



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

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MICHAEL J. BURKE, SUPERINTENDENT

MEMORANDUM

TO: Honorable Chair and Members of the School Board
Michael J. Burke, Superintendent of Schools
Chair and Members of the Audit Committee

CC: Shawntoyia Bernard, Esq., General Counsel

FROM: Teresa Michael, Inspector General

DATE: February 18, 2022

SUBJECT: Contract Review (Report # 22-R-1): Modernization of Verde Elementary School

SUMMARY

Pursuant to the *Office of Inspector General 2021-2022 Work Plan*, we reviewed the District's contract with Moss & Associates, LLC. (RFP 18C-009R), to modernize Verde Elementary School. The primary objective of this review was to determine the extent of compliance with selected contractual terms and conditions, including (1) whether payments were appropriate and properly approved, and (2) whether deliverables were received. The review produced the following conclusions:

1. Moss & Associates (Construction Manager) was compliant with selected contract terms and conditions (except as noted below).
2. The District amended the contract to add \$5,891,945, (or 19.3%) for a significant scope change, rather than competitively bidding out the additional work.
3. The Construction Manager apparently overbilled, and District overpaid, \$73,155 for insurance.
4. Some subcontractor payment applications were not signed or notarized as required.
5. The Construction Manager did not provide *Contractor Furnished Property Logs* as required.

SCOPE AND METHODOLOGY

This review was performed in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Inspections, Evaluations, and Reviews*, as promulgated by the Association of Inspectors General.

The scope of our review covered the time period from January 1, 2019 through May 31, 2021, and included interviewing staff and reviewing:

- Relevant statutes, rules and policies including:
 - *Florida Statute 287.055 - Procurement of commodities or contractual services*
 - *Florida Statute 255.071 - Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects*
 - *Florida Statute 255.20 - Local bids and contracts for public construction works; specification of state-produced lumber*
 - *Florida Statute 1013.45 - Educational facilities contracting and construction techniques*
 - *State Requirements for Educational Facilities (SREF), Sections 4.1 and 4.2*
 - *School Board Policy 6.14 - Purchasing Department*
 - *School Board Policy 7.10 – Construction Bid Procedures*
 - *School Board Policy 7.229 – Construction Contractor Payments*
- The *Contract between The School Board of Palm Beach County, Florida, and Moss & Associates, LLC., (RFP# 18C-009R)*, and related contract documents including:
 - Monthly contractor payment applications and supporting documentation
 - Subcontracts
 - Change orders
 - Use of Allowance and Contingency funds
- The Program Management Department’s written procedures
- The Purchasing Department’s *Purchasing Manual*
- The Facilities Department’s contract administration processes

We judgmentally selected a sample of the Construction Manager’s payment applications for modernizing the main campus, and for constructing the holding school, for a detailed review as shown in Table 1 below. We also reviewed detailed documentation related to change orders, and uses of contingency and allowance funds during the project.

Table 1

Documentation Reviewed	Main Campus			Holding School		
	Quantity Reviewed	Value of Quantity Reviewed	Value of Total Population	Quantity Reviewed	Value of Quantity Reviewed	Value of Total Population
Payment Applications	9 of 24	\$9,780,280	\$23,838,543	6 of 11	\$2,695,020	\$5,271,733
Use of Allowance Funds	3 of 7	\$127,900	\$254,482	2 of 22	\$173,000	\$605,141
Change Orders	3 of 11	\$7,041,969	\$7,194,948	3 of 4	\$1,497,390	\$1,559,010
Use of Contingency Funds	4 of 35	\$54,683	\$780,855	3 of 10	\$53,080	\$142,976

Note: All values are absolute values

Draft findings were sent to the Facilities Management Department and Moss and Associates for review and comments. Management responses are attached. We appreciate the courtesy and cooperation extended to us by District staff during this review. The final Memorandum was presented to the Audit Committee at its February 18, 2022, meeting.

BACKGROUND



On June 20, 2018, the District contracted with Moss & Associates, LLC (Construction Manager) to modernize Verde Elementary School in Boca Raton, Florida. The original contract had a project budget of \$31,742,592, and required construction of a 140,000 gross square foot, 1,500 student station, K-8 middle school.

The contract was amended five times as follows:

On January 23, 2019, the contract was amended (*First Amendment*) to revise the scope of work to include site preparation and all related construction services for an off-site holding school, consequently increasing the project budget to \$36,792,162. Also, on January 23, 2019, the contract was amended to incorporate a guaranteed maximum price (GMP) of \$2,024,254 for site work and utilities for the off-site holding school (*Second Amendment*).

On February 20, 2019, the contract was amended (*Third Amendment*) to incorporate a revised GMP of \$5,843,065 for construction of the off-site holding school.

On May 8, 2019, the contract was amended (*Fourth Amendment*) to incorporate a GMP of \$1,097,206 for demolition of the Verde Elementary School campus.

On July 24, 2019, the contract was amended (*Fifth Amendment*) to incorporate a GMP of \$29,185,208 to modernize Verde Elementary School.

CONCLUSIONS

1. The Construction Manager Was Compliant with Selected Contract Terms and Conditions (except as noted below).

We reviewed the District's contract with the Construction Manager to ascertain the extent of compliance with selected contractual terms, and the District's related construction contract management processes, including whether:

1. The Construction Manager's payment applications were accurate, appropriate and consistent with contract terms, including whether deliverables were received;
2. Subcontractor contracts and payment applications were proper, and whether they reconciled to total amounts billed by the Construction Manager;
3. Change orders, allowances, and use of contingency funds were reasonable, adequately reviewed, and properly approved;
4. The project close-out reconciliation was completed accurately and approved by the School Board; and,
5. The District's related contract management and administrative processes/practices were adequate, and compliant with state laws, requirements, School Board policies and department procedures.

The construction project was completed timely, and the cost was below the guaranteed maximum price (GMP). Our review of the Construction Manager's detailed payment applications found that subcontractor pay applications reconciled to amounts billed; change orders, and use of allowance and contingency funds were adequately reviewed and properly approved; and project close-out reconciliations were completed accurately. Overall, we concluded that the Construction Manager provided key deliverables, and that their monthly payment applications were compliant with contractual terms, except as noted below.

District Management's Response: *No action is needed on the contract terms in compliance.* (Please see Attachment A.)

Response from Moss and Associates: *Concur.* (Please see Attachment B.)

2. The District Amended the Contract to Add \$5,891,945 (or 19.3%) to Construct an Off-Site Holding School, rather than Competitively Bidding Out the Additional Work.

