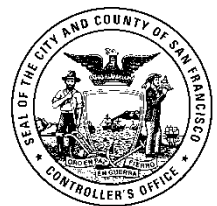


DEPARTMENT OF PUBLIC WORKS, BRANCH LIBRARY IMPROVEMENT PROGRAM:

DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures



August 27, 2009

CONTROLLER'S OFFICE
CITY SERVICES AUDITOR

The City Services Auditor was created within the Controller's Office through an amendment to the City Charter that was approved by voters in November 2003. Under Appendix F to the City Charter, the City Services Auditor has broad authority for:

- Reporting on the level and effectiveness of San Francisco's public services and benchmarking the city to other public agencies and jurisdictions.
- Conducting financial and performance audits of city departments, contractors, and functions to assess efficiency and effectiveness of processes and services.
- Operating a whistleblower hotline and website and investigating reports of waste, fraud, and abuse of city resources.
- Ensuring the financial integrity and improving the overall performance and efficiency of city government.

The audits unit conducts financial audits, attestation engagements, and performance audits. Financial audits address the financial integrity of both city departments and contractors and provide reasonable assurance about whether financial statements are presented fairly in all material aspects in conformity with generally accepted accounting principles. Attestation engagements examine, review, or perform procedures on a broad range of subjects such as internal controls; compliance with requirements of specified laws, regulations, rules, contracts, or grants; and the reliability of performance measures. Performance audits focus primarily on assessment of city services and processes, providing recommendations to improve department operations.

We conduct our audits in accordance with the Government Auditing Standards published by the U.S. Government Accountability Office (GAO). These standards require:

- Independence of audit staff and the audit organization.
- Objectivity of the auditors performing the work.
- Competent staff, including continuing professional education.
- Quality control procedures to provide reasonable assurance of compliance with the auditing standards.

Audit Team: Robert Tarsia, Deputy Audit Director
Sally Pearce, Audit Manager
Rob Malone, Associate Auditor



City and County of San Francisco

Office of the Controller - City Services Auditor

Department of Public Works, Branch Library Improvement Program:
DPW Needs to Ensure Contract Terms Are Consistent With Actual
Practices and Procedures

August 27, 2009

Purpose of the Audit

The purpose of this audit was to determine if Huey Construction Management Co., Inc. (MHC) complied with construction contract terms and conditions in its work on the West Portal Branch Library construction project, and to evaluate the extent to which the Department of Public Works (DPW) provided sufficient project management oversight in accordance with contract provisions. The audit period covered the time from receipt of MHC's bid documents on October 6, 2004, through the execution of final closeout documents and final payment to MHC on June 20, 2008.

Highlights

The renovation of the West Portal Branch Library is part of the City's Branch Library Improvement Program (BLIP). The West Portal Branch Library closed for renovation on December 19, 2004, and re-opened on February 10, 2007. Library patrons, staff, and other stakeholders have indicated that they are satisfied with the results of the renovation.

The audit found that certain DPW and MHC processes were not consistent with contract terms and conditions. The audit team identified the following:

- The final completion date approved by DPW was not granted in accordance with contract requirements, and it is unclear why the contractor was not assessed \$405,000 in liquidated damages.
- Approval of monthly applications for payment with no or incomplete supporting documentation.
- Approval of incomplete certified payroll submissions
- Approval of change orders without detailed cost information required by the contract.
- Confirmation of the state registration of an MHC insurer was not performed, and approval was given to a noncompliant bond surety company.
- Compensation paid to certain subcontractor employees was not in accordance with prevailing wage scheduled rates.

Recommendations

The audit report includes 27 recommendations for the DPW to improve administration of construction contracts for BLIP projects.

DPW should:

- Either issue MHC a documented non-compensatory time extension, or require MHC to pay the City \$405,000 in liquidated damages.
- Ensure that all procedures included in construction contracts are followed by both DPW and the contractors during the execution of a project.
- Ensure that all detailed procedures included in contract specifications are applicable to the project.
- Document confirmation contractor insurers are registered in California.
- Verify the financial stability of contractors' bond surety companies is compliant with contract requirements.
- Consider setting agreed-upon criteria for defining a "small" project and creating a contract template that is specific to these small projects, so that the task of customizing a contract for an individual small project is not onerous.

Copies of the full report may be obtained at:

Controller's Office • City Hall, Room 316 • 1 Dr. Carlton B. Goodlett Place • San Francisco, CA 94102 • 415.554.7500
or on the Internet at <http://www.sfgov.org/controller>

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CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE CONTROLLER

Ben Rosenfield
Controller

Monique Zmuda
Deputy Controller

August 27, 2009

Edward D. Reiskin, Director
San Francisco Department of Public Works
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Luis Herrera, City Librarian
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102

Dear Mr. Herrera and Mr. Reiskin:

The Controller's Office, City Services Auditor, presents its audit report regarding the construction contract with Huey Construction Management Co, Inc. (MHC) for the completion of the West Portal Branch Library renovation project. The construction contract was entered pursuant to an agreement between the Department of Public Works (DPW) and the Library Commission for oversight and management of projects that are part of the Branch Library Improvement Program (BLIP). The audit evaluated compliance with the construction contract and established construction management procedures by both DPW and MHC.

The audit found that certain DPW and MHC contract and construction management practices were not consistent with contract terms and conditions or with DPW's own established procedures. The audit includes 27 recommendations for DPW to improve its contract administration and construction management processes.

