalrymple to Osborn dated March 25, 2010, it was communicated that LICRAT's Property Clearance Committee had conducted an extensive review of bid-proposal documents and, based upon that evaluation, had selected Stone's as the winning contractor.

We could find no evidence that this "extensive review" of the bid documents and the subsequent awarding of the contract had ever been included on a LICRAT meeting agenda, discussed in any open meeting, or documented in Trust minutes.

Additionally, DT Specialized Services, Inc, the low bidder on the March 2010 Project, filed a lawsuit in District Court. The Court did rule that LICRAT had violated the Open Meeting Act. An Order and Judgment dated May 5, 2010, held that the Trust bidding process was invalid and the contract with Stone's was void. The Court ordered LICRAT to rebid the project.

At the conclusion of this lawsuit, DT Specialized Services sued for payment of legal fees. The Court rendered a judgment against LICRAT, ordering the Trust to pay $10,429 in attorney fees to DT Specialized Services.

If so, has the District Attorney taken any action in regard to that event?

We found no evidence that the District Attorney of Ottawa County has taken any action in regard to the Trust's violation of the Open Meeting Act.

In April 2009, the Trust was sued in the District Court of Ottawa County for alleged violations of the Open Meeting Act and was found to have been in violation of the Act. No action was taken by the District Attorney in regard to that event either.

It should be noted that the District Attorney of Ottawa County was a LICRAT trustee from September 2004 – July 2006.

Additional Concerns

As previously mentioned, Concerns A through I detailed above are in response to the specific questions addressed in the Attorney General's 74 O.S. § 18f request letter. During our evaluation of these concerns, we became aware of other issues that we felt were matters of interest that needed to be reported. These additional concerns are noted below.

Concern J **LICRAT entered into a contract with Stone's Backhoe, Dozer & Trucking for the Property Improvement Clearance Project without Stone's being properly bonded. Stone's was then allowed to proceed with demolition work without having provided the required bonding.**

Title 61 O.S. § 103(A) states in part, "No work shall be commenced until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency."

The LICRAT contract stated, "The contractor shall execute and file good and sufficient performance and statutory payment bonds in an amount equal to the contract amount with the Trust to insure the proper and prompt completion of the work in accordance with the provisions of the contract and the contract bid proposal."

On April 9, 2010, a Notice to Proceed was issued by the Trust allowing Stone's to begin work on the demolition project. The notice acknowledged that "bonding is expected to be delivered to the Contract Facilitator within a reasonable time frame. Until those bonds are delivered, the undersigned have agreed that there will be no payments on work performed." The contractor should not have been authorized to proceed without bonding in place.

Additionally, as previously detailed in 'Concern C', Stone's subsequently assigned the contract to CWF/Vision which was also not bonded at the date of assignment.

Concern K **The $366,282.56 lawsuit settlement paid by LICRAT to Vision Construction was paid out of federal stimulus monies, specifically from 'American Recovery and Reinvestment Act' funds. This payment appears to be in violation of Federal award guidelines.**

Federal OMB Circular A-87 states in part:

> Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or

> Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

Payment of the LICRAT lawsuit settlement to Vision, which resulted from the Trust' violations of State law, appears to be an unallowable cost under OMB Circular A-87.

LAWSUITS

CV-10-24 (Ottawa County)

DT Specialized Services v. LICRAT (and all nine trustees)

Summary: DT Specialized Services sued LICRAT, claiming violations of the Open Meeting Act, Open Records Act, and Public Competitive Bidding Act. The Court that LICRAT violated the Open Meeting Act and, as such, voided the Trust's contract with Stone's and ordered the Trust to rebid the project.

CJ-10-127 (Ottawa County)

Vision Construction and CWF Enterprises v. LICRAT (and all nine trustees)

Summary: Vision Construction sued LICRAT for payment of $366,282 for work completed under the voided Property Clearance Project contract. Vision Construction subsequently received the money when the State settled.

CJ-10-224 (Ottawa County)

Abatement Systems v. LICRAT, Vision Construction, and CWF Enterprises

Summary: Abatement Systems sued LICRAT for payment of $100,000 for work completed under the voided Property Clearance Project contract. Abatement Systems subsequently received the money from Vision Construction and CWF Enterprises when the companies settled.

