

Reports Issued to Date

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Memorandum



DATE: September 30, 2021

TO: Terry S. Lowery, Director – Department of Dallas Water Utilities
Chhunhy Chhean, Director – Office of Procurement Services

SUBJECT: Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities
Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project
CIZ-DWU-220 23

Attached for your review is the *Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project CIZ-DWU-220 23*. The Agreed-Upon Procedures are included in [Attachment 1](#). Five procedures were not performed as a result of the August 23, 2021, Dallas Water Utilities request to discontinue the agreed-upon attestation procedures. Dallas Water Utilities made the request after determining it would recommend canceling the current procurement because the bids received exceeded the available budget. Procedure (I) had two exceptions.

We have performed these procedures which were agreed to by the Department of Dallas Water Utilities and the Office of Procurement Services, solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and the Office of Procurement Services' compliance with the requirements of Administrative Directive 4-05, *Contracting Standards and Procedures (Interim)*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures.

If you have any questions, please contact me at (214) 670-3222 or by email at mark.swann@dallascityhall.com.

Sincerely,



Mark S. Swann
City Auditor

Attachment

C: Honorable Mayor and Members of City Council

T.C. Broadnax, City Manager

Christopher J. Caso, Interim City Attorney

Kimberly Bizer Tolbert, Chief of Staff

Majed A. Al-Ghafry, Assistant City Manager

M. Elizabeth Reich, Chief Financial Officer



Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project CIZ-DWU-220 23

September 30, 2021

Mark S. Swann, City Auditor

Mayor

Eric Johnson

Mayor Pro Tem

Chad West

Deputy Mayor Pro Tem

Jaime Resendez

Council Members

Carolyn King Arnold

Tennell Atkins

Adam Bazaldua

Paula Blackmon

B. Adam McGough

Cara Mendelsohn

Jesse Moreno

Omar Narvaez

Paul E. Ridley

Jaynie Schultz

Casey Thomas, II

Gay Donnell Willis

Executive Summary

Objective and Scope

The objective of the agreed-upon procedures attestation engagement is solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and Office of Procurement Services' compliance with Administrative Directive 4-05, *Contracting Standards and Procedures (Interim)*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures.

The Department of Dallas Water Utilities requested this attestation in accordance with Administrative Directive 4-05, Section 9.5.5, *Attestation Engagement Requirement for All Construction Projects \$50 Million and Greater*.

Five procedures were not performed as a result of the August 23, 2021, Dallas Water Utilities request to discontinue the agreed-upon attestation procedures due to plans to cancel the current bids, because the bids received exceeded the available budget.

Background

The Elm Fork Water Treatment Plant Filter Complex has been identified for replacement as part of Dallas Water Utilities' long-term water capital program planning. The Elm Fork Water Treatment Plant Filter Complex has reached the end of its useful life and the project plans to improve water quality and filtration efficiency.

The project was estimated to cost between \$130 million and \$145 million. The two bids received were for approximately \$237.3 million and \$252.5 million. Dallas Water Utilities determined that the bids received for the project exceeded the available budget.

With City Council approval, Dallas Water Utilities plans to cancel the current bids and phase or repackage the needed improvements to match the available budget.

What We Found

At the time Dallas Water Utilities requested discontinuing the agreed-upon attestation procedures, 12 of the 17 agreed-upon procedures had been performed. Procedure (I) had two exceptions. Specifically, rules A and D of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*, were not followed.

See [Attachment 1](#) for the list of procedures, the exception, and actions taken by management as a result of the exception.

Results:

Independent Agreed-Upon Procedures Report

The Office of the City Auditor conducted 12 of the 17 procedures described in [Attachment 1](#), which were agreed to by the Department of Dallas Water Utilities and the Office of Procurement Services, solely to assist the City of Dallas City Council in evaluating the Department of Dallas Water Utilities' and the Office of Procurement Services' compliance with Administrative Directive 4-05, *Contracting Standards and Procedures (Interim)*, relevant State of Texas statutes, and City of Dallas contracting and delivery procedures. The Department of Dallas Water Utilities and Office of Procurement Services are responsible for the establishment and execution of operational procedures. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described in [Attachment 1](#) either for the purpose for which this report has been requested or for any other purpose.

The Department of Dallas Water Utilities requested this attestation of agreed-upon procedures on March 16, 2021. After the Department of Dallas Water Utilities determined the bids received exceeded the available budget and planned to cancel the bids, the Department of Dallas Water Utilities requested the City Auditor discontinue the agreed-upon procedures effective August 23, 2021, and release a report based on the procedures performed.

Two exceptions were noted for Agreed-Upon Procedure (I). The procedure was to confirm the City received sealed bids/proposals within the due date and time, opened them, and subsequently read them in compliance with state law. The procurement did not comply with rules A and D of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*, which are required for compliance with state law. Management noted that it has taken actions to correct the two exceptions. See [Attachment 1](#) for the specific exceptions.

The purpose of this report is intended solely for the information and use of the Dallas City Council and City management and is not intended to be and should not be used by anyone other than these specified parties. Accordingly, this report is not suitable for any other purpose. The Office of the City Auditor was not engaged to and did not conduct an examination or review, the objective of which would be the expression of an opinion or conclusion, respectively, on compliance. Accordingly, the Office of the City Auditor does not express such an opinion or conclusion. Had additional procedures been performed, other matters might have been identified that would have been reported.

The agreed-upon procedures were conducted in accordance with the United States generally accepted government auditing standards.

Signature:

A handwritten signature in blue ink, appearing to read "Mark S. Swann", with a long horizontal flourish extending to the right.

Mark S. Swann, CPA
City Auditor
City of Dallas, Texas

September 30, 2021

ATTACHMENT 1: Agreed-Upon Procedures

Independent Report on Agreed-Upon Procedures for the Department of Dallas Water Utilities Construction Project Procurement – Elm Fork Water Treatment Plant Filter Complex Project CIZ-DWU-220 23

September 30, 2021

Agreed-Upon Procedures

As stated in Administrative Directive 4-05, *Contracting Standards and Procedures, (Interim)* Section 9.5.5 C. 4.