DPW's response is included as Appendix A to this report. We appreciate the assistance and cooperation that staff of DPW, BLIP, and MHC provided to us during the audit.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tonia Lediju".

Tonia Lediju
Director of Audits

cc: Mayor
Board of Supervisors
Civil Grand Jury
Budget Analyst
Public Library

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LIST OF ACRONYMS

BCM	Department of Public Works' Bureau of Construction Management
BLIP	Branch Library Improvement Program
CSA	City Services Auditor
DBI	Department of Building Inspection
DPW	Department of Public Works
FY	Fiscal Year
MHC	Huey Construction Management, Inc.
MOU	Memorandum of Understanding

INTRODUCTION

Audit Authority

This audit was conducted under the authority of the Charter of the City and County of San Francisco (City), which requires that the City Services Auditor conduct periodic, comprehensive financial and performance audits of City departments, services, and activities.

Background

Branch Library Improvement Program

The Branch Library Improvement Program (BLIP) is a bond program established to upgrade and restore the City's branch libraries. Upgrades include seismic safety, customer accessibility, technological advances, and facility restoration for code compliance. In November 2000, San Francisco voters authorized \$106 million for the BLIP by passing Proposition A. In November 2007, voters authorized Proposition D, which extended the existing Library Preservation Fund authorized in the City Charter through fiscal year (FY) 2022-23. Proposition D authorized the City to issue additional bonds to help fund branch library improvements.

The City's Administrative Code requires that the Department of Public Works (DPW) contract for the completion of BLIP construction projects because the San Francisco Public Library (Library) is not authorized to contract independently for this type of work. The working relationship between the Library and DPW is codified in a memorandum of understanding (MOU) between both departments. The main purpose of the MOU is to establish a baseline management plan by which the budget, revenue, schedule, and scopes of work of BLIP projects are to be managed. The initial MOU was operative during the West Portal Branch Library Renovation and approved in June 2002. A revised MOU was adopted in May 2008 to incorporate the CSA's September 2007 audit recommendations concerning BLIP's program management procedures.

DPW's program management team consisted of three full-time employees led by a program manager who is responsible for oversight of the entire BLIP, which consists of five new libraries, 19 branch renovations, and a support services center. The program manager reports to the bureau manager of DPW's Bureau of Project Management (BPM). To initiate a project, the DPW Contract

Administration Group prepares contract documents, confirms adherence to bid requirements, and issues the official notice to proceed to a project's contractor. Once a contract is awarded, DPW assigns a construction manager from the Bureau of Construction Management, assisted by a resident engineer, to oversee the construction phase. The resident engineer is responsible for ensuring adherence to both the terms of the contract and to DPW's established procedures.

EXHIBIT 1 West Portal Branch Library



Source: CSA original photo.

West Portal Branch Library renovation

This audit addresses the detailed project management activities of the West Portal Branch Library renovation (West Portal) project, as these activities relate to the MOU and the construction contract for a specific BLIP project. After discussion with BLIP regarding all library renovation

projects, CSA selected the West Portal project to audit. The West Portal project included an addition and numerous renovations to the existing building. Improvements include an accessible elevator and restrooms, seismic upgrading, expanded shelf space, new electrical and plumbing systems, and a new front courtyard.

Huey Construction Management Co., Inc. (MHC) of San Francisco performed the work to restore and construct the addition for the West Portal Branch Library. MHC's total fee for the West Portal project was \$3,355,783, which included an initial lump-sum bid award of \$2,980,000 and approved change orders of \$375,783. The initial duration of the project was set for 400 days. Approved time extensions of 118 days increased the final contract duration to 518 days. The library closed for renovation on December 19, 2004, and reopened on February 10, 2007.

Objectives

This audit evaluated MHC's and DPW's compliance with the construction contract and established construction management procedures. The audit objectives were:

1. *Verification of Contracted Scope of Work* – To analyze and test selected Schedule of Values items to determine if the contractor fully provided the contracted scope of work. The review of the materials incorporated into the final project was limited because the project was already complete when audit field work was conducted.
2. *Schedule of Values and Applications for Payment* – To reconcile paid invoices to the schedule of values including base contract and change orders; to review and test selected items; and to verify and test credit and add alternates, allowances, etc.
3. *Change Order Review* – To review change order scope of work to confirm that required work represents a legitimate change in scope and for possible deletions or changes in scope that should be credited to the City.
4. *General Conditions and Other Requirements* – To review and test compliance with selected requirements such as submittal requirements, bonds and insurance, etc.

Scope and Methodology

The audit period covered the time from receipt of MHC's bid documents in October 6, 2004, through the execution of final closeout documents and final payment to MHC in June 20, 2008.

To conduct the audit, the CSA audit team:

- Reviewed and gained an understanding of the construction contract terms and conditions, procedures manuals for DPW's Bureau of Construction Management (BCM) and Contract Administration Group, and the MOU between DPW and the Library.
- Reviewed and analyzed contract files at DPW and MHC to confirm and compare whether project operations were in compliance with the MOU, written procedures, and the construction contract.
- Selected a sample of specification sections from the contract and tested whether:
 - reports and special inspections were conducted and documented
 - shop drawings and product/material samples were submitted and approved
 - material deliveries were reviewed and documented as being compliant with contract specifications
- Tested applications for payment for accuracy and for compliance with contract requirements for submission of accompanying backup information, including certified payroll reports and a monthly project schedule update.
- Tested a sample of change order items for compliance with contract terms regarding:
 - Justification of a reasonable change to the original project scope of work
 - Breakdown of costs into labor (by hour and trade classification), material quantities and types, equipment by type and rate, and taxes, insurance and bonds
- Time delay items, including adequate justification that proposed work warranted an extension to the project schedule

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- Tested for:
 - Adherence to the contract's project closeout requirements, including completion of all detailed tasks required before the issuance of substantial completion and final completion certificates to MHC
 - Compliance by MHC with the contract's bonding and insurance requirements
 - Compliance with prevailing wage requirements in a sample of MHC payroll and tax records for

- Interviewed BCM, the DPW contract administration group, and MHC staff to obtain explanations for apparent noncompliance and to provide context to our findings.

