



Proprietary & Confidential

FINAL REPORT

City of Cupertino

CUPERTINO LIBRARY EXPANSION PROJECT CONSTRUCTION AUDIT

April 20, 2023

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April 20, 2023

Pamela Wu
City Manager, City of Cupertino
10300 Torre Avenue
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Dear Pamela:

Thank you for the opportunity to perform the construction close-out audit for the Cupertino Library Expansion project. This report summarizes the results of our close-out audit and project controls review.

This engagement was performed in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants. The scope of this engagement is outlined in the body of our report. This report was developed based on information from our review of construction projects and records.

This report is intended solely for the use of the City of Cupertino, and may not be provided to, used, or relied upon by any third parties. Moss Adams LLP does not accept any responsibility to any other party to whom this report may be shown or into whose hands it may come.

We appreciate the opportunity to help you continuously improve your construction program performance. Please do not hesitate to contact us if you have any questions or need further assistance regarding this important matter.

Sincerely,

Moss Adams LLP
San Francisco, CA

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I. EXECUTIVE SUMMARY

During the construction close-out audit of the City of Cupertino’s (the City) Cupertino Library Expansion (the Project), Moss Adams LLP (Moss Adams, we, our) identified \$327 in questioned costs, as well as project control opportunities. Questioned costs are charges that are not allowable per the construction contract (the Contract) between the City and Rodan Builders, Inc. (the DBE). Overall, the results of the audit are consistent with a positive audit, with eight of the nine observations relating to recommendations surrounding improvements and enhancements to the City’s existing procedures and control environment to supported continued consistency amongst City Project Management personnel. As part of this audit, we also identified several good practices relating to the capital project, including:

- Project management teams consist of experienced construction professionals.
- Contractor project expenditures documentation was effectively sourced, maintained, and managed.
- Strong collaboration and good working relationship among City and Contractor project management personnel was observed.

The table below summarizes the questioned and unsupported costs identified during our review. Summary observations and future improvement opportunities have also been provided below.

OBSERVATION NO.	QUESTIONED AND UNSUPPORTED COSTS	COSTS CHARGED
1	Questioned Non-Compliant Change Order, Foreman Rate	\$327
Total Questioned and Unsupported Amounts		\$327

1. **Questioned Non-Compliant Change Order, Foreman Rate** - The DBE charged the City for Foreman labor rates in excess of actual costs as determined by DBE payroll reports, resulting in \$326.83 of questioned labor costs (see Observation No. 1 in the report body for further information).
2. **Contract Compliance -Excessive Change Order Markups** - The methodology implemented to revise the scope included within PCO 19R2 may have led to \$5,853.75 of unnecessary DBE fee markups (see Observation No. 2 in the report body for further information).
3. **Contract Compliance – Inadequate Skilled Labor Documentation Control** - The DBE did not adequately report compliance with Skilled and Trained Workforce documentation requirements (see Observation No. 3 in the report body for further information).
4. **Contract Compliance – Payment Application Controls** - Select payment applications reviewed were not fully executed (see Observation No. 4 in the report body for further information).
5. **Contract Compliance – Inadequate Lien Waiver Controls** - The DBE’s support did not include a conditional lien waiver for one payment application reviewed (see Observation No. 5 in the report body for further information).
6. **Contract Compliance – Inadequate Flow Down Provisions** - The DBE did not include the prime contract flow down clause in its subcontracts (see Observation No. 6 in the report body for further information).



7. **Contract Compliance Design-Builder (DBE) Self-Performed Change Order Delivery Method** - The DBE did not sufficiently substantiate its self-performed costs in its requests for extra work, resulting in \$14,681.67 of unsupported costs (see Observation No. 7 in the report body for further information).
8. **Contract Compliance – Inadequate Drawing Rights Secured Confirmation** - The DBE did not provide the City with evidence of right of use for the Project’s design (see Observation No. 8 in the report body for further information).
9. **Contract Compliance – Incorrect Payment Application Calculations** - The DBE included a calculation error as part of Design Application No. 8D (see Observation No. 9 in the report body for further information).