- (a) Confirm the documentation to support the procurement is provided by the Department of Dallas Water Utilities, Office of Procurement Services, and other applicable City departments.

No Exceptions.

- (b) Confirm the solicitation complied with Administrative Directive 4-05, *Contracting Standards and Procedures (Interim)*, City ordinances, applicable State law, and departmental policies and procedures.

No Exceptions.

- (c) Confirm the scope of work/specifications were written in a manner that promotes competition and competitive pricing.

No Exceptions.

- (d) Confirm the specifications identify the criteria for with the Department of Dallas Water Utilities could determine that a bid is responsive and responsible.

No Exceptions.

- (e) Confirm that the Department of Dallas Water Utilities performed due diligence when developing the bid specifications by consulting with other departments, such as the City Attorney's Office, and documenting the consultation.

No Exceptions.

- (f) Confirm the procurement was advertised appropriately in accordance with State law.

No Exceptions.

- (g) Confirm the Department of Dallas Water Utilities and the Office of Procurement Services used appropriate commodity code(s) to send notifications to the vending community from the City's solicitation system.

No Exceptions.

- (h) Confirm the Department of Dallas Water Utilities and the Office of Procurement Services sent solicitation notices and addenda (if applicable) to the vending community with sufficient time for response.

No Exceptions.

- (i) If the Department of Dallas Water Utilities held a pre-proposal/pre-bid meeting, confirm the meeting was held.

No Exceptions.

- (j) Confirm the specifications were posted for a reasonable period of time on the City's solicitation system.

No Exceptions.

- (k) Confirm the Department of Dallas Water Utilities obtained appropriate nondisclosure and conflict of interest forms for any consultants and/or subject matter experts used in the procurement process, if applicable. Additionally, if applicable, confirm the Department of Dallas Water Utilities included conflict-of-interest and nondisclosure policy language in the scope of work/specifications.

No Exceptions.

- (l) Confirm the City received sealed bids/proposals within the due date and time, opened them, and subsequently read them in compliance with State law.

Exceptions.

The bid process did not comply with rules A and D of the City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals*. The City's *Rules Governing the Receipt of Electronic Submission of Bids and Proposals* were established to comply with the state law for receiving electronic bids. The following discusses the exceptions to these rules.

A. All users of the electronic system shall be assigned a unique user name and password.

Two people shared an account used to review the bid documents. Using a shared account increases the risk that the City cannot track who accessed or potentially changed bid documents.

The account was created to give City departments one generic account they could use to obtain Office of Procurement Services support for their projects in the Bonfire procurement system. Two people shared the account in case the primary person was not available, and the Office of Procurement Services needed to respond to a department request.

D. All data shall be encrypted using a time-sensitive mechanism that allows the data to be decrypted only after the Bid Opening specified for each solicitation.

The encryption mechanism in the Bonfire procurement system was set to allow access to the submitted bids after the deadline for bid submission passed, but before the bid opening time, which was about one hour later. The bids were accessed by Dallas Water Utilities and Office of Procurement Services employees starting at 1:01 p.m., one minute after the bid submission deadline and before the 2:00 p.m. bid opening time.

Accessing submitted bids before the bid opening time increases the risk that bids can be changed to favor a bidder. The third-party company that operates the Bonfire procurement system confirmed that no bid documents were changed prior to the bid opening.

Action Taken to Address the Exceptions

Management in the Office of Procurement Services took the following corrective actions after being made aware of the two exceptions:

- A.** The generic account was restricted to one individual. No other individuals can access that generic account.

- D.** The Office of Procurement Services has changed its practices to not open bid documents until after the bid opening time. The Office of Procurement Services now places the project in a special mode in the Bonfire procurement system that restricts access to bid documents to other departments until after the bid opening time.

- (m) Confirm the City received and evaluated the bids/proposals and found them to meet the minimum requirements/qualifications for low bid OR that the most advantageous proposer was determined based on the published evaluation criteria.

Not Performed.

- (n) Confirm the Department of Dallas Water Utilities performed due diligence when a bidder is disqualified or in the event of a bid protest by consulting with the City Attorney's Office and informed the City Council of a bid protest and response in accordance with Administrative Directive 4-05, *Contracting Standards and Procedures, (Interim)*, 9.5.3.

Not Performed.

- (o) Obtain a representation from the Department of Economic Development that the Department of Economic Development followed the City's Business Inclusion and Development policies outlined by City Council.

Not Performed.

- (p) Confirm the Department of Dallas Water Utilities review and evaluation process confirmed the lowest bid or highest ranked vendor, and that the Department of Dallas Water Utilities appropriately documented the determination.

Not Performed.

- (q) Confirm the Department of Dallas Water Utilities used the Federal System for Award Management website to confirm that the lowest responsible bidder is not currently excluded.

Not Performed.

Released Reports - Follow-Up

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Audit of City Boards and Commissions

August 4, 2021

Mark S. Swann, City Auditor

Mayor

Eric Johnson

Mayor Pro Tem

Chad West

Deputy Mayor Pro Tem

Jaime Resendez

Council Members

Carolyn King Arnold

Tennell Atkins

Adam Bazaldua

Paula Blackmon

B. Adam McGough

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Executive Summary

Objective and Scope

The objectives of this audit were to determine if:

- 1) Boards and commissions are in compliance with the City's Charter and Code – specifically
 - (a) membership and vacancy;
 - (b) meetings; (c) racial and ethnic diversity; (d) annual reports;
 - (e) conflict of interest and financial disclosure; and, (f) protecting confidential information.
- 2) The City is monitoring the costs to operate boards and commissions.
- 3) All boards and commissions have members' roles and responsibilities defined in bylaws or another authoritative document.

The scope of the audit included management operations in Fiscal Years 2019 and 2020.

What We Recommend

We recommend City management:

- Establish a single authority that ensures compliance with City requirements.
- Improve procedures to ensure compliance with City requirements and capture all costs to operate the boards and commissions.