This performance audit was conducted in accordance with generally accepted government auditing standards. These standards require planning and performing the audit to obtain sufficient and appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for the stated findings and conclusions which are based on the audit objectives.

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AUDIT RESULTS

Summary

The newly renovated West Portal Branch Library incorporates improved facilities, increased shelf space, and modern upgrades like Wi-Fi internet access and additional computers. Patrons, Library staff, and the district's member of the Board of Supervisors have indicated they are satisfied with the results of the renovation.

The project's adherence to applicable codes was inspected several times during construction by the Department of Building Inspection (DBI), which issued plumbing, electrical, and building permits, followed by a final certificate of occupancy on March 21, 2007. By issuing the certificate of occupancy, DBI asserted that the project had adhered to applicable City ordinances and state laws.

The results of the audit work revealed that DPW needs to improve contract and construction management processes and procedures. In several instances, DPW's actual contract and construction management practices used to manage the project were not consistent with requirements of the contract or with DPW's own published procedures.

Inadequate contract and construction management processes and procedures employed during oversight of the West Portal project resulted in the following:

- Noncompliance with procedures required by the contract
- Noncompliance, or partial compliance, with closeout requirements
- Noncompliance with final and substantial completion requirements
- Approval of monthly applications for payment with no, or incomplete, backup documentation
- Approval of change orders without detailed cost information required by the contract
- Inadequate management oversight of the project's submittal log and no documented monitoring of material deliveries.

By accepting the West Portal contract award, MHC agreed to abide by all contract terms and provisions, and to complete the project using specified means and methods required by the contract. DPW's role was to implement contract administration and construction management oversight that ensured compliance with all contract requirements. The audit findings disclosed instances in which DPW and MHC did not adequately or effectively meet their respective obligations.

Finding 1

BCM and MHC used certain procedures that were not compliant with the detailed requirements of the contract

BCM and MHC did not adhere to certain contract terms and conditions. Conversations with BCM and MHC revealed that in these instances, both entities agreed to implement less detailed and/or omit certain required contract procedures because they were considered time consuming and unnecessary. Examples include:

- The project budget and billing status document, known as the schedule of values (SOV), did not contain required detail and its line items did not correspond to line items on the project's critical path method schedule.
- MHC did not submit a monthly update of the schedule that the contract requires.
- Closeout inspection requests submitted by MHC and the subsequent closeout inspections by BCM were not documented.
- MHC and BCM did not use required forms to document the date on which change order items were initially identified; therefore the timeliness of the completion of subsequent change order proposals by BCM could not be determined.
- BCM approved change-order labor rates that were calculated using a markup that exceeded the one allowed by the contract.

BCM personnel stated that the rationale for not requiring adherence to these procedures was that it would have been overly burdensome and essentially not necessary because

it is “boilerplate” language which is not customized for a smaller project such as West Portal. Although BCM staff referenced West Portal as being a “small” project, BCM also indicated they do not have any written guidance regarding which procedures are, or are not, applicable to small projects, nor is there a definition of what qualifies as a “small” project.

Related concerns surrounding City contracting policies and procedures have been addressed over the past two years by the Construction Contracting Task Force.¹ BCM noted that the City will publish a new procedures manual that will standardize construction contracting and construction management policies and procedures across all City departments.

Until these new procedures are codified and adopted through inclusion in the contract specifications of individual projects, BCM should ensure adherence to the policies and procedures documented in current contract(s), or prepare and document agreed-upon modifications to contract terms and conditions. The contract between BCM and MHC is a legally binding document. Both parties must abide by the contract requirements to ensure accountability and successful execution of the outlined scope of work.

Recommendations

DPW should:

1. Ensure that all detailed procedures included in a contract’s specifications are applicable to the project and are consistent with DPW’s current contract and construction management practices.
2. Ensure that all procedures included in a contract are followed by BCM and the contractor during the execution of a project.
3. Consider setting agreed-upon criteria for defining a “small” project and creating a contract template that is specific to these small projects, so that the task of customizing a contract for an individual small project is not onerous.

¹ The Construction Contracting Task Force was convened in 2006 to address many issues related to City contracting, including the impact of City policies and procedures on contractors’ desire to bid on City projects. One of the projects undertaken pursuant to the task force’s input is a comprehensive rewriting of the City’s construction contracting procedures, which is due to be published by the end of 2009.

Finding 2

The substantial and final completion dates approved by BCM were not made in accordance with contract guidelines

The substantial completion date is the date that the project is sufficiently complete that the facility can begin to be used for its intended purpose, even though work is continuing. The final completion date is the date that the contract's scope of work has been fully completed, including all punch list² outstanding items and all contractual and administrative requirements. On West Portal, DPW approved a substantial completion date of August 6, 2006, and a final completion date of October 6, 2006.

