

**AUDIT TEAM**

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**UNIT-PRICE CONTRACT  
INVESTIGATION REPORT**

**NOVEMBER 9, 2021**

**MAYOR AND CITY COUNCIL**

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<b><i>Bradley Carter</i></b>	<b><i>Audit Committee, Ward 1</i></b>
<b><i>James Cooper</i></b>	<b><i>Ward 2</i></b>
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<b><i>Mark K. Stonecipher</i></b>	<b><i>Ward 8</i></b>



November 9, 2021

The Mayor and City Council:

The Office of the City Auditor investigated allegations relating to unit-price contracts administered by the Public Works Department for street resurfacing and related paving work.

Our investigation did not substantiate alleged failure to comply with the Oklahoma Competitive Bidding Act or favored treatment of contractors during work completion. However, the extent of weaknesses in Public Works' process for selecting contractors for work order issuances were such that it was not possible to conclude if work orders were issued based on demands, pressure, or bribes from contractors.

Certain operational matters noted during our investigation and discussed in detail in the attached report include the following:

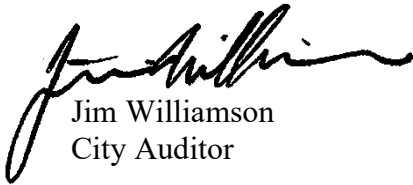
- Quantities included in bid requests disproportionately impacted contract awards. Had quantities included in the bid requests reasonably aligned with expected use, a different contractor would have been the lowest bidder for all four bid requests reviewed. These bid requests resulted in expenditures totaling more than \$68 million. See Comment 1.
- Completion of work orders at the lowest cost is not a determining factor in contractor selections for work order issuances. Because material quantities vary between work orders, the lowest overall bidder may not be the lowest cost contractor for a specific work order. Actual costs paid for 47 work orders reviewed totaling approximately \$38.1 million exceeded what those costs would have been had the lowest cost contractors been selected for each of those work orders by nearly \$3.5 million. See Comment 2.
- Contractor workload assessments (e.g., assigned work order status, crew availability, etc.) were not documented to support 62 reviewed work orders totaling \$58.4 million issued to contractors that were not the low overall bidders on related contracts. Documentation supporting contractor selections for work order issuances is also not subject to formal supervisory review and approval. See Comments 3 and 4.
- For a work order examined during our investigation, actual costs totaling \$2.8 million exceeded the original cost estimate of \$1.3 million by \$1.5 million. After work order issuance, the original cost estimate for this work order was not updated, reviewed, or approved nor was a work order with a final cost estimate issued to the contractor. Completed work order costs are also not compared to original cost estimates for monitoring and management. See Comments 8 and 9.

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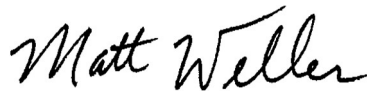
**EXECUTIVE SUMMARY: Investigation Report 117-21**

- Material quantities for 16 contractor invoices totaling \$2.8 million on a completed work order were not agreed to construction inspection reports prior to payment and contract construction inspector reports for nine of these invoices totaling \$700,000 were not in City inspection records. See Comment 10.
- The work order status report produced for local contractors is incomplete, contains inaccurate data including unreliable completion dates, and could be more accessible. See Comment 16.
- Reporting of overdue work orders has not been developed or used in assessing contractor workloads when making work order issuance decisions. See Comment 17.

All comments, recommendations, suggestions, and observations arising from our investigation have been discussed in detail with appropriate representatives from management. These discussions were held to assure a complete understanding of the content and emphasis of items in this report. Responses to this report from management are attached.



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City Auditor



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Assistant City Auditor



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**PUBLIC WORKS DEPARTMENT  
UNIT-PRICE CONTRACT INVESTIGATION REPORT**

**SCOPE AND METHODOLOGY**

The Office of the City Auditor has investigated the following allegations, in summary, relating to unit-price contracts administered by the Public Works Department for street resurfacing and related paving work (e.g., residential sidewalks, pavement repairs):

Allegations

- Unit-price contracts are illegal under the Oklahoma Competitive Bidding Act.
- Unit-price contract work orders are issued to contractors based upon contractor demands, pressure, or bribes instead of a clear selection process based on lowest cost.
- Certain contractors are receiving favored treatment in carrying out issued work orders.

Conclusions

Our investigation did not substantiate failure to comply with the Oklahoma Competitive Bidding Act or favored treatment of certain contractors during work completion. However, we noted weaknesses in Public Works' process for selecting contractors for unit-price contract work order issuances that could allow those issuances to be based upon demands, pressure, or bribes from contractors without detection. The extent of these weaknesses is such that it is not possible to conclude if work orders were issued based upon such factors.

Procedures performed during this investigation included interviews of Public Works personnel and Oklahoma Municipal Contractors Association (OMCA) representatives; assessment of unit-price contract bids, bid specifications, and resulting contracts; examination of project management policies and procedures, construction inspection reports, and documentation supporting issued work orders, contractor payment applications, and internally used and externally distributed reporting; and consultation with the Municipal Counselor's Office.

Our work focused on investigating the specific allegations discussed above and did not include performing an audit of Public Works Department operations or programs. Therefore, no opinion is provided on program results or the adequacy or effectiveness of controls.

Our work also did not include follow-up on the implementation of strategies developed during the Harvard Kennedy School Government Performance Lab study (GPL study) of Public Works contracting in late 2017 and early 2018. The study included recommendations to:

- Streamline the contracting cycle for Public Works construction projects.

- Modify resurfacing contract bid requests to include the locations and schedules for work to be completed under the contract to reduce bidder uncertainty and add information about future resurfacing bid opportunities to attract more prospective bidders.
- Introduce contractor performance payments to reward timely completion.
- Develop a tracking system for contractor performance across different project areas to use in decision-making, including contract renewal decisions.

