CITY OF CHARLOTTE
OFFICE OF INTERNAL AUDIT

MEMORANDUM

To: City Manager's Office and General Services Department April 13, 2021
From: Greg McDowell, City Auditor
Re: Charlotte Convention Center Renovation Audit

<u>Conclusion</u>

The Holder-Edison Foard-Leeper joint venture (HEFL) is generally compliant with the CMAR agreement, but further clarifications of contract provisions and improvements in cost management may result in future cost recovery opportunities. Conducting a thorough pre-contracting financial review of significant projects can reduce costs to the City.

<u>Background</u>

The City of Charlotte's Internal Audit Department engaged the consulting firm Talson Solutions LLC (Talson) to conduct an audit of the construction manager at risk (CMAR) for the Convention Center Renovation project. The scope of the audit focused on cost and billings associated with the Contractor Controlled Insurance Program (CCIP) and the accuracy, allowability and reasonableness of expenditures for subcontractors, labor, consultants, fees, insurances and other incurred costs.

<u>Results Summary</u>

The following results areas are highlighted:

Pre-contract Financial Reviews (see Talson observations 1, 2)

> It is an acceptable and common practice in construction contracts to reduce the administrative burden of reviewing detailed cost data by agreeing to unit price rates or lump sum amounts upfront. However, when rates are agreed to upfront, and not subject to audit later, a significant level of analysis is required to ensure excess payments are not built into the rates.
>
> Although HEFL has properly administered costs for various insurance coverages, the City agreed to fixed cost percentage mark-ups without sufficiently reviewing the proposed costs.

- For example, the contract allows 1.93% or $2.2 million of the total GMP contact value for CCIP (commercial general liability, workers compensation, employer's liability and excess liability insurance for project site work), while also allowing HEFL to determine subcontractor participation in CCIP.

- In addition, an agreed upon burden markup of 34.55% includes an insurance rate of 13.9% for auto, professional, pollution, umbrella, worker's compensation and general liability for offsite activities by Holder salary personnel that are assigned to the project site.

According to Talson, the current basis for monthly payments for CCIP insurance is incorrectly calculated using the total GMP value of $114.5 million. The correct basis ($112.2 million) should have excluded the GMP CCIP value of $2.2 million. Excluding the CCIP value in the calculation would reduce the estimated CCIP premium by approximately $44,000. However, contract language does not clearly establish the basis for the CCIP calculation.

According to the CMAR Agreement, HEFL is entitled to a "Difference in Coverage Insurance" (DICI) of $47,864 for additional Builders Risk insurance. The City is providing Builders Risk insurance for the Project. HEFL did not fully address City inquiries related to the need for HEFL to pursue the additional coverage. Risk Management is continuing to work with HEFL to resolve the issue.

Recommendations:

- The City should develop a formal process to conduct a financial review of all non-auditable markups and/or obtain independent assessment of proposed premiums prior to entering future agreements.
- The City should consider revising future CMAR contract provisions allowing for scalable premium amounts that are dependent on actual enrollment values.
- The City should require Holder to issue a deductive change order in the approximate amount of $44,000 for the CCIP overestimate.

Actions Planned/Taken:

- General Services will review the justification for future requests for non-auditable mark-ups and will review contracts with the City Attorney's office to determine if contract language modifications are required on future contracts.
- General Services has determined that HEFL is in compliance with contracts terms and will therefore not seek deductive change orders for insurance costs, as recommended by Talson.
- General Services has required HEFL to provide its full DICI policy, premium paid, and justification for the need to purchase coverage over and above the City Builders' Risk policy.

- ❖ Risk Management will work with the City Attorney's Office to review contract language emphasizing that if the City purchases the project's Builders' Risk insurance, any supplement to this coverage needs to be reviewed and approved by the City regarding the necessity and cost effectiveness, or the contractor will be responsible for the full cost of any policy they procure.

