



Mayor

Mattie Parker

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- Carlos Flores, District 2
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- Jeanette Martinez, District 11

INTERNAL AUDIT REPORT

Construction - Property Management

August 29, 2023

Audit Staff

David A. Medrano
City Auditor

8/29/2023

Date

Brian Burkland
Assistant City Auditor

8/29/2023

Date

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Audit Manager

08/29/2023

Date

William K M Mafi
Senior Auditor

08/29/2023

Date





This Construction - Property Management Audit was performed in accordance with the approved schedule of engagements identified in the Department of Internal Audit Fiscal Year 2023 Annual Audit Plan.

Executive Summary

The role of the Facilities Management Division within City of Fort Worth (City) Property Management Department (PMD) includes the provision of architectural and construction management services Citywide. PMD managed construction of the Reby Cary Youth Library and Park by FPI Builders, LLC, on behalf of the City's Library Department.

We found that generally, construction of the Reby Cary Youth Library and Park was performed and completed in accordance with the contract terms and applicable laws. However, we observed the following areas for improvement:

- there was no change order when the contract time was extended;
- there was no evidence of receipt or reviews of the contractor's certified payrolls to confirm compliance with prevailing wage rates; and,
- incomplete capitalization of construction costs.

Our audit findings are discussed in further detail within the [Detailed Audit Findings](#) section of this report.

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Background

The City of Fort Worth (City) publicly advertised and, after due process, recommended award of a contract to FPI Builders, LLC for the construction of the Reby Cary Youth Library and Park at 3851 East Lancaster Avenue, in Council District 8. The lump sum contract (No. 53820) of \$3,897,514.00, was executed on April 17, 2020 between the City and FPI Builders, LLC.

Reby Cary Youth Library



Source: City of Fort Worth website



Objectives

The objectives of this audit were to determine whether:

- the construction project was completed in accordance with contract terms; and,
- the project was performed in accordance with contract terms and applicable laws.

Scope

Construction contracts (not maintenance related), managed by the City's Property Management Department and completed in FY2022.

- Internal Audit reviewed the population of contracts and selected contract number 53820, for Reby Cary Youth Library and Park.

Methodology

To achieve the audit objectives, the Department of Internal Audit performed the following:

- interviewed Property Management and Library Departments personnel;
- reviewed contract terms and related laws;
- verified compliance with bonding and insurance requirements, City policies and procedures, and Minority Business Enterprise (MBE) terms;
- reviewed compliance with Texas Government Code, Chapter 2258 Prevailing Wage Rates;
- compared quantities charged to the City with quantities projected in the bid and budget;
- reconciled days allowed per contract and change orders to final count of days;
- checked bidding and contract awarding processes;
- reviewed daily inspection logs and laboratory material quality inspection reports, and notes;
- performed site visits;
- reviewed the final inspection "punch list", and post-maintenance period inspections; and,
- evaluated internal controls related to construction contracts and projects.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

Based on our audit testing, we concluded that the Reby Cary Library and Park project was advertised and awarded in compliance with City policies and State law, and that the construction was consistent with the construction plan diagrams. Furthermore, FPI Builders, LLC complied with insurance, bonding and one-year maintenance warranty requirements specified within the contract. Moreover, PMD promptly reacted to, and took action on, “does-not-conform” laboratory inspection reports.

The construction of Reby Cary Library and Park was completed within contract amount, at a total cost of \$3,867,805.79, resulting in a net savings of \$29,708.21 (0.76 % of the lump sum contract value).

<u>Lump Sum Contract Value</u>	<u>\$3,897,514.00</u>
Actual Total Cost	\$3,867,805.79

Source: City’s records

We observed areas for improvement, as follows:

- PMD did not comply with some of the controls and procedures stated in the contract and related general conditions, consequently,
 - the planned project completion date was exceeded by 84 days, with no change order filed; and,
 - there was no evidence of receipt of affidavit or review of Contractor compliance with Texas Government Code, Chapter 2258 Prevailing Wage Rates;
- incomplete and thus incorrect capitalization of the construction cost, by \$588,464.06 (15.1% of total lump sum contract).

Additionally, we did not consider the following as findings, however, we believe they are worth mentioning to management:

- Although the one-year maintenance warranty was complied with, we believe the City would be better protected by including a two-year maintenance warranty in future contracts, as it is commonly done in construction contracts by other City departments; and,
- We identified opportunities for improvement of tracking and reporting non-compliance with MBE goals. The Diversity and Inclusion Department acknowledged the need for such improvements and undertook to introduce a new process.

The Department of Internal Audit would like to thank the Property Management and Library Departments for their cooperation and assistance during this audit.

Overall Risk Evaluation

High	Medium	Low
	Contract time extended without a change order	
	No review of contractor's compliance with prevailing wage rates	
	Project capitalization value understated by \$588,464.06	

Detailed Audit Findings

1. Contract time extended by a total of 84 days without change order(s).

Section H-4 of the General Conditions of the Contract for Construction Lump Sum Contracts (within Contract No. 53820) indicates that "... *If the Contractor is delayed at any time in the progress of the Work by any act, then the contract time may be extended by Change Order for such reasonable time as recommended by the Architect and approved by the Owner...*" However, there was no evidence of change orders processed when the contract time was extended by a total of 84 days.

Additionally, the contract indicates that: "...*If the Contractor should fail to complete the work as set forth in the Plans and Specifications and Contract Documents within the time so stipulated, plus any additional time allowed as provided in the General Conditions, there shall be deducted from any monies due or which may thereafter become due him, the liquidated damages outlined in the General Conditions, not as a penalty but as liquidated damages, the Contractor and their Surety shall be liable to the Owner for such deficiency.*" However, the City did not levy liquidated damages related to the time delays.