CIV-12-462-R (Western District of Oklahoma)

United States of America, ex rel., Billy Freeman, Jr., and Joe Crawford v. Mark Osborn, Jim Thompson, Mike Sexton, Virgil Jurgensmeyer, Chris White, Jack Dalrymple, CWF Enterprises, Vision Construction, and Miami Engineering Service

Summary: Billy Freeman was the original complainant who brought the concerns about LICRAT's demolition projects to the attention of U.S. Tom Coburn's office, which began the process of this investigation. Joe Crawford is a former Ottawa County Commissioner. (Miami Engineering Service is the name of Dalrymple's engineering firm.)

Objective Two

Investigative Summary

This report describes various problems with the LICRAT Property Improvement Clearance Project that was bid and awarded through the Department of Central Services (DCS) in December 2010. Although our investigation did not provide direct evidence for a conspiracy against the state, it did provide considerable circumstantial evidence that a conspiracy may have existed.

We observed that the DCS bid process resulted in this contract being awarded to the same vendor implicated in our report for Objective One, CWF Enterprises, Inc., despite the fact that the March 2010 bid process contained significant violations of the **Title 61, Public Competitive Bidding Act** and was voided by an Ottawa County District Court on an **Open Meeting Act** violation.

Every change, modification, or re-interpretation of this second demolition contract served only to increase the eventual payout to the contractor and increased the appearance of favoritism directed to the benefit of CWF Enterprises (CWF). As a consequence of highly questionable change orders and extremely lax contract administration of the December 2010 contract, the payments to CWF, under this second bid award/contract, totaled $3,050,785.93.

This amount, along with a payment to CWF of $366,282.56 under the March 2010 contract, brought the total payments to CWF for the Property Improvement Clearance Project to $3,417,068.49. Contrast this total amount with the original bid received on the project in October 2009, of $599,988.00.

To attribute the following sequence of events surrounding the December 2010 contract to simple coincidence or merely poor management, it would have to be "reasonable" to believe:

- That a restoration-cleaning company with no heavy equipment and little experience in actual demolition work would receive a perfect "10" across the board in the DCS pre-bid qualification process led by Jack Dalrymple, the LICRAT project manager.

- That this same pre-bid qualification process would attempt to disqualify all three other demolition companies by rating them near across-the-board "1's" on a scale of 1 to 10, although two of the three initially disqualified companies provided examples of prior experience of major and more complex demolition contracts totaling tens of millions of dollars.

- That all parties signed a contract omitting the Alternate bid as unnecessary, only to subsequently add the $1.3 million Alternate two months later using

"clerical error" as the ostensible justification for increasing the contract award by nearly 78%.

- That adding the $1.3 million Alternate bid as a "clerical error" change order was reasonable and appropriate, although state law prohibits cumulative "change orders or addenda" from exceeding 10% on contracts exceeding $1 million.

- That it was acceptable to invoke the Alternate bid for additional costs to haul debris to a fee-based Kansas landfill when non-fee based facilities were still receiving debris.

- Finally, after invoking the Alternate bid, that it could be presumed legitimate for the contractor to charge LICRAT on a "lump sum" basis for the entire $1.3 million Alternate, even though billing documentation reported only approximately 15% of project debris was hauled to the fee-based Kansas landfill, resulting in a "windfall" to the contractor of over $1 million.

We do not believe that the above events can be explained away as poor management or "clerical error." We believe the above provides sufficient circumstantial evidence for additional investigation into a potential conspiracy against the state.

Concerns

The Attorney General's **74 O.S. § 18f** request specifically defined eight "Concerns" to be addressed in connection with the contract awarded for the Lead-Impacted Communities Relocation Assistance Trust (LICRAT), through the Department of Central Services for the December 2010 Property Improvement Clearance Project. Each Concern A through H is individually listed below verbatim as presented to us and is highlighted in red print; our responses to these questions immediately follow.

In the progression of our investigation of the December 2010 contract, it became apparent that there were questions surrounding the bid, the award, and the management of this contract. However, these concerns did not appear compatible with the parameters of the statutory questions proposed in the Attorney General's request letter. We have addressed the concerns presented to us by the Attorney General's Office below, but the substantive portion of our reporting follows under "Other Concerns."