We also did not follow-up on the status of recommendations included in our Capital Street Project Construction Administration Follow-Up Audit report issued on August 28, 2018. During that audit, we found that previous audit recommendations addressing significant control weaknesses identified in street construction project management had been partially implemented, time allowed for completing street resurfacing projects often exceeded what was necessary and the reasonableness of time allowed for completing street project construction, in general, continued to be unresolved. Recommendations in that report included:

- Engage an external consultant to determine the reasonableness of time allowed for contractors to complete street resurfacing and construction projects.
- Modify construction contracts to specify that substantial completion of work is expected within a certain number of calendar days or by a certain date.
- Fully document construction timeline management for all projects.
- Document liquidated damage assessments for all delayed projects and develop policies to govern waiving or reducing liquidated damages.
- Conduct daily inspections and document construction timeline management for unit-price contract street resurfacing projects.

Our work also did not include follow-up on recommendations from Matrix Consulting Group (Matrix), an external consultant engaged to assess the reasonableness of time allowed for street resurfacing and construction projects. In general, recommendations included in the Matrix report issued on January 27, 2021 were to:

- Require Project Managers to obtain detailed project schedules with milestones from contractors for all projects prior to commencement.
- Include feasible dates for work to begin in work orders and enforce those dates.
- Communicate to contractors the intention to strictly enforce contractual liquidated damage provisions and report to them weekly on violations that could trigger enforcement.

- Modify construction inspection reports to improve the relevance and timeliness of information and train Construction Inspectors on completing the reports.
- Develop criteria to evaluate contractor performance on completed projects, including timeliness of completion, and use the results in awarding future contracts.
- Require Construction Inspectors to record all used material quantities in daily inspection reports in a consistent manner and Project Managers to reconcile all quantity differences between inspection reports and contractor payment applications.

## BACKGROUND

On September 12, 2017, Oklahoma City voters approved a temporary, 27-month one cent sales tax for street and other community and neighborhood improvements. The temporary sales tax was anticipated to generate \$240 million of which, \$168 million or 70% was to be used for street resurfacing with the rest to be used for street enhancements, sidewalks, trails, and bike infrastructure. Also on September 12, 2017, Oklahoma City voters approved a \$967.4 million General Obligation Bond (GO Bond) authorization of which, \$490.6 million was committed to street projects. At the time, Oklahoma City also had GO Bond funds committed to street projects on-hand totaling approximately \$111 million<sup>1</sup>.

With combined on-hand and authorized future funding for street and street-related projects totaling nearly \$850 million, Oklahoma City management explored alternatives to increase the rate of project completion. Public Works had tested the use of unit-price contracts for street resurfacing work beginning late in 2016 as a method for increasing the project completion rate by reducing the administrative burden of bidding each individual project<sup>2</sup>. Unit-price contracts allow contractors to complete work on multiple projects during the contract term at prices bid per unit of material to be used, while lump-sum contracts traditionally used on street projects require contractors to bid a price to complete each individual project.

Oklahoma City management decided to use unit-price contracts to the extent possible to help address the unprecedented influx of funding for street and street-related projects, awarding six such contracts immediately following the election on September 12, 2017. Approximately \$186.4 million had been spent on sales tax and GO Bond-funded projects using unit-price contracts through February 2021.

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<sup>1</sup> Based on remaining balances reported as of August 31, 2017 in the GO Bond Executive Summary included in the September 21, 2017 GO Bond Program Oversight Committee meeting packet.

<sup>2</sup> Public Works had previously only used unit-price contracts for lower dollar, less frequent work such as street repairs, utility cut repairs, and snow/ice removal and plowing services.

## RESULTS OF WORK PERFORMED

Recommendations included in this report are intended to provide constructive suggestions for addressing certain operational matters noted during our investigation. Each recommendation is immediately followed by *management’s response*, which is also attached to this report in its entirety.

### Unit-Price Contract Bid Request Quantities

#### Comment 1

Public Works’ unit-price contract bid requests include individual material items and the quantities of those items expected to be used. Contractors bid prices per unit for each item of material based on the quantities for each item included in the bid requests. The sum of the total cost for each item of material included in the bid requests, calculated by multiplying unit prices bid by the included quantity, is the bid amount. Therefore, the quantities of each item included in bid requests have a direct and material impact on total contractor bids.

Bid requests have also typically specified that contracts will be awarded to the lowest overall bidder and all other bidders with a total bid within 10% of the overall low bid<sup>3</sup>. Additionally, specifications included in bid requests state that initial work orders will be issued to contractors based on the order of bids received and crew availability.

**Quantities included in bid requests for a few items disproportionately impacted contract awards.** Quantities for a few items in each of four unit-price contract bid requests reviewed represent either too high or too low of a percentage of the bid prices given average use as evidenced by inclusion in estimates for work orders completed using the related contracts as illustrated in Exhibit 1. Those bid requests resulted in 27 awarded contracts, including renewals, used to complete 85 work orders with related expenditures totaling more than \$68 million.

EXHIBIT 1								% OF BID PRICE COMPARED TO AVERAGE USE BASED ON WORK ORDER ESTIMATES			
Bid #	Total Bid Items	Contract Award			# of Items	Items Representing Low % of BID		Items Representing High % of BID		# of Items	
		Date	#	Value Each		But High % of Work Order ESTIMATES	But Low % of Work Order ESTIMATES				
PM-0285	152	8/27/19	6	\$6 million	4	5% 43%	41% 14%	4			
PM-0277	108	5/8/18	5	\$15 million	8	20% 56%	20% 2%	4			
PM-0274	136	4/24/18	5	\$15 million	4	17% 52%	31% 6%	1			
PM-0268	122	10/24/17	3	\$10 million	2	3% 15%	52% 32%	3			

<sup>3</sup> Unit-price contract bid requests that did not include such a specification are discussed in Comment 5 of this report.

Total contractor bids would be different if not for the disproportionate weighting of the quantities for these items in their bid prices. A different bidder would have been the lowest overall bidder for all four of the reviewed bid requests had the quantities included in the bid requests for a few items more reasonably aligned with average expected use. The actual bidder deemed lowest overall would not have been within 10% of the actual lowest overall bid for two of the bid requests and would have been the highest bidder on one.

Additionally, the order of bids received used to determine the order of initial work order issuances to contractors would have been different. See Comment 2.

### **Recommendation 1**

Item quantities included in future unit-price contract bid requests should more reasonably reflect expected project needs based on current conditions and experience to allow for more accurate determination of the lowest overall bid used in contract awards. Also see Recommendation 2.