Background

Approximately 500 people serve on 52 boards and commissions established by City Council, providing direction and recommendations for City operations, such as economic development, parks, libraries, arts, police oversight, and planning.

The operating requirements for board and commission membership, activities, and operations are primarily established by the City's Charter and Code but may also be established by State laws.

For Fiscal Year 2020, the City will spend over \$800,000 to support the boards and commissions.

What We Found

Responsibility for ensuring compliance with City requirements is fragmented and shared among multiple offices, departments, and positions.

Processes are in place for the review of board and commission member qualifications, financial and conflict of interest disclosures, and the protection of confidential information.

Processes could be improved to ensure:

- Compliance with City requirements.
- Transparent documentation and communication of board and commission operations.
- Monitoring of the costs to operate boards and commissions.

Objectives and Conclusions

1. Are boards and commissions in compliance with the City's Charter and Code covering:
 - (a) membership and vacancy; (b) meetings; (c) racial and ethnic diversity; (d) annual reports; (e) conflict of interest and financial disclosure; and, (f) protecting confidential information?

Partially achieved. Responsibility for ensuring compliance with City requirements is fragmented and shared among multiple offices, departments, and positions. This fragmentation makes it difficult to ensure compliance with City requirements. Testing samples indicated compliance can be improved for most requirements reviewed. See [Observation A](#) and [Section 2](#) for specific areas identified for improvement.

2. Is the City monitoring costs for Boards and Commissions?

Partially achieved. Only the City Secretary's Office and the Office of Community Police Oversight have budgeted and actual costs related to operating boards and commissions reported in the City's approved annual budget. Costs for all other offices, departments and positions responsible for ensuring compliance with City requirements and supporting boards and commission are not tracked and reported. See [Observation A](#) and [Observation B](#).

3. Do all boards and commissions have members' roles and responsibilities defined in bylaws or another authoritative document?

Generally, yes. Forty-two of the 52 boards and commissions have members' roles and responsibilities defined in bylaws or another authoritative document. See [Observation C](#).

Audit Results

As required by *City Council Resolution 88-3428*, departments will establish internal controls in accordance with the standards established by the Comptroller General of the United States pursuant to the *Federal Managers' Financial Integrity Act of 1982*. Administrative Directive 4-09, *Internal Control* prescribes the policy for the City to establish and maintain an internal control system. The audit observations listed are offered to assist management in fulfilling their internal control responsibilities.

SECTION 1 – GLOBAL OBSERVATIONS

Observation A: Responsibility for Compliance

Responsibility for ensuring boards and commissions are in compliance with the City's Charter and Code is decentralized. There is not one focal point with responsibility to ensure boards and commissions comply the City's Charter and Code. The City Secretary, City Manager, City Council, department directors and boards and commissions coordinators all have responsibilities ensuring that boards and commissions comply with the City's Charter and Code requirements. This increases the risk that boards

and commissions are not in compliance with the City's Charter and Code and achieving the objectives of each board and commission.

The lack of one focal point for boards and commissions oversight, with the responsibility for ensuring compliance with the City's Charter and Code, is a contributing factor for many of the observations identified in this audit report, including: racial and ethnic diversity, annual reports, member qualification reviews, and on-time reporting of meeting documentation.

According to the City Secretary's Office and City Manager's Office, the current training the City Secretary's Office provides to boards and commissions chairs, vice-chairs, and coordinators can be improved and expanded to more boards and commissions members and coordinators to increase awareness of the City's Charter and Code requirements for boards and commissions.

Criteria

- ❖ Government Accountability Office, *2020 Annual Report, Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Billions in Financial Benefits*
- ❖ Standards for Internal Control in the Federal Government, *Principle 3 – Establish Structure, Responsibility, and Authority*

Assessed Risk Rating:

Moderate

We recommend the **City Manager in consultation with the City Secretary and the City Attorney:**

A.1: Present to the City Council, a proposal, to assign overall responsibility for ensuring boards and commissions operations comply with the City's Charter and Code to one position.

We recommend the **City Secretary:**

A.2: Improve and expand training on compliance with boards and commissions requirements to more boards and commissions members and coordinators.

Observation B: Monitoring Operating Costs

The City does not track the total costs of operating board and commissions. As a result, the City Manager and City Council lack information that should be considered when assessing the performance of each board and commission and establishing new boards and commissions.

Only the City Secretary's Office and Office of Community Police Oversight, which supports the Community Police Oversight Board, have budgeted and actual costs related to operating boards and commissions reported in the City's approved annual budget. The following budgeted costs were reported during the audit period:

- City Secretary's Office Fiscal Year 2019 Budget - \$388,131
- City Secretary's Office Fiscal Year 2020 Budget - \$321,706
- Office of Community Police Oversight (new office) Fiscal Year 2020 Budget - \$475,000

Sixteen City departments and offices responsible for coordinating boards and commissions have costs related to staff time and materials to prepare for and facilitate meetings. These costs are not specific "line items" reported in the City's approved annual budget or reported individually by each board or commission to City Council.

Criteria

- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities* and *Principle 16 – Perform Monitoring Activities*