However, the contractor had not completed many of the detailed requirements of the contract in advance of these DPW-approved dates. Therefore, DPW's approval of substantial and final completion on the project was improper. The granting by DPW of substantial and final completion prior to actual completion of required tasks created an inaccurate historical record of actual project activities.

Substantial completion

Analysis of records related to the granting of substantial completion revealed that:

- An initial version of a Certificate of Substantial Completion listed a completion date of August 29, 2006. This certificate was signed by the DPW Resident Engineer on February 26, 2007.
- A later version of a Certificate of Substantial Completion was included in DPW's package of project closeout documents. This version listed a completion date of August 6, 2006. This certificate was signed by the Resident Engineer and by three members of DPW management. The final approval signature is dated June 6, 2008.
- 13 of 15 contract requirements related to substantial completion were either not completed, or they were reportedly completed but their completion could not be substantiated because they were not documented.

² A "punch list" is a list of final repair and finish work items, issued at the time of substantial completion, that must be completed and approved by the owner prior to approval of final completion.

Final completion

Analysis of records related to the granting of final completion revealed that:

- Library staff occupied and began using the building as of December 12, 2006. According to DPW, this is the date the Library obtained “beneficial occupancy”³ of the building.
- The contractor continued to complete the punch list items through the first months of 2007.
- DBI issued a Certificate of Final Completion and Occupancy on March 21, 2007.
- The final change order on the project was approved by DPW on July 12, 2007.
- The Certificate of Final Completion, on which DPW granted completion as of October 6, 2006, was signed on May 23, 2008, almost twenty months after the granted completion date.
- 8 of 13 contract requirements related to final completion were either not completed, or they were reportedly completed but their completion could not be substantiated because they were not documented.

Penalties due

The contract contains clearly defined terms that call for the assessment of financial penalties, known as liquidated damages, against the contractor if substantial and final completion are not achieved by the contractual time limits. The terms call for a penalty of \$2,500 per day for each day of delay in achieving substantial completion and \$1,250 per day for each day of delay in achieving final completion. The audit team identified three categories of liquidated damages that may be due from the contractor:

- Based on the substantial completion date of August 29, 2006, which was approved by the resident engineer on February 26, 2007, damages of \$57,500 are due based on a 23-day delay from August 6, 2006, to August 29, 2006.

³ Beneficial occupancy is defined as the stage of construction of a building or a facility, before final completion, at which its owner can occupy it for the purpose it was constructed.

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- Based on issuance of DBI's final certificate on March 21, 2007, damages of \$207,500 are due based on a 166-day delay from October 6, 2006 to March 21, 2007.
- Based on approval of the final change order on July 12, 2007, additional damages of \$140,000 are due for the additional 112-day delay from March 21, 2007 through July 12, 2007.

The total damages due from these three categories are \$405,000.

Further action is required

Audit interviews with BCM management reflect that the end-of-project delays were caused by poor coordination among City departments and were not the fault of the contractor; DPW therefore did not assess financial penalties on the contractor. However, granting MHC final completion in advance of the actual completion of all required tasks was not in accordance with contract requirements. DPW should issue a non-compensatory time extension, in the form of a change order, to document the City's responsibility for however much of the delay was the City's fault. If such a time extension is not issued, the terms of the contract require that the contractor be assessed liquidated damages for not completing all required activities before the contractual deadlines for substantial and final completion.

Recommendations

BCM should:

4. Ensure that all contract substantial and final completion requirements are completed and documented before granting substantial and final completion on a project.
5. Either issue MHC a non-compensatory time extension that extends through the date that all their work was complete, or assess MHC the appropriate amount of liquidated damages, up to \$405,000.
6. Develop a set of written procedures surrounding the acceptance by client departments of beneficial occupancy of facilities. Such procedures should include documentation requirements; detail precise responsibilities of the client department, DPW and the contractor; and outline any changes to final completion requirements resulting from the acceptance of beneficial

occupancy.

Finding 3

MHC did not submit required certified payroll reports and BCM approved these incomplete submissions

Sixteen of nineteen applications for payment (invoices) submitted for the project were not supported by a complete package of certified payroll reports as required by the contract.⁴ The packages were partially complete in 14 of 19 instances. No reports were provided in 2 of 19 instances. The contract requires that each invoice be supported by three copies of the certified payroll for the contractor and each subcontractor active on the project.

MHC indicated that its monthly submissions of certified payroll to BCM contained a certified payroll report for every subcontractor. However, when it came time to submit its monthly invoice, MHC submitted what documentation it had, even if it was incomplete. MHC further indicated that several of its regular subcontractors are small operations that frequently fall behind on paperwork, including certified payrolls.

BCM did not adequately review the submitted packages of certified payroll reports to confirm that all required subcontractor reports were included by MHC. Moreover, BCM approved 16 invoices with incomplete certified payroll packages.

In addition to being required by the contract, it is important to maintain complete certified payroll records because they are requested as evidence during investigations of alleged violations of prevailing wage laws or of union agreements. BCM staff acknowledged that they have historically had a problem maintaining complete certified payroll records because it is difficult to monitor hard-copy certified payroll files. According to BCM staff, this is one reason they migrated, in late Fall 2008, to an all-electronic process for submission and approval of certified payroll reports.

⁴ Certified payroll reports detail exactly what was paid to each employee and include such information as base pay rate, taxes, vacation, payroll deductions, net pay, etc.