Including item quantities more reasonably reflecting expected project needs in bid requests would likely be simplified by also determining work locations for inclusion in bid requests as recommended in the GPL study discussed in the Scope & Methodology section of this report.

### **Public Works Response 1**

*Public Works agrees. When the unit-price street resurfacing contracts were initially developed, the item quantities required for each project were not known. Unit-price contracts have been utilized for the past three years and data has been collected during that time. The most recent unit-price street resurfacing contracts bid in June 2021 have included updated bid forms that accurately reflect expected project quantities and project needs.*

*Work locations are not known for all projects when bids are advertised and received for unit-price street resurfacing contracts. In response to including work locations in future bid requests, the department has increased the number of hard bid street resurfacing projects and will include project locations in the bidding documents. The hard bid projects are also known as corridor projects where several individual projects are grouped in a geographical area to provide large project bid opportunities to contractors and construction pricing specific to the project locations. In May 2021, Public Works began bidding additional hard bid project opportunities with project locations identified in the bidding documents.*

### **Unit-Price Contract Work Order Issuances**

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#### **Comment 2**

**Completion of the work orders at the lowest cost is not a determining factor in contractor selections for work order issuances.** As discussed in Comment 1, contracts are awarded based



on lowest overall bid. However, given that material quantities used vary between work orders, the lowest overall bidder may not be the lowest cost contractor for a specific work order. Public Works does not assess, and award work orders based on the lowest cost contractor for each work order.

Actual costs paid for 47 completed unit-price contract work orders reviewed totaling approximately \$38.1 million exceeded what those costs would have been had the lowest cost contractors been selected for each of those work orders by nearly \$3.5 million. Efficient use of taxpayer dollars requires that work order cost be considered in the competitive award of work.

## **Recommendation 2**

The lowest cost contractor should be identified for each work order. This cost should be used in making work order issuance decisions. Cost estimate calculations should be documented and compared for each contractor using all available contracts.

### ***Public Works Response 2***

*Public Works agrees with modification. Since February 2018, Public Works has successfully administered 138 resurfacing projects for a total of \$187,899,835 utilizing Better Streets Safer City sales tax funding. The method of awarding work orders on unit-price street resurfacing projects is based on the lowest and best bid contractor. The procedure for awarding work orders has been included in each bidding document and is part of the bid.*

*To address the cost concerns in the investigation report, updates and changes were made to bid forms in June 2021 to better estimate project quantities and project needs. The total funding authorization for each contract awarded has also been reduced to only provide three to four work orders to be issued under each street resurfacing unit-price contract. In addition, street resurfacing unit-price contracts will no longer be renewed, and updated bid forms and additional bid opportunities will be sought to ensure best costs are being received on projects and work orders issued.*

*Public Works will document cost estimates with contractors selected and maintain the information in project files for use on future bid opportunities.*

### **Auditor's Response 2**

While we agree that including item quantities more reasonably reflecting expected project needs in bid requests reduces the likelihood of significant differences in cost between contractors, we continue to believe that calculating estimated costs for each contractor and considering which is lowest when making work order issuance decisions would ensure work is done at the best price.

### Comment 3

**Contractor workload assessments (e.g., assigned work order status, crew availability, etc.) supporting work order issuance decisions are not documented.** Though Public Works management represents that staff routinely discusses timeliness of contractor work order completion and contractor availability when making work order issuance decisions, those discussions are not documented.

Contractor workload assessments were not documented in the project files for 62 work orders reviewed totaling \$58.4 million issued to contractors that were not the low overall bidders on the related unit-price contracts. Documented assessments of contractor workloads should be available to evidence the reasons for work order issuances to contractors that are not the lowest cost.

### Recommendation 3

When work orders are issued to contractors that are not the lowest cost, documented assessments of the lowest cost contractors' workload should be included in the related project files to support that decision.

Overdue work order information identified when assessing contractor workloads could also be useful for evaluating and tracking contractor performance as recommended in the Matrix report and GPL study, respectively, discussed the Scope & Methodology section of this report.

### *Public Works Response 3*

*Public Works agrees. Improved project files and new documentation were implemented in February 2021 to better document the selection of contractors for each work order. The new documentation allows each contractor to respond in writing when accepting or rejecting a proposed work order. The documentation records when the lowest and best bid contractor chooses not to accept work orders. The contractor responses are being maintained in the project file for future reference.*

*New reporting was implemented by the department in November 2020 to record awarded contracts, contract capacities, work orders, costs and project completions. The new report documents overdue work and addresses the recommendation made in the Matrix Consulting Group report for tracking and evaluating contractor performance.*

### Comment 4

**Documentation supporting contractor selections for work order issuances is not subject to formal supervisory review and approval.** While issued work orders are signed by the Public Works Director or Assistant Director, documentation supporting contractor selections for those

issuances (e.g., cost estimates, workload assessments, etc.) is not reviewed and approved for adequacy and consistent application of selection criteria.

Contractor selections for work order issuances could be based on favoritism or inducement without detection if documentation supporting those selections is not subject to supervisory review and approval.

#### **Recommendation 4**

The immediate supervisor of those selecting contractors for work order issuances, the Division Head, if different, and the Department Director or Assistant Director should review and approve documentation supporting contractor selections for adequacy and consistent application of selection criteria.

#### ***Public Works Response 4***

*Public Works agrees. A new procedure was implemented in November 2020 for the Paving Engineering Section Head to review and recommend all project estimates and work orders prior to submitting a work order to the Public Works Director/City Engineer for final review and signature.*

#### **Unit-Price Contract Bid Request Specifications**

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#### **Comment 5**

**Contracts were awarded to all bidders on a unit-price contract bid request regardless of bid price.** While criteria were not included for bids that would be considered for contract awards (e.g., all bids received within 10% of the low bid) in two unit-price contract bid requests, the lowest overall bidder was disqualified on one and the bids remaining were roughly within 10% of the next lowest bid. Public Works management represents that the criteria were omitted from the bid requests to increase the number of available contractors.

Unit-price contracts were awarded to all five responding bidders for \$15 million each. Only two contracts would have been awarded had contracts only been awarded to bidders within 10% of the lowest overall bid.