Unallowable Mark-ups (see Talson observations 3, 4, 5)

Talson identified conflicting contract language and inconsistent application of markups:

- The CMAR added a 3.95% fee markup on change orders utilizing owner contingency. The CMAR agreement states that change orders utilizing owner's contingency are not subject to the fee.
- A subcontractor applied an additional 5% markup on work performed by a second-tier subcontractor, exceeding the 15% allowed by the CMAR agreement.
- Two subcontractors invoiced separately for bond costs on change orders, although such costs were contractually acknowledged to be included in agreed labor rates.

Recommendations:

Talson noted that the City should:

- Confirm the intent of the contract provision regarding fee markup for changes using owner's contingency. If applicable, require HEFL to reconcile owner contingency change orders and provide a change order credit.
- Require HEFL to reconcile markups on subcontractor change orders and seek credit for any additional 5% markups that are applied on a sub-subcontractor.
- Require HEFL to reconcile all change orders for subcontractors and seek credit for any unallowable bond markups.

Actions Planned/Taken:

- ❖ General Services will address the contract language issues noted above with attorneys and obtain credits where appropriate.

<u>Applicability to Other City Departments and Projects</u>

City departments have increasingly chosen alternative project delivery methods such as Design-Build and Construction Manager-at-Risk over the last few years. Management has identified benefits to using these delivery methods such as decreased time to completion, increased cooperation and quality, and increased transparency.

Although directed to General Services, the consultant's report and recommendations apply citywide. Previous recommendations are presented here to emphasize the continued need for stronger, more consistent contract language.
Recommendations:

A. The City should include contract language that retains the right to audit regardless of the inclusion of upfront agreed-upon rates or lump-sum amounts. This protects the City if it is later learned that the assumptions and historical data used for the basis of proposed rates and lump sum amounts were inaccurate or overstated. (Previously included as a recommendation in Change Order Audit, May 2018.)

B. For contracts awarded through qualifications-based selection processes, the City should only reimburse for the actual cost of insurance, bonds and other administrative costs after the appropriate independent review and pre-approval of such expenditures. (Previously included in RSM's CMAR Best Practices report, January 2017.)

C. City departments, in coordination with City Attorney staff and Internal Audit, should create, revise or enhance existing policies, procedures and contract templates for CMAR and DB agreements incorporating the recommendations above by the end of FY 2021.

Actions Taken/Planned

General Services, in coordination with City Attorney Office and Internal Audit, will review and revise contract templates for CMAR and DB agreements by the end of FY 2021 and will review, revise or enhance existing policies, procedures by the end of 2021.

glm

TALSON SOLUTIONS LLC

Construction Contract Audit

Charlotte Convention Center Renovation Project

FEBRUARY 1, 2021

Prepared for:
INTERNAL AUDIT
CITY OF CHARLOTTE, NORTH CAROLINA

Charlotte Convention Center
Renovation Project

Construction Contract Audit

February 1, 2021

Prepared for Internal Audit
City of Charlotte, North Carolina

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EXECUTIVE SUMMARY

Talson Solutions, LLC (Talson) conducted a construction contract audit of Holder-Edison Foard-Leeper (HEFL), Construction Manager at Risk (CMAR) for the City of Charlotte's (City) Convention Center Renovation Project (Project). Talson focused on cost and billings associated with HEFL's Contractor Controlled Insurance Program (CCIP), accuracy, allowability and reasonableness of expenditures for subcontractors, labor, consultants, fees, insurances and other incurred cost to the CMAR agreement. Talson reviewed performance against allowances and contingency amount included in the approved Guarantee Maximum Price (GMP) contract value.

HEFL is generally compliant with the CMAR agreement but further clarifications of contract provisions and improvements in cost management may result in cost recovery opportunities for the City. Although HEFL is properly administering and incurring costs for CCIP and other insurances under the CMAR agreement, there are opportunities for the City to reassess the reasonableness of incurred insurance costs using non-auditable markups. Additionally, there are future opportunities for the City to require the financial review of non-auditable markups and formal approval for additional insurances outside the City standard coverages typical on capital programs.

As of August 2020, the Owner's Contingency is at risk for being depleted with only a forecasted 14% potentially available of its initial value while project progress is approximately 37% complete as of July 2020. Also, an agreement on estimated, pending and submitted cost items for design considerations, unforeseen site conditions, allowance reconciliation and COVID-19 scope remains open. HEFL submitted $0.7 million in change orders for the City's review, which represents 30% of the remaining available contingency amount. The pending cost amount of $1.1 million that is awaiting additional information or definition represents 49% of the available Owner's Contingency amount.