Concern A ***Were bids solicited, received and contract awarded pursuant to the provisions of the Public Competitive Bidding Act of 1974 (as amended), 61 O.S. 2001, §§ 101 et seq.?***

It appeared that bids were solicited, received, and the contract awarded through the Department of Central Services, pursuant to the Public Competitive Bidding Act. However, portions of the bid and award process were problematic and are addressed under "Other Concerns."

Concern B ***If the contract was awarded to any bidder [other] than the lowest bidder, was a credible written explanation of the award of bid filed in accordance with 61 O.S. 2001, § 117?***

The LICRAT Property Improvement Clearance Project was awarded to the lowest bidder. As such, no credible written explanation was required.

Concern C ***Is there any evidence of an agreement or collusion among bidders, prospective bidders and/or material suppliers in restraint of freedom of competition [including, but not limited to, whether the winning bidder served as a "straw bidder" for an actual other person or entity], 61 O.S. Supp. 2008, § 115?***

We found no evidence of collusion among bidders or evidence of a "straw bidder."

If so, was a knowingly false affidavit of non-collusion filed in support of a bid, 74 O.S. Supp. 2009, § 85.22?

We found no direct evidence that a false affidavit of non-collusion was filed. See discussion under Concern F.

Were the rights to the contract unlawfully transferred from the winning bidder to another person or entity?

CWF Enterprises, Inc. was the winning bidder; their contract rights were not transferred to another person or entity.

Concern D ***Is there any evidence of an illegal conflict of interest between the entity awarded the winning bid and any Trustee of the public trust or its chief administrative officer contrary to 61 O.S. 2001, § 114?***

There was no evidence found of an illegal conflict of interest as it is defined in **61 O.S. 2001, § 114**.

Concern E ***Is there any evidence of any unlawful disclosure(s) by any person contrary to 61 O.S. Supp. 2006, § 116?***

We found no direct evidence of unlawful disclosure of bid information as defined in this statute.

Concern F ***Is there any evidence that the successful bidder knowingly provided misstatements of existing or past material fact(s) to the Public Trust in support of its bid for the award of the contract, 21 O.S. 2001, §1541.1 and 1541.2?***

We found potential evidence of a violation of ***21 O.S. 2011, § 1541.1 and 1541.2.*** See discussion of "Bid Affidavit and Survey" under Phase 1 - The Bidding Process, Page 25. See also Phase III - Contract Charges, Page 31, in relation to the bid affidavit.

Concern G ***Is there any evidence that two (2) or more persons agreed to take, and thereafter undertook, any action or make any representation to the Public Trust calculated to impair, obstruct, or defeat the Public Trust in its lawful function of awarding the contract to the lowest and best bidder, 21 O.S. 2001, § 424?***

We found no direct evidence of a "conspiracy" as defined in ***21 O.S. 2001 § 424.*** However, in the totality of circumstances from the Pre-Qualification of Bidders (Page 25), to the Contract Charges (Page 31); there appeared to be an inordinate level of bias directed to the winning bidder that could warrant further investigation. See discussion in the Investigative Summary.

Concern H ***Is there any evidence that the awarding of the contract was influenced in any way by the promise or transfer of something of value or gift to a***

public official or employee 21 O.S. 2001, §§ 381 & 382, 21 O.S. 2001, § 341 (First), or 74 O.S. 2001, § 3401 et seq.?

The statutes referenced in this Concern define bribery, embezzlement and kickbacks. We found no evidence in the transactions and activities reviewed that would meet the criteria defined in these statutes.

Bid Process and Contract Management

The LICRAT Property Improvement Clearance Project (hereinafter "the Project") was set in motion with a Request for Proposal (RFP) released by the Trust in September 2009. The bids received for this RFP were tabled and eventually withdrawn, with a new RFP issued in February 2010. From this RFP a LICRAT Project contract was awarded in March 2010.

The March 2010 contract was awarded to Stone's Backhoe, Dozer & Trucking, Inc. and almost immediately assigned to CWF Enterprises, Inc. (CWF). The assignment of the contract was under the sole approval of LICRAT's Project Manager, Jack Dalrymple.

In May 2010, the work under the contract was halted by the District Court of Ottawa County due to improper activity concerning the bid process. The contract was re-let through the Department of Central Services (DCS) in December 2010, with Dalrymple continuing in his position as the LICRAT Project Manager.

Three bids were submitted for the December 2010 contract, with the lowest bidder, CWF, receiving the bid.

