



NEBRASKA AUDITOR OF PUBLIC ACCOUNTS

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June 14, 2021

Kathy Cummings, Board Chairperson
Village of Rogers
1455 2nd Street
Rogers, NE 68659

Dear Ms. Cummings:

As you may know, the Nebraska Auditor of Public Accounts (APA) has received concerns regarding the Village of Rogers's (Village) procurement procedures and expenditures related to a Federal Emergency Management Agency (FEMA) project to demolish an old and vacant schoolhouse. As a result, the APA began limited preliminary planning work to determine if a full financial audit or attestation would be warranted. Pursuant thereto, the APA requested relevant financial and other documentation from the Village. Based on the outcome of this preliminary planning work, including a review of the information provided, the APA has determined that a separate financial audit or attestation is unnecessary at this time.

However, during the course of the preliminary planning work, the APA noted certain issues that need corrective action, as presented below.

Procurement Procedures

Upon examination of the Village documentation provided, the APA noted that the Village Board (Board) selected the most expensive bid submitted for demolishing the old schoolhouse. The table below shows the companies that bid on the demolition work sought by the Village and the amounts of those bids:

Vendor	Amount
Cech Excavating, LLC	\$ 11,750
Kohl Construction, Inc.	\$ 26,200
Schutt Construction, Inc.	\$ 9,965

The following timeline, which was created from information provided by the Village, details the significant events surrounding the bid selection at issue:

- On July 27, 2020, the Village received a Subgrant Application award (SA 1775) of \$93,859.53 for a FEMA project. The purpose of that project was to restore to its pre-disaster condition an old and vacant schoolhouse in which the Board conducted its meetings. The schoolhouse had been damaged during the flooding that occurred in 2019.
- On August 18, 2020, \$79,153.05 of the FEMA project funds were disbursed to the Village and deposited into its main checking bank account.
- On September 3, 2020, the Village requested an Alternate Project for SA 1775, which would change the scope of work for the project. Instead of restoring the schoolhouse to its pre-disaster condition, the new scope of work would be to tear down the schoolhouse and use the remaining funds to repair a road. In this request, the Village specified that Kohl Construction, Inc., would be the company providing the demolition services. The request included a bid of \$25,750 from Kohl Construction, Inc., dated October 10, 2019.

- On September 9, 2020, the Board instructed the Village Clerk (Clerk) to transfer the FEMA award money from the Village's main checking bank account to its money market bank account.
- On September 15, 2020, \$79,153.05 was transferred from the Village's main checking bank account to its money market bank account.
- On October 28, 2020, FEMA approved the Village's Alternate Project request for SA 1775.
- On December 9, 2020, the Board instructed the Clerk to transfer the FEMA award money from the Village's money market bank account to its main checking bank account. The Board also explained that it would be seeking additional bids for the demolition of the schoolhouse.
- On December 11, 2020, \$83,109.53 was transferred from the Village's money market bank account to its main checking bank account. This amount included the \$79,153.05 award from FEMA plus an additional \$3,956.48.
- On January 13, 2021, the Board announced that it had received the following three bids for the demolition of the schoolhouse: Cech Excavating, LLC, bid of \$11,750; Kohl Construction, Inc., bid of \$26,200; and Schutt Construction, Inc., bid of \$9,965. The Board did not select a bid at that time.
- On February 10, 2021, the Board approved a motion to select the bid of \$26,200 from Kohl Construction, Inc., to provide demolition services for the schoolhouse.
- On April 14, 2021, the Board approved payment of \$26,200 to Kohl Construction, Inc., for demolition of the schoolhouse, removal of four large trees, and regrading and reseeding of the area around the demolition site.

Per discussion with the Clerk, the actual solicitation of bids for the demolition of the schoolhouse was not documented. Instead, a Board member who was acquainted with companies in the area that performed demolition and other such services reached out verbally to those companies and requested that they observe the schoolhouse property and provide a bid for the cost of demolition. According to the Clerk, moreover, neither State statute nor Federal regulations required the Village to solicit bids for the demolition of the schoolhouse.

Upon review of the relevant State statutes and Federal regulations, the APA agrees that the Village was not required to go through a formal bidding process for the procurement of the demolition services for the schoolhouse. However, the Village does appear to have pursued an informal bidding process, selecting a proposal that was significantly higher than the other two bids. See **Attachments A, B, and C** herein for copies of the bids received by the Village.