The RFP stated that the existing school will remain operational and occupied during construction, and considered the need for "temporary site accommodations" for the school "*on the site*". However, the day after the contract was approved by the School Board, District staff and the Construction Manager discussed options to build a holding school *off-site* on the Don Estridge campus. On January 23, 2019, the contract was amended to include construction of an off-site holding school. This amendment was a significant scope change that increased the construction budget stated in the contract by \$5,049,570, or by 15.9 % (from \$31,742,592 to \$36,792,162).

On February 20, 2019, the contract was amended to include the estimated construction cost for the holding school of \$5,891,945. This amendment increased the Construction Manager’s contract value by 19.3% (from \$30,582,854 to \$36,474,799).

Also, we noted the construction budget increased significantly from the \$22,000,000 advertised in the RFP (to build a 125,000 square foot, 1,200 student station, K-5 school), to \$31,742,592 as stated in the original contract (to build a 140,000 square foot, 1,500 student station, K-8 school). This was a budget increase of 44.3% (from RFP to contract signing). Subsequently amending the original contract to include the holding school further increased the construction budget to \$36,792,162, resulting in a cumulative construction budget increase of \$14,792,162 (or 67.2%) from the amount advertised in the RFP.

It should also be noted that the Construction Manager internally separated the modernization project and the holding school into two separate projects for tracking and accounting purposes. For example, the Construction Manager submitted, and the District approved, separate pay applications for the Holding School, effectively treating it as a separate project. The Construction Manager also treated the Holding School as a separate project for insurance purposes.

Entering into, or significantly amending, large contracts that materially differ in scope, value and/or location from original proposals appears to be inconsistent with the competitive solicitation/bidding requirements in Florida Statute and School Board Policy. Florida Courts have indicated such conduct is not a good practice, and does not inspire public confidence in the procurement process.¹ Additionally, this practice eliminates the potential for other competitive contractors to bid, meet or exceed the District’s needs, and may expose the District to litigation arising out of protests from unsuccessful RFP respondents.

Florida Statute 1013.45 - Educational facilities contracting and construction techniques states, in part,

- “(1) Boards may employ procedures to contract for construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities, that will include, but not be limited to:*
- (a) Competitive bids.*
 - (b) Design-build pursuant to s. 287.055.*
 - (c) Selecting a construction management entity, pursuant to s. 255.103 or the process provided by s. 287.055...”*

Florida Statute 287.055 - Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties states, in part,

“(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

¹ See *Emerald Correctional Mgmt. v. Bay County Bd. of Co. Commissioners*, 955 So. 2d 647 (Fla. 1st DCA 2007) and, *State, Dept. of Lottery v. Gtech Corp.*, 816 So.2d 648 (Fla. 1st DCA 2001)

(a)1. *Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 (\$325,000) ...*”

School Board Policy 7.10 – Construction Bid Procedures states, in part,

“Consistent with SREF §§ 4.1 and 4.2, competitive bidding shall be used to award all construction, remodeling, or renovation/addition projects for any educational plant or ancillary facility exceeding the dollar threshold in Fla. Stat. § 255.20(1) & (2), unless other contract processes authorized by law are used.”

Fla. Stat. 255.20 - Local bids and contracts for public construction works; specification of state-produced lumber states,

“(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000.”

Recommendations

- a) The Facilities Management Department should enhance their processes to allow for more accurate initial estimates of facility needs and costs prior to initiating a competitive solicitation. This will help avoid substantial changes to project scope and value after contract award.
- b) The Facilities Management Department in coordination with the Construction Purchasing Department should ensure that competitive solicitation requirements established by Florida Statute and School Board Policy are followed when projects materially change in scope and value from what was advertised in the RFP. When this occurs, the District should either start a new solicitation incorporating the changes, or competitively bid for the additional work through a separate competitive solicitation as required by existing laws, requirements, and policies. This will (1) help ensure the District contracts with the most qualified firm, (2) reduce the chance of protested awards and any related litigation, and (3) enhance the integrity of the procurement/bidding process.

Management’s Response: *The District had several plans for a holding campus for Verde. The initial plan when the project was a K-5, was to use onsite portables for Verde students in year one and then Addison Mizner students in year two. When Verde had to be expanded to a K-8 to address overcrowding at nearby middle schools an onsite option was no longer viable. The District then planned to build 05-C (needed for FY23), near the Don Estridge campus and use it as a holding school for both Verde and Addison Mizner. FDOE did not approve the construction of 05-C in time to utilize the site as a holding school. In this instance, staff determined it was not necessary to rebid the holding school based on the circumstances. Management has implemented a more detailed process for initial project scoping and estimation (prior to RFP) to ensure a competitive solicitation process is maintained when necessary.*

The decision to separately track the modernization project and the holding school project stemmed from different funding sources (long term borrowing for the modernization and local property tax dollars for the holding campus). Further, the modernization project is subject to cost per student station limits which must be audited by the Florida Auditor General. Separating the projects allows for a more transparent audit process and has been used for several recent projects, such as Odyssey/South Tech (new building vs renovation) and Washington ES Modernization (new buildings vs renovation). (Please see Attachment A.)

3. Construction Manager Apparently Overbilled, and District Overpaid, \$73,155 for Subcontractor Default Insurance.

Subcontractor Default Insurance (SDI) is an insurance purchased by construction managers to manage the risk of subcontractor default. The Construction Manager purchased and billed the District for SDI insurance although it was not required by the contract. In addition, staff did not obtain proof of the SDI insurance, and the Construction Manager's payment applications did not include invoices from the insurance company (or proof of payment) to substantiate the amounts they billed the District. Thus, we requested staff provide us with proof of insurance, as well as backup documentation to support the amounts billed. Subsequently, on August 19, 2021, the Construction Manager indicated that they had inadvertently over-billed the District \$80,116.62 for insurance because they had "both invoiced SDI separately for the Holding School and also bundled and invoiced the costs for the Holding School into the Modernization project". The Construction Manager also indicated they would refund the District the amount overbilled (See Exhibit 1). Our analysis of the payment history indicated the amount overbilled appeared to be \$73,155.28, as opposed to the \$80,116.62 originally calculated by the Construction Manager. On November 1, 2021, the District's Treasury Department received a check from Moss Associates in the amount of \$73,155.28 as reimbursement for the overbilling.

The Program Management Department's procedure ***PM-315 CM Pay Application and Owner Review*** specifies that construction manager monthly pay applications shall include invoices for bonds and insurance billings, and that the final pay application includes "*backup for Bonds and Insurance Billing*". The procedure also states the pay application should be reviewed for accuracy as follows:

"The SPA (Senior Project Administrator) shall use the CM Pay Application Review Checklist to review the pay application. The SPA shall check each line item on the checklist to indicate that it was reviewed. The SPA shall sign and date the SD702 (Application and Certificate for Payment) and the cover sheet after verifying that the pay application is complete, accurate, and in accordance with the terms and conditions of the CMAR Agreement. The pay application will be forwarded to the Estimator from Project Controls for review and comment... Project Controls shall sign and date the cover sheet after verifying ... pay application is complete, accurate and in accordance with the terms and conditions of the CMAR Agreement."