- CWF Enterprises, Inc. – $1,701,752.97
- Kingston Environmental – $1,740,548.22
- Abatement Systems – $2,260,470.00

Our reporting on this bid process including subsequent changes, amendments, and transactions will be addressed in three phases:

Phase 1 The Bidding Process
Phase 2 Contract Changes and Amendments
Phase 3 Contract Charges

Phase 1 - The Bidding Process

Pre-Qualification of Bidders

In the awarding of the contract, the Construction and Properties (CAP) Division of DCS utilized a new construction project bid procedure called the Performance Information Procurement System (PIPS). With PIPS, contractors submit pre-qualification bids which are reviewed and compared by a committee. These pre-qualification bids are used to narrow the field of vendors to those that would be the most responsive bidders.

Pre-qualification bids for the Project were submitted by CWF Enterprises, Inc., Kingston Environmental Services, Inc, Abatement Systems, Inc., and Crossland Heavy Contractors, Inc. These bids were evaluated by a committee which consisted of the following:

Jack Dalrymple	LICRAT Contract Project Manager
James Thompson	LICRAT Trustee
David Mihm	Department of Central Services
Kelly Dixon	Department of Environmental Quality

The members of the committee scored the bids submitted on 'General-Performance' information, as provided in the pre-bid responses. The committee recorded across-the-board scores of 10 for CWF, despite CWF not adequately providing all the information required in the 'Pre-Qualification Submittal.'

Firms		Dalrymple *(LICRAT)*	Thompson *(LICRAT)*	Mihm *(DCS)*	Dixon *(DEQ)*
A	Kingston	**1**	**1**	**1**	**1**
B	Abatement	**1**	**1**	**1**	**1**
C	CWF	**10**	**10**	**10**	**10**
D	Crossland	**1**	**1**	**1**	**5**

This stage in the process was supposed to be a pass/fail rating. If these scores would have been utilized, all vendors would have been eliminated from the bidding process, except CWF. According to DCS management, the committee should not have scored the 'General Performance' information, and the committee was advised that the scores assigned to firms A (Kingston) & B (Abatement) "did not make sense" and were "not defensible."

The committee's evaluation for 'General Performance' was not used in the final weighted scores of the pre-qualification bid. However, the scoring of a "perfect" pre-bid score, which would have eliminated all bidders except CWF, along with the historical relationship of LICRAT, CWF, and Jack Dalrymple, resulted in an appearance of favoritism toward CWF in this process.

Bid Affidavit and Survey

61 O.S. § 108 requires that each bidder accompany their bid with a written statement under oath disclosing the nature of any business relationships currently in effect or that existed within one year prior to the date of the statement with the architect, engineer, or other party to the project.

In CWF's bid submitted to DCS, owner Chris White signed a "Bid Affidavit" under oath representing that he did not currently, or had not had any business relationship with the project engineer, any officer or director of the project engineering firm, or any other party to the project within the past year.

However, CWF owner Chris White had a prior business relationship with LICRAT and Jack Dalrymple, the Project Manager for the LICRAT/DCS contract. The March 2010 LICRAT contract had been assigned from the winning bidder, Stone's Backhoe, Dozer & Trucking, Inc. to CWF through the sole approval of Jack Dalrymple.

Also, as part of the DCS bid process, a 'Survey Questionnaire' was used to collect past performance information on firms submitting bids. Jack Dalrymple completed a questionnaire as a reference and evaluator of CWF. In fact, the work performed under this contract was done by Stone's, not CWF. This evaluation by Dalrymple was further documentation that a prior relationship did exist between CWF and Dalrymple. This relationship should have been disclosed on the bid affidavit as required by statute.

Summary Phase One

What influence, if any, these issues had on the bid process and its final outcome could not be fully determined or independently corroborated. However, when a vendor is awarded a contract despite crucial relationships not being reported and pertinent information not being disclosed; at a minimum, appearances of favoritism exist.

Phase 2 - Contract Changes and Amendments

Change Order #1 – Unit Price Modification

The first amendment to the December 2010 contract, Change Order #1, was approved March 10, 2011, for an increased per square foot pricing structure for properties that may have to be 'passed over' during the planned progression of demolition work.