Future Considerations

Contract Type and Cost of Work Definitions Process Improvement: On future projects of this size, or larger, the City should continue to evaluate the City’s ability to use a Guaranteed Maximum Price (GMP) contract type with a right-to-audit clauses with strong cost of work definitions for cost types such as labor, equipment, direct cost, materials, insurance markups and fees to support the City with budget management and cost control on major capital projects.

Deductive Change Order Markups Process Improvement: The City’s prime contract does not appear to allow the City to recuperate the full cost benefit of deductive change orders. Contract Article 6.3 states, “Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work), will include allowed markup for overhead, profit, and other indirect costs.” Several instances were observed where deductive change orders did not include the associated deduction in fees and markups as stipulated in the Contract. However, allowing the City to recover markups on reduced scopes would be beneficial to the project and the City.

Project Oversight Process Improvement: The City’s agreement with Griffin Structures, the City’s Representative, was executed in late October 2020, while the first application for payment from the DBE was submitted at the end of September 2020. The City should continue to evaluate adequate staffing levels on other projects and engaging representatives early enough to ensure appropriate levels of skills and expertise are available to successfully guide a project during the critical early phases.



II. OBJECTIVE AND SCOPE

The primary focus of the close-out construction cost audit was to evaluate construction controls for the Project to determine their reasonableness and adherence to the terms of the construction contract. This report reflects practices observed and cost documentation reviewed through July 31, 2022. As part of the construction audit, we performed the following procedures:

- Reviewed payment documentation and calculations to assess the adequacy of supporting documentation for the DBE
- Assessed internal controls surrounding the DBE's and City's processes
- Reviewed Contract terms and identified areas not properly implemented
- Reviewed Contract terms and identified areas of potential improvements
- Reviewed select subcontractor agreements for compliance with prime contract requirements
- Analyzed change orders including markup testing
- Reviewed lien release and insurance documentation
- Reviewed skilled workforce requirement documentation
- Performed other miscellaneous testing procedures as necessary
- Conducted interviews as necessary
- Reviewed the DBE's and subcontractors' Certificates of Insurance
- Checked subcontractors' state licenses



III. PROJECT OVERVIEW

We performed this review using the most current contractor payment application, which was Construction Phase Payment Application No. 15C through July 31, 2022. The following table provides a summary of the Project billing and costs reviewed as part of the audit:

PAYMENT APPLICATION SERIES	CONTRACT AMOUNT	AMOUNT BILLED	PERCENTAGE COMPLETE	COST REVIEWED THROUGH
Design Phase	\$648,014.55	\$648,014.55	100%	6/30/2021
Construction Phase	\$6,314,069.67	\$6,314,069.67	100%	7/31/2022
Total	\$6,962,084.22	\$6,962,084.22	100%	7/31/2022



IV. DETAILED OBSERVATIONS AND RECOMMENDATIONS

This section provides the details of our observations, risks, and recommendations as well as City responses. The following audit observations have been ranked as high, medium, or low priority based upon our analysis and experience with respect to probability and potential impact on the construction project costs, schedule, and scope goals.

1 Questioned Non-Compliant Change Order, Foreman Rate

MEDIUM - HIGH RISK

The DBE charged the City for Foreman labor rates in excess of actual costs as determined by DBE payroll reports, resulting in \$326.83 of questioned labor costs. We reviewed change orders 01 through 08 totaling \$485,916.22. Based on our review, we observed two instances where labor rates did not align with DBE payroll reports provided. Article 6.3.C.1 of the Contract states the allowable labor cost on change orders is, “15% for overhead and profit.” The table below summarizes the labor billings and excess charges:

Potential Change Order (PCO)/ Owner Change Order (OCO)	Description	Labor Billing Rate	Labor Cost Rate per Labor Reporting	Labor Billing Rate vs Cost Rate Variance
PCO 09/06	8 Foreman labor hours	\$119/hr	\$99/hr	\$20/hr
PCO 10/07	6 Foreman labor hours	\$119/hr	\$99/hr	\$20/hr
Subtotal				\$280.00
Self-Performed Mark-up at 15%				\$42.00
Bond Mark-up at 1.5%				\$4.83
Total	14 labor hours			\$326.83

Per additional inquiry with the contractor, “it appears our superintendent mis-labeled on of our employees as a foreman on the T&M tags.”; no additional documentation is available. Absent further clarification or documentation to support the excessive labor rate, we are unable to confirm the appropriateness of the overbilled amount, resulting in questioned billings in excess of actual costs incurred totaling \$326.83.