Staff approved a total reimbursement of \$424,858 to the Construction Manager for SDI insurance without sufficient backup documentation to support the expense. The backup documentation that staff relied upon included invoices for insurance prepared by the Construction Manager (not the insurance provider or agent), and letters from the insurance agent/broker (not the insurance provider) stating the amount of the “insurance cost allocation” for each of the projects (See Exhibit 2). Neither of these items sufficiently demonstrate the actual cost of, or amount the Construction Manager paid for, insurance.

Similarly, staff also relied upon the same agent/broker’s letter as documentation to justify reimbursing the Construction Manager \$229,325 for General Liability Insurance. In this case, however, Certificates of Insurance were provided to verify coverage.

Approving payments without reviewing sufficient and appropriate back-up documentation that support amounts billed and/or paid can lead to significant overpayments, waste of public funds, and undetected fraud.

Recommendations

To protect the financial and business interests of the School Board, we recommend staff independently verify the total amount the District should have reimbursed the Construction Manager for SDI and General Liability Insurance. This verification should include obtaining proof of the amounts the Construction Manager paid for the insurance, as well as obtaining and reviewing the documentation that supports the agent/broker’s calculations of the “insurance cost allocations” for Verde Elementary School and the Holding School. Any amounts determined to be overbilled or unsupported should be aggressively pursued for recovery. Once the above information is obtained, we request staff forward the documentation to the Office of Inspector General.

We also recommend the Facilities Management Department strengthen procedures for reviewing the accuracy and appropriateness of amounts contractors bill for insurance, including:

- a. Verifying the accuracy of amounts billed by construction managers by reviewing sufficient backup documentation (e.g. invoices and/or proof of payment) that supports the amounts billed/paid.
- b. Verifying and maintaining proof of all insurance coverages purchased with public funds.
- c. Adding a line item to the District’s *Construction Manager’s Payment Application Checklist* to include “backup” for Bonds and Insurance billings.
- d. Ensure the District’s pay application review procedures for the Program Manager² adequately protect the financial interests of the District, and are being followed.

Additionally, we recommend the Facilities Management Department, in consultation with the Risk and Benefits Management Department, determine whether it is in the best interest of the School

² The District contracts with AECOM Technical Services, Inc. to serve as the Program Manager to act on behalf of the School Board for the delivery of the District’s Capital Improvement Program, and is an integral part of the capital improvement team.

District to require construction managers to purchase SDI Insurance for “Construction Management at Risk” contracts. If acquiring SDI insurance is determined to be necessary, the standard contract language should be revised to require such insurance. If it is determined that purchasing SDI insurance is not necessary, staff should not authorize or approve reimbursement to construction managers who purchase insurance that is not required by the contract or needed by the School District.

District Management’s Response: *Subcontractor Default Insurance (SDI) was not required in the contract, however, the GMP, which is incorporated as an amendment to the contract, indicated the contractor would purchase SDI in lieu of Payment and Performance Bonds for subcontractors, required in the contract, section 9.6. The District recorded receipt of \$73,155.28 for reimbursement of the overpayment on December 13, 2021. District staff and AECOM have subsequently trained project controls staff on appropriate documentation for insurance payments.*

District staff recommends the use of a construction audit firm to review the contractor’s books for such items mid-way through the project as well as at the conclusion of the project. Other districts in the state, including Orange County Schools, have used this approach for many years indicating savings found by the auditors more than offset the cost of the service. (Please see Attachment A.)

Response from Moss and Associates: *Concur. See previous response - Exhibit 1. (Please see Attachment B.)*

4. Some Subcontractor Payment Applications Were Not Signed or Notarized as Required.

As a standard process, subcontractor *Application and Certification for Payment* forms (payment applications) are attached to the construction manager’s monthly pay applications as backup documentation to support the amounts billed for subcontract work. We noted that four (4) of the fourteen (14) *Application and Certification for Payment* forms from one subcontractor were not signed or notarized, totaling \$824,383. We further noted that none of the ten (10) *Application and Certification for Payment* forms from another subcontractor were notarized, totaling \$410,238. The Construction Manager submitted the unsigned and/or un-notarized forms, and District staff reviewed and approved the Construction Manager’s payment applications that contained the incomplete forms.

The language on the subcontractor *Application and Certification for Payment* form states:

“The undersigned Contractor certifies that to the best of the Contractor’s knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments were received from the Owner, and that the current payment shown herein is now due.”

Section 16.3.2 of the contract requires the construction manager to submit signed and notarized subcontractor pay requisitions as supporting documentation for amounts billed on each monthly

pay application. Also, the Program Management Department's procedure *PM-315 CM Pay Application and Owner Review* states,

"The subcontractors shall submit signed and notarized pay applications, using the School District Subcontractor Application and Certificate for Payment form... The CM shall prepare the monthly pay application.... The pay application shall contain the following documents... Supporting documentation... including subcontractor pay applications."

If subcontractor *Application and Certification for Payment* forms are not signed and notarized, there is less assurance that the work being invoiced was completed as stated, and that the prior and current amounts billed are accurate.

Recommendation

We recommend staff perform more thorough reviews of payment applications to help ensure compliance with significant provisions of contract documents. We also recommend procedures be enhanced to include requiring receipt of signed and notarized subcontractor payment applications prior to approving payment; and that this requirement be added to *Program Management's CM Progress Payment Application Checklist*.

District Management's Response: *District staff and AECOM have subsequently trained project controls staff to look for this omission on all future applications. (Please see Attachment A.)*

Response from Moss and Associates: *Concur. (Please see Attachment B.)*

5. Construction Manager Did Not Provide Contractor Furnished Equipment Logs as required.

Contractor Furnished Equipment Logs are used to track assets, small tools and equipment purchased with project funds. The logs also document the asset description, serial number, manufacturer, model number, date acquired, and the price paid for equipment priced at \$1,000 or more. We noted that the Construction Manager's monthly payment applications did not include *Contractor Furnished Equipment Logs*. Nonetheless, the incomplete pay applications were approved and processed for payment.

The Program Management Department's procedure *PM-315 CM Pay Application and Owner Review* states, in part,

"The pay application shall contain the following documents or it will be considered incomplete with respect to prompt payment laws: ... Contractor Furnished Equipment Log."

It also states,

“The SPA shall sign and date the SD702 and the cover sheet after verifying that the pay application is complete, accurate, and in accordance with the terms and conditions of the CMAR Agreement. The pay application will be forwarded to the Estimator from Project Controls for review and comment... Project Controls shall sign and date the cover sheet after verifying ... pay application is complete, accurate and in accordance with the terms and conditions of the CMAR Agreement.”