The original contract Demolition A unit pricing was $2.95 per square foot. The new pricing structure, calculated from the 'Notice to Proceed' date of January 28, 2011, would be as follows:

0-30 day:	$3.68 per square foot
30-60 day:	$4.65 per square foot
60-90 day:	$5.75 per square foot

On January 20, 2011, before demolition work even began, CWF submitted a letter to project manager Jack Dalrymple requesting a contract modification. The modification was requested because structures pending release from the Bureau of Indian Affairs and the Quapaw Tribe might delay the Project progressive time schedule.

The draft documents requesting the amendment implied that the contractor did not have any prior knowledge that 'Properties on Restricted Land & Properties Occupied by Tenants' would not be available for demolition as needed, and as such they should receive additional compensation for remobilization and operating expenses incurred because of possible delays.

However, the 'Project Summary' section of the RFP stated in part, "At publication of this Invitation to Bid (ITB) there are 66 of the 248 properties that are not ready to be released for demolition. The contractor will be notified as those parcels become available for demolition."

Because the RFP included a disclosure that selected properties were not ready to be released for demolition, the contractor should have been aware of this issue during the bid process and a contract modification for an increase in unit cost appeared unwarranted.

Change Order #2 – Alternate Bid

The second amendment to the December 2010 contract, Change Order #2, added an "Alternate Bid" of $1,324,032.96 to the Property Improvement Clearance Project.

As part of the DCS bid process the 'Request for Proposal' included a directive for an "Alternate Bid." This 'Alternate' would reflect the additional amount required to utilize a licensed landfill rather than the EPA Repository and would only be used if the EPA repository was not available and as directed by the Owner. The Scope of Work in the RFP specifically stated, "All debris shall go to the EPA Repository…. An alternate bid shall be submitted for taking the debris to a licensed landfill."

The winning bid of CWF, included an 'Alternate Bid' amount of $1,324,032.96. On December 7, 2010, the Trust board approved the bid pricing of the DCS contract with the Alternate Bid included.

However, before the official contract was signed, on January 3, 2011, an email between DEQ and DCS officials, stated in part, "We have worked out a coordination plan with the repository…. we have no need for accepting the alternate." Subsequently, on January 7, 2011, the official LICRAT/DCS Project contract was signed by all parties without the "Alternate Bid."

The signed contract included the following clause, "This Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral." The approval by the Trust Board to accept the bid pricing, prior to signing of the contract, appears to be a "prior" representation and as such would be superseded by the DCS Contract which did not include the Alternate.

After the contract was signed and demolition had begun, email exchanges revealed that LICRAT and DCS discussed how to add the "Alternate Bid" back to the contract. In a March 18, 2011, email between David Mihm, DCS Project Manager, and Angela Hughes, DEQ Programs Manager, Mihm wrote,

> "I spoke with Mike about our concerns with this project and what we could do to resolve them. He confirmed my thoughts on the matter. We are unable to exercise an Alternate after the fact, an Alternate and option can only be accepted if within the Contract. The other alternative we have that I discussed with Mike was the idea of declaring an emergency. We do not suggest this due to the sensitive nature of the project already. Basically LICRAT, with advice of legal counsel, would declare the remaining work as either a safety or health concern. Projects declared, and accepted by the Director of DCS, can be given to any contractor – logically here, to CWF. This is what not recommended. Let me know what you think."

Three days later, on March 21, 2011, Change Order #2 was approved, adding back to the contract the 'Alternate Bid' of $1,324,032.96. The amendment included a statement declaring that the Alternate was being added because it was left off the original contract by **"clerical error."**

We could find no evidence supporting the explanation of a clerical error. If leaving the Alternate Bid out of the contract was a clerical error, why

was this not declared immediately upon discovery? Why were discussions held on what procedures were available for adding an Alternate, if the issue was simply an error? How does a clerical error of this magnitude go undetected for over two months, by DCS, LICRAT, and Jack Dalrymple, the contract consultant or the contractor CWF?

Change Order #2 – Alternate Bid Purpose and Cost

Purpose

Once the Alternate bid was added to the contract, when and if it was to be used was based on whether CWF would need to haul debris to a licensed landfill instead of using the EPA Repository, at no cost. The RFP stated in Attachment F of the Unit Price Commentary, "This alternate shall reflect the additional amount required to utilize a Licensed Landfill rather than the EPA Repository."