The Board's meeting minutes for January 13, 2021, specify the three bids that the Village received for the schoolhouse demolition project, as shown in the excerpt below. Cech Excavating, LLC, is located in Clarkson, NE, and both Kohl Construction, Inc., and Schutt Construction, Inc., are based out of Schuyler, NE.

The village has 3 bids on the old school teardown and haul away. Cech Excavating \$11,750; Kohl's-26,200; Schutt's-9,965. Rowlands commented that Ben Hurst wanted to possibly put in a bid. Zrust will contact Ben on this. Kathy Cummings announced that she will call a special meeting on this as soon as all the bids are in.

In the next meeting on February 10, 2021, the Board voted to accept the bid from Kohl Construction, Inc., as shown in the following excerpt from the minutes.

A motion was made by J. Cummings and seconded by Zrust to take the Kohl Construction bid of \$26,200 to tear down the old school and haul away. All in favor, motion carried.

During the following meeting on March 10, 2021, the Board approved a revision to the meeting minutes from February 10, 2021, to clarify that one Board member, JoAnne Rowland, had voted against the motion to accept the bid from Kohl Construction, Inc. That revision is shown below.

Agenda Item # 2 Reading of Minutes:

After reading of the minutes a correction to the voting on the Kohl Construction bid to tear down the old school and haul away was made to show that the motion was not all in favor, Rowlands had voted no, so it was majority passed. A motion was made by Noyd and seconded by Zrust to accept the corrected last month's minutes. All in favor, motion carried.

The Clerk explained that the Board chose the most expensive of the three bids because the highest bidder, Kohl Construction, Inc., promised additional services not offered by the other two companies that had bid on the project. However, the bidding documentation from these three companies – as can be seen in **Attachments A, B, and C** herein – show that, at least between Kohl Construction, Inc., and Schutt Construction, Inc., the services to be provided were quite similar. Based on this documentation, the APA was unable to identify exactly what additional services Kohl Construction, Inc., offered the Village to warrant charging an additional \$16,235 more than would have been paid to Schutt Construction, Inc.

The meeting minutes from February 10, 2021, provide, perhaps, additional insight as to why the Board voted to accept the bid from Kohl Construction, Inc. As shown in the meeting minutes excerpt below, Michelle Evert, the Colfax County Deputy Emergency Manager, told the Board Chairperson, Kathy Cummings, that the Village should essentially spend down as many Federal funds as possible.

Kathy Cummings informed the board that per a conversation with Michelle Everet on Extra FEMA old school tear down money and a possible alternate project of building a town hall with it, Michelle said the EPA would have to be involved and way too much paperwork and no guarantee of accepting another alternate project, Michelle advised to use as much money as possible for tear down and close out this project and then NEMA would probable come back with their 12 1/2%.

Despite formally approving the bid from Kohl Construction, Inc., during the February 10, 2021, meeting, the Board appears to have decided several months earlier. The following image shows an excerpt of a September 3, 2020, letter addressed to the Nebraska Emergency Management Agency (NEMA), which was submitted along with other documentation as a part of the Village's request for an Alternate Project for SA 1775. See **Attachment D** herein for a copy of the letter to NEMA in its entirety.

Dear Mr. Christensen,

Village of Rogers is requesting an Alternate Project for PW 1775.

Village of Rogers has respectfully submitted an Alternate Project Request for PW 1775. This project was initially approved to repair the Old Schoolhouse, to bring it back to pre-disaster condition.

The Village Board feels it would be in their best interest to tear down the schoolhouse and use the rest of that funding to repair the asphalt road. The schoolhouse will be torn down by Kohl Construction, Inc. He will demo the building, remove concrete footings and regrade the building area. The schoolhouse does not have a basement so there will not be a lot of dirt hauled in. Kohl construction will utilize the dirt that is on site.