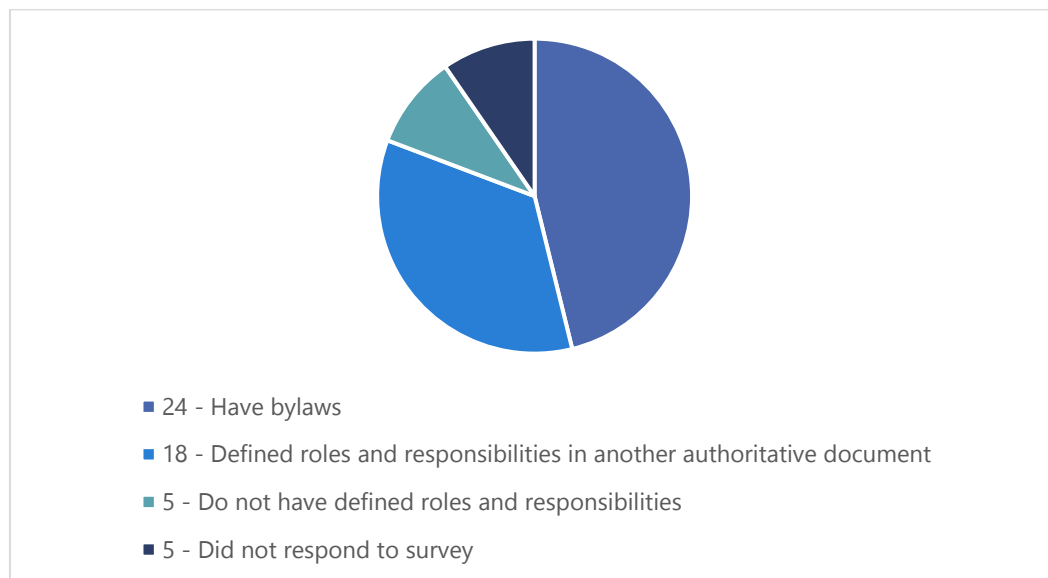
Assessed Risk Rating:

Moderate

We recommend the **City Manager**:

- B.1:** Establish procedures to account for all costs to operate each board and commission and report the total cost by board and commission to the City Council on an annual basis.

Boards and Commissions with Defined Roles and Responsibilities



Source: City Auditor's Office September 2020 survey of boards and commissions coordinators and additional documents provided by the City Attorney's Office in April 2021.

Criteria

- ❖ The City of Kansas City, Missouri- City Auditor's Office, Governance Assessment Performance Audit Report, 2019, *Governance Assessment Checklist*
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities* and *Principle 16 – Perform Monitoring Activities*

Assessed Risk Rating:

Moderate

We recommend the **City Manager**:

- C.1:** Ensure all boards and commissions have defined roles and responsibilities of members either in bylaws or another authoritative document.

The racial and ethnic make-up of boards and commissions is not representative of the City's population. As a result, there is an increased risk that boards and commissions will not proportionately represent the City's residents in recommendations and decisions.

There is no procedure to ensure the racial and ethnic make-up of boards and commissions reflects the racial and ethnic make-up of the City's population, as nearly as may be practicable, as required by City Charter, Chapter XXIV, *Sec. 13. Appointment and Tenure of Commissions and Boards (d)*. Although the City Secretary's Office provides the City Council a demographic report every two years as part of their on-boarding process or upon request, the report provided does not include comparative information on the City's population needed to determine compliance with the City Charter.

A high-level analysis shows Hispanic members have lower representation on boards and commissions than their percentage of the population, while white members have greater representation than their percentage of the population. Black and Asian members were represented at close to their percentage of the population. Women also have lower representation than their percentage of the population.

A detailed analysis was not performed due to differences in time period reported and how race was classified between the City Secretary's Office demographic reports and United States Census data. See [Exhibit 2](#) for a high-level analysis.

Exhibit 2:

Comparison of Boards and Commissions Members to City Residents

Population	Hispanic	White	Black	Asian	Other	Female	Male
City of Dallas Residents	41.7%	29.0%	24.3%	3.4%	1.6%	50.4%	49.6%
Boards and Commissions Members	11.8%	62.7%	22.5%	2.3%	0.7%	39.9%	60.1%

Sources: United States Census population estimates for July 1, 2019 based on the United States Census 2018 population survey and City of Dallas Board Member demographic report for 2017 through 2019.

Criteria

- ❖ City Charter, Chapter XXIV, Sec. 13, *Appointment and Tenure of Commissions and Boards (d)*
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities*

Assessed Risk Rating:

High

We recommend the **Director of the Mayor and City Council Office:**

D.1: Develop procedures to ensure the racial and ethnic membership of boards and commissions reflect the racial and ethnic make-up of the City's population, as nearly as may be practicable.

Observation E: Annual Reports

Not all City boards and commissions Fiscal Year 2019 annual reports comply with the City's Charter and Code requirements. Noncompliance with the City's Charter and Code requirements increases the risk that interested parties would not have enough information on activities relating to boards and commissions.

The City Manager's Office was able to provide five of the ten board and commission Fiscal Year 2019 annual reports selected for review. The annual report is required to communicate the missions, achievements, recommendations, and goals of the respective board or commission. Of the five annual reports reviewed:

- One complied with all applicable City Charter and Code requirements.
- Two did not have the required memo, including transmission to the City Council.
- All lacked documentation of the review and evaluation of the annual reports performed by the City Manager's Office.

In addition to the noncompliance with the City's Code requirements, three annual reports were not posted on the City's website.

Criteria

- ❖ City Charter, Chapter XXIV, Sec. 19, *Reports*
- ❖ City Code, Chapter 8, Sec. 8-1.1, *Reports to the City Council*
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities*

Assessed Risk Rating:

Moderate

We recommend the **City Manager:**

E.1: Develop procedures to ensure compliance with requirements of City Code, Chapter 8, Sec. 8-1.1, *Reports to the City Council* for all applicable boards and commissions.

E.2: Develop procedures to ensure all board and commission annual reports are posted to the City's website.

Observation F: Meeting Documentation

Not all City boards and commissions meeting documentation complies with the City's Code requirements. Noncompliance with the City's Code requirements increases the risk that interested parties would not have enough information on activities relating to boards and commissions.

The following instances of noncompliance with the City's Code requirements were noted from a review of meeting documentation for ten boards and commissions during Fiscal Year 2019 and 2020:

- Eleven meeting minutes of a sample of 30 meetings (31 percent) were not sent to the City Secretary's Office within five days of approval.
- Six boards and commissions did not report meeting attendance during the period.
- Four boards and commissions reported meeting attendance within the required five days 60 percent of the time.

While not exceptions to the City's Code requirements, the following observations demonstrate opportunities to improve transparency:

- Meeting minutes for 56 meetings (45 percent) out of a sample of 125 meetings were not available online.
- Two of the seven executive sessions (29 percent) did not state the reason or relevant citation for the executive session in the meeting minutes.