Based on review of emails and through interviews conducted, the EPA Repository was approved for accepting of the demolition debris and appeared to never completely close for use by CWF. In an email dated January 6, 2011, from David Cates of DEQ it states, "The finalized and approved meeting minutes represent the written approval of acceptance of the demo debris at the repository. This was the agreed to approach for written approval."

Additionally, Hockerville was available for dumping of debris until the close of the project, at no cost. Hockerville was a DEQ Land Reclamation subsidence site; a 'collapsed mine' approved by DEQ to be filled in with debris. The closing and maintenance of the site was the responsibility of the Trust, and under Trust agreement.

Based on the fact that both the EPA Repository and Hockerville were available for dumping, it appeared the invoking and using of the Alternate bid was unnecessary.

Cost

After determining whether the Alternate bid should have been utilized at all, the next key discussion is the cost pertaining to the Clearance Project. Specifically, the allowable expenditure amount and whether the Alternate bid was a 'lump sum' or 'unit price' addition to the contract. LICRAT, DCS and CWF's supposition was that the Alternate bid was needed and that it was a 'lump sum' addition. Under their assumption, once the Alternate bid was invoked, CWF received the entire Alternate amount of $1,324,032.96 for any project related cost, and not exclusively costs related to disposing of debris at a licensed landfill.

However, the contract form specifically stated that the use of the Alternate was for fees (and transport) to a licensed landfill, and there was no provision that allowed the Alternate to be used for other contract costs. As previously noted, the RFP expressly stated, "An alternate bid shall be submitted for taking the debris to a licensed landfill." Additionally, under **61 O.S.§ 121**, "Change orders to public construction contracts of over $1 million shall not exceed the greater of $150,000 or a ten percent cumulative increase in the original contract amount."

Since the Alternate bid was not part of the original contract, the only authorized means to add the Alternate to the contract would be through the change order process, and the Alternate greatly exceeded the "$150,000 or ten percent cumulative increase" allowed by statute.

The licensed landfill used by CWF was B-3 Construction, Inc. A review of this account for the period April 1, 2011 – August 9, 2011 showed B-3 charged CWF $61,845.98 for 43,206 square feet of demolition debris taken to the licensed landfill. CWF's billing of the Trust for this amount of landfill debris would have been $158,133.96 (43,206 square feet @ $3.66 per square feet). Based on these calculations, if any charges were to be allowed under the Alternate, the cost allowed should have been limited to the increased costs related to the 43,206 square feet of debris taken to the licensed landfill, i.e. $158,133.96.

Change Order #1 and #2 - Approval

Under **61 O.S. § 121E**, if an awarding public agency has a governing body, all change orders shall be formally approved by the governing body of the awarding agency and the reasons for approval recorded in the permanent records of the governing body. Both change orders of this contract were signed by the Board chairman, but we could find no evidence that either change order had been approved in an open meeting by the Trust board.

Summary Phase Two

We could find no evidence that the funding of the Alternate Bid was necessary, given that the EPA Repository along with the Hockerville subsidence site was available to the Trust at no cost. Additionally, we did not receive an adequate explanation of how the Alternate Bid was added as a "clerical error" after the contract had been executed by all parties. We also could find no statutory authorization that would allow the modifying of a $1,701,752.97 contract through a $1,324,032.96 clerical error, a 78% increase in the contract amount.

Furthermore, if the Alternate had been a legal addition to the contract, the use of the $1,324,032.96 should have been limited to $158,133.96 of added cost incurred to utilize a licensed landfill. Based on the actual language of the Alternate Bid, maintaining the position that it was a "lump sum" addition to the original contract provided in excess of a $1 million "windfall" to the contractor.

Phase 3 – Contract Charges

Files were to be maintained by CWF and the Trust for each property owned by the Trust and included as part of the Property Clearance Project. These records were to include information on demolition, structural removal, asbestos removal, landfill fees and debris removal charges; and included reports on Asbestos Remediation Documentation; Volume Logs of Material; Daily Inspection Reports; and Before and After Demolition Photos.

Chris White, President of CWF, signed a DCS Bid Affidavit form December 6, 2010. This form required in part that, "If awarded a contract, the bidder affirms that the work will be carried out in conformance with the contract requirements and that all invoices submitted for payment will reflect a true and accurate accounting of the work completed."

Following are examples of documentation included in the account files for seven of the Trust properties that were reviewed. All seven are documented with purchase orders and invoices that do not reflect a true and accurate accounting of work completed by CWF.