Efficient use of taxpayer dollars requires that contract awards be based, at least in part, on competitive pricing.

#### **Recommendation 5**

The criteria by which bids will be considered for contract awards should be included in all unit-price contract bid requests contemplating the award of multiple contracts.

### ***Public Works Response 5***

*Public Works agrees. The original goal of the Better Streets Safer City program was to expedite work orders to provide for a rapid delivery of street resurfacing projects.*

*No additional unit-price street resurfacing projects have been advertised or bids received that have allowed contract awards exceeding the 10% award rule. All bidding documents and project specifications include the criteria for how bids will be considered and awarded.*

### **Comment 6**

**An anticipated contract amount was not included in an August 2016 bid request for a unit-price contract intended to test the use of such contracts for street resurfacing work.** The bid request resulted in the award of a single unit-price contract approved by City Council in an amount not to exceed \$2.5 million with an initial one-year term and two one-year renewal options. The not to exceed amount of the contract was increased to \$4 million by City Council action within 4 months of contract award when purchase orders (POs) totaling less than \$500,000 had been issued on the contract. Ultimately, the contract was renewed for the two additional one-year terms and used to complete work totaling nearly \$8.9 million.

Public Works management represents that the intent to spend \$8 million using this contract was communicated verbally to prospective bidders at the pre-bid conference<sup>4</sup>. However, there is no documented evidence that prospective bidders were made aware of the dollar amount of work anticipated to be available on this contract prior to bidding.

Unit-price contract bid requests without anticipated contract amounts could result in noncompetitive bids and excessive costs.

### **Recommendation 6**

The anticipated contract amount should be included in all unit-price contract bid requests to ensure submitted bids are competitive and work is completed at the lowest possible cost. Management should also consider requesting new bids when anticipated costs significantly increase.

### ***Public Works Response 6***

*Public Works agrees. All current and future bid opportunities will identify the contract amounts and no existing street resurfacing unit-price contracts will be renewed or extended. New bids will be advertised and received as contracts expire or utilize their authorized contract funding amounts.*

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<sup>4</sup> On September 1, 2015, a City Council Resolution expressing the intent to amend the General Fund budget to use \$8 million in fund balance to improve streets throughout the City was approved.

## Unit-Price Contract Rebidding

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### Comment 7

**Multiple overlapping unit-price contracts create operational inefficiencies.** Frequent unit-price contract rebidding increases time spent requesting bids, executing contracts, and selecting contracts for work order issuances. Over a 34-month period ending in July 2020, 14 unit-price contract bid requests were issued resulting in 85 contracts, including renewals, awarded to 11 contractors totaling \$660 million<sup>5</sup>. Contractors have overlapping contracts for the same type of work in many instances. As an example, 14 residential resurfacing unit-price contracts were available with six different contractors at once during a seven-month period.

Bidding multiple overlapping contracts may significantly reduce efficiency.

### Recommendation 7

Consideration should be given to reducing the overall frequency with which unit-price contracts are rebid to reduce the number of active contracts thereby improving contracting efficiency.

### Public Works Response 7

*Public Works agrees. The numerous overlapping street resurfacing unit-price contracts will expire by October 31, 2021. Beginning June 2021, new street resurfacing unit-price contracts have been bid to replace expired contracts. New bids in the future will only be considered as the previous unit-price contracts funding authorization is fully utilized or the contract expires.*

## Administration of Unit-Price Contract Work Orders

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### Comment 8

**The cost estimate was not updated and approved, and a work order with a final cost estimate was not issued when costs for a work order significantly exceeded the original estimate.** After issuance of the work order and related purchase order (PO) for a cost estimate of approximately \$1.3 million, PO increases and additional PO issuances increased total costs to almost \$2.8 million. See Comment 9. The cost estimate included in the original work order was never updated and approved and while a work order with a revised cost estimate was reissued, the revised estimate only accounted for half of the total increase.

Work order cost increases beyond original estimates without update and approval of the related cost estimates and reissuance of work orders with final cost estimates could allow Project Managers to authorize unapproved work based on favoritism or inducement without detection.

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<sup>5</sup> These totals do not include unit-price contract bid requests and resulting contracts for street repairs, utility cut repairs, and snow /ice removal and plowing services during this period.

## **Recommendation 8**

Cost estimates should be updated and approved by an immediate supervisor and the Division Head, if different, and the Department Director or Assistant Director before POs are issued or increased beyond original work order cost estimates. Work orders with final cost estimates should also be reissued to contractors when such cost estimate increases occur.

### ***Public Works Response 8***

*Public Works agrees. Staff implemented a new documentation process in November 2020 that is being used when increasing purchase order amounts for street resurfacing unit-price contracts. Documentation is provided to justify the increase in costs and determines if there is an increase in the work order amount. The Section Head now approves the proposed increases or decreases before the Director or designee reviews and signs the updated work order.*

## **Comment 9**

**There is currently no reporting of actual completed work order costs compared to original cost estimates that would allow work order costs to be monitored and managed.** Though budgets are established and monitored for GO Bond and sales tax-funded projects, those projects are often completed using several work orders. Actual costs exceeded original cost estimates by \$1.5 million for the work order discussed in Comment 8 and by nearly \$618,000 for another reviewed work order without any documented reasons for these variances in the project files.

Work order cost overruns, if not detected and managed, could result in projects becoming underfunded overall. Additionally, persistent and/or significant work order cost overruns could be indicators of manipulated contractor selections for work order issuances or use of incorrect quantities in cost estimates that could go undetected if not reviewed.

## **Recommendation 9**

Reports comparing actual completed work order costs to original cost estimates should be developed, routinely reviewed by management personnel, significant variances identified, and the reasons for those variances documented in the related project files.

