



**Internal Audit Department
Interim Audit Report**

**Judicial Center Expansion Review
Lake County Board of County Commissioners
September 12, 2011**

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BACKGROUND

The Internal Audit Department is in the process of reviewing the Judicial Center Expansion Project as requested by Kristian Swenson, Director of Facilities Development and Management (Facilities), and as scheduled per the Clerk's Annual Internal Audit Plan. The objectives include the review of all owner direct purchases (ODP), change orders, and contractor pay requests to ensure compliance with the contract and County policies. The purpose of this report is to provide information to interested parties on the status of our review activities. The lead auditors of this review are Jeremy Martin, Internal Audit Director and Cindy McLaughlin, Senior Internal Auditor.

In 2005, a master plan was developed for additional government facilities and the expansion of the Judicial Center. Phase I of the Downtown Tavares Governmental Facilities Project included a 2-story building at 320 West Main Street for the Tax Collector and Property Appraiser, an 8-story parking garage, and a central energy plant. All were completed by June 1, 2009 by PPI Construction Management (CM).

Phase II of the Downtown Tavares Governmental Facilities Project as originally envisioned included a 298,290 square foot expansion to the Judicial Center. During 2009-2010, staff and the Board of County Commissioners evaluated the final size and scope of this project in light of the economic conditions. The architect for the redesign of the Judicial Center expansion was HLM Design, a division of Heery International, Inc. On June 15, 2010 the Board approved an amendment to PPI's contract for Phase II of the project, including a 168,026 square foot expansion and renovation of the Judicial Center.

Construction on the Judicial Center expansion began on July 26, 2010. It is expected to be complete by August, 2013.

FINANCIAL INFORMATION

The CM's Guaranteed Maximum Price (GMP) for the Judicial Center expansion is \$39,949,581, with an amount approved for allowances and contingency of \$5,425,000. Additional cost estimate for renovation of the existing Judicial Center amounted to \$5,000,000. The total estimated cost of Phase II is \$50,374,581. Existing bond funding is available for \$41,349,727 of the expansion costs, with the balance of \$9,024,854 to be funded by future Sales Tax (Fiscal Years 2011-2014).

As of the construction period through January 25, 2011, the County paid CM \$4,505,987.76 for Phase II, not including retainage withheld by the County in the amount of \$500,665.31.

The County purchases significant quantities of materials through ODP, which results in Sales Tax savings. Estimated Sales Tax Savings as of January 25, 2011 were \$85,707.25.

ACTIVITIES PERFORMED

Activities performed by Internal Audit include reviewing Owner Direct Purchases and their supporting documentation, vouching actual ODPs and deliveries to Purchase Order documents; reviewing contract Change Orders for proper documentation, support and approval; reviewing all applications for payment for proper documentation and support, verifying mathematical accuracy, ensuring payment is timely and that applications are adequately reviewed at the department level.

Additionally, we reviewed the bid process and creation of the GMP to ensure that contract requirements and County policies were followed. We traced all bid amounts and agreed subcontractor names to the original bid documents obtained by PPI and to final contract documents between PPI and subcontractors.

We have met several times with Facilities staff and PPI Project managers to obtain information and follow up on any questions that we may have had. We appreciate the cooperation of both parties during this process.

OVERALL EVALUATION

As a result of our work to date, we have concluded that the Construction Manager, PPI Construction Management, is in material compliance with the terms of the contract. We found Facilities management and staff to be very upfront and open to making improvements to their processes. Based on our discussions with current Facilities staff and review of prior audit reports, it appears that overall departmental controls have been tightened significantly from prior management.

We have found areas where improvements can be made, however the County and PPI have been proactive in putting into place our recommendations. Our findings and recommendations are included in this report as well as management's responses to our recommendations.

Our review processes will continue until the conclusion of the project. All staff members of the Facilities Management Department and PPI Construction Management have been very helpful in all our review activities thus far.

AUDIT BY:

Jeremy Martin, CPA, Internal Audit Director
Cindy McLaughlin, Sr. Internal Auditor

FINDINGS AND RECOMMENDATIONS

No County representative was present to observe the bid opening process by PPI.

Criteria: Chapter 2, paragraph 3.1.6 of Appendix A of the PPI Contract dated September 21, 2007 states: "The Construction Manager shall conduct private bid openings in the presence of the Owner's Representative."

Condition: During the course of our audit, we found that no "Owner's Representative" was present at the private bid openings conducted by PPI. An invitation to attend was extended by PPI, however the County declined to attend due to other controls they put in place such as obtaining a third party GMP estimate to be used as a comparison and their active participation in negotiating the GMP. We also found that the process used by PPI to select final subcontractors was not clear to Facilities Management.

Effect: A lack of understanding and oversight of the bid and award process could lead to violations of policies and procedures as well as reduced competitive bidding practices.