Criteria

- ❖ City Code, Chapter 8, *Boards and Commissions*:
 - Sec. 8-4 (a)
 - Sec. 8-6 (a), (b), (c), (d)
 - Sec. 8-8 (a), (b)
 - Sec. 8-20 (a), (b), (c)
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities*

Assessed Risk Rating:

Moderate

We recommend the **City Manager**:

F.1: Develop procedures to ensure compliance with requirements of City Code, Chapter 8, *Boards and Commissions*; Sec. 8-4 (a); Sec. 8-6 (a), (b), (c), (d); Sec. 8-8 (a), (b); and, Sec. 8-20 (a), (b), (c).

F.2: Develop procedures to ensure all meeting minutes are posted to the City's website.

Observation G: Acceptance of Appointment

A review of 77 boards and commissions members found 15 (19 percent) did not have documentation of acceptance within 15 days or were late in acceptance of the appointment. As a result, there is an increased risk that boards and commissions members are serving in positions that should have been declared vacant and required new appointments.

The following is a breakdown of the exceptions identified:

- No documentation of timely acceptance for ten of 77 members (13 percent).
- Documentation of late acceptance for five of 77 members (6 percent).

The City Secretary's Office converted to a new system in 2017 to document the appointment acceptance procedures. However, the system did not document the date of acceptance in all cases.

The appointee must return the signed acceptance of appointment to the City Secretary within 15 calendar days from the date of receiving notice of appointment, according to the requirement. The City Secretary's Office adds days (a grace period) to allow time for the appointee to receive the notice of appointment through the mail. The grace period is still used although notifications under the new system are sent electronically, without delays.

Criteria

- ❖ City Code, Chapter 8, Sec. 8-1.2, *Notice of Appointment; Acceptance, (a), (b)*
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities*

Assessed Risk Rating:

Moderate

We recommend the **City Secretary**:

G.1: Establish procedures to ensure each appointed board member's vetting file includes documentation of acceptance of appointment within 15 days or the reason for late acceptance.

Observation H: Vacancies

Seven of the 52 boards and commissions (13.5 percent) had vacancy rates greater than 40 percent during fiscal years 2019 and 2020. As a result, there is an increased risk that high-vacancy boards or commissions will have to cancel meetings due to a lack of quorum and not represent the interests of the City's residents.

Special qualifications required for most of the high-vacancy boards and commissions make the positions difficult to fill. Two boards and commissions (Building Inspection Advisory, Examining and Appeals Board and Fire Code Advisory and Appeals Board) rely on members serving in holdover capacity after their terms have expired. Also, there is confusion among City offices and departments about their responsibilities for assisting the City Council and City Manager in the recruitment of boards and commissions members.

[Exhibit 3](#) lists the seven boards and commissions with a vacancy rate greater than 40 percent and their vacancy rates in fiscal years 2019 and 2020.

Exhibit 3:

Boards and Commissions with Vacancy Rates Greater Than 40 Percent

Board or Commission	Vacant Positions and Percentage In:		
	Authorized Positions	May 2019	May 2020
Building Inspection Advisory, Examining and Appeals Board	16	8 (50%)	9 (56%)
Fire Code Advisory and Appeals Board	9	4 (44%)	4 (44%)
North Oak Cliff Municipal Management District	9	4 (44%)	4 (44%)
North Texas Education Finance Corporation	11	10 (91%)	8 (73%)
Reinvestment Zone Five Board (City Center)	6	3 (50%)	3 (50%)
Reinvestment Zone Eleven Board (Downtown Connection)	6	3 (50%)	3 (50%)
Reinvestment Zone Twenty-One Board (University)	6	6 (100%)	3 (50%)

Source: City Auditor's Office analysis of City Secretary's Office vacancy reports as of May 31, 2019 and May 29, 2020.

The City Secretary's Office posts weekly boards and commissions vacancy reports to their website. While the boards and commissions vacancy reports are not required to be retained, the lack of past vacancy reports limited the vacancy rate analysis to the two reports used in [Exhibit 3](#).

Criteria

- ❖ City Charter, Chapter XXIV, Sec. 17, *Board and Commission Members (a)*
- ❖ City Code Chapter 8, Sec. 8-20, *Attendance (d)*
- ❖ Standards for Internal Control in the Federal Government, *Principle 10 – Design Control Activities*

Assessed Risk Rating:

Moderate

We recommend the **City Manager and the Director of the Mayor and City Council Office in consultation with the responsible Department and Office Directors:**

H.1: Review the qualifications and requirements for hard-to-fill boards and commissions positions and present to the City Council a proposal to revise the qualifications and requirements.

H.2: Establish procedures to identify boards and commissions with high vacancy rates and communicate these boards and commissions to City Council members for their actions.

We recommend the **City Secretary:**

H.3: Establish a retention period for boards and commissions vacancy reports.

- Having qualified members who conduct themselves in the best interests of the City's residents.
- Conducting open and transparent meetings.
- Clearly reporting on activities and accomplishments.

City Code, Chapter 8, *Boards and Commissions* defines a board as *"a board or commission of the city that is established by ordinance or the Charter of the City of Dallas."* There is not a list of which boards and commissions meet that definition and must comply with City Code, Chapter 8, *Boards and Commissions* requirements.

The City Secretary's Office maintains a website which states the authority that established each board or commission. However, the website does not state whether the board or commission must comply with the City Code, Chapter 8, *Boards and Commissions* requirements.

Criteria

- ❖ City Code Chapter 8, Sec. 8-1, *Definitions (1)*
- ❖ Standards for Internal Control in the Federal Government, *Principle 2 – Exercise Oversight Responsibility and Principle 10 – Design Control Activities*.

Assessed Risk Rating:

Moderate

We recommend the **City Secretary**:

I.1: Establish and maintain a current list of all boards and commissions and whether the board or commission must comply with City Code, Chapter 8, *Boards and Commissions*.

Appendix A: Background and Methodology

Background

The City's Fiscal Year 2019-20 Annual Budget states on page 575, *"Civic participation in government is a cornerstone of representative democracy and boards and commissions offer residents an opportunity to actively participate in their local government."* Approximately 500 people serve on the City's 52 boards and commissions.