Recommendation	The City should implement change order management controls to prevent charging change order labor rates in excess of contractually allowable amounts, as required by the Contract terms. The City should consider seeking credit for excess labor charges.
Contractor Response	I do not have any additional documentation to provide. It appears our superintendent mis-labeled one of our employees as a foreman on the T&M tags.
City Response	The City will consider change order cost management controls that align with the City's assessment of risk.

2 Contract Compliance – Excessive Change Order Markups **MEDIUM - HIGH RISK**

The methodology implemented by the DBE to revise the scope as included within PCO 19R2 may have led to unnecessary DBE fee markups. In summary, when calculating PCO 19R2, the DBE credited the original budget of \$35,000 without returning DBE markups (as allowed by Article 6.3 for decreased costs or deleted work) and applied DBE markups on the full value of added scope, not the net difference, resulting in the DBE collecting a fee on both the original \$35,000 budget as well as the added scope totaling \$5,853.75 summarized in the table below:

	Original Budget for Donor Wall	Markups
	\$35,000.00	-
Self-Performed Markup Rate of 15%	-	\$5,250.00
Bond and Insurance Rate of 1.5%	-	\$603.75
Total		\$5,853.75

The original project budget included \$35,000 for the “Donor Wall,” which was increased as part of OCO No. 7 (PCO 20R1) to \$81,283.37 of DBE self-performed work costs. Also included within OCO No. 7 (PCO 19R2) was an “Art Wall” in the amount of \$66,559.65 (self-performed work costs only). In moving forward with both the “Art Wall” and the “Donor Wall” at the change order values, the DBE elected to no longer utilize the \$35,000 initial budget for the “Donor Wall” and credited this amount within PCO 19R2. Due to contract Article 6.3, the DBE was able to keep all fee and all associated markups, though the initial \$35,000 budget for the “Donor Wall” was fully credited within PCO 19R2. In addition to earning these markups on deleted work, the DBE was able to earn markups on the added change order budgets for both the new value of the “Donor Wall” (\$81,283.37) and the “Art Wall” (\$66,559.65). Implementing a methodology where deleted scopes of work do not proportionately affect the DBE’s markups has allowed them to decrease the budget and re-add the same scope at a higher value; affording them the opportunity to make fee and markups in both instances.



In the future, the net effect of changes should be subject to fee. If that had been the case for this Project, the City would have avoided paying the DBE \$5,853.75 in fees, bonds, and insurance markups.

Recommendation	The City should review change order management controls and associated contract language to prevent incurring excessive fee markups. The City should consider whether it is worthwhile to pursue cost recovery of markups associated with the PCOs identified.
Contractor Response	n/a
City Response	The contractor and the City provided consistent information on how the change order process worked. The City understands that the change order process was not clear to the auditor after the fact and will explore options for revision. The change orders expenses were in alignment with the agreement between the contractor and the City and thus no additional exchange of funds is warranted.

3 Contract Compliance – Skilled Labor Documentation Control

MEDIUM RISK

The DBE did not adequately report compliance with Skilled and Trained Workforce documentation requirements. Contract Article 8.3(A)2 states, “The application for payment for Construction Services must also include the monthly report documenting compliance with the Skilled and Trained Workforce requirements pursuant to Public Contract Code§ 2602, and as specified In Section 9.6.” Furthermore, Article 6.4 states, “Services on the Project that fall within an apprenticeable occupations in the building and construction trades, in accordance with Public Contract Code§ 2600 et seq. DBE, members of the Design-Build Team providing Construction Services, and Subcontractors of every tier will comply with these requirements. DBE will provide City with a monthly report while the Project is being constructed evidencing that the DBE, its Design-Build Team (as applicable).”

The audit team requested the Skilled and Trained Workforce documentation from the DBE multiple times; the DBE provided two certificates. One certificate was associated with Payment Application No. 15C (July 2022) and another undated one was not directly associated with a payment application. Per inquiry with the DBE, no additional documentation was available. See Appendix A for a listing of payment application Skilled and Trained Workforce documentation received. Absent further documentation from the DBE, it is unclear if Skilled and Trained Workforce documentation was provided during the course of construction as required per state law.