Talson identified an opportunity to improve the contract allowance approval and reconciliation procedures for more timely approval and reporting to the City prior to or soon after the work is performed and invoiced. Additionally, Talson observed a risk for improper invoicing against scope of work without proper approvals for allowance usage.

Talson identified several potential unallowable cost items for insurance, legal fees, labor, relocation expenses and subcontractor markups requiring further review by the City and HEFL.

Talson's recommendations include the following. The City should:

- Review the Owner's Contingency for overruns and impacts to the GMP contract value.
- Pursue clarification of questionable contract provisions impacting subcontractor costs, fees, insurances and approvals.
- Require HEFL to enhance allowance procedures for timely approvals of work performed and reconciliation including the costs within payment applications.
- Resolve noted cost management items with HEFL.
- Consider for any credit the reasonableness of CCIP costs to actual coverage required.
- Obtain credits from HEFL, as necessary, related to the Observations.

BACKGROUND

The Charlotte Convention Center (CCC) opened in 1995 and is a 550,000-square foot facility owned and maintained by the City of Charlotte. In 2015, the Charlotte Regional Visitors Authority (CRVA) contracted with Jones Lang LaSalle to develop recommendations to make the facility more competitive and marketable.[1] In January 2017, the CRVA awarded a contract to TVS North Carolina for design and cost estimates for the renovations to the CCC. The project comprises renovations to expand meeting space, create a pedestrian bridge between the CCC and a nearby hotel and light rail station, and upgrade building/technology systems.

In June 2017, the CRVA entered into a contractual agreement for pre-construction services with HEFL as the CMAR. HEFL is a joint venture between Holder Construction, Edison Foard Construction, and RJ Leeper Construction. In September 2019, HEFL was approved for a Guaranteed Maximum Price (GMP) contract value not to exceed $114.5 million. As of HEFL's July 2020 Payment Application No. 15, HEFL has invoiced $42.5 million or 37% of the GMP contract value. There are no approved change orders increasing the GMP contract value. The Project is expected to achieve substantial completion in October 2021.

The City engaged Talson, as construction auditors, to conduct an extensive review of the costs and billings associated with HEFL's CCIP and to review HEFL's contractual agreement with respect to CCIP language that prevents CCIP costs from being audited. HEFL estimated that the CCIP cost for the project is anticipated at 1.93% of the total contract value or approximately $2.2 million. CCIP insurance covers Commercial General Liability, Workers Compensation/Employers Liability, and Excess Liability insurance for work performed at the Project site. Holder is the Administrator for CCIP and reserves the right to determine subcontractor participation in CCIP. Holder has not enrolled 100% of the subcontractors on the Project.

As of September 25, 2020, HEFL is reporting a remaining balance of approximately $188,000 in the initial Owner's Contingency of $3.2 million. Costs for COVID-19 impacts are currently applied against the Owner's Contingency. HEFL is reporting the Construction Contingency has a remaining value of $2.7 million against the initial contract value of $4.1 million. Additionally, approximately $1.4 million of the $1.6 GMP allowance has been reconciled.

[1] The Charlotte Regional Visitors Authority (CRVA) is an independent authority established under the Charlotte City Charter that is charged with managing City-owned assets such as the Convention Center.

AUDIT PROCESS

On August 6, 2020, the City informed HEFL of its intent to audit HEFL's books, accounting, and records related to the contract for the Charlotte Convention Center Phase 1 Renovation. Talson in conjunction with the City's Office of Internal Audit commenced its audit activities which included an extensive review of project documentation and interviews with HEFL and City personnel. On August 24, 2020, Talson conducted an audit kick-off conference call with HEFL and the City's Internal Audit group to discuss audit objectives, processes, expectations, and documentation necessary for the review.