The boards and commissions are established by ordinance or the Charter of the City of Dallas to serve various roles. The roles served by the 52 boards and commissions are as follows:

- Advisory – Provides advice or recommendations to the City Council on issues or policies.
- Quasi-Judicial – Has the power to exercise sovereign functions of government, such as determining the rights of one or more parties under State law, city ordinances, regulations or general laws, largely independent of the controls of others (e.g. Park Board).
- Instrumentality – A subsidiary of local government created for a special purpose (e.g. Dallas Housing Finance Corp.).
- Municipal Management Districts – An example is Trinity River West.

Boards and commissions members are appointed by the following methods:

- The Mayor and each City Council member appoint one member and each member is confirmed by the City Council.
- The City Council collectively appoints and confirms the members. This is the method used for reinvestment zone advisory boards.
- The Mayor appoints members who are confirmed by the City Council.
- The City Manager appoints members who are confirmed by the City Council.
- Members serve on the basis of their position, such as the Mayor or Chief Financial Officer serving on certain boards and commissions.

The City Charter and Code assigns certain operational responsibilities for boards and commissions to the following City officials, offices and departments:

Mayor and City Council

The Mayor and City Council are responsible for appointing most board and commission members. The Mayor appoints the chair of each board subject to confirmation by the City Council. The vice-chair of every board and commission is appointed by the City Council, unless otherwise provided in State law, City Charter or City Code. The Mayor and City Council Office provides staff support to the City Council, for board and commission appointments. City Council can request boards and commissions reports.

City Manager

The City Manager appoints members to three boards and commissions. Assistant City Managers serve on Municipal Management District boards. The City Manager can request boards and commissions reports and is required to review and evaluate all board and commission annual reports and send them to the City Council.

City Secretary's Office

The City Secretary's Office is responsible for ensuring appointed board members meet specific qualifications for membership and obtaining the required documentation, such as appointment acceptance forms, conflict of interest disclosures, and financial disclosures. The City Secretary's Office also receives required documentation on board and commission activities including meeting schedules, annual reports, meeting agendas, meeting attendance records, and meeting minutes. The City Secretary's Office provides staff support to the Ethics Commission and Permit and License Appeal Board.

City Departments and Offices

Eighteen City departments and offices provide support to boards and commissions through coordinators. The coordinators are responsible for:

- Ensuring compliance with Texas Open Meetings Act requirements
- Providing the City Secretary's Office with the required documentation on board and commission activities, as noted in the [City Secretary's Office](#) section above.
- All other activities needed to facilitate the boards and commissions meetings.

Six organizations outside of the City government structure also provide support to boards and commissions.

City Attorney's Office

The City Attorney's Office provides legal opinions and guidance when needed.

- Interviewed personnel from the various offices and departments responsible for performing boards and commissions functions.
- Reviewed policies and procedures, relevant City Charter and Code and State law compliance requirements, applicable Administrative Directives, and best practices guidance.
- Surveyed boards and commissions coordinators.
- Performed various analyses and reviewed documents as needed to support conclusions.
- Considered risk of fraud, waste and abuse.
- Considered all five internal control components of the *Standards for Internal Control in the Federal Government*.

This performance audit was conducted 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 upon our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Major Contributors to the Report

Dapo Juba, MBA, CISA – Auditor

Shino Knowles, CPA – Auditor

Dan Genz, CIA, CFE – In-Charge Auditor

Rory Galter, CPA – Audit Manager

Appendix B: Defining Members' Roles and Responsibilities

A survey of the coordinators for the 52 boards and commissions was conducted in September 2020. The responses were the basis for [Observation C](#). After the survey, the City Attorney's Office provided additional authoritative documents with roles and responsibilities that were incorporated in the results. The following is a listing of each board's and commission's response.

Members' Roles and Responsibilities Defined in Bylaws

- | | |
|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------|
| 1. Dallas Area Partnership to End and Prevent Homelessness Local Government Corporation | 13. Reinvestment Zone Eleven Board (Downtown Connection) |
| 2. Dallas Area Rapid Transit Board | 14. Reinvestment Zone Twelve Board (Deep Ellum) |
| 3. Dallas Housing Authority Board – Housing Solutions for North Texas | 15. Reinvestment Zone Thirteen Board (Grand Park South) |
| 4. North Texas Education Finance Corporation | 16. Reinvestment Zone Fourteen Board (Skillman Corridor) |
| 5. Reinvestment Zone Three Board (Oak Cliff Gateway) | 17. Reinvestment Zone Fifteen Board (Fort Worth Avenue) |
| 6. Reinvestment Zone Four Board (Cedars Area) | 18. Reinvestment Zone Sixteen Board (Davis Gardens) |
| 7. Reinvestment Zone Five Board (City Center) | 19. Reinvestment Zone Seventeen Board (Transit-Oriented Development) |
| 8. Reinvestment Zone Six Board (Farmers Market) | 20. Reinvestment Zone Eighteen Board (Maple/Mockingbird) |
| 9. Reinvestment Zone Seven Board (Sports Arena) | 21. Reinvestment Zone Nineteen Board (Cypress Waters) |
| 10. Reinvestment Zone Eight Board (Design District) | 22. Reinvestment Zone Twenty Board (Mall Area Redevelopment) |
| 11. Reinvestment Zone Nine Board (Vickery Meadow) | 23. Reinvestment Zone Twenty-One Board (University) |
| 12. Reinvestment Zone Ten Board (Southwest Medical) | 24. Trinity Corridor Local Government Corporation |

1. Arts and Culture Advisory Commission
2. Board of Adjustment
3. Building Inspection Advisory, Examining & Appeals Board
4. City Plan and Zoning Commission
5. Civil Service Board
6. Community Development Commission
7. Cypress Waters Municipal Management District
8. Dallas-Fort Worth International Airport Board
9. Dallas Police and Fire Pension System Board of Trustees
10. Employees Retirement Fund Board
11. Ethics Advisory Commission
12. Judicial Nominating Committee
13. Landmark Commission and Task Force
14. North Oak Cliff Municipal Management District
15. Park and Recreation Board
16. Permit and License Appeal Board
17. Senior Affairs Commission
18. Trinity River West Municipal Management District