Recommendations

BCM should:

7. Ensure that contractors submit all required certified payroll reports before approving applications for payment.

Finding 4

Thirty-four of forty-one change order proposals prepared by MHC and approved by BCM did not include required detail, and/or did not have required documentation attached

Of a sample of 41 change order item proposals tested, the auditors found that 34 were missing one or more elements of detailed information required by the contract, such as a breakdown of:

- Labor by trade classification, wage rates, and estimated hours
- Material quantities and type of products
- Equipment breakdown by make, type, rental rate, etc.
- Detailed justification for a time extension as a result of excessive rain, accompanied by a required notice of delay form
- Detailed justification, if applicable, that an individual change order item results in a delay to the project schedule, accompanied by a required notice of delay form

Not only is the detailed information outlined above required by the contract, change order items should be documented to a level of detail that shows exactly what the City is getting in return for the additional fee it is agreeing to pay. Only by requiring this level of detail is BCM ensuring that the City can, if needed, effectively audit change order costs as it is entitled to do under the contract.

The level of noncompliance varied among the 34 incomplete proposals. Some were small dollar items for which the noncompliance is of minimal significance. However, some large dollar items were approved based on one-line proposal descriptions. For example, the proposal for a \$46,999 item stated only to: "Remove existing floor prep., material, and repair cracks, and float floor with ardex." As a result, insufficient evidence exists to validate that the labor, material, and equipment costs that comprise the change order proposal were compliant with contract

requirements and were bona fide, warranted, change order work.

Details regarding time extensions were also insufficient. Supporting documentation was not maintained to substantiate a 15-day extension for excessive rain (although auditor research found the extension to have been reasonable). Other time extensions were not attributed to individual items as required by the contract. For example, a 30-day extension was granted and attributed to an entire group of 14 change order items. The reasonableness of this time extension could not be rigorously assessed because the time extension was not attributed to individual line items on the change order as required by contract provisions.

Recommendations

BCM should:

8. Ensure that contractors include all the detailed labor, material, and equipment cost breakdown required by the contract for change order proposals.
9. Ensure time extensions for excessive rain are supported by detailed backup information required by the contract.
10. Ensure that time extensions are defined and tied directly to individual change order items.

Finding 5

BCM did not approve change orders in a timely manner

Change orders were not approved according to procedures defined in the contract. According to BCM, 92 percent of proposals for individual change order items were initially given only verbal approval (38 of 41 proposals reviewed). After verbal approval was given, the items were then accumulated for many months and included as part of one official change order document. This change order was then given written approval by BCM and DPW management. For example, Change Order #2, which was given written approval on June 30, 2006, contained individual items that had been approved verbally between September 2005 and May 2006.

The contract does not specify a timeframe within which the City must approve a change order; however, the contract

does note that verbal approvals are not valid. BCM indicated that change order items were compiled into an official change order document once the accumulation of items made it “worthy of the paperwork.” However, according to BCM management, subsequent to the completion of work on West Portal in early 2007, BCM has adopted a policy of compiling all change order items once a month into an official change order document for written approval by BCM and DPW management.

Recommendations

BCM should:

11. Ensure adherence to all contract requirements regarding the generation, preparation, and approval of change orders.
12. Comply with the current policy requiring change order items to be consolidated into an official change order on at least a monthly basis.

Finding 6

BCM and MHC did not document adherence to the detailed submittal, testing, and materials requirements outlined in the contract

A construction contract outlines a project’s administrative and technical requirements, including all the materials, products, and construction methods to be used by the contractor. The contract also outlines tests and inspections that must be performed and documented to verify requirements are met (e.g., “the foundation must be inspected before it is buried underground”). A submittal log is maintained by BCM to document and track the submission and review of critical materials, products, and construction methods used. The contract for the West Portal project contains detailed specifications for many other materials, for example, the types of wiring, bolts, and screws to use in various building locations.

Only by using the specified materials outlined in the contract, and coordinating the completion of all required testing and inspections, would MHC fully meet its obligation on the project. Concurrently, BCM’s primary role was to ensure that MHC adhered to these detailed contract specifications. Audit findings reflect the following:

- BCM did not approve an official baseline version of the submittal log at the beginning of the project, and the latest version provided lists certain items as incomplete or requiring resubmission. As a result, there is no documentation that all required submittals were reviewed and approved in a timely manner.
- The contract specifications contain requirements for the submittal of many items that are not included on the submittal log. BCM and MHC agreed that certain items required for submittal did not actually need to be included in a submittal, because they were so basic as to not require this level of review.
- Neither BCM nor MHC documented reviewing deliveries of project materials, whether they were or were not part of a formal submittal.
- A sample of 15 of the detailed requirements, selected from the contract's 83 specification sections, revealed:
 - 9 of 15 requirements were fully met
 - 4 of 15 were reportedly met, but not documented
 - 2 of 15 requirements were not met

As noted above, the submittal log was not adequately maintained, reviews of delivered materials were not documented, and certain detailed specification requirements were not met. The audit team therefore concluded that BCM's and MHC's oversight of the project did not provide complete assurance that the final project was constructed according to the detailed specifications of the contract.

Recommendations

BCM should:

13. Ensure that project submittal logs are accurately maintained, up to and including written sign off of a final version to be maintained in the project file.
14. Document the review of a sample of the deliveries of both submitted and non-submitted materials on a project, to confirm items delivered exactly conform to specification.
15. Ensure that all the detailed requirements of a specification section have been met before signing off

on 100 percent completion of a given section of work in the monthly application for payment.