Contract No. 53820 Timeline



Source: Auditor generated from contract records

Upon inquiry, PMD staff indicated that they could not close the project as scheduled after completion due to pending delivery and installation of furniture, fixtures, and equipment (FFE). Staff indicated these delays were caused by COVID-19. As the Contractor was awarded this contract on, inter alia, the promise to deliver the project earlier than competitors, it was important to ensure adherence to the contract time. By not processing a change order for time extensions/delays: City management may not be made aware of delays and would not have an opportunity to consider claiming liquidated damages; and the City could risk setting a precedent for other contracts to be delayed without approval or consequences.



Recommendation 1A: *The Property Management Director should require compliance with the change order contract terms.*

Auditee's Response: Concur. All changes to schedule will be documented through Change Orders.

Target Implementation Date: Implemented Immediately Upon Finding

Responsibility: Jackson Jones, Construction Superintendent

Applicable Department Head: Ricardo Salazar II, Interim Property Management Director

Applicable Assistant City Manager: Dana Burghdoff

Recommendation 1B: *The Property Management Director should develop either a policy or process which serves to ensure that liquidated damages are pursued when the City is entitled to such damages.*

Auditee's Response: Concur. Policy will be developed and approved by the date below.

Target Implementation Date: September 29, 2023

Responsibility: Nikita Watts, Senior Capital Projects Officer

Applicable Department Head: Ricardo Salazar II, Interim Property Management Director

Applicable Assistant City Manager: Dana Burghdoff

2. There was no evidence of receipt of affidavit or review of Contractor compliance with prevailing wage rates.

Section D-6 of the General Conditions of the Contract for Construction Lump Sum Contracts (within Contract No. 53820) indicates that “...*With each partial payment estimate or payroll period, whichever is less, the Contractor shall submit an affidavit stating that the Contractor has complied with the requirements of Chapter 2258, Texas Government Code...*”

Based on our audit results, there was no evidence that the Contractor submitted an affidavit with each partial payment estimate or payroll period. The expected payroll details were not readily available for audit until PMD requested and received the records from the contractor towards the end of this audit. Internal Audit, thus, had no verifiable evidence that PMD had monitored and assured that the Contractor complied with the prevailing wage requirements.

Section. 2258.058 (a) of the Texas Government Code states that “...*An officer, agent, or representative of the state or of a political subdivision of the state commits an offense if the person willfully violates or does not comply with a provision of this chapter.*” By not requesting payroll records in a timely manner, and by not monitoring the wages paid to contractor’s employees, the City would not be able to verify that the contractor complied with the state regulation.



Recommendation 2A: *The Property Management Director should ensure that PMD staff perform a review of the payroll records related to Contract No. 53820 to determine whether the Contractor complied with Chapter 2258 of the Texas Government Code, and that any follow up is performed, as deemed necessary, based on that review.*

Auditee's Response: Concur. Will complete by the date below, and on future projects, will create affidavit waivers and provide to contractor for notarization and inclusion in the payment application.

Target Implementation Date: September 29, 2023

Responsibility: Nikita Watts, Senior Capital Projects Officer &
Jackson Jones, Construction Superintendent

Applicable Department Head: Ricardo Salazar II, Interim Property Management Director

Applicable Assistant City Manager: Dana Burghdoff

Recommendation 2B: *The Property Management Director should ensure compliance with Section D-6 (prevailing wage requirements) of the of the General Conditions of the Contract for Construction Lump Sum Contracts for all future contracts.*

Auditee's Response: Concur. Will require affidavits with monthly pay applications.

Target Implementation Date: September 29, 2023

Responsibility: Brian Glass, Assistant Property Management Director

Applicable Department Head: Ricardo Salazar II, Interim Property Management Director

Applicable Assistant City Manager: Dana Burghdoff

3. Project capitalization understated by \$588,464.06.

Per sections VII.A. and VII.B. of the City of Fort Worth Capital Asset Policy, “...land includes all land parcels purchased or otherwise acquired by the City...land should always be treated and accounted for separately...”; and “...capitalization of costs related to buildings include, but are not limited to... architects’ and engineers’ fees for design and supervision...”.

Section VI.C. of the City of Fort Worth Capital Asset Policy indicates that each department’s Capital Asset Coordinator’s responsibilities includes “...identify all constructed assets in use, and provide the Capital Assets Team documentation within six months or before the current fiscal year ends, whichever comes first for capitalization...”



During our audit, approximately one-year after project completion, the capitalization of assets related to the Reby Cary Youth Library and Park project excluded the following amounts:

Cost Type	Total Amount
Architects' and engineers' fees for design and supervision	\$393,573.06
Land	\$194,891.00
Total Understatement	\$588,464.06

Source: CFW PeopleSoft Financials

Incomplete and untimely capitalization of costs could result in incorrect capital asset value on the City's balance sheet.

Financial Management Services (FMS) acknowledged the error and indicated that they had started making the necessary corrections; and, that they had not received a "Capital-Project-Asset-In-Service Form" for this project from PMD or Library Departments. Internal Audit concluded that completion and submission of the said form could have avoided or at least ensured early detection of this error.

Recommendation 3: *The Property Management Director should ensure that the documentation required by FMS to process capitalization costs is being provided timely.*

Auditee's Response: Concur. Will incorporate with close out process.

Target Implementation Date: September 29, 2023

Responsibility: Brian Glass, Assistant Property Management Director

Applicable Department Head: Ricardo Salazar II, Interim Property Management Director

Applicable Assistant City Manager: Dana Burghdoff