Documentation reviewed related to the work activities for the Project includes, but is not limited to, the following:

- HEFL executed CMAR agreement including GMP details, monthly invoices, and project cost reports
- Documentation related to the cost and billings associated with insurances including HEFL's CCIP policy manual, CCIP costs and billings, CCIP subcontractor enrollment reporting, and Subcontractor Default Insurance (SDI) enrollment reporting
- Supporting documentation for general conditions and general requirement costs including costs for additional Builders Risk insurance charges and legal fees
- Subcontractor contractual agreements, including flow-down provisions from the CMAR agreement
- HEFL's salary and labor wage rate documents and reporting
- Allowance and contingency management records including reconciliation documentation, change order support documentation including COVID-19 related expenditures

As required under Talson's executed Statement of Work with the City, an extensive effort was conducted in understanding the HEFL's documentation and methodology supporting the CCIP and contractually agreed to markups for CCIP and the burden multiplier. Talson reviewed the allowability of the markup within Holder labor costs.

Talson in conjunction with Internal Audit facilitated six (6) virtual interviews on September 24, 25, 28, and 29, and 30, 2020 with personnel from HEFL and the City's Senior Project Manage.

A complete list of documents reviewed and interviews conducted are included in Appendix A.

AUDIT OBSERVATIONS

Talson presents the Audit Observations into four categories: I. Contract Insurances, II. Contract Provisions, III. Continency and Allowances and IV. Cost Management. Talson's recommendations follow each Observation.

I. <u>CONTRACT INSURANCES</u>

1. Evaluating the CCIP Markup and CCIP Premium

The CMAR agreement allows HEFL to invoice the City 1.93% or $2.2 million of the total GMP contract value for CCIP. This markup percentage is not subject to audit. As previously noted, the CCIP insurance covers Commercial General Liability, Workers Compensation /Employers Liability, and Excess Liability insurance for work performed at the project site, and Holder reserves the right to determine subcontractor participation in CCIP.

Additionally, the contractually agreed burden markup of 34.55% is not subject to audit and contains an insurance or CCIP rate of 13.9% for auto / professional, pollution / umbrella, worker's compensation, and general liability for offsite activities by Holder salary personnel that are assigned to the project site. The 13.9% markup is also applied against the gross wages for onsite hourly personnel such as the laborers performing cleanup, flagman, and other general tasks. According to Holder, the costs for coverage of offsite insurance liabilities are spread among the onsite salary personnel and hourly workers.

Although it is common for Contractors to use non-auditable markups for insurance and other items, the markups are typically agreed by the Owner after a financial review of underlying support documentation and cost basis which may include but not limited to payroll data, policy declarations and premium amounts and historic performance / claim analysis, estimated labor cost for direct trades and field staff, to name a few. The City did not conduct a financial review of the non-auditable markups which can potentially lead to excessive charges from HEFL. Talson was unable to fully verify the actual cost basis for use of this methodology.

<u>Additional Considerations / Observations:</u>

a. The CMAR agreement as indicated below does not clearly identify the markup of 13.9% for offsite insurance as defined in Contract Clarification Item 33, GMP Revision 2:

"Offsite Worker's Comp, Offsite General Liability, Excess Liability, Auto Insurance are included in the GMP and will be reimbursed separately from CCIP."

b. The current basis for monthly payments for CCIP insurance is incorrectly calculated using the total GMP value of $114.5 million. The correct basis of $112.2 million should have excluded the GMP CCIP value $2.2 million. The correct basis would reduce the estimated CCIP premium by approximately $44,000. Holder is aware the CCIP premium costs is subject to reconciliation based on the final GMP contract value at project close-out.

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c. There is not a contract provision requiring a reconciliation or review of the subcontractor contract values enrolled in CCIP. As noted, the CCIP is based on 100% of the GMP contract value; however, not all major subcontractors are enrolled in CCIP. Talson understands the actual CCIP premium is primarily based on actual cost for all salary and hourly HEFL and subcontractor personnel expended at the job site. Non-enrolled subcontractors are required to included insurances in the subcontract value to HEFL. Talson estimates the enrolled CCIP value including HEFL costs for general condition, general requirements, contingency, and the fee is approximately $80 million. However, estimated onsite labor costs are significantly less. Due to the non-auditable percentage markup for insurance costs in the CMAR Agreement, Talson was unable to obtain actual insurance premiums and related administrative and claim costs to make a reasonable judgment of the contractually obligated cost paid by the City.