Finding 7

The DPW Contract Administration group did not confirm whether one of MHC's insurers was registered in California and approved a noncompliant bond surety company

DPW's Contract Administration group coordinates the activities for a project during the bid and award phase. Once a contractor has been awarded the project, a signed contract and a notice to proceed is issued to the contractor. Contract Administration is responsible for confirming adherence to all bid requirements, including those related to insurance and bond certificates, contractors' licenses and City business tax registration.

Contract Administration also confirms that the insurers listed on contractors' insurance certificates meet contract requirements for financial stability, and ensures that insurers for the contractor and subcontractors are licensed to work in California. If subcontractors will be used, the prime contractor, under BCM's management, assumes responsibility for monitoring the compliance of its subcontractors with the contract's insurance, licensure, and registration requirements.

The auditors found that Contract Administration:

- Did not confirm that MHC's general liability insurer, Landmark American Insurance Co., was registered in California. (Audit staff subsequently confirmed that Landmark American was, in fact, registered.)
- Approved MHC's bond surety company, American Contractor's Indemnity Co., but the financial stability rating of the surety company was rated two levels below the contract's requirement.
- Did not require an increase to the coverage limit of MHC's builder's risk insurance, inclusive of increased value added by change orders.

Recommendations

DPW Contract Administration should ensure that:

16. It adheres strictly to its procedure of confirming and documenting that all contractor insurers are licensed in California.
17. Contractors' builder's risk coverage is compliant with contract terms and conditions.
18. The financial stability of contractors' bond surety companies is compliant with contract requirements.

Finding 8

MHC did not adequately monitor its subcontractors' renewals of their insurance, contractor's license, and City business tax registration

The contract requires that MHC, and related subcontractors, maintain:

- Required insurance coverage
- State contractor's license
- City business tax registration

DPW confirms these requirements are met during the bid and award phase. It is the prime contractor's responsibility, under BCM's management, to ensure that all its subcontractors remain in compliance throughout the duration of the project. MHC did not provide documentation to prove that all required insurance, licenses, and tax registrations were maintained throughout the duration of the project. CSA subsequently reviewed information from the State of California Department of Insurance, Department of Consumer Affairs, and from the City's FAMIS accounting system, all of which confirmed that MHC, and all subcontractors except one, were in fact in compliance with all insurance, licensure, and tax registration requirements. One subcontractor, Avoca Trucking & Excavating, was found to have fraudulent license and insurance information and was removed from the project.

Recommendations

BCM should require that:

19. Contractors on multi-year projects submit an annual written confirmation that all active subcontractors have active City business tax registration.

20. Contractors on multi-year projects submit an annual written confirmation that all active subcontractors have active state contractor's licenses.

Finding 9

MHC overcharged the City by \$1,078 due to improper change order calculations

Detailed analysis of 41 change order items showed that MHC made several calculation errors:

- Math errors resulted in overcharges to the City of \$221
- Use of incorrect mark-up percentages resulted in an overcharge to the City of \$115
- Application of a 3 percent mark up for bond costs on change order items, which exceeded MHC's actual cost of 2.75 percent. This resulted in overcharges to the City of \$742 (The contract requires that only actual costs be charged.)

Recommendations

BCM should:

21. Require the contractor to repay the City for \$1,078 in overcharges on change orders.

Finding 10

MHC made changes to schedule of value line item amounts without notifying BCM

Audit testing revealed that the budget values of 7 of 60 line items on the final schedule of values were different than the budget values on the project's initial schedule of values approved by BCM, although the total of the budgets of all 60 items did not change. The contract requires that all monthly invoice packages, of which an updated schedule of values is an integral part, be consistent with previously approved invoices. MHC's project manager explained that certain items were adjusted to be more accurate, once new information became available from subcontractors. BCM's construction manager stated that the changes were not significant because the total contract value did not change. However, regardless of whether the noted changes were reasonable, making the changes without notifying BCM was a violation of contract terms.

Recommendations

BCM should:

22. Ensure that line item values on updated schedule of values documents submitted with monthly invoices are consistent with prior approved values.
23. Remind contractors that proposed changes to the budgets of individual schedule of values line items need to be submitted to, and approved by, BCM.

Finding 11

MHC did not provide sufficient oversight to ensure that its subcontractors compensated employees at prevailing wage rates. MHC also did not ensure adherence by two subcontractors to significant administrative requirements of the contract

Lai's E&H Electric, Inc. paid employees working on the West Portal project wages that were less than the prevailing wages required by the contract. MHC stated that Lai's had accidentally paid the lower rate.

- Three journeyman level electricians were paid at a rate of \$62 when the prevailing wage was \$62.51, during the months of December 2005 and February 2006.
- Two journeyman level electricians were paid at a rate of \$62 when the prevailing wage was \$64.71, during the month of May 2006.

One subcontractor, United California Glass & Door (UCG&D), did not sign and return a subcontract agreement for the project. Written subcontractor agreements are a specific requirement of MHC's contract with the City. A proposal was on file, but MHC staff stated that UCG&D staff must have forgotten to sign and return the subsequent subcontract agreement.

In these instances, MHC did not adequately meet its obligation to ensure subcontractor compliance with contract terms.

Recommendations

24. DPW should coordinate a follow-up investigation into the prevailing wage violations of Lai's E&H Electric on the West Portal project and assess any applicable penalties based on the results of the investigation and report issues to the City's Office of Labor Standards Enforcement.
25. BCM should require contractors to submit written confirmation upon receipt of signed subcontractor agreements.