Recommendation	The DBE should implement billing controls to ensure adequate skilled labor documentation, as required by the Contract terms. For example, the City should ensure that all Skilled and Trained Workforce documentation is consistently reported in the monthly application for payment with the appropriate level of detail required to ensure compliance with Public Contract Code. Compliance with this requirement should be tracked by the City and Project Management for compliance.
Contractor Response	I do not have any additional documentation to provide.
City Response	The CIP practice is that the City PM confirms that the certified payroll has been submitted to DIR; and they request/file the monthly certified payroll record throughout the life of the project. We will confirm that this practice is implemented consistently across the CIP construction projects.

4 Contract Compliance – Select payment applications reviewed were not fully executed **MEDIUM RISK**

During our review of payment applications, we identified some payment applications were not fully executed. Contract Article 8.3 states, “DBE will submit to the Project Manager for approval, a monthly application for payment for Work performed.” Per inquiry with the DBE, no additional documentation is available. The following table summarizes the three instances where payment application approvals were deficient (see Appendix B for a listing of payment application execution statuses):

Project Phase	Payment Application Number	DBE Signature Provided as Required?	Griffin Structures’ Signature as Required?
Design	1	N	N [1]
Design	2	N	Y
Design	3	N	Y

[1] It appears that the payment application was submitted prior to Griffin Structures’ agreement with the City being in place.

Recommendation	The DBE should implement billing controls to ensure adequate sign-offs, as required by the Contract terms. The City and its project managers should require the DBE to fully execute all payment applications prior to submission.
Contractor Response	I do not have any additional documentation to provide.



City Response

The City will ensure all future payment applications are fully executed.

5 Contract Compliance – Inadequate Conditional Waiver Controls

MEDIUM RISK

During our review of the DBE’s payment applications, we were unable to identify a conditional waiver for one payment application. Per inquiry with the DBE, no additional conditional waiver documentation is available. Contract Article 8.3(A)2 states, If requested by the Project Manager, each application for payment for Construction Services must also be accompanied by an executed Conditional Waiver and Release Upon Progress Payment, using the form specified in Civil Code 8132 for each Subcontractor that performed Work during the period covered by that application.”

Conditional waivers from general contractors (or in this case, the DBE) can be an important tool because they provide proof that the contractor has been paid for their work on a construction project and can afford to pay their subcontractors and suppliers in a timely manner. By signing a conditional waiver, the contractor is releasing their right to file a mechanics lien against the property if they have not been fully compensated for their services. This helps to reduce the risk of financial disputes between the property owner and the contractor, and ensures that all parties involved are protected. While public capital projects may be subject to a different method of claim remedy, requiring conditional waivers with each payment application is a best practice even when the project is public works.

Additionally, 32 of the 45 conditional waivers reviewed were executed by the Project Engineer while the balance was executed by either the Project Manager or the CFO. The contract does not state which persons have the responsibility to act on behalf on the DBE, and it is unclear if the Project Engineer would have the authority to act on behalf of the DBE.

Recommendation

As a best practice and consistent with contractual language, the DBE should obtain and provide to the City conditional waivers from each subcontractor and material supplier once payment is made to support the City ensuring all parties are being paid timely and there are payment issues which may be an indicator of performance issues. At the end of a subcontractor’s work, or at the Project’s completion, conditional waivers for all subcontractors should be obtained to validate full payment for performance of the Contract and mitigate potential exposures for the City. Additionally, the City should consider updating policies and procedures to develop a methodology with project management personnel to determine which subcontractors are required to provide conditional waivers based on initial subcontracting plan including attributes such as contract size and or scope complexity.

Contractor Response

I do not have any additional documentation to provide.

City Response

The City assumes that the auditor is using “lien waiver” as a shorthand for the conditional waiver and release upon payment which is authorized under Civil Code section 8132 (since mechanics liens do not apply to public property). Section 8.3(A)(2) of the General Conditions authorizes but does not require the project manager to request that each



application for a progress payment be accompanied by a Conditional Waiver and Release Upon Progress Payment. Unconditional waiver and releases are similarly addressed in Section 8.3(B)(2).