### ***Public Works Response 9***

*Public Works agrees with modification. New reporting has been developed and is in use for improved financial management of street resurfacing unit-price projects. The reports are being utilized on the Better Streets Safer City projects. Both overruns and underruns have been documented and the individual street resurfacing project budgets have been adjusted. The adjustments are documented with revised Implementation Plans recommended by the BSSC Advisory Board and approved by the City Council. Underruns totaling \$21,200,000 on projects have already been realized and these funds have been allocated to new projects under the*

*program. Beginning October 2021, a quarterly report will be developed to be reviewed by both projects managers and financial staff to review variances in cost estimates compared to final project costs. Any variances requiring correction will be completed and reports will be maintained in project files.*

#### **Comment 10**

**Invoiced quantities on a completed work order were not agreed to inspected quantities prior to payment and City records of inspected quantities on that work order were incomplete.** The Project Manager authorized payment of 16 contractor invoices totaling nearly \$2.8 million on a completed work order without agreeing the invoiced quantities to City construction inspection records.

Additionally, quantities inspected by the contract construction inspector for six months were not recorded in City inspection records. The contract construction inspector provided records of inspected quantities during our investigation supporting substantially all amounts paid on the nine invoices totaling \$700,000 during that six-month period.

Paying contractor invoices without agreeing invoiced quantities to inspected quantities could allow payments of fraudulent invoices to occur without detection while incomplete inspection records will not allow for a complete and accurate confirmation of invoiced quantities.

#### **Recommendation 10**

Project Managers should ensure complete inspected quantities are recorded in City inspection records to allow for a complete and accurate confirmation of invoiced quantities and agree all invoiced quantities to City inspection records before authorizing payments.

The Matrix report discussed in the Scope & Methodology section of this report also includes a recommendation that Project Managers confirm all invoiced quantities using inspection records containing complete inspected quantities recorded consistently by construction inspectors.

#### **Public Works Response 10**

*Public Works agrees. Inspection reports and pay invoices are expected to be accurate. The contractor, inspector, and engineer currently meet in the field to review pay invoices before the contractor submits a completed invoice for payment. Discrepancies identified in the inspection reports will be reconciled to ensure the invoiced quantities are correct before authorizing payment.*

*To address the Matrix report recommendations, Public Works will implement a training program for Engineering project managers to improve the project documentation process. By December 2021, Public Works will provide project managers with a Project Management Procedures*

*Manual and training to include project manager review of inspection reports and use of inspection reports to confirm invoiced quantities.*

#### **Comment 11**

**Paid contractor billings at prices differing from contract prices or not complying with contract terms were identified.** Of paid invoices reviewed for 108 completed work orders totaling nearly \$93 million, invoices paid for 46 completed work orders included billing errors that resulted in overcharges and undercharges totaling approximately \$43,000 and \$81,000, respectively.

Paying contractor invoices without confirming billed prices agree to contract prices and all charges comply with contract terms could result in undetected overcharges or undercharges in greater amounts.

#### **Recommendation 11**

Each contractor invoice should be reviewed to confirm billed prices agree to contract prices and all charges comply with contract terms before invoice payment is authorized.

#### ***Public Works Response 11***

*Public Works agrees. Training has been completed with both project managers and finance staff to avoid this issue from occurring in the future. Finance staff are also working directly with project managers to ensure invoices are accurate and include correct contract prices.*

#### **Unit-Price Contract Financial Administration**

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#### **Comment 12**

**Certain paid contractor billings were at prices from the wrong contract.** Contracts differing from those originally designated in work orders issued to contractors were used to process certain payments because it was believed that inadequate spending authority remained to make the payments on the original contracts. Contractors were not notified of the change in contracts through issuances of new work orders and continued to invoice for work performed using original contract prices. Contractor billings relating to 33 payments totaling nearly \$5.5 million on 11 work orders were at prices from the wrong contracts with those contractors.

Using a different contract to enable payments of billings at prices from the original contract circumvents PeopleSoft controls preventing payments from exceeding contractual spending limits. Additionally, paying contractors at prices from the wrong contract could result in payment of noncompetitive prices or contractor claims of contract breach and/or underpayment.



## **Recommendation 12**

When inadequate spending authority remains on originally designated contracts to complete work orders initiated on those contracts, Public Works should either:

- Obtain City Council approval of an amendment to the original contract amounts, or
- Issue new work orders to the contractors on different contracts and confirm subsequent billings are at correct prices before payments are authorized.

### ***Public Works Response 12***

*Public Works agrees. Training has been completed with both project managers and finance staff to avoid this issue from occurring in the future. Finance staff are also working directly with project managers to ensure invoices are accurate and include correct contract prices.*

## **Comment 13**

**A PeopleSoft query used by Public Works and other City departments to monitor remaining spending authority available on contracts was incomplete for a reviewed unit-price contract.** The query result did not include a PO for \$887,172 in the amount encumbered on the contract, thereby overstating the remaining spending authority available on the contract by that amount.

Incomplete information regarding remaining spending authority available on contracts could result in incorrect decisions about which contracts can be used for work order issuances or if adequate spending authority remains to complete work orders issued on a contract.

## **Recommendation 13**

Public Works should work with Information Technology and Finance to identify and correct the cause of the incomplete result produced by the PeopleSoft query used to monitor remaining spending authority available on contracts.

### ***Public Works Response 13***

*Public Works agrees. Public Works has worked with both IT and Finance, and a new document using a query from PeopleSoft is now available and being used to monitor spending authority for street resurfacing unit-price contracts.*

## **Comment 14**

**Unit-price contracts with an initial term of one year and renewal options for two additional one-year terms were entered in PeopleSoft with three-year terms at the outset.** Expiration dates for all 35 unit-price contracts entered in PeopleSoft since February 2019 were two years

beyond actual initial expiration dates. Because of incorrect contract expiration dates entered in PeopleSoft, ten POs totaling approximately \$6.2 million were issued on expired contracts. Two of these POs totaling approximately \$526,000 were issued on contracts that were not renewed.

Incorrect contract expiration date entry in PeopleSoft allows for issuance of invalid or potentially fraudulent POs on expired contracts.

#### **Recommendation 14**

The accuracy of expiration dates for all unit-price contracts entered in PeopleSoft since February 2019 should be reviewed and expiration dates for those entered with three-year terms revised to one-year terms. Additionally, incomplete POs issued on expired contracts, if any, should be identified, cancelled, and reissued on valid contracts.