Finding 12

BCM's internal payment records for the project are not accurate

BCM maintains its own record of amounts paid on projects in a Microsoft Access database it calls the "payment database." BCM staff stated the payment database is used to track payments on individual projects and also to create summary reports for use by BCM management in its running of the bureau. Analysis of payment database records for West Portal showed that the payment database did not reflect actual amounts paid to the contractor. Payment database records show total payments that are \$16,782 below actual payments recorded in the City's FAMIS accounting system. The variance apparently occurred because a change was made to one progress payment after the initially approved amount was entered into the payment database. BCM staff failed to record the change in the database.

BCM management said that BCM has no procedure to periodically reconcile payment amounts recorded in the payment database to actual paid amounts recorded in FAMIS. This lack of a reconciliation procedure led to the noted variance on West Portal and potentially allowed variances on other projects to go undetected.

Recommendations

26. BCM should correct its internal payment database records for the West Portal project by making a \$16,782 entry to true up its records to FAMIS.
27. BCM should reconcile internal payment database information to FAMIS on a monthly basis to confirm the accuracy of its project and divisional management report data

APPENDIX A: DEPARTMENT RESPONSE

City and County of San Francisco



Gavin Newsom, Mayor
Edward D. Reiskin, Director



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Department of Public Works
City Hall, Room 348
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4645

Fuad S. Sweiss, PE, PLS
City Engineer & Deputy Director of Engineering

July 30, 2009

Mr. Ben Rosenfield, Controller
City & County of San Francisco
1 Dr. Carlton B. Goodlett Place
City Hall, Room 318
San Francisco, CA 94102

Dear Mr. Rosenfield,

I would like to thank you and your staff for completing a comprehensive audit of the West Portal Branch Library project. Since this library was completed and opened to the public in February 2007, DPW has been implementing changes to our business procedures as part of our effort to receive a national accreditation through the American Public Works Association (APWA). The process changes include changes to our documenting procedures and a plan to implement a training program to ensure that DPW staff applies the best and most consistent construction management practices to all of our projects for quality assurance and quality control purposes. Many of these new and improved procedures address the recommendations made in your audit.

I am happy to report that the West Portal Branch Library was delivered under budget. We have received positive feedback from the community regarding the project, which included seismic upgrades, general renovation, accessibility improvements, and an expanded collection of books.

We remain committed to providing beautiful, functional and sustainable facilities to the City. We look forward to adopting the recommendations made in your report and will continue to deliver quality public projects for San Franciscans.

Sincerely,


Fuad S. Sweiss, PE, PLS, LEED AP
City Engineer & Deputy Director for Engineering

Cc: Edwin Lee, City Administrator
Edward Reiskin, DPW Director
Luis Herrera, City Librarian

Customer Service "IMPROVING THE QUALITY OF LIFE IN SAN FRANCISCO"
Teamwork Continuous Improvement

Office of the Controller, City Services Auditor
 DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
1. Ensure that all detailed procedures included in a contract's specifications are applicable to the project and are consistent with DPW's current contract and construction management practices.	DPW	Staff has been revising and streamlining specifications as they pertain to smaller public projects and to ensure applicable procedures and documents are utilized, in coordination with other City departments. Current General Conditions have been revised as part of the Citywide Construction Tasks Force since West Portal Library was completed and further refinements to the technical specifications are on-going.
2. Ensure that all procedures included in a contract are followed by BCM and the contractor during the execution of a project.	DPW	DPW is currently updating all construction management and QA/QC procedures under BCM as part of the APWA accreditation process. Also, once procedures are finalized and approved, BCM intends to implement a training program for inspectors and resident engineers on these procedures to ensure consistent and thorough application.
3. Consider setting agreed-upon criteria for defining a "small" project and creating a contract template that is specific to these small projects, so that the task of customizing a contract for an individual small project is not onerous.	DPW	In addition to our response to number one above, check lists and templates will be developed for smaller projects.
4. Ensure that all contract substantial and final completion requirements are completed and documented before granting substantial and final completion on a project.	DPW	The Citywide Construction Task Force has completed the draft construction procedures including Project Close out procedure which deals with substantial and final completion requirements. A check list will be developed to ensure that all requirements are met and complied with.

Office of the Controller, City Services Auditor
DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
5. Either issue MHC a non-compensatory time extension that extends through the date that all their work was complete, or assess MHC the appropriate amount of liquidated damages, up to \$405,000.	DPW	Issuing a non-compensatory time extension would have been the proper alternative in this case, however, BCM will not issue one at this time because the contract has already been closed out in June 2008.
6. Develop a set of written procedures surrounding the acceptance by client departments of beneficial occupancy of facilities. Such procedures should include documentation requirements; detail precise responsibilities of the client department, DPW and the contractor; and outline any changes to final completion requirements resulting from the acceptance of beneficial occupancy.	DPW	The current 01700 (Contract Closeout) technical specifications will be modified in conjunction with other City departments to add client department acceptance procedures for beneficial occupancy.
7. Ensure that contractors submit all required certified payroll reports before approving applications for payment.	DPW	Effective July 2008, DPW implemented a web based program called "Elation" which requires Certified Payrolls to be submitted electronically. Along with the new system and electronic payments, the two will be tied together to ensure payments are processed with the required Certified Payrolls.
8. Ensure that contractors include all the detailed labor, material, and equipment cost breakdown required by the contract for change order proposals.	DPW	DPW will review all change orders for full compliance to the specification requirements and document all information and methodology for each change order. As part of the Citywide procedures, checklists are being developed and staff will undergo training to apply consistent procedures.