Staff utilize a *CM Progress Payment Application Checklist* to help ensure critical forms/deliverables are received prior to approving pay applications. However, the *Contractor Furnished Equipment Log* is not listed as an item on the checklist. Upon our inquiry, staff informed us that they are not requiring contractors to complete the log. As a result of our inquiry, staff requested the Construction Manager to provide a log. The log that was subsequently provided (after the construction project was complete and closed-out) listed 29 items with a total cost of \$10,008.

By not documenting and keeping track of equipment and small tools purchased with public funds, there is less assurance that all valuable tools and equipment will be returned/credited to the District when the project is complete. There is also an increased risk of procurement fraud, waste and/or abuse due to the lack of record keeping and monitoring.

Recommendation

Facilities Construction staff should adhere to written procedures when reviewing payment applications. We recommend *Program Management’s CM Progress Payment Application Checklist* be updated to include the *Contractor Furnished Equipment Log*. This will help ensure pay applications are complete and in compliance with significant provisions of contract documents.

District Management’s Response: *In the past, these logs were provided with every contractor invoice. This procedure will be reinstated to ensure that all contractor furnished equipment will be properly recorded.* (Please see Attachment A.)

Response from Moss and Associates: *Moss will provide requested documentation.* (Please see Attachment B.)

Exhibit 1

Letter received from Moss and Associates regarding overbilling



August 19, 2021

Mr. Glen Armbruster
School District of Palm Beach County
3661 Interstate Park Road N., Suite 200
Riviera Beach, FL 33404

Re: Verde Elementary School - Modernization
Project Number: 1661-7390 SDI Audit Response

Dear Mr. Armbruster,

We have had the chance to review and gather the information associated the audit questions regarding the Subcontractor Default Insurance (SDI). During this review it was determined that there were errors in the SDI calculation costs that were inadvertently overbilled. Below is a brief synopsis of how this occurred and please find supporting documentation attached hereto:

- One (1) contract was issued and executed by the School District of Palm Beach County and Moss for the Verde Elementary School – Modernization Project. This contract was modified by Amendment to include both the Holding School and Modernization.
 - Moss internally separated these projects into two (2) separate projects for tracking and accounting purposes and also created and invoiced two (2) separate Applications for Payment for both the Holding School and the Modernization projects.
 - The SDI policy year runs from April 15th to April 15th. So, despite both projects being constructed in 2019, the Holding school project was covered by the SDI policy effective during the policy period of 4/15/18 to 4/15/19. The Verde Elementary School Modernization project was covered by the SDI policy effective during the policy period of 4/15/19 to 4/15/20 due to construction beginning in the new 2019-2020 SDI policy period.
 - While reviewing and responding to the audit questions, Moss discovered that it both invoiced SDI separately for the Holding School and also bundled and invoiced the costs for the Holding School into the Modernization project.
 - This oversight, along with minor final reconciliations resulted in the overall amount of SDI for both the Holding School and Verde Elementary School Modernization project being overbilled by \$80,116.82 between the Holding School and Modernization projects.
-

Exhibit 1

Letter received from Moss and Associates regarding overbilling

- Internally we have begun to implement modified procedures to prevent this type of error occurring in the future.

- Please find attached the following information:
 - o Item 1 – Detailed breakdown for amounts from CRP for SDI costs.
 - o Item 2 – SDI Declaration Pages.
 - o Item 3 – Certificate of Insurance for SDI.
 - o Item 4 – SDI was included in the GMP in lieu of individual Subcontractor P&P Bonds.

We sincerely apologize that this occurred and will make arrangements to remit the amount that was inadvertently overbilled associated with the SDI.

Sincerely,

/S/ Kristen Weber

Director of Risk Management

2101 N. Andrews Avenue, Fort Lauderdale, FL 33311 | Phone: 954.524.5678 | mosscom.com

CONSTRUCTION MANAGERS | FL CGC #1511059

Exhibit 2

Letters from Insurance Agent/Broker that staff relied upon to support reimbursements to Construction Manager



October 29, 2019

Re: Verde Elementary School (Modernization)
Moss & Associates, LLC Insurance Cost Allocation for Project

To Whom It May Concern:

Our firm, Construction Risk Partners, is the insurance agent/broker servicing and placing Moss & Associates, LLC's insurance program on their behalf. Moss' total insurance cost is based on the entirety of the organization's annual revenue volume. The insurance cost allocation for the Verde Elementary School (Modernization) project related to General Liability is \$189,838.17. The insurance cost allocation for the Verde Elementary School (Modernization) project related to Subcontractor Default Insurance is \$351,702.82. Moss' insurance cost is inclusive of premium payments, deductible/retention obligations, and broker commissions/fees.

Please contact me directly with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Oakes", is written over a light blue horizontal line.

Tyler Oakes, CPCU, CRIS
DIRECTOR
125 High Street, Suite 220
Boston, MA 02110
CELL 781.706.1530

Exhibit 2

Letters from Insurance Agent/Broker that staff relied upon to support reimbursements to Construction Manager



October 29, 2019

Re: Verde Elementary School (Holding School)
Moss & Associates, LLC Insurance Cost Allocation for Project

To Whom It May Concern:

Our firm, Construction Risk Partners, is the insurance agent/broker servicing and placing Moss & Associates, LLC's insurance program on their behalf. Moss' total insurance cost is based on the entirety of the organization's annual revenue volume. The insurance cost allocation for the Verde Elementary School (Holding School) project related to **General Liability** is **\$39,487.03**. The insurance cost allocation for the Verde Elementary School (Holding School) project related to **Subcontractor Default Insurance** is **\$73,155.46**. Moss' insurance cost is inclusive of premium payments, deductible/retention obligations, and broker commissions/fees.

Please contact me directly with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Oakes", is written over a horizontal line.

Tyler Oakes, CPCU, CRIS
DIRECTOR
125 High Street, Suite 220
Boston, MA 02110
CELL 781.706.1530



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL


JOSEPH M. SANCHES, MBA
CHIEF OPERATING OFFICER

MICHAEL J. BURKE
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TO: TERESA MICHAEL
INSPECTOR GENERAL

FROM: JOSEPH M. SANCHES, MBA 
CHIEF OPERATING OFFICER

DATE: FEBRUARY 16, 2022

SUBJECT: MANAGEMENT RESPONSE – VERDE CONTRACT REVIEW

Conclusion #1: The Construction Manager was Compliant with Selected Contract Terms and Conditions (except as noted below).

Response:

No action is needed on the contract terms in compliance.