#### ***Public Works Response 14***

*Public Works agrees. The street resurfacing unit-price purchase orders entered in PeopleSoft since February 2019 have been reviewed and all issues related to expiration dates have been resolved.*

#### **Comment 15**

**Intentional extensions of contract expiration dates in PeopleSoft beyond actual expiration dates are not documented or monitored.** Expiration dates entered in PeopleSoft for 17 unit-price contracts were intentionally extended by as little as a day and as much as two and a half years. While one was intentionally extended by a day specifically to allow issuance of a PO on an expired contract, the others were extended to allow replacement of originally issued POs with new POs specifying different funding sources<sup>6</sup>.

Funding source changes are often needed after POs have been issued for GO Bond projects to ensure 85% of funds are spent within 3 years of bond issuance as required by Internal Revenue Service regulations. Such changes can only be made by replacing originally issued POs with new POs specifying different funding sources which may occur after contract expiration. Twenty-nine new POs totaling \$5.2 million were issued on expired contracts with intentionally extended expiration dates in PeopleSoft to replace original POs for funding changes.

These extensions could be made to allow PO issuances to contractors after contract expiration based on favoritism or inducement if the reasons for the extensions are not documented and monitored.

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<sup>6</sup> The expiration date for a contract expiring on 10/23/18 was extended to 10/24/18 to issue a purchase order on that date for \$832,219. This purchase order had been requested on 10/19/18, prior to contract expiration.

## Recommendation 15

Contract expiration date extensions in PeopleSoft should only occur when originally issued POs need to be replaced with new POs specifying different funding sources and the related contract has expired. Those extensions should be logged, including:

- The contract and the “from” and “to” date of the expiration date extension,
- The requestor of the expiration date extension and reason for the request, and
- The name of the person entering the extended expiration date in PeopleSoft.

The Public Works Financial Services Manager should periodically compare the log to PeopleSoft expiration dates to verify completeness and review the legitimacy of reasons for the extensions.

## ***Public Works Response 15***

*Public Works agrees. In response to the concern, PeopleSoft has limitations for updating purchase orders issued after the contract time has expired. The program requires finance staff to change the expiration date in the program.*

*Public Works has coordinated with IT and Finance to ensure future actions are completed correctly. Weekly meetings are being held between the Public Works Financial Services Manager and project managers overseeing street resurfacing unit-price contracts to verify the expiration and completion dates are updated and accurate.*

## **Construction Management System (CMS) Unit-Price Contract Reporting**

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### **Comment 16**

**The work order status report produced from CMS for local contractors is incomplete, contains inaccurate data, including unreliable completion dates, and could be more accessible.** During our assessment of that report, which included 197 issued work orders totaling approximately \$180 million, we noted that the report which is provided to the OMCA each month and distributed by the OMCA to the local contractor community:

- Did not include the contract number relating to each issued work order.
- Excluded 23 issued work orders totaling approximately \$15.3 million; included overstated and understated dollar amounts for 29 work orders totaling approximately \$7.4 million and approximately \$3.3 million, respectively; and included approved start dates differing from such dates in 43 issued work orders, with 18 of those dates differing by more than 1 month.

- Included completion percentages for 28 work orders that did not agree to such percentages in construction inspection reports as of the report date or a reasonably recent date.
- Did not include a completion date or a status of “Complete” for 26 work orders with final inspection dates prior to the report date.
- Included work order completion dates not as of a consistent point in time (e.g., substantial completion, final inspection, final acceptance, etc.) for every work order.

Lack of timely contractor access to complete and accurate reporting on the status of issued work orders could result in a lack of contractor confidence in City unit-price contracting.

### **Recommendation 16**

The completeness, accuracy and accessibility of the work order status report distributed to local contractors should be improved by:

- Including the contract number relating to each work order in the report.
- Assigning responsibility for periodic verifications of the completeness and accuracy of CMS data through comparisons of project files to CMS data to a specific employee or employees.
- Coordinating complete and timely entry of construction inspection reports with updated completion percentages in the related database to ensure reporting accuracy.
- Selecting a consistent date to deem work orders complete, preferably upon substantial completion, and ensuring all completion dates are entered in CMS as of that date.
- Giving direct, timely report access to contractors through posting the report on the City’s website and updating the posted report weekly.

### **Public Works Response 16**

*Public Works agrees. As of December 2020, the contract number for each work order has been included in the monthly work order status report provided to street resurfacing unit-price contractors.*

*In response to the Construction Management System (CMS) data accuracy, Public Works is working with IT to resolve several reporting issues. Unfortunately, the current software has errors that cannot be corrected and new software or a rewrite of the program is required. Public Works is currently engaged with Utilities on a new Project Management System (PMS) that may replace the CMS. A consultant has been selected and system development is underway and anticipated to be completed in late 2022. Until new software is available, Public Works will*

*continue to work with all available CMS reports and ensure the system is complete and accurate as possible.*

*Construction status will continue to be entered into the CMS as the software will allow and can be reported. Inspection reports containing construction completion percentages are now available on-line for inspectors, project managers, engineers, and contractors.*

*Substantial completion is defined as the completion date for a project and the completion dates are being entered into the CMS as the software will allow and can be reported.*

*City staff shared the recommendation for weekly reporting to be provided on the City's website with the Oklahoma Municipal Contractors Association Executive Board. The Executive Board which represents the street resurfacing contractors requested the City maintain the current monthly reporting by email prior to scheduled monthly update meetings. City staff will begin to email a weekly status report to the street resurfacing contractors and will continue to provide the monthly work order status report on a monthly basis and upon request.*

#### **Comment 17**

**Reporting of overdue work orders by contractor has not been developed in CMS or used in assessing contractor workloads when making work order issuance decisions.** Public Works began producing a status report from CMS containing all issued work orders and distributing that report to personnel making work order issuance decisions weekly during the investigation. The report contains the same information as the report discussed in Comment 16 (e.g., status, completion percentage, completion date, etc.) plus completion deadlines stated in the work orders and the contract numbers relating to the work orders.

Though overdue contractor work orders can be identified in the report now being used as those without completion dates for which completion deadlines have passed, such work orders are not clearly identified in the report.

Contractor workload assessments may be inaccurate if overdue work orders are not identified and could result in work orders issued to contractors that are behind schedule on work already assigned.