Recommendation: We recommend that a County representative be present at all private bid openings performed by third party contractors and that management obtain a complete understanding of the bid award process to be used. Doing so will help ensure that proper controls are in place and that County policies and procedures are followed.

Management Response: This finding was submitted to the Office of Procurement Services for comment. They have commented as follows: It is first noted that similar text is included in the CM On-Call contracts, and that this response applies to all CM contracts having similar text. We recommend that the contracts having this text be modified to exclude that requirement. This is based on the fact that attending a bid opening offers little or no insight into the CM's bidding process, and the fact that budget shortfalls now curtail the ability of County staff to attend such events. We fully concur in the need for County management to obtain a complete understanding of the bid award process to be used by all CM vendors. We opine that such understanding can be gained by the procedures stated in the "conditions" section of the finding, but further recommend a new requirement for quarterly meetings of CM, Facilities, and Procurement staff to review bidding procedures and results. It is specifically noted that while compliance with overall County procurement policy is anticipated, none of the CM contracts require adherence to every procurement procedure established for the County's in-house procurement operation.

Changes to GMP Subcontractors were made by PPI without prior written notice or County approval.

Criteria: Chapter 2, paragraph 2.7.5.5 of Appendix A of the PPI Contract dated September 21, 2007 states: "During the course of the Work, the Construction Manager; shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement for good cause."

Condition: During our audit testing we noted one actual subcontract that was awarded to a different subcontractor and for a different amount than indicated on the approved GMP Schedule of Values. Facilities Management had not been made aware that any changes to subcontractors in the GMP had been made. Subsequently, PPI notified the County of this change and seven additional subcontractors that had been changed from the original GMP.

Effect: Changes to subcontractors could occur that are not in line with the desires and best interests of the County.

Recommendation: We recommend that any changes to subcontractors, along with justification for the change, be provided to the County in writing and that all changes be approved by the County prior to the change being made. Thorough detailed review of pay applications will assist in detecting unauthorized changes to subcontractors.

Management Response: Agree with finding. A letter was sent to PPI on 4/1/2011 instructing them about the required written request and the necessary County authorization needed to change subcontractors.

Differences between actual Cost of Work and GMP amount were not adequately accounted for or tracked on the Schedule of Values.

Criteria: Chapter 3, paragraph 15.2 of Appendix A of the PPI Contract dated September 21, 2007 states: "The Construction Manager's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Construction Manager shall not imbalance or artificially inflate any element of its schedule of values."

Condition: During our audit testing we noted 11 actual subcontract amounts that were lower than the amount shown on the Schedule of Values submitted with the Application for Payment. The total of these differences resulted in \$400,096 of uncommitted budget that should be re-classed in the GMP and only used if properly justified. Historically, the reconciliation of actual amounts to the Schedule of Values has been done at the conclusion of the project rather than throughout the project. We found no unauthorized use of funds; however we found no means in place to track and account for the use of these uncommitted funds on a regular basis.

Effect: Uncommitted budget may be spent inappropriately if not accurately tracked.

Recommendation: We recommend that the Schedule of Values be changed to reflect the actual subcontract amounts, any uncommitted budget be tracked and accounted for each month, and use of these funds be properly reviewed and approved by management prior to use.

Management Response: Agree with finding. Current GMP accounting can be established throughout the project with the suggested reconciliation timing and will make final payment easier. This process has been adopted.

The department did not perform a thorough detail review of pay applications.

Criteria: Lake County Procedure LC-20 Contract Administration, section III provides general user department duties in regards to contract administration. Specifically, their duties are to, "inspect and/or monitor all vendor-provided goods, work and services to ensure adherence to the contract, and to confirm proper scheduling and fiscal compliance" and "review, verify and forward invoices in a timely, accurate, and effective manner to Finance for payment."

Condition: During the course of our audit testing, we found that even though a review each pay application was being performed, the detailed financial review was not being performed thoroughly. Facilities has undergone several organizational changes and key elements of review were not clearly communicated to staff. The review performed consisted of recalculating the figures on the front page of the pay application. It appeared that no one was reviewing or agreeing the supporting documentation to the pay application detail. Change orders to subcontractor pay applications were not always supported due to timing issues. We found one questionable charge that was not discovered or investigated at the time of review. Differences between actual subcontract price and budget were not being reviewed or accounted for. Changes to subcontractors from the approved GMP were not discovered or addressed during the review.

Effect: Mistakes and errors in the pay application may go unnoticed and result in a loss to the County.

Recommendation: We recommend that the review procedures for all pay applications be improved including, but not limited to, detail reviewing of supporting documentation, agreeing billed amounts to supporting documentation, thoroughly investigating and resolving questionable charges, analyzing variances between actual and budget, ensuring subcontractors awarded the work are actually performing the work, reviewing calculation of General Conditions and Management Fee for accuracy, and ensuring that the schedule of values accurately presents all financial information.