Conclusion #2: The District Amended the Contract to Add \$5,891,945 (or 19.3%) to Construct an Off-Site Holding School, rather than Competitively Bidding Out the Additional Work.

Response:

The District had several plans for a holding campus for Verde. The initial plan when the project was a K-5, was to use onsite portables for Verde students in year one and then Addison Mizner students in year two. When Verde had to be expanded to a K-8 to address overcrowding at nearby middle schools an onsite option was no longer viable. The District then planned to build 05-C (needed for FY23), near the Don Estridge campus and use it as a holding school for both Verde and Addison Mizner. FDOE did not approve the construction of 05-C in time to utilize the site as a holding school. In this instance, staff determined it was not necessary to rebid the holding school based on the circumstances. Management has implemented a more detailed process for initial project scoping and estimation (prior to RFP) to ensure a competitive solicitation process is maintained when necessary.

The decision to separately track the modernization project and the holding school project stemmed from different funding sources (long term borrowing for the modernization and local property tax dollars for the holding campus). Further, the modernization project is subject to cost per student station limits which must be audited by the Florida Auditor General. Separating the projects allows for a more transparent audit process and has been used for several recent projects, such as Odyssey/South Tech (new building vs renovation) and Washington ES Modernization (new buildings vs renovation).

Conclusion #3: Construction Manager Apparently Overbilled, and District Overpaid, \$73,155 for Subcontractor Default Insurance.

Response:

Subcontractor Default Insurance (SDI) was not required in the contract, however, the GMP, which is incorporated as an amendment to the contract, indicated the contractor would purchase SDI in lieu of Payment and Performance Bonds for subcontractors, required in the contract, section 9.6. The District recorded receipt of \$73,155.28 for reimbursement of the overpayment on December 13, 2021. District staff and AECOM have subsequently trained project controls staff on appropriate documentation for insurance payments.

District staff recommends the use of a construction audit firm to review the contractor's books for such items mid-way through the project as well as at the conclusion of the project. Other districts in the state, including Orange County Schools, have used this approach for many years indicating savings found by the auditors more than offset the cost of the service.

Conclusion #4: Some Subcontractor Payment Applications Were Not Signed or Notarized as Required.

Response:

District staff and AECOM have subsequently trained project controls staff to look for this omission on all future applications.

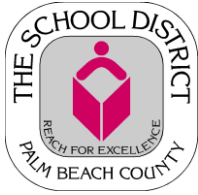
Conclusion #5: Construction Manager Did Not Provide Contractor Furnished Equipment Logs as required.

Response:

In the past, these logs were provided with every contractor invoice. This procedure will be reinstated to ensure that all contractor furnished equipment will be properly recorded.

JMS/DD/HF/LE/GO:ss

C: David G. Dolan, Deputy Chief, Facilities Management



THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FLORIDA

OFFICE OF INSPECTOR GENERAL
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TERESA MICHAEL, CIG, CIGI, CFE
INSPECTOR GENERAL

SCHOOL BOARD
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ERICA WHITFIELD

MICHAEL J. BURKE, SUPERINTENDENT

MEMORANDUM

DRAFT

TO: Honorable Chair and Members of the School Board
Michael J. Burke, Superintendent of Schools
Chair and Members of the Audit Committee

FROM: Teresa Michael, Inspector General

DATE: **TBD**

SUBJECT: Contract Review (Report # 22-R-1): Modernization of Verde Elementary School

SUMMARY

Pursuant to the *Office of Inspector General 2021-2022 Work Plan*, we reviewed the District’s contract with Moss & Associates, LLC. (RFP 18C-009R), to modernize Verde Elementary School. The primary objective of this review was to determine the extent of compliance with selected contractual terms and conditions, including (1) whether payments were appropriate and properly approved, and (2) whether deliverables were received. The review produced the following conclusions:

1. Moss & Associates (Construction Manager) was compliant with selected contract terms and conditions (except as noted below).
2. The District amended the contract to add \$5,891,945, (or 19.3%) for a significant scope change, rather than competitively bidding out the additional work.
3. The Construction Manager apparently overbilled, and District overpaid, \$73,155 for insurance.
4. Some subcontractor payment applications were not signed or notarized as required.
5. The Construction Manager did not provide *Contractor Furnished Property Logs* as required.

SCOPE AND METHODOLOGY

This review was performed in accordance with the *Principles and Standards for Offices of Inspector General, Quality Standards for Inspections, Evaluations, and Reviews*, as promulgated by the Association of Inspectors General.

The scope of our review covered the time period from January 1, 2019 through May 31, 2021, and included interviewing staff and reviewing:

- Relevant statutes, rules and policies including:
 - *Florida Statute 287.055 - Procurement of commodities or contractual services*
 - *Florida Statute 255.071 - Payment of subcontractors, sub-subcontractors, materialmen, and suppliers on construction contracts for public projects*
 - *Florida Statute 255.20 - Local bids and contracts for public construction works; specification of state-produced lumber*
 - *Florida Statute 1013.45 - Educational facilities contracting and construction techniques*
 - *State Requirements for Educational Facilities (SREF), Sections 4.1 and 4.2*
 - *School Board Policy 6.14 - Purchasing Department*
 - *School Board Policy 7.10 – Construction Bid Procedures*
 - *School Board Policy 7.229 – Construction Contractor Payments*
- The *Contract between The School Board of Palm Beach County, Florida, and Moss & Associates, LLC., (RFP# 18C-009R)*, and related contract documents including:
 - Monthly contractor payment applications and supporting documentation
 - Subcontracts
 - Change orders
 - Use of Allowance and Contingency funds
- The Program Management Department’s written procedures
- The Purchasing Department’s *Purchasing Manual*
- The Facilities Department’s contract administration processes

We judgmentally selected a sample of the Construction Manager’s payment applications for modernizing the main campus, and for constructing the holding school, for a detailed review as shown in Table 1 below. We also reviewed detailed documentation related to change orders, and uses of contingency and allowance funds during the project.

Table 1

Documentation Reviewed	Main Campus			Holding School		
	Quantity Reviewed	Value of Quantity Reviewed	Value of Total Population	Quantity Reviewed	Value of Quantity Reviewed	Value of Total Population
Payment Applications	9 of 24	\$9,780,280	\$23,838,543	6 of 11	\$2,695,020	\$5,271,733
Use of Allowance Funds	3 of 7	\$127,900	\$254,482	2 of 22	\$173,000	\$605,141
Change Orders	3 of 11	\$7,041,969	\$7,194,948	3 of 4	\$1,497,390	\$1,559,010
Use of Contingency Funds	4 of 35	\$54,683	\$780,855	3 of 10	\$53,080	\$142,976

Note: All values are absolute values

Draft findings were sent to the Facilities Management Department and Moss and Associates for review and comments. Management responses are attached. We appreciate the courtesy and cooperation extended to us by District staff during this review. The final Memorandum was presented to the Audit Committee at its **TBD** meeting.