#### **Recommendation 17**

Overdue work orders should be considered when contractor workloads are assessed during work order issuance decisions. Either overdue work orders should be highlighted in the weekly report currently distributed or development of a new report quantifying total work orders issued and overdue by contractor should be considered. Also see Recommendation 16.

As discussed previously, overdue work order information used in assessing contractor workloads would also be useful for evaluating and tracking contractor performance as recommended in the Matrix report and GPL study discussed the Scope & Methodology section of this report.

### **Public Works Response 17**

*Public Works agrees. Staff developed and implemented a new report in November 2020 to document unit-price street resurfacing contractor selections, work order issuances and project costs. The report includes past, current and future projects. As part of weekly unit-price street resurfacing project reviews, overdue work orders are being monitored and late completion project letters are being sent to contractors.*

*Should a contractor repeatedly experience overdue work orders, Public Works will make a report to the City's Prequalification Review Board to review contractor performance. The Board has the authority to schedule a show cause hearing that can address a contractor's inability to perform City work including time of completion. Previous actions have suspended bidding or proceeding on additional projects until the deficiency is corrected and the Board removes conditions placed on contractor's prequalification status. Public Works will utilize the resources of the Prequalification Review Board to address overdue work orders.*

*The report developed by Public Works will be utilized to evaluate and track contractor performance and to assist in making the reports to the Prequalification Review Board as necessary.*

## **Project Management Procedures**

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### **Comment 18**

**A procedures guide developed in 2006 for managing capital improvement projects has not been updated for management of projects completed using unit-price contracts.** Procedures included in the guide only contemplate management of projects completed using lump-sum contracts. Completion of projects using unit-price contracts creates the need for procedures on matters such as selecting contractors for work order issuances, managing work order costs, and verifying contractor billings that are not addressed currently.

Project management procedures that are not updated for projects completed using different contracting methods results in a lack of consistency and accountability in the management of those projects.

### **Recommendation 18**

Procedures for managing capital improvement projects should be updated for management of projects completed using unit-price contracts. Updates should include procedures addressing

matters unique to unit-price contracts, including, but not limited to, contractor selections for work order issuances, work order cost management, and verification of contractor billings.

***Public Works Response 18***

*Public Works agrees. Staff developed revised written procedures for the management of street resurfacing unit-price contracts which are being used on all current and future projects.*

*Staff also developed and implemented new reporting in November 2020 to document street resurfacing unit-price contracts, contractor selections, work order issuances and project costs. The report includes past, current and will also include future projects.*




**MEMORANDUM**  
The City of  
**OKLAHOMA CITY**



**TO:** Jim Williamson, City Auditor  
City Auditor's Office

**THROUGH:** Craig Freeman, City Manager  
City Manager's Office

**FROM:** Eric J. Wenger, P.E., Director  
Public Works Department 

**DATE:** November 8, 2021

**SUBJECT:** Unit-Price Contract Investigation Report Public Works Response

On June 1, 2021, the Public Works Department received a draft report regarding allegations related to unit price contracting on street resurfacing projects. The report included 18 recommendations following an investigation by the City Auditor's office. Below is a summary of the recommendations and departmental responses.

**Recommendation 1**

Item quantities included in future unit price contract bid requests should more reasonably reflect expected project needs based on current conditions and experience to allow for more accurate determination of the lowest overall bid used in contract awards. Also see Recommendation 2.

Including item quantities more reasonably reflecting expected project needs in bid requests would likely be simplified by also determining work locations for inclusion in bid requests as recommended in the GPL study discussed in the Scope and Methodology section of this report.

***Public Works Response 1***

*Public Works agrees. When the unit price street resurfacing contracts were initially developed, the item quantities required for each project were not known. Unit price contracts have been utilized for the past three years and data has been collected during that time. The most recent unit price street resurfacing contracts bid in June 2021 have included updated bid forms that accurately reflect expected project quantities and project needs.*

*Work locations are not known for all projects when bids are advertised and received for unit-price street resurfacing contracts. In response to including work locations in future bid requests, the department has increased the number of hard bid street resurfacing projects and will include project locations in the bidding documents. The hard bid*



*projects are also known as corridor projects where several individual projects are grouped in a geographical area to provide large project bid opportunities to contractors and construction pricing specific to the project locations. In May 2021, Public Works began bidding additional hard bid project opportunities with project locations identified in the bidding documents.*

## **Recommendation 2**

The lowest cost contractor should be identified for each work order. This cost should be used in making work order issuance decisions. Cost estimate calculations should be documented and compared for each contractor using all available contracts.

### ***Public Works Response 2***

*Public Works agrees with modification. Since February 2018, Public Works has successfully administered 138 resurfacing projects for a total of \$187,899,835 utilizing Better Streets Safer City sales tax funding. The method of awarding work orders on unit price street resurfacing projects is based on the lowest and best bid contractor. The procedure for awarding work orders has been included in each bidding document and is part of the bid.*

*To address the cost concerns in the investigation report, updates and changes were made to bid forms in June 2021 to better estimate project quantities and project needs. The total funding authorization for each contract awarded has also been reduced to only provide three to four work orders to be issued under each street resurfacing unit price contract. In addition, street resurfacing unit price contracts will no longer be renewed, and updated bid forms and additional bid opportunities will be sought to ensure best costs are being received on projects and work orders issued.*

*Public Works will document cost estimates with contractors selected and maintain the information in project files for use on future bid opportunities.*

## **Recommendation 3**

When work orders are issued to contractors that are not the lowest cost, documented assessments of the lowest cost contractors' workload should be included in the related project files to support that decision.

Overdue work order information identified when assessing contractor workloads could also be useful for evaluating and tracking contractor performance as recommended in the Matrix report and GPL study, respectively, discussed the Scope and Methodology section of this report.

### ***Public Works Response 3***

*Public Works Agrees. Improved project files and new documentation were implemented in February 2021 to better document the selection of contractors for each work order. The new documentation allows each contractor to respond in writing when accepting or rejecting a proposed work order. The documentation records when the lowest and best bid contractor chooses to not accept work orders. The contractor responses are being maintained in the project file for future reference.*

*New reporting was implemented by the department in November 2020 to record awarded contracts, contract capacities, work orders, costs and project completions. The new report documents overdue work and addresses the recommendation made in the Matrix Consulting Group report for tracking and evaluating contractor performance.*

#### **Recommendation 4**

The immediate supervisor of those selecting contractors for work order issuances, the Division Head, if different, and the Department Director or Assistant Director should review and approve documentation supporting contractor selections for adequacy and consistent application of selection criteria.