462 S. Emily – Requisition 242

As shown in the photo below, the historic home in which Mickey Mantle was married, was salvaged and moved to the City of Commerce. The City of Commerce Sports Authority paid for the cost of the move.

On June 24, 2011, CWF invoiced the Trust $2,832.00 for removal of the 960-square-foot structure and $3,513.60 for landfill fees, resulting in $6,345.60 of unwarranted charges.

									DATE ASSIGNED:				
PURCHASE ORDER: ADDRESS: 462 S EMILY											6/24/2011		
DATE:		REQUISITION NO.		PAGE NO		CONTRACT ID NO			DATE MATERIAL NEEDED				
6/24/2011		242		1 OF 1		TRUST ID:			SEE BELOW				

LINE:	QUANTITY	UNIT	ITEM ID	DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	960	SQ/FT	REMOVAL OF STRUCTURE		$2.95	$2,832.00
2	960	SQ/YDS	LANDFILL FEE		$3.66	$3,513.60

103 S. Ethyl - Requisition 247

The photos below show the lot at 103 S. Ethyl in Picher, Oklahoma, before and after demolition.

103 S. Ethyl – Before Demolition

103 S. Ethyl – After-Demolition

CWF's 'Asbestos Remediation Documentation' reflected 2000 square feet of ceiling texture was abated from this structure on or about March 30, 2011. However, before asbestos remediation was performed, the property burned leaving no structure for abatement. Even so, CWF billed the Trust $15,900 for 'Asbestos Removal'.

Additionally, the 'Load Tickets' and CWF's 'Volume Log of Materials' showed that only six loads of debris, approximately 156 square feet, was hauled from this location on March 25, 2011. Yet, on June 27, 2011, CWF billed the Trust for 1288 square feet of structure removal at a cost of $3,799.60. This transaction resulted in the full $19,699.60 of charges being claimed by the contractor and approved by the project manager.

									DATE ASSIGNED:				
PURCHASE ORDER: ADDRESS: P2-101 103 South Ethel Piche											6/27/2011		
DATE:		REQUISITION NO.		PAGE NO		CONTRACT ID NO			DATE MATERIAL NEEDED				
6/27/2011		247		1 OF 1		TRUST ID: P2-101			SEE BELOW				

LINE:	QUANTITY	UNIT	ITEM ID DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	1288	SQ/FT	REMOVAL OF STRUCTURE	$2.95	$3,799.60
2	2000	SQ/FT	ASBESTOS REMOVAL	$7.95	$15,900.00

414 N. Gladys – Requisition 225

As can be seen in the photos below, no structure existed at 414 N. Gladys, Picher, Oklahoma, before the noted demolition and haul date of May 12, 2011. Despite that fact, CWF invoiced the Trust $5,479.75 for structure removal and $3,487.98 for landfill fees, for a total of $8,967.73 of unsubstantiated charges.

414 N. Gladys – Before

414 N. Gladys – After

PURCHASE ORDER: ADDRESS: 414 N GLADYS PICHER				5/16/2011
DATE:	REQUISITION NO.	PAGE NO	CONTRACT ID NO	DATE MATERIAL NEEDED
5/16/2011	225	1 OF 1	TRUST ID: P2-27A	SEE BELOW

LINE:	QUANTITY	UNIT	ITEM ID DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	953	SQ/FT	REMOVAL OF STRUCTURE	$5.75	$5,479.75
2	953	SQ/FT	LANDFILL FEE	$3.66	$3,487.98

926 N. Ottawa – Requisition 165

On August 6, 2010, a 'Certificate of Inspection' for 926 N. Ottawa, Picher, Oklahoma showed that, "No structure was present on this parcel at the time of the site inspection." Additionally, CWF's 'Daily Inspection Report' for February 19, 2011 stated, "Cleaned debris from site where house had been moved out….no loads from site." However, on April 18, 2011, CWF invoiced the Trust $2,124 for the removal of a structure.