Members' Roles and Responsibilities not Defined

1. Animal Advisory Commission
2. Citizen Homelessness Commission
3. Martin Luther King Jr. Community Center Board
4. South Dallas/Fair Park Opportunity Fund Board
5. Youth Commission

No Response to Survey

1. Community Police Oversight Board
2. Dallas Central Appraisal District Board
3. Fire Code Advisory and Appeals Board
4. Housing Finance Corporation
5. Municipal Library Board

Appendix C: Management's Response

Memorandum



DATE: July 30, 2021
TO: Mark S. Swann – City Auditor
SUBJECT: Response to Audit of City Boards and Commissions

This letter acknowledges the City Secretary's Office received the *Audit of City Boards and Commissions* and submitted responses to the recommendations.

Unfortunately, the Audit of City Boards and Commissions was not conducted in a cohesive and collaborative manner, which resulted in unrealistic recommendations. For example, a recommendation of: ***Develop procedures to ensure the racial and ethnic membership of boards and commissions reflect the racial and ethnic make-up of the City's population.*** Members to boards and commissions are selected, nominated, and appointed by city council members and/or mayor; therefore, for city staff to develop procedures for this action to control the racial and ethnic membership is unrealistic, as it is not within their control. A second example, a recommendation of: ***Present to the City Council, a proposal, to assign overall responsibility for ensuring boards and commissions operations comply with the City's Charter and Code to one position.*** The City Code, in conjunction with the City Charter is evident that the City Secretary is to ensure compliance of boards and commissions. In addition, the City Charter and Code also provide the officers of boards and commissions with operations of their respective board.

City Boards and Commissions responsibilities are across three different city structures (city secretary, city attorney and city manager). It would have been beneficial to have all parties initially provide a collaborative overview of the process, rather than the audit be solely conducted in an isolated format.

Sincerely,

Biliera Johnson
Biliera Johnson
City Secretary

Memorandum



CITY OF DALLAS

DATE: July 28, 2021

TO: Mark S. Swann – City Auditor

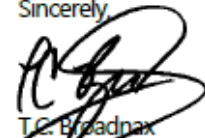
SUBJECT: Response to Audit of City Boards and Commissions

This letter acknowledges the City Manager's Office received the *Audit of City Boards and Commissions* and submitted responses to the recommendations in consultation with the City Secretary and the Mayor and City Council Office.

While the City Manager's Office respects the work and findings of the City Auditor's Office, we generally believe most of the recommendations are already sufficiently addressed through existing processes that the City Manager's Office and his departments follow to comply with the City Charter and the City Code. Further, we feel that any remaining risk is small and the cost to implement the controls recommended in the audit would exceed the benefit. However, the City Manager's Office and his departments will take additional steps as described in our responses to further reduce risk and facilitate effective boards and commissions.

The City Manager's Office agrees to implement the recommendations related to helping ensure boards and commissions have a quality and diverse candidate pool by reviewing the existing qualifications and requirements for hard-to-fill positions on boards and commissions with numerous vacancies and providing the City Council a proposal, as needed. Additionally, the City Manager's Office will review and edit vacancy requirements, including a review of the racial and ethnic make-up of boards and commissions, to help ensure boards and commissions can operate effectively and are representative of the City population.

Sincerely,


T.C. Broadnax
City Manager

C: Bilierae Johnson, City Secretary
Kimberly Bizer Tolbert, Chief of Staff
M. Elizabeth Reich, Chief Financial Officer
Carrie Rogers, Director, Mayor and City Council Office

"Our Product is Service"
Empathy | Ethics | Excellence | Equity

City Auditor's Response

The Office of the City Auditor conducts audits in as open, transparent, and collaborative nature as possible. As the City Secretary notes and we note in [Observation A](#), *"City Boards and Commissions responsibilities are across three different city structures (city secretary, city attorney, and city manager)."* This structure made it challenging to conduct the audit collaboratively while performing the audit virtually. However, meetings were held, weekly status reports distributed, and two discussion draft audit reports were shared with all parties to help foster a collaborative approach.

The City Auditor is responsible for reporting the observation if it is reasonable and could improve the City's operational effectiveness, efficiency, equity, or safeguarding of assets. While the auditees disagreed with 10 of the 14 recommendations and accepted the risk, six of the compliance-related recommendations not accepted will be addressed through improved compliance training.

City Secretary's Responses to Recommendations

Assessed Risk Rating	Recommendation	Concurrence and Action Plan	Implementation Date	Follow-Up/ Maturity Date
SECTION 1: GLOBAL OBSERVATIONS				
Moderate	We recommend the City Secretary:			
	A.2: Improve and expand training on compliance with boards and commissions requirements to more boards and commissions members and coordinators.	Agree: Continue to improve training on compliance with boards and commissions requirements to boards and commissions members and coordinators. Expansion will include an online training/informational video.	10/01/2021	07/01/2022
SECTION 2: COMPLIANCE WITH THE CITY'S CHARTER AND CODE				
Moderate	We recommend the City Secretary:			
	G.1: Establish procedures to ensure each appointed board member's vetting file includes documentation of acceptance of appointment within 15 days or the reason for late acceptance.	Agree: Update current procedures to ensure each appointed board member's vetting file includes <u>electronic</u> documentation of acceptance of appointment within 15 days or the reason for late acceptance.	10/01/2021	07/01/2022
	H.3: Establish a retention period for boards and commissions vacancy reports.	Accept Risk: A retention period for boards and commissions vacancy reports exists. (Considered a 'transitory record'.) They are produced or received in the course of routine actions, in the preparation of other records which replace them, or for convenient reference. NO RISK	N/A	N/A