6 Contract Compliance – Flow Down Contract Provisions Not Included in Subcontracts

LOW - MEDIUM RISK

Based on our review of the sample subcontracts, the DBE did not include the prime contract flow down clause in its subcontracts. Contract Article 2.5.B states, “Subcontractor to be bound to the provisions of the Contract Documents as they apply to the Subcontractor’s portion(s) of the Work, and to likewise bind their subcontractors or suppliers.” The audit team sampled the mechanical, electrical, and plumbing subcontracts and of the three subcontracts. None of the subcontracts appeared to have language tying vendors to these prime contract obligations. The following table summarizes the documents reviewed:

Subcontractor Identified	DBE Document Reviewed	Flow Down Clause Identified?	Auditor Methodology Notes
Environmental Systems Inc.	'20-1110 _Work Authorization_ESI_HVAC'	N	Document appears to be the scope of work for the subcontract, but did not include the contractual flow down provision requirement.
Atlas Pellizzari	'20-1110 _Work Authorization_Atlas'	N	Document appears to be the scope of work for the subcontract, but did not include the contractual flow down provision requirement.
Environmental Systems Inc.	'20-1110 _Work Authorization_ESI_Plumbing-_R 1'	N	Document appears to be the scope of work for the subcontract, but did not include the contractual flow down provision requirement.
	'SubPack WITH EXHIBITS'	N	Document appears to be the typical exhibits package to accompany a subcontractor’s scope of work, but did not include the contractual flow down provision requirement.

Additionally, in its subcontracts, the DBE did not include the required language as mandated by Exhibit A-A, Shelter In Place and Social Distancing Requirements, which states, “Contractor shall include the terms of this Exhibit in all subcontracts and require any agents, subcontractors, or subconsultants to comply with its provisions.” However, our review of the DBE's typical subcontract exhibits and scope of work did not provide evidence of Covid-19 safety exhibits. It is important to confirm the inclusion of this exhibit to ensure that proper safety measures are being implemented on the Project site.



In prime construction contracts, flow down clauses are crucial because they outline the duties and obligations of the parties participating in a project. These clauses ensure subcontractors and suppliers are subject to the terms and conditions of the prime contract. Flow down clauses frequently contain stipulations relating to payment terms, insurance conditions, special warranty requirements (Article 11.2.D page 73), special safety requirements, and dispute-resolution processes. These clauses make sure that suppliers and subcontractors are adhering to the requirements of the prime contract and are aware of their responsibilities not only to the contractor but also to the client. Though the DBE bears the risk by not including the flow down clause, in the event of a dispute, the responsible subcontractor party would be obligated to engage and bear the cost of their non-compliance, leading to better outcomes for the City and DBE.

Recommendation	The City should consider implementing contract administration controls to ensure flow down contract provisions, are included within contracts, as required by the Contract terms. For example, the City should request a copy of a typical subcontract agreement template ahead of the DBE’s buyout process to confirm compliance with flow down requirements.
Contractor Response	n/a
City Response	The City will consider the recommendation to request a subcontract agreement template.

The City should consider implementing contract administration controls to ensure flow down contract provisions, are included within contracts, as required by the Contract terms. For example, the City should request a copy of a typical subcontract agreement template ahead of the DBE’s buyout process to confirm compliance with flow down requirements.

For subcontracts already executed, the DBE could issue subcontract change orders modifying the subcontract agreement terms and conditions.

7

Contract Compliance Self-Performed Work Change Order Delivery Method

LOW - MEDIUM RISK

During our review of self-performed work change orders, we were unable to identify the change order delivery method (i.e. lump sum, T&M, etc.). Per Article 6.3 of the contract, adjustments to contract price, “The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods, listed below in eh order listed with unit pricing taking precedence over the other methods... (A) Unit Pricing... (B) Lump Sum... (C) Time and Materials...” Upon enquiry with the DBE, they responded that change orders were intended to be lump sum and not T&M, meaning costs were not specifically tracked in a method to easily provide itemized cost documentation. The change order forms observed on the project did not explicitly make reference to the change order delivery method (T&M, Lump Sum, or other). It has been observed that self-performed labor scopes were not identified as lump sum values, and some of the charges lack the necessary level of substantiation. Within each extra work detail breakdown provided, we often observed lines identified as Lump Sum (LS) as well as lines indicating Time and Material (T&M) charges. These charges may be reasonable and warranted for the proper completion of the scope, but do not meet the Contract requirements for supporting documentation. Based on several requests throughout the audit, we were unable to obtain the requested substantiation documentation.