Management Response: Agree with findings. The method and process of reviewing pay applications was improved prior to this report and is currently consistent with the above mentioned recommendations.

There is a disconnect between the review expectations of the Clerk's Board Finance Department and the review procedures performed by BCC departmental finance staff.

Criteria: Article VIII, Section 1(d), Florida Constitution provides that "the clerk of the circuit court shall be ex officio clerk of the board of county commissioners [BCC], auditor, recorder and custodian of all county funds." As the ex officio clerk and auditor of county funds, the clerk has the duty to pre-audit all County expenditures prior to payment to ensure they are legal, budgeted, and in compliance with county policies and procedures.

Condition: The review and monitoring requirements of departments relating to contract administration are set forth in BCC Procedure LC-20. During the course of this audit, we found that the review expectations of the Clerk's Board Finance Department (Board Finance) varied from the review that was actually being performed at the department level prior to pay applications being submitted for payment. Board Finance expected a thorough review was being done at the department level as indicated by department approval signatures; however, such review was not being done.

Effect: If BCC departments are not performing an adequate review of pay applications and support, Board Finance could issue a payment that is not adequately supported or is out of compliance with county policies and procedures.

Recommendation: We recommend that Board Finance hold periodic meetings with BCC department finance staff to ensure they understand and accept the review expectations and responsibility placed upon them and to discuss other financial matters that may come up during the course of county business.

Management Response: This finding was submitted to the County Finance department for comment. They have commented as follows: We agree that the department should follow established BCC procedures. LC-20 states that the user department is responsible for fiscal monitoring, which includes a review of the timeliness and accuracy of a vendor's billings. The expectations of the County Finance department are based on the BCC procedure. We will hold periodic meetings with BCC department finance staff to review procedures and other financial matters.

One item included in the General Conditions of the contract was also included in the GMP Schedule of Values.

Criteria: Appendix K of the PPI Contract, dated September 21, 2007, is the Construction Management and General Conditions Fee Outline and details items included in the General Conditions fee. The Construction Preparation section of this appendix indicates that Construction Layout & Base Lines is a cost included in the General Conditions fee.

Condition: During our audit testing, we found that bid package 02H Surveying was not supported by a subcontractor bid. After further inquiry, it was explained by the project manager that this line item was included in the General Conditions of the contract and should not be included in the GMP and that it would be removed and placed in the uncommitted budget section of the Schedule of Values. The description of what is included in the General Conditions of the contract is vague and makes it difficult to ascertain what should or should not be included in the GMP.

Effect: County could be charged in error for items that should be included in the General Conditions of the contract.

Recommendation: We recommend that Facilities Management ensure that the amount for this item is removed from the GMP and be placed in the uncommitted budget section of the Schedule of Values. We further recommend that the General Conditions section of future contracts be detailed enough for proper review and that management review all GMP bids for compliance with the contract.

Management Response: Agree with finding. This charge has been removed. The new On-Call CM contract the department is using itemizes the various General Conditions. This process will assist to ensure the contractor is not doing this.

All payments are not being made timely in accordance with State Statutes.

Criteria: Chapter 1, paragraph 4.3.2 of the PPI Contract dated September 21, 2007 states:

"Payment requests shall be processed and paid in accordance with Part VII, Chapter 218, Florida Statutes." Section 218.735(1)(a) requires that "if an agent must approve the payment request or invoice before the payment request or invoice is submitted to the local governmental entity, payment is due 25 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74(1)." Section 218.74(1) provides that "each local governmental entity shall establish procedures whereby each payment request or invoice received by the local governmental entity is marked as received on the date on which it is delivered to an agent or employee of the local governmental entity."

Condition: Pursuant to Appendix A, chapter 11 of the contract, HLM Design (Heery) was designated as the Owner's Professional Representative, or agent. In our testing of the pay applications we noted that Heery did not mark any of the six pay applications reviewed as received on the date it was delivered to them. Therefore, in calculating the due date for each pay application, we used the date it was certified by the architect. We found that four of the six pay applications reviewed were paid up to 36 business days after the date it was certified by Heery. The average number of days from Heery to Facilities was 8 days, the average number of days from Facilities to Finance was 22 days, and the average number of days from Finance to payment was 5 days.

Effect: Without being marked as received by the architect, it is difficult to determine the most accurate start date to use in calculating the due date. Per 218.735(9) of Florida Statutes, payments not made within the specified time period shall bear interest at a rate of one percent per month. This would add undue cost to the project.

Recommendation: We recommend that each pay application be marked as received by Heery on the date it is delivered, that prompt review by the architect and the Facilities Department be performed, and that pay applications be forwarded to Board Finance timely to ensure that payments are made in accordance with the contract and Florida Statutes.

Management Response: Agree with finding. Staff is implementing these changes and is working to reduce review times. The contractor has indicated they would prefer a slightly delayed review verses a rejection as it resets the time clock.