Office of the Controller, City Services Auditor
 DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
9. Ensure time extensions for excessive rain are supported by detailed backup information required by the contract.	DPW	The current practice is to document weather conditions (especially rainy days) in the project's daily reports prepared by resident engineers for each contract. In addition and in conjunction with the Contracting Task Force recommendations, we will require the contractor to submit all rainy days time extensions in writing for the City's review, to ensure consistent practices.
10. Ensure that time extensions are defined and tied directly to individual change order items.	DPW	This is already part of our procedure for individual change orders and we will ensure compliance.
11. Ensure adherence to all contract requirements regarding the generation, preparation, and approval of change orders.	DPW	In addition to APWA procedures being developed, see response numbers 8, 9, and 10 above.
12. Comply with the current policy requiring change order items to be consolidated into an official change order on at least a monthly basis.	DPW	Our current practice is to group change orders under contract modifications on a regular and as needed basis.
13. Ensure that project submittal logs are accurately maintained, up to and including written sign off of a final version to be maintained in the project file.	DPW	Submittal review and approval procedures are already in place. In addition, we are developing a new and improved module for standardization of submittal logs to be included in our new web based database to ensure complete and accurate submittal review, approval, and archiving process.
14. Document the review of a sample of the deliveries of both submitted and non-submitted materials on a project, to confirm items delivered exactly conform to specification.	DPW	Some of our current projects include schedules of required submittals. We will also work with other city departments to standardize procedures relative to submittal schedules based on project types and we will comply with the standardized procedures.

Office of the Controller, City Services Auditor
DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
15. Ensure that all the detailed requirements of a specification section have been met before signing off on 100 percent completion of a given section of work in the monthly application for payment.	DPW	We will ensure that this is completed. For clarification, in the normal course of business, monthly payment applications are not paid 100 percent on any section of work until final closeout. The payment application may show 100% complete, but the City will only pay 90% and hold the remaining percentage as retention. This retention ensures that all work is completed including any corrections or deficiencies to the satisfaction of the city before final retention and payment is released.
16. Ensure it adheres strictly to its procedure of confirming and documenting that all contractor insurers are licensed in California.	DPW	DPW Contract Administration agrees with the recommendation but disagrees with the finding. DPW checks and verifies that contractor insurers are licensed in California using the website of California Department of Insurance Company Profiles. We will include a new website called List of Eligible Surplus Lines Insurers (LESI) to further verify. DPW continues to consult with City's Risk Management if appropriate.
17. Ensure contractors' builder's risk coverage is compliant with contract terms and conditions.	DPW	DPW Contract Administration does not agree. DPW works with the City's Risk Management to address insurance requirements. Risk Management has not required that builders' risk policies be increased with each change order. We will work with Risk Management to clarify or revise our standard contract language.
18. Ensure that the financial stability of contractors' bond surety companies is compliant with contract requirements.	DPW	DPW Contract Administration does not agree. We will ensure contract requirements are met, or that the decision to deviate from contract terms is documented. To clarify, the surety company approval on West Portal, MH Construction did not find American Contractors Indemnity Surety (ACI) by itself. It was the City's bonding program, Merriwether & Williams, that required MH to use this particular bonding company and it was pre-approved by the City's Risk Manager.

Office of the Controller, City Services Auditor
 DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
19. Require that contractors on multi-year projects submit an annual written confirmation that all active subcontractors have active City business tax registration.	DPW	We will consider revising our contract specifications in conjunction with other City departments to reflect this recommendation.
20. Require that contractors on multi-year projects submit an annual written confirmation that all active subcontractors have active state contractor's license.	DPW	See Response #19 above.
21. Require the contractor to repay the City for \$1,078 in overcharges on change orders.	DPW	Neither advisable nor feasible because contract is closed.
22. Ensure that line item values on updated schedule of values documents submitted with monthly invoices are consistent with prior approved values.	DPW	Schedule of values for lump sum contracts can only be revised via change orders. We will discuss with other City departments on a standardized procedure for updating schedule of values.
23. Remind contractors that proposed changes to the budgets of individual schedule of values line items need to be submitted to, and approved by, BCM.	DPW	Already in place and we will ensure compliance.

Office of the Controller, City Services Auditor
DPW Needs to Ensure Contract Terms Are Consistent With Actual Practices and Procedures

Recommendation	Responsible Agency	Response
24. Coordinate a follow-up investigation into the prevailing wage violations of Lai's E & H Electric on the West Portal project and assess any applicable penalties based on the results of the investigation and report issues to the City's Office of Labor Standards Enforcement.	DPW	We will refer this to the Office of Labor Standards Enforcement, as the agency is tasked with this responsibility. May not be feasible due to expiration of statute of limitation and project is closed.
25. Require contractors to submit written confirmation upon receipt of signed subcontractor agreements.	DPW	Will review recommendation with other City departments and City Attorney and will implement, if deemed appropriate.
26. Correct BCM's internal payment database records for the West Portal project by making a \$16,782 entry to true up its records to FAMIS.	DPW	Completed.
27. Reconcile internal payment database information to FAMIS on a monthly basis to confirm the accuracy of its project and divisional management report data.	DPW	Procedures, through our web based database, will be developed to reconcile payment data.