In addition, one of the Board members appears to be related to the spouse of the owner of Kohl Construction, Inc. That relationship would not trigger any of the conflict of interest prohibitions for public officials found in the Nebraska Political Accountability and Disclosure Act, which is set out at Neb. Rev. Stat. § 49-1401 (Cum. Supp. 2020) et seq. It is not unreasonable, however, to consider that such a relationship may have affected the Board's decision to select Kohl Construction, Inc., to perform the demolition of the schoolhouse. Indeed, as shown above, the Board appears to have decided as early as September 3, 2020, to contract with that company. Such a decision would have been made five months before the Board's actual February 10, 2021, vote to accept the bid. The Kohl Construction, Inc., bid itself is dated October 10, 2019, which is 16 months prior to the Board meeting in February 2021, and it appears to have been the basis for the cost estimate the Village used for the demolition of the schoolhouse.

Regarding the bidding procedures of political subdivisions, the Nebraska Attorney General has offered the following observation:

The purpose of public lettings, of course, is to facilitate the accomplishment of public projects at the lowest cost possible consistently with responsibility.

Op. Att'y Gen. No. 96 (November 1, 1973). While the Village may not have been required to seek bids for the demolition services sought, the Attorney General's comment about the underlying cost-saving purpose of the bidding process remains significant nonetheless. Accepting a bid some \$16,235 higher than that of a competitor offering virtually identical services appears to fly in the face of this common-sense admonition.

It should be noted also that both State statute and Federal regulations do have some important application to proper bidding procedures and the expenditure of Federal grant monies. To start, though not mandating the acceptance of bids, Neb. Rev. Stat. § 73-101 (Reissue 2018) does require adherence to specific procedures whenever "bids for supplies or work, of any character whatsoever, are received" by a political subdivision. Likewise, 2 CFR § 200.403(a) requires the expenditure of Federal grant funds to be "necessary and reasonable for the performance of the Federal award and be allocable thereto" under governing principles.

Moreover, particularly when costly projects are involved, good internal control requires any formal or informal solicitation of bids by the Village, even if not required by State statute or Federal regulations, to be subject to procedures that ensure public funds are being expended responsibly, and the best goods or services are being obtained at a reasonable price.

Without such procedures, there is an increased risk for the loss or misuse of public funds.

We recommend the Village implement procedures to ensure that any formal or informal solicitation of bids by the Village, even if not required by State statute or Federal regulations, is subject to procedures that ensure public funds are being expended responsibly, and the best goods or services are being obtained at a reasonable price.

Village Response: The Village of Rogers never meant to defraud or misuse the funds allocated to us by FEMA. We felt that we were following proper procedures.

In the future, I and the members of the Board of Trustees for the Village of Rogers will be more diligent in following proper procedures when asking for bids/estimates and awarding those contracts.

* * * * *

The preliminary planning work that resulted in this letter was designed primarily on a test basis and, therefore, may not bring to light all existing weaknesses in the Village's policies or procedures. Nevertheless, our objective is to use the knowledge gained during the performance of that preliminary planning work to make comments and suggestions that we hope will prove useful to the Village.

Draft copies of this letter were furnished to the Village to provide its management with an opportunity to review and to respond to the comment and recommendation contained herein. Any formal response received has been incorporated into this letter. Such response has been objectively evaluated and recognized, as appropriate, in the letter. A response that indicates corrective action has been taken was not verified at this time.

This communication is intended solely for the information and use of the Village and its management. It is not intended to be, and should not be, used by anyone other than those specified parties. However, this letter is a matter of public record, and its distribution is not limited.

If you have any questions regarding the above information, please contact our office.

Audit Staff Working on this Examination:

Craig Kubicek, CPA, CFE – Assistant Deputy Auditor

Mason Culver – Auditor II

Sincerely,

A handwritten signature in cursive script that reads "Mary Avery". The signature is written in black ink and is positioned to the left of the typed name and title.

Mary Avery
Special Audits and Finance Manager
Phone (402) 471-3686
mary.avery@nebraska.gov

VILLAGE OF ROGERS
CECH EXCAVATION, LLC BID DOCUMENT

Attachment A

Cech Excavating

\$11,750⁰⁰

use clay
to fill in
crawl space
instead of dirty
sand.

VILLAGE OF ROGERS
KOHL CONSTRUCTION, INC. BID DOCUMENT

Attachment B

Kohl Construction, Inc.