BACKGROUND



On June 20, 2018, the District contracted with Moss & Associates, LLC (Construction Manager) to modernize Verde Elementary School in Boca Raton, Florida. The original contract had a project budget of \$31,742,592, and required construction of a 140,000 gross square foot, 1,500 student station, K-8 middle school. The construction project was funded by the local government infrastructure surtax (1% local sales tax).

The contract was amended five times as follows:

On January 23, 2019, the contract was amended (*First Amendment*) to revise the scope of work to include site preparation and all related construction services for an off-site holding school, consequently increasing the project budget to \$36,792,162. Also, on January 23, 2019, the contract was amended to incorporate a guaranteed maximum price (GMP) of \$2,024,254 for site work and utilities for the off-site holding school (*Second Amendment*).

On February 20, 2019, the contract was amended (*Third Amendment*) to incorporate a revised GMP of \$5,843,065 for construction of the off-site holding school.

On May 8, 2019, the contract was amended (*Fourth Amendment*) to incorporate a GMP of \$1,097,206 for demolition of the Verde Elementary School campus.

On July 24, 2019, the contract was amended (*Fifth Amendment*) to incorporate a GMP of \$29,185,208 to modernize Verde Elementary School.

CONCLUSIONS

1. The Construction Manager Was Compliant with Selected Contract Terms and Conditions (except as noted below).

We reviewed the District's contract with the Construction Manager to ascertain the extent of compliance with selected contractual terms, and the District's related construction contract management processes, including whether:

1. The Construction Manager's payment applications were accurate, appropriate and consistent with contract terms, including whether deliverables were received;
2. Subcontractor contracts and payment applications were proper, and whether they reconciled to total amounts billed by the Construction Manager;
3. Change orders, allowances, and use of contingency funds were reasonable, adequately reviewed, and properly approved;
4. The project close-out reconciliation was completed accurately and approved by the School Board; and,
5. The District's related contract management and administrative processes/practices were adequate, and compliant with state laws, requirements, School Board policies and department procedures.

The construction project was completed timely, and the cost was below the guaranteed maximum price (GMP). Our review of the Construction Manager's detailed payment applications found that subcontractor pay applications reconciled to amounts billed; change orders, and use of allowance and contingency funds were adequately reviewed and properly approved; and project close-out reconciliations were completed accurately. Overall, we concluded that the Construction Manager provided key deliverables, and that their monthly payment applications were compliant with contractual terms, except as noted below.

District Management's Response:

Response from Moss and Associates: Concur

2. The District Amended the Contract to Add \$5,891,945 (or 19.3%) to Construct an Off-Site Holding School, rather than Competitively Bidding Out the Additional Work.

The RFP stated that the existing school will remain operational and occupied during construction, and considered the need for "temporary site accommodations" for the school "*on the site*". However, the day after the contract was approved by the School Board, District staff and the Construction Manager discussed options to build a holding school *off-site* on the Don Estridge campus. On January 23, 2019, the contract was amended to include construction of an off-site holding school. This amendment was a significant scope change that increased the construction budget stated in the contract by \$5,049,570, or by 15.9 % (from \$31,742,592 to \$36,792,162).

On February 20, 2019, the contract was amended to include the estimated construction cost for the holding school of \$5,891,945. This amendment increased the Construction Manager's contract value by 19.3% (from \$30,582,854 to \$36,474,799).

Also, we noted the construction budget increased significantly from the \$22,000,000 advertised in the RFP (to build a 125,000 square foot, 1,200 student station, K-5 school), to \$31,742,592 as stated in the original contract (to build a 140,000 square foot, 1,500 student station, K-8 school). This was a budget increase of 44.3% (from RFP to contract signing). Subsequently amending the original contract to include the holding school further increased the construction budget to \$36,792,162, resulting in a cumulative construction budget increase of \$14,792,162 (or 67.2%) from the amount advertised in the RFP.

It should also be noted that the Construction Manager internally separated the modernization project and the holding school into two separate projects for tracking and accounting purposes. For example, the Construction Manager submitted, and the District approved, separate pay applications for the Holding School, effectively treating it as a separate project. The Construction Manager also treated the Holding School as a separate project for insurance purposes.

Entering into, or significantly amending, large contracts that materially differ in scope, value and/or location from original proposals appears to be inconsistent with the competitive solicitation/bidding requirements in Florida Statute and School Board Policy. Florida Courts have indicated such conduct is not a good practice, and does not inspire public confidence in the procurement process.¹ Additionally, this practice eliminates the potential for other competitive contractors to bid, meet or exceed the District's needs, and may expose the District to litigation arising out of protests from unsuccessful RFP respondents.

Florida Statute 1013.45 - Educational facilities contracting and construction techniques states, in part,

- “(1) Boards may employ procedures to contract for construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities, that will include, but not be limited to:*
- (a) Competitive bids.*
 - (b) Design-build pursuant to s. 287.055.*
 - (c) Selecting a construction management entity, pursuant to s. 255.103 or the process provided by s. 287.055...”*

Florida Statute 287.055 - Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties states, in part,

“(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

¹ See *Emerald Correctional Mgmt. v. Bay County Bd. of Co. Commissioners*, 955 So. 2d 647 (Fla. 1st DCA 2007) and, *State, Dept. of Lottery v. Gtech Corp.*, 816 So.2d 648 (Fla. 1st DCA 2001)

(a)1. *Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 (\$325,000) ...*”

School Board Policy 7.10 – Construction Bid Procedures states, in part,

“Consistent with SREF §§ 4.1 and 4.2, competitive bidding shall be used to award all construction, remodeling, or renovation/addition projects for any educational plant or ancillary facility exceeding the dollar threshold in Fla. Stat. § 255.20(1) & (2), unless other contract processes authorized by law are used.”

Fla. Stat. 255.20 - Local bids and contracts for public construction works; specification of state-produced lumber states,

“(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000.”

Recommendations

- a) The Facilities Management Department should enhance their processes to allow for more accurate initial estimates of facility needs and costs prior to initiating a competitive solicitation. This will help avoid substantial changes to project scope and value after contract award.
- b) The Facilities Management Department in coordination with the Construction Purchasing Department should ensure that competitive solicitation requirements established by Florida Statute and School Board Policy are followed when projects materially change in scope and value from what was advertised in the RFP. When this occurs, the District should either start a new solicitation incorporating the changes, or competitively bid for the additional work through a separate competitive solicitation as required by existing laws, requirements, and policies. This will (1) help ensure the District contracts with the most qualified firm, (2) reduce the chance of protested awards and any related litigation, and (3) enhance the integrity of the procurement/bidding process.