Recommendation	The City should evaluate the T&M and allowance use within the change orders identified for cost substantiation and reasonableness as required by the Contract. The City should consider developing change order forms and update as needed to include information such as change type (e.g., cost plus not to exceed, T&M, lump sum, unit price, etc.),
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The City should evaluate the T&M and allowance use within the change orders identified for cost substantiation and reasonableness as required by the Contract. The City should consider developing change order forms and update as needed to include information such as change type (e.g., cost plus not to exceed, T&M, lump sum, unit price, etc.),



itemized change amounts, percentages, descriptions, change responsibilities, schedule impacts, dates of approval, subtotals, and totals to enhance internal change order controls and to support contract compliance.

Contractor Response

In general, I'm not going to be able to provide the backup you're looking for in regards to small tools. Our superintendents order tools as needed, and as you can see from the attached invoice for example it's extremely difficult, if not impossible, to allocate those costs perfectly per Change Order. Because of this, we use a percentage of labor costs to cover small tools expense.

PCO 10 – see invoices for rented excavator & rented chipping hammer. All other equipment was Rodan owned, not rentals.

PCO 19 – this was a lump sum PCO, so I do not have the invoice off hand. Attached is an invoice example of our cost for boom lift rental.

PCO 20 – this was a lump sum PCO, so I do not have the invoice off hand.

PCO 23 – this was a lump sum PCO, so I do not have the invoice off hand. Attached is an invoice example of our cost for concrete disposal (not including trucking to/from dump). I'm not sure if the attached concrete invoice is for this scope, but it has similar yardage to what was estimated.

PCO 25 – this was a lump sum PCO. No plants were ever specified or purchased, so no backup available.

PCO 27 – this was a lump sum PCO. No plants were ever specified or purchased, so no backup available.

PCO 29 – this was a lump sum PCO, so I do not have the invoice off hand.

PCO 30 – this was a lump sum PCO, so I do not have the invoice off hand.

PCO 32 – this was a lump sum PCO, so I do not have the invoice off hand.

City Response

The City will consider this recommendation; the City's current Change Order form contains many of these items.



The DBE did not provide the City with evidence of right of use for the Project’s design. Contract Article 2.3.D.4 states, regarding the Ownership of Design Documents, “DBE will obtain from its Subcontractors and Subconsultants rights and rights of use that correspond to the rights given by DBE to City in this Contract and DBE must provide evidence that such rights have been secured.”

In a construction project, the right of use is typically granted to the owner or contractor, who has the legal right to access and use and reproduce the design drawings, specifications, and other documents related to the project. The right of use agreement typically outlines the responsibilities and obligations of the parties involved and specifies the conditions under which the design documents can be used. The right of use helps to protect the intellectual property rights of the designers and engineers who created the design documents. Without clear definitions of the right of use, disputes over ownership and control of the design documents could arise.

Having the right to use the drawings also allows the City to freely use plans and renderings for marketing purposes without infringing on the intellectual property rights of the architect or other parties who created the drawings. Upon request, the DBE provided correspondence between itself and the Project’s architect stating that such rights would have been implied with the executed design agreements; however, there was no proof that the City was provided with such confirmation as required by the contract.

Recommendation

The City should consider including more specific contract language regarding the right of use and ensuring that all parties involved in the Project’s design understand their responsibilities regarding their design documents. If deemed necessary at this point in the Project, the City should request that the DBE obtain the necessary documentation from its subcontractors and subconsultants to secure the rights of use for the City.