959 Road 15
Schuyler, NE 68661
Phone (402) 352-5779

BID

Date	BID #
10/10/2019	587Revised

Name / Address
Village of Rogers Attn: Darlene Divis 160 Center St Rogers, NE 68659

Description	Qty	Rate	Total
Demo old school building, haul debris to Butler County Landfill, remove concrete footings, and regrade building area, lump sum	1	25,000.00	25,000.00
Additional cost due to increase in C & D tipping fees and trucking rate, Lump sum	1	1,200.00	1,200.00
We will need a copy of the asbestos survey prior to starting the demolition.			
This bid does not include any asbestos removal or the disconnecting of any utilities.			
Thank you!			
Any questions, please call (402) 615-0397.			
Total			\$26,200.00

VILLAGE OF ROGERS
SCHUTT CONSTRUCTION, INC. BID DOCUMENT

Attachment C



SCHUTT CONSTRUCTION, INC.

631 Road 8
Schuyler, NE 68661
Phone: (402)352-2396 or (402)615-0687
Email: schutt.68661@gmail.com

VILLAGE OF ROGERS
C/O RUDY ZRUST
1490 3rd STREET
ROGERS, NEBRASKA
68659

DECEMBER 17. 2020

QUOTE ON TAKING DOWN SCHOOL HOUSE AND HAULING TO BUTLER COUNTY LAND FILL.
ESTIMATES ON LAND FILL FEE.

HAULING TO LAND FILL	\$2,565.00
HAUL FOOTING, SIDE WALK, AND ALL CEMENT OUT	\$500.00
HAUL FILL INTO LEVEL OFF SCHOOL SITE.	\$1,500.00
MACHINE HIRE EXCAVATOR	\$3,400.00
QUOTE ON YOUR PROJECT	\$2,000.00
	\$9,965.00

THANK YOU FOR LETTING US GIVE YOU @ QUOTE ON YOUR PROJECT:

IF YOU HAVE ANY QUESTION PLEASE CALL.

WE COULD START ON YOUR PROJECT AS SOON YOU LET US KNOWN IF WEATHER
IS FIX.

SCHUTT CONSTRUCTION INC.

A handwritten signature in cursive script, appearing to read 'Ray Schutt', written over a horizontal line.

RAY SCHUTT

VILLAGE OF ROGERS
LETTER TO NEMA REQUESTING ALTERNATE PROJECT

Attachment D

Village of Rogers
Kathy Cummings, Chairperson
160 Center Street
Rogers, NE 68659

September 3, 2020

Mr. Donny Christensen, Administrator
Recovery Section
Nebraska Emergency Management Agency
2433 N.W. 24th Street
Lincoln, NE 68524

Attn: Kyle Winchell

RE: Alternate Project Request
FEMA-4420-DR-NE
Village of Rogers
FIPS#: 037-42145-00
PW 1775
CATEGORY E

Dear Mr. Christensen,

Village of Rogers is requesting an Alternate Project for PW 1775.

Village of Rogers has respectfully submitted an Alternate Project Request for PW 1775. This project was initially approved to repair the Old Schoolhouse, to bring it back to pre-disaster condition.

The Village Board feels it would be in their best interest to tear down the schoolhouse and use the rest of that funding to repair the asphalt road. The schoolhouse will be torn down by Kohl Construction, Inc. He will demo the building, remove concrete footings and regrade the building area. The schoolhouse does not have a basement so there will not be a lot of dirt hauled in. Kohl construction will utilize the dirt that is on site.

The debris will be hauled by utilizing side dumps and taken away to the Butler County Landfill, 3588 R Road, David City, NE 68632. The GPS coordinates in digital are: 41.26265 -97.0421027777. That is the closest dumping site that can handle this kind of material.

The board thought that there might be some asbestos in the building but had a survey done, there is no asbestos in the building, I am attaching the report from Robert H. Krepel Jr. LLC along with a copy of his permit.

With that being said the Village of Rogers Board is asking to utilize the remaining balance of funds to cover the cost of the asphalt road.

Here is a breakdown of the funding and where the extra funding will be used:

FEMA approved to repair the building	\$93,859.53
The estimate to remove the building	-\$25,750.00
Allowance for any unforeseen issues	<u>-\$5,000.00</u>
Leaving a total of	\$63,109.53

The asphalt road cost	<u>\$64,967.00</u>
Leaving the village to pay out of their funds	-\$1,857.47