Management’s Response:

3. Construction Manager Apparently Overbilled, and District Overpaid, \$73,155 for Subcontractor Default Insurance.

Subcontractor Default Insurance (SDI) is an insurance purchased by construction managers to manage the risk of subcontractor default. The Construction Manager purchased and billed the District for SDI insurance although it was not required by the contract. In addition, staff did not obtain proof of the SDI insurance, and the Construction Manager’s payment applications did not

include invoices from the insurance company (or proof of payment) to substantiate the amounts they billed the District. Thus, we requested staff provide us with proof of insurance, as well as backup documentation to support the amounts billed. Subsequently, on August 19, 2021, the Construction Manager indicated that they had inadvertently over-billed the District \$80,116.62 for insurance because they had “both invoiced SDI separately for the Holding School and also bundled and invoiced the costs for the Holding School into the Modernization project”. The Construction Manager also indicated they would refund the District the amount overbilled (See Exhibit 1). Our analysis of the payment history indicated the amount overbilled appeared to be \$73,155.28, as opposed to the \$80,116.62 originally calculated by the Construction Manager. On November 1, 2021, the District’s Treasury Department received a check from Moss Associates in the amount of \$73,155.28 as reimbursement for the overbilling.

The Program Management Department’s procedure ***PM-315 CM Pay Application and Owner Review*** specifies that construction manager monthly pay applications shall include invoices for bonds and insurance billings, and that the final pay application includes “*backup for Bonds and Insurance Billing*”. The procedure also states the pay application should be reviewed for accuracy as follows:

“The SPA (Senior Project Administrator) shall use the CM Pay Application Review Checklist to review the pay application. The SPA shall check each line item on the checklist to indicate that it was reviewed. The SPA shall sign and date the SD702 (Application and Certificate for Payment) and the cover sheet after verifying that the pay application is complete, accurate, and in accordance with the terms and conditions of the CMAR Agreement. The pay application will be forwarded to the Estimator from Project Controls for review and comment... Project Controls shall sign and date the cover sheet after verifying ... pay application is complete, accurate and in accordance with the terms and conditions of the CMAR Agreement.”

Staff approved a total reimbursement of \$424,858 to the Construction Manager for SDI insurance without sufficient backup documentation to support the expense. The backup documentation that staff relied upon included invoices for insurance prepared by the Construction Manager (not the insurance provider or agent), and letters from the insurance agent/broker (not the insurance provider) stating the amount of the “insurance cost allocation” for each of the projects (See Exhibit 2). Neither of these items sufficiently demonstrate the actual cost of, or amount the Construction Manager paid for, insurance.

Similarly, staff also relied upon the same agent/broker’s letter as documentation to justify reimbursing the Construction Manager \$229,325 for General Liability Insurance. In this case, however, Certificates of Insurance were provided to verify coverage.

Approving payments without reviewing sufficient and appropriate back-up documentation that support amounts billed and/or paid can lead to significant overpayments, waste of public funds, and undetected fraud.

Recommendations

To protect the financial and business interests of the School Board, we recommend staff independently verify the total amount the District should have reimbursed the Construction Manager for SDI and General Liability Insurance. This verification should include obtaining proof of the amounts the Construction Manager paid for the insurance, as well as obtaining and reviewing the documentation that supports the agent/broker's calculations of the "insurance cost allocations" for Verde Elementary School and the Holding School. Any amounts determined to be overbilled or unsupported should be aggressively pursued for recovery. Once the above information is obtained, we request staff forward the documentation to the Office of Inspector General.

We also recommend the Facilities Management Department strengthen procedures for reviewing the accuracy and appropriateness of amounts contractors bill for insurance, including:

- a. Verifying the accuracy of amounts billed by construction managers by reviewing sufficient backup documentation (e.g. invoices and/or proof of payment) that supports the amounts billed/paid.
- b. Verifying and maintaining proof of all insurance coverages purchased with public funds.
- c. Adding a line item to the District's *Construction Manager's Payment Application Checklist* to include "backup" for Bonds and Insurance billings.
- d. Ensure the District's pay application review procedures for the Program Manager² adequately protect the financial interests of the District, and are being followed.

Additionally, we recommend the Facilities Management Department, in consultation with the Risk and Benefits Management Department, determine whether it is in the best interest of the School District to require construction managers to purchase SDI Insurance for "Construction Management at Risk" contracts. If acquiring SDI insurance is determined to be necessary, the standard contract language should be revised to require such insurance. If it is determined that purchasing SDI insurance is not necessary, staff should not authorize or approve reimbursement to construction managers who purchase insurance that is not required by the contract or needed by the School District.

District Management's Response:

Response from Moss and Associates: Concur, see previous response - Exhibit 1

4. Some Subcontractor Payment Applications Were Not Signed or Notarized as Required.

As a standard process, subcontractor *Application and Certification for Payment* forms (payment applications) are attached to the construction manager's monthly pay applications as backup

² The District contracts with AECOM Technical Services, Inc. to serve as the Program Manager to act on behalf of the School Board for the delivery of the District's Capital Improvement Program, and is an integral part of the capital improvement team.

documentation to support the amounts billed for subcontract work. We noted that four (4) of the fourteen (14) *Application and Certification for Payment* forms from one subcontractor were not signed or notarized, totaling \$824,383. We further noted that none of the ten (10) *Application and Certification for Payment* forms from another subcontractor were notarized, totaling \$410,238. The Construction Manager submitted the unsigned and/or un-notarized forms, and District staff reviewed and approved the Construction Manager's payment applications that contained the incomplete forms.

The language on the subcontractor *Application and Certification for Payment* form states:

"The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments were received from the Owner, and that the current payment shown herein is now due."

Section 16.3.2 of the contract requires the construction manager to submit signed and notarized subcontractor pay requisitions as supporting documentation for amounts billed on each monthly pay application. Also, the Program Management Department's procedure *PM-315 CM Pay Application and Owner Review* states,

"The subcontractors shall submit signed and notarized pay applications, using the School District Subcontractor Application and Certificate for Payment form... The CM shall prepare the monthly pay application.... The pay application shall contain the following documents... Supporting documentation... including subcontractor pay applications."

If subcontractor *Application and Certification for Payment* forms are not signed and notarized, there is less assurance that the work being invoiced was completed as stated, and that the prior and current amounts billed are accurate.

Recommendation

We recommend staff perform more thorough reviews of payment applications to help ensure compliance with significant provisions of contract documents. We also recommend procedures be enhanced to include requiring receipt of signed and notarized subcontractor payment applications prior to approving payment; and that this requirement be added to *Program Management's CM Progress Payment Application Checklist*.