Assessed Risk Rating	Recommendation	Concurrence and Action Plan		Implementation Date	Follow-Up/ Maturity Date
	I.1: Establish and maintain a current list of all boards and commissions and whether the board or commission must comply with City Code, Chapter 8, <i>Boards and Commission</i> .	Accept Risk:	<p>A list of all boards and commissions, along with their appropriate authority (for compliance) is listed on the City Secretary's website.</p> <p>The City Attorney's Office needs to advise, as they develop/interpret ordinances and/or authority regulations. NO RISK/HANDLED INTERNALLY</p>	N/A	N/A

City Manager and Mayor and City Council Office Responses to Recommendations

Assessed Risk Rating	Recommendation	Concurrence and Action Plan	Implementation Date	Follow-Up/ Maturity Date
SECTION 1: GLOBAL OBSERVATIONS				
Moderate	We recommend the City Manager in consultation with the City Secretary and the City Attorney:			
	A.1: Present to the City Council, a proposal, to assign overall responsibility for ensuring boards and commissions operations comply with the City's Charter and Code to one position.	Accept Risk: At this time, the City Manager does not see a need to present a proposal to the City Council and therefore is accepting the risk for this recommendation. However, the City Manager's Office will monitor respective departments to ensure compliance with the City's Charter and Code. Additionally, the City Manager's Office and the City Secretary's Office agree that the City Secretary will ensure City staff and board members will receive <i>training to help ensure compliance.</i>	N/A	N/A
Moderate	We recommend the City Manager:			
	B.1: Establish procedures to account for all costs to operate each board and commission and report the total cost by board and commission to the City Council on an annual basis.	Accept Risk: Currently, costs to operate boards and commissions are incorporated in the City's annual budget process. The City Manager's Office does not believe it is practical to establish additional procedures to account for and report total costs by board or commission and therefore will accept the risk for this recommendation.	N/A	N/A

Assessed Risk Rating	Recommendation		Concurrence and Action Plan	Implementation Date	Follow-Up/ Maturity Date
	C.1: Ensure all boards and commissions have defined roles and responsibilities of members either in bylaws or another authoritative document.	Accept Risk:	We will accept the risk for this recommendation. Article III, Chapter 8-9 (Chair and Vice Chair) provides guidelines for the roles of the Chair and Vice Chair of most boards and commissions. Additionally, the City Secretary's Office ensures City staff and those board members will be trained on compliance with all authorities governing boards and commissions.	N/A	N/A
SECTION 2: COMPLIANCE WITH THE CITY'S CHARTER AND CODE					
High	We recommend the Director of the Mayor and City Council Office:				
	D.1: Develop procedures to ensure the racial and ethnic membership of boards and commissions reflect the racial and ethnic make-up of the City's population, as nearly as may be practicable.	Accept Risk:	While MCC will not be implementing the recommendation as written, we will coordinate with CMO as they implement recommendation H.2 to help mitigate the identified risk.	N/A	N/A
Moderate	We recommend the City Manager:				
	E.1: Develop procedures to ensure compliance with requirements of City Code, Chapter 8, Sec. 8-1.1, <i>Reports to the City Council</i> for all applicable boards and commissions.	Accept Risk:	The City Secretary's Office will ensure city staff and board members will be trained on compliance with all authorities governing boards and commissions and therefore, the City Manager does not see a need to develop separate procedures to ensure compliance. Additionally, the City Manager's Office will monitor respective departments to ensure compliance and can commit to distributing an annual directive city-wide as a reminder.	N/A	N/A

Assessed Risk Rating	Recommendation	Concurrence and Action Plan	Implementation Date	Follow-Up/ Maturity Date
	E.2: Develop procedures to ensure all board and commission annual reports are posted to the City's website.	Accept Risk: The City Secretary's Office will ensure city staff and board members will be trained on compliance with all authorities governing boards and commissions and therefore, the City Manager does not see a need to develop separate procedures to ensure compliance. Additionally, the City Manager's Office will monitor respective departments to ensure compliance and can commit to distributing an annual directive City-wide as a reminder.	N/A	N/A
	F1: Develop procedures to ensure compliance with requirements of City Code, Chapter 8, <i>Boards and Commissions</i> : Sec. 8-4 (a); Sec. 8-6 (a), (b), (c), (d); Sec. 8-8 (a), (b); and, Sec. 8-20 (a), (b), (c).	Accept Risk: The City Secretary's Office will ensure City staff and board members will be trained on compliance with all authorities governing boards and commissions and therefore, the City Manager does not see a need to develop separate procedures to ensure compliance. Additionally, the City Manager's Office will monitor respective departments to ensure compliance and can commit to distributing an annual directive City-wide as a reminder.	N/A	N/A
	F.2: Develop procedures to ensure all meeting minutes are posted to the City's website.	Accept Risk: The City Secretary's Office will ensure City staff and board members will be trained on compliance with all authorities governing boards and commissions and therefore, the City Manager does not see a need to develop separate procedures to ensure compliance. Additionally, the City Manager's Office will monitor respective departments to ensure compliance and can commit to distributing an annual directive City-wide as a reminder.	N/A	N/A

Assessed Risk Rating	Recommendation	Concurrence and Action Plan	Implementation Date	Follow-Up/ Maturity Date
Moderate	We recommend the City Manager and the Director of the Mayor and City Council Office in consultation with the responsible Department and Office Directors:			
	H.1: Review the qualifications and requirements for hard-to-fill boards and commissions positions and present to the City Council a proposal to revise the qualifications and requirements.	Agree: The City Manager's Office, in consultation with designated departments, will agree to review the qualifications and requirements for hard-to-fill board and commission positions will be considered should the board have numerous vacancies. The City Council will then receive a proposal to revise the qualifications and requirements when possible.	6/30/2022	9/30/2022
	H.2: Establish procedures to identify boards and commissions with high vacancy rates and communicate these boards and commissions to City Council members for their actions.	Agree: The City Manager's Office will work with stakeholders to review and edit vacancy requirements including a review to ensure the racial and ethnic make-up of boards and commissions is representative of the City's population as nearly as many be practicable. This information will be provided to City Council when possible.	6/30/2022	9/30/2022