Contractor Response

n/a

City Response

Section 2.3(D) of the General Conditions broadly confers that all ownership rights, including copyrights and possessory rights, in the Design Documents (as defined) as well as additional documents accrue to the City: “DBE is deemed to have conveyed the copyright in any Design Documents (at any stage of development), Shop Drawings, as-builts, or other documents (in paper or electronic form) developed by DBE for the Project, and City will retain all rights to such works, including the right to possession.” Section 2.5(B) of the General Conditions further provides that all Subcontractors (as defined) must be bound to all applicable provisions in the Contract Documents (as defined). Provided that each subcontract includes a provision to that effect, it is not necessary to itemize each provision in order to legally bind the Subcontractors to the provisions of Section 2.3(D) (or other provisions of the Contract Documents), particularly if the Contract Documents are incorporated by reference into the subcontracts.



9 Contract Compliance – Incorrect Payment Application Calculations

LOW RISK

The DBE included a calculation error as part of Design Phase Application No. 8D. The DBE modified the G702 Original Contract Sum to include the original contract value plus the value of contract change order (CCO) #01. The CCO #01 value was also appropriately included on the “net by change orders” line of the G702, which resulted in duplicated contract sum/budget on the payment application. This appears to have been noted by the City as part of its review process but the payment application was not revised before the City finalized and processed. The error does not appear to have led to an overbilling of the Contract.

The following table summarizes the variance in Design Phase Application No. 8D:

G703 Line	Value	Note
1. ORIGINAL CONTRACT SUM	\$648,014.55	Value for CCO #01 is inaccurately included here. The original contract amount per the Contract is \$645,000.
2. Net change by Change Orders	\$3,014.55	The accurate value for CCO#01.
3. CONTRACT SUM TO DATE (LINE 1 + 2)	\$651,029.10	The contract sum is inaccurate due to the double-counting of CCO #01 in both lines 1 and 2 above.
4. TOTAL COMPLETED & STORED TO DATE	\$648,014.55	Correct value

Recommendation

Billing controls should be implemented to ensure accurate calculations within payment application submissions, as required by the Contract terms payment applications with material calculation errors should be revised prior to finalization and processing to avoid overbillings and overpayment.

Contractor Response

n/a

City Response

The City will consider the recommendation.



APPENDIX A: SKILLED AND TRAINED WORKFORCE DOCUMENTATION CONTROLS

The following table indicates the Skilled and Trained Workforce documentation received (Y) and missing (N) (see Observation No. 3 for more detail):

PHASE	PAYMENT APPLICATION NUMBER	SKILLED AND TRAINED WORKFORCE DOCUMENTATION
Design	1	N
Design	2	N
Design	3	N
Design	4	N
Design	5	N
Design	6	N
Design	7	N
Design	8	N
Construction	1	N
Construction	2	N
Construction	3	N
Construction	4	N
Construction	5	N



PHASE	PAYMENT APPLICATION NUMBER	SKILLED AND TRAINED WORKFORCE DOCUMENTATION
Construction	6	N
Construction	7	N
Construction	8	N
Construction	9	N
Construction	10	N
Construction	11	N
Construction	12	N
Construction	13	N
Construction	14	N
Construction	15	Y



APPENDIX C: PAYMENT APPLICATION CONTROLS

The following table summarizes the payment application approval statuses per Project phase (see Observation No. 4 for additional detail).

PROJECT PHASE	PAYMENT APPLICATION NUMBER	DBE SIGNATURE PROVIDED AS REQUIRED?	GRIFFIN STRUCTURES SIGNATURE AS REQUIRED?
Design	1	N	N [1]
Design	2	N	Y
Design	3	N	Y
Design	4	Y	Y
Design	5	Y	Y
Design	6	Y	Y
Design	7	Y	Y
Design	8	Y	Y
Construction	1	Y	Y
Construction	2	Y	Y
Construction	3	Y	Y
Construction	4	Y	Y
Construction	5	Y	Y
Construction	6	Y	Y
Construction	7	Y	Y



PROJECT PHASE	PAYMENT APPLICATION NUMBER	DBE SIGNATURE PROVIDED AS REQUIRED?	GRIFFIN STRUCTURES SIGNATURE AS REQUIRED?
Construction	8	Y	Y
Construction	9	Y	Y
Construction	10	Y	Y
Construction	11	Y	Y
Construction	12	Y	Y
Construction	13	Y	Y
Construction	14	Y	Y

[1] It appears that the payment application was submitted prior to Griffin Structures' agreement with the City being in place and executed.