District Management's Response:

Response from Moss and Associates: Concur

5. Construction Manager Did Not Provide *Contractor Furnished Equipment Logs* as required.

Contractor Furnished Equipment Logs are used to track assets, small tools and equipment purchased with project funds. The logs also document the asset description, serial number, manufacturer, model number, date acquired, and the price paid for equipment priced at \$1,000 or more. We noted that the Construction Manager's monthly payment applications did not include *Contractor Furnished Equipment Logs*. Nonetheless, the incomplete pay applications were approved and processed for payment.

The Program Management Department's procedure *PM-315 CM Pay Application and Owner Review* states, in part,

"The pay application shall contain the following documents or it will be considered incomplete with respect to prompt payment laws: ... Contractor Furnished Equipment Log."

It also states,

"The SPA shall sign and date the SD702 and the cover sheet after verifying that the pay application is complete, accurate, and in accordance with the terms and conditions of the CMAR Agreement. The pay application will be forwarded to the Estimator from Project Controls for review and comment... Project Controls shall sign and date the cover sheet after verifying ... pay application is complete, accurate and in accordance with the terms and conditions of the CMAR Agreement."

Staff utilize a *CM Progress Payment Application Checklist* to help ensure critical forms/deliverables are received prior to approving pay applications. However, the *Contractor Furnished Equipment Log* is not listed as an item on the checklist. Upon our inquiry, staff informed us that they are not requiring contractors to complete the log. As a result of our inquiry, staff requested the Construction Manager to provide a log. The log that was subsequently provided (after the construction project was complete and closed-out) listed 29 items with a total cost of \$10,008.

By not documenting and keeping track of equipment and small tools purchased with public funds, there is less assurance that all valuable tools and equipment will be returned/credited to the District when the project is complete. There is also an increased risk of procurement fraud, waste and/or abuse due to the lack of record keeping and monitoring.

Recommendation

Facilities Construction staff should adhere to written procedures when reviewing payment applications. We recommend *Program Management's CM Progress Payment Application Checklist* be updated to include the *Contractor Furnished Equipment Log*. This will help ensure

pay applications are complete and in compliance with significant provisions of contract documents.

District Management's Response:

Response from Moss and Associates: Moss will provide requested documentation

Exhibit 1

Letter received from Moss and Associates regarding overbilling



August 19, 2021

Mr. Glen Armbruster
School District of Palm Beach County
3661 Interstate Park Road N., Suite 200
Riviera Beach, FL 33404

Re: Verde Elementary School - Modernization
Project Number: 1661-7390 SDI Audit Response

Dear Mr. Armbruster,

We have had the chance to review and gather the information associated the audit questions regarding the Subcontractor Default Insurance (SDI). During this review it was determined that there were errors in the SDI calculation costs that were inadvertently overbilled. Below is a brief synopsis of how this occurred and please find supporting documentation attached hereto:

- One (1) contract was issued and executed by the School District of Palm Beach County and Moss for the Verde Elementary School – Modernization Project. This contract was modified by Amendment to include both the Holding School and Modernization.
- Moss internally separated these projects into two (2) separate projects for tracking and accounting purposes and also created and invoiced two (2) separate Applications for Payment for both the Holding School and the Modernization projects.
- The SDI policy year runs from April 15th to April 15th. So, despite both projects being constructed in 2019, the Holding school project was covered by the SDI policy effective during the policy period of 4/15/18 to 4/15/19. The Verde Elementary School Modernization project was covered by the SDI policy effective during the policy period of 4/15/19 to 4/15/20 due to construction beginning in the new 2019-2020 SDI policy period.
- While reviewing and responding to the audit questions, Moss discovered that it both invoiced SDI separately for the Holding School and also bundled and invoiced the costs for the Holding School into the Modernization project.
- This oversight, along with minor final reconciliations resulted in the overall amount of SDI for both the Holding School and Verde Elementary School Modernization project being overbilled by \$80,116.82 between the Holding School and Modernization projects.

Exhibit 1

Letter received from Moss and Associates regarding overbilling

- Internally we have begun to implement modified procedures to prevent this type of error occurring in the future.

- Please find attached the following information:
 - o Item 1 – Detailed breakdown for amounts from CRP for SDI costs.
 - o Item 2 – SDI Declaration Pages.
 - o Item 3 – Certificate of Insurance for SDI.
 - o Item 4 – SDI was included in the GMP in lieu of individual Subcontractor P&P Bonds.

We sincerely apologize that this occurred and will make arrangements to remit the amount that was inadvertently overbilled associated with the SDI.

Sincerely,

/S/ Kristen Weber

Director of Risk Management

2101 N. Andrews Avenue, Fort Lauderdale, FL 33311 | Phone: 954.524.5678 | moss.com

CONSTRUCTION MANAGERS | FL CGC #1511059

Exhibit 2

Letters from Insurance Agent/Broker that staff relied upon to support reimbursements to Construction Manager

DRAFT



October 29, 2019

Re: Verde Elementary School (Modernization)
Moss & Associates, LLC Insurance Cost Allocation for Project

To Whom It May Concern:

Our firm, Construction Risk Partners, is the insurance agent/broker servicing and placing Moss & Associates, LLC's insurance program on their behalf. Moss' total insurance cost is based on the entirety of the organization's annual revenue volume. The insurance cost allocation for the Verde Elementary School (Modernization) project related to General Liability is \$189,838.17. The insurance cost allocation for the Verde Elementary School (Modernization) project related to Subcontractor Default Insurance is \$351,702.82. Moss' insurance cost is inclusive of premium payments, deductible/retention obligations, and broker commissions/fees.

Please contact me directly with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Oakes", is written over a light blue horizontal line.

Tyler Oakes, CPCU, CRIS
DIRECTOR
125 High Street, Suite 220
Boston, MA 02110
CELL 781.706.1530

Exhibit 2

Letters from Insurance Agent/Broker that staff relied upon to support reimbursements to Construction Manager

DRAFT



October 29, 2019

Re: Verde Elementary School (Holding School)
Moss & Associates, LLC Insurance Cost Allocation for Project

To Whom It May Concern:

Our firm, Construction Risk Partners, is the insurance agent/broker servicing and placing Moss & Associates, LLC's insurance program on their behalf. Moss' total insurance cost is based on the entirety of the organization's annual revenue volume. The insurance cost allocation for the Verde Elementary School (Holding School) project related to **General Liability** is \$39,487.03. The insurance cost allocation for the Verde Elementary School (Holding School) project related to **Subcontractor Default Insurance** is \$73,155.46. Moss' insurance cost is inclusive of premium payments, deductible/retention obligations, and broker commissions/fees.

Please contact me directly with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Oakes".

Tyler Oakes, CPCU, CRIS
DIRECTOR
125 High Street, Suite 220
Boston, MA 02110
CELL 781.706.1530