#### ***Public Works Response 4***

*Public Works Agrees. A new procedure was implemented in November 2020 for the Paving Engineering Section Head to review and recommend all project estimates and work orders prior to submitting a work order to the Public Works Director/City Engineer for final review and signature.*

#### **Recommendation 5**

The criteria by which bids will be considered for contract awards should be included in all unit-price contract bid requests contemplating the award of multiple contracts.

#### ***Public Works Response 5***

*Public Works agrees. The original goal of the Better Streets Safer City program was to expedite work orders to provide for a rapid delivery of street resurfacing projects*

*No additional unit price street resurfacing projects have been advertised or bids received that have allowed contract awards exceeding the 10% award rule. All bidding documents and project specifications include the criteria for how bids will be considered and awarded.*

#### **Recommendation 6**

The anticipated contract amount should be included in all unit-price contract bid requests to ensure submitted bids are competitive and work is completed at the lowest possible cost.

Management should also consider requesting new bids when anticipated costs significantly increase.

#### ***Public Works Response 6***

*Public Works agrees. All current and future bid opportunities will identify the contract amounts and no existing street resurfacing unit price contracts will be renewed or extended. New bids will be advertised and received as contracts expire or utilize their authorized contract funding amounts.*

**Recommendation 7**

Consideration should be given to reducing the overall frequency with which unit-price contracts are rebid to reduce the number of active contracts thereby improving contracting efficiency.

***Public Works Response 7***

*Public Works agrees. The numerous overlapping street resurfacing unit price contracts will expire by October 31, 2021. Beginning June 2021, new street resurfacing unit price contracts have been bid to replace expired contracts. New bids in the future will only be considered as the previous unit price contracts funding authorization is fully utilized or the contract expires.*

**Recommendation 8**

Cost estimates should be updated and approved by an immediate supervisor and the Division Head, if different, and the Department Director or Assistant Director before purchase orders are issued or increased beyond original work order cost estimates. Work orders with final cost estimates should also be reissued to contractors when such cost estimate increases occur.

***Public Works Response 8***

*Public Works agrees. Staff implemented a new documentation process in November 2020 that is being used when increasing purchase order amounts for street resurfacing unit price contracts. Documentation is provided to justify the increase in costs and determines if there is an increase in the work order amount. The Section Head now approves the proposed increases or decreases before the Director or designee reviews and signs the updated work order.*

**Recommendation 9**

Reports comparing actual completed work order costs to original cost estimates should be developed, routinely reviewed by management personnel, significant variances identified, and the reasons for those variances documented in the related project files.

***Public Works Response 9***

*Public Works agrees with modification. New reporting has been developed and is in use for improved financial management of street resurfacing unit price projects. The reports are being utilized on the Better Streets Safer City projects. Both overruns and underruns have been documented and the individual street resurfacing project budgets have been adjusted. The adjustments are documented with revised Implementation Plans recommended by the BSSC Advisory Board and approved by the City Council. Underruns totaling \$21,200,000 on projects have already been realized and these funds have been allocated to new projects under the program. Beginning October 2021, a quarterly report will be developed to be reviewed by both project managers and financial staff to review variances in cost estimates compared to final project costs. Any variances requiring correction will be completed and reports will be maintained in project files.*

**Recommendation 10**

Project Managers should ensure complete inspected quantities are recorded in City inspection records to allow for a complete and accurate confirmation of invoiced quantities and agree all invoiced quantities to City inspection records before authorizing payments.

The Matrix report discussed in the Scope & Methodology section of this report also includes a recommendation that Project Managers confirm all invoiced quantities using inspection records containing complete inspected quantities recorded consistently by construction inspectors.

***Public Works Response 10***

*Public Works agrees. Inspection reports and pay invoices are expected to be accurate. The contractor, inspector, and engineer currently meet in the field to review pay invoices before the contractor submits a completed invoice for payment. Discrepancies identified in the inspection reports will be reconciled to ensure the invoiced quantities are correct before authorizing payment.*

*To address the Matrix report recommendations, Public Works will implement a training program for Engineering project managers to improve the project documentation process. By December 2021, Public Works will provide project managers with a Project Management Procedures Manual and training to include project manager review of inspection reports and use of inspection reports to confirm invoiced quantities.*

**Recommendation 11**

Each contractor invoice should be reviewed to confirm billed prices agree to contract prices and all charges comply with contract terms before invoice payment is authorized.

***Public Works Response 11***

*Public Works agrees. Training has been completed with both project managers and finance staff to avoid this issue from occurring in the future. Finance staff are also working directly with project managers to ensure invoices are accurate and include correct contract prices.*

**Recommendation 12**

When inadequate spending authority remains on originally designated contracts to complete work orders initiated on those contracts, Public Works should either:

- Obtain City Council approval of an amendment to the original contract amounts, or
- Issue new work orders to the contractors on different contracts and confirm subsequent billings are at correct prices before payments are authorized.

***Public Works Response 12***

*Public Works agrees. Training has been completed with both project managers and finance staff to avoid this issue from occurring in the future. Finance staff are also working*

*directly with project managers to ensure invoices are accurate and include correct contract prices.*

**Recommendation 13**

Public Works should work with Information Technology and Finance to identify and correct the cause of the incomplete result produced by the PeopleSoft query used to monitor remaining spending authority available on contracts.

***Public Works Response 13***

*Public Works agrees. Public Works has worked with both IT and Finance, and a new document using a query from PeopleSoft is now available and being used to monitor spending authority for street resurfacing unit price contracts.*

**Recommendation 14**

The accuracy of expiration dates for all unit-price contracts entered in PeopleSoft since February 2019 should be reviewed and expiration dates for those entered with three-year terms revised to one-year terms. Additionally, incomplete POs issued on expired contracts, if any, should be identified, cancelled, and reissued on valid contracts.

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Please let me know if you have questions or if you need any additional information.

Attachment