926 N. Ottawa – Before

926 N. Ottawa – After

DATE ASSIGNED:

PURCHASE ORDER: ADDRESS: P2-56 926 N OTTAWA PICHER 4/18/2011

DATE:	REQUISITION NO.	PAGE NO	CONTRACT ID NO	DATE MATERIAL NEEDED
4/18/2011	165	1 OF 1	TRUST ID:P2-56	SEE BELOW

LINE:	QUANTITY	UNIT	ITEM ID	DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	720	SQ/FT		REMOVAL OF STRUCTURE	$2.95	$2,124.00

61500 E 20th Rd – Requisition 160

The before photo below shows the property at 61500 E 20th Rd., Quapaw, Oklahoma with no structure present. Additionally, asbestos 'Certificate of Inspection' dated August 5, 2010, stated, "No structure was present on this parcel at the time of the site inspection."

CWF's 'Daily Inspection Report" for April 5, 2011, describes the work performed at this address as, "Clean up of remains of a 1798 sq ft residential structure." However, on April 13, 2011, the Trust purchase order documented 'Removal of Structure' at a cost of $5,304.10, when all evidence shows that no structure existed at this location.

61500 E 20th Rd., Quapaw – Before

61500 E 20th Rd., Quapaw – After

PURCHASE ORDER: ADDRESS: 61500 E 20 RD				4/13/2011
DATE:	REQUISITION NO.	PAGE NO	CONTRACT ID NO	DATE MATERIAL NEEDED
4/13/2011	160	1 OF 1	TRUST ID:	SEE BELOW

LINE:	QUANTITY	UNIT	ITEM ID DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	1798	SQ/FT	REMOVAL OF STRUCTURE	$2.95	$5,304.10

2400 S 570th Rd. – Requisition

CWF's 'Building Demolition Notification Form' documented the property at 2400 S 570th Rd., Cardin, Oklahoma as burned. The before and after demolition photos show no structures on this property. The final inspector report and material logs showed that approximately 118 square feet of scrap metal was removed from this site. Yet the Trust was billed for 1120 square feet of structure removal at a cost of $3,304.

2400 S 570th Rd., Cardin – Before

2400 S 570th Rd., Cardin – After

PURCHASE ORDER: ADDRESS: 2400 S 570 RD				4/13/2011
DATE:	REQUISITION NO.	PAGE NO	CONTRACT ID NO	DATE MATERIAL NEEDED
4/13/2011	156	1 OF 1	TRUST ID:TV-5	SEE BELOW

LINE:	QUANTITY	UNIT	ITEM ID DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	1120	SQ/FT	REMOVAL OF STRUCTURE	$2.95	$3,304.00

2404 S. 570th Rd – Requisition 154

CWF's 'Daily Inspection Form' stated that work performed at 2404 S. 570th Rd., Cardin, Oklahoma, consisted of clean-up of a burnt structure and removal of scrap metal. However, an asbestos 'Certificate of Inspection' for this site, dated August 6, 2010, stated that, "No structure was present on this parcel at the time of the site inspection."

Additionally, CWF's 'Volume Log of Materials' reported only one load of debris, approximately 47 square feet, was hauled from this location. Despite this, the Trust was billed for 880 square feet of structure removal at a cost of $2,596.

2404 S. 570th Rd., Picher – Before

2404 S. 570th Rd., Picher – After

PURCHASE ORDER: ADDRESS: 2404 S 570 RD				3/31/2011
DATE:	REQUISITION NO.	PAGE NO	CONTRACT ID NO	DATE MATERIAL NEEDED
3/31/2011	154	1 OF 1	TRUST ID:TV-6L	SEE BELOW

LINE:	QUANTITY	UNIT	ITEM ID	DESCRIPTION	UNIT PRICE	ITEM TOTAL
1	880	SQ/FT	REMOVAL OF STRUCTURE		$2.95	$2,596.00

Summary Phase Three

As shown by this evidence, the Trust was invoiced for structures not demolished, debris not hauled, asbestos not abated, and landfill fees not incurred. The contractor, project engineer/manager, and DCS contract administrator claim that payment under the contract was 'lump sum,' and therefore the billing of cost for individual properties was irrelevant.

However, there is evidence to support the position that the entire project was not 'lump sum,' specifically the Alternate bid; and that the erroneous billing reported here is relevant to compliance with the contract and the affidavit accompanying the contract. The contract required that the bidder awarded the contract affirm that the work would be carried out in conformance with the contract requirements and that all invoices submitted for payment would reflect a true and accurate accounting of the work completed.

DISCLAIMER In this report there may be references to state statutes and legal authorities which appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.

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