



Santa Clara Valley Water District

File No.: 19-0118

Agenda Date: 2/26/2019

Item No.: 4.1.

BOARD AGENDA MEMORANDUM

SUBJECT:

Recommendation from Board Audit Committee to Receive and Discuss the Final Audit Report and Management Response for the Performance Audit of Lower Silver Creek Flood Protection Project, Agreement No. A3277G.

RECOMMENDATION:

Receive and discuss a presentation of the final audit report and management response for the performance audit of the Lower Silver Creek Flood Protection Project, Agreement No. A3277G (Lower Silver Creek Flood Protection Performance Audit), from PMA Consultants.

SUMMARY:

The Board Audit Committee (Committee) was established to assist the Board of Directors, consistent with direction from the full Board, to identify potential areas for audit and audit priorities, and to review, update, plan and coordinate execution of Board audits.

At the January 22, 2019, Board Audit Committee meeting, the Committee directed staff to have PMA Consultants present the final audit report and final management response for the Lower Silver Creek Flood Protection Performance Audit to the full Board. The final audit report is included in Attachment 1. The management response is included in Attachment 2.

Background

The Lower Silver Creek Flood Protection Project was identified in the 1986 Benefit Assessment Program and was enabled to protect the surrounding area by removing 3,800 parcels from the 1% floodplain and to improve stream habitat values. The Lake Cunningham Project was also necessary to provide 1% flood protection to areas along Lower Silver Creek. The federal sponsor is the United States Department of Agriculture (USDA), through its Natural Resources Conservation Service (NRCS). The NRCS was the lead agency in the development of the original 1983 Watershed Plan and the 1988 Alternative Analysis Plan Update. In 2000, the Santa Clara Valley Water District (District) initiated the Coyote Watershed Program to accelerate work in the Watershed which included the Lower Silver Creek Project and the Lake Cunningham Project. Improvements for Lower Silver Creek Reaches 1-3 were constructed. Although project designs were nearly completed for Reaches 4-6, improvements to these reaches and to the Lake Cunningham facility were not constructed due to funding limitations and were consequently deferred.

Due to the completeness of design (ranging from 90-100%), District staff identified Reaches 4-6 (Project) as a “shovel ready” project eligible for federal funds. On April 16, 2009, the USDA Secretary Vilsack announced that the Lower Silver Creek project would receive \$2 million in federal economic stimulus funds through the NRCS as part of the American Recovery and Reinvestment Act (ARRA) of 2009. The terms and conditions applicable to the District’s award of the federal economic stimulus funds associated with Reaches 4-6 required the District to award the first contract for project construction no later than August 2009; a very tight timeline. As the District did not have the management and services staff available to support the Project, and since the short timeline was deemed as critical, a sole-source procurement strategy was made to utilize consultant staffing associated with previous Reaches. In June 2009, RMC Water and Environment (RMC) was contracted and issued a notice-to-proceed for the Project.

To comply with the August 2009 deadline, the first contract awarded (allowing for access to federal stimulus funding) was the construction of Reach 6B Early Grading work, from Moss Point Drive to Cunningham Avenue. As a condition upon receiving initial grant funding, District executed a construction contract for the Early Grading work. It was the first phase prior to final design and construction of the preferred channel configuration.

In order to receive an additional approximate \$16 million of federal stimulus funding for the previously deferred Reaches 4- 6A Project, the District was required to award the subsequent professional services contracts for project management, permitting, design and coordination during construction by August 2010. On June 17, 2009, the District issued a notice-to-proceed with Agreement A3277G to RMC.

At the October 27, 2015, Board meeting, the Board received a staff report in response to a Board Request related to recent media coverage. A financial review of the Project’s finances and grants was also conducted through the Chief Financial Officer’s Office and the results were presented as part of staff’s report to the Board.

As a result, the Board took action to refer to its Committee an audit of the Lower Silver Creek Flood Protection Project Consultant Agreement with RMC, consideration of whether additional audits should be considered by the Board, and an audit of District processes relating to Conflict of Interest between contractors and staff; and bring discussion back to the Board that includes the March 10, 2015, Consultant Contracts Management Process audit.

At Board’s December 8, 2015, meeting, the Board received a District Counsel report of fact finding conducted as a result of an ethics/misconduct complaint. The Board noted the information and took no formal action.

At the Committee’s March 25, 2016, meeting, the Committee discussed and directed staff to prepare a scope and schedule for Committee review and to commence a Board-commissioned audit of the Lower Silver Creek Flood Protection Project Agreement with RMC Water and Environment (A3277G), including all agreement amendments. The scope of the performance audit focused on policies, procedures, and resources. A financial review was not included in the original audit scope. The

results of staff's financial review were presented to the Board on October 27, 2015.

At the July 7, 2016, Committee meeting, the Committee approved the audit scope and directed staff to issue a Request for Proposal (RFP).

The RFP was released on August 12, 2016, through September 9, 2016. A total of three proposals were received and two firms were interviewed. The highest ranked firm was PMA Consultants LLC (PMA). The District and the Committee evaluated the proposals, conducted interviews, and selected PMA to conduct the performance audit.

On January 18, 2017, a notice to proceed was issued to PMA Consultants to conduct the Lower Silver Creek Flood Protection Performance Audit.

At the February 27, 2018, Board meeting, the Board approved the Board Audit Committee's recommendation to expand the scope of the Lower Silver Creek Flood Protection Performance Audit to include:

- A financial review to ensure that there was no double billing and no billing for work that was not done, including additional analysis on the October 27, 2015, verbal report to the Board that considers whether the invoices followed appropriate financial review and approval processes and followed appropriate preparation and submittal processes; and
- A review of media allegations in newspaper reports and video and ensure that they have been addressed.

On October 30, 2018, PMA presented the Preliminary Draft Audit Report to District management for review and comment.

At the December 3, 2018, Board Audit Committee meeting, PMA presented the Final Draft Audit Report to the Committee. The Committee also received the Final Draft Management Response to the audit recommendations. The Committee directed staff and PMA to return to the BAC to further discuss the Final Draft Audit Report and the Final Draft Management Response.

At the January 22, 2019, Board Audit Committee meeting, the Final Draft Audit Report (Attachment 1) and the Final Draft Management Response (Attachment 2) were reviewed and discussed, and the Committee directed staff to have PMA Consultants present the final audit report and final management response for the Lower Silver Creek Flood Protection Performance Audit to the full Board.

A key finding from the audit was that District staff compliance with policy and process was inconsistent. This was predominantly associated with post award contract management, and specifically, change management and project document control. Accordingly, PMA highly recommends implementing compliance audits on an "as you go" basis at key project intervals (mobilization, 30% design, pre-construction, etc), which would provide an ongoing basis to gauge employee understanding and policy conformance.

Based on the auditor's comments, the BAC recommends that staff use the Quality Environmental Management System's Corrective and Preventive Action Request process as part of the response to PMA's audit-as-you-go and construction contract close-out audit recommendations for capital projects.

FINANCIAL IMPACT:

There is no financial impact with this item.

CEQA:

The recommended action does not constitute a project under California Environmental Quality Act (CEQA) because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

Attachment 1: Final Audit Report
Attachment 2: Management Response
Attachment 3: PowerPoint

UNCLASSIFIED MANAGER:

Darin Taylor, 408-630-3068