Recommendations: *(1) The City should develop a formal process to conduct a financial review of all non-auditable markups and/or obtain independent assessment of proposed premiums prior to entering future agreements containing such provisions and costs. (2) The City should request Holder to reconsider the CCIP premium amount or a reduction to more closely match insurance projections for the enrolled contractors / subcontractor and related administration expenses. (3) Additionally, the City should consider revising future CMAR contract provisions allowing for scalable premium amounts that are dependent on actual enrollment values. (4) The City should request contract modification to Exhibit 2 to more clearly define the use and of the 13.9% markup to Holder's hourly employees. (5) The City should require Holder to issue a deductive change order in the approximate amount of $44,000 for the CCIP overestimate.*

City Response: (1) General Services will review the justification for future requests for non-auditable mark-ups, requesting assistance from Internal Audit as needed. General Services will review contracts with City Attorney's office to determine if contract language modifications are required on future contracts by April 1, 2021. (2) Per AIA A201, Article 11.7.3.2, The cost of the CCIP reimbursable by the Owner to the CMAR shall be included in the GMP at a rate of 1.93% of the GMP and is not subject to audit. HEFL is following the contract terms. (3) General Services will work with City Attorney's Office to review reasoning behind CCIP contract provision and determine if contract language modifications are required on future contracts. Perhaps consider requiring CMAR to have each bonded first tier sub break out the bonding cost so we can see the true savings resulting from CCIP or individual bonding; so accept or deny CCIP after bids come in. (4) Per AIA A133, Article 6.11, The Owner and CMAR have agreed to a 34.55% burden rate of the actual salaries for hourly rates set forth in Exhibit 2 of the GMP contract. Exhibit 7 in the GMP contract outlines the burden rate breakdown. (5) Per AIA A201, Article 11.7.3.2, The cost of the CCIP reimbursable by the Owner to the CMAR shall be included in the GMP at a rate of 1.93% of the GMP and is not subject to audit. HEFL is following the contract terms.

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2. **Difference in Coverage Insurance Not Fully Reviewed by the City**
According to the CMAR Agreement, HEFL is entitled to a "Difference in Coverage Insurance" of $47,864 for additional Builders Risk insurance. The City is providing Builders Risk insurance for the Project. It is unclear the reason for the additional coverage and the City indicated that HEFL did not fully address the City prior to HEFL decision to pursue the additional coverage.

Recommendation: *The City's Risk Management should continue to pursue detailed justification from HEFL for why Difference in Coverage Insurance is needed. Should this be deemed unallowable to the City, a credit should be provided by HEFL. In future projects, the City should ensure that all inquiries are answered prior to providing any confirmations or payments to the Contractor.*

City Response (Risk Management): In order to determine if DIC coverage was warranted, and the expense for this policy was less than any policy that could have been purchased by the City for DIC, HEFL will need to provide their full DIC policy, premium paid, and justification for the need to purchase this coverage over and above the City Builders' Risk. If it is determined this coverage was needed and could have been provided by the City less expensively, HEFL should reimburse the City for the difference in price. If this coverage is deemed not required, HEFL should reimburse the City the full amount charged. Expected response from HEFL is February 15,2021.

Risk will need to work with the City Attorney's Office to review contract language emphasizing that if the City purchases the project's Builders' Risk, any supplement to this coverage needs to be reviewed and approved by the City regarding the necessity and cost effectiveness, or the contractor will be responsible for the full cost of any policy they procure. Expected date of review is April 1, 2021.

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II. CONTRACT PROVISION

3. **Unallowable CMAR Fee Markup on Changes Utilizing Owner's Contingency**
HEFL included an unallowable markup of the CMAR fee of 3.95% on change orders utilizing the Owner's Contingency. Article 5.1.2 of the CMAR Agreement states:

"Any change orders utilizing Owner Contingency is not subject to this section."

Talson identified several Owner Contingency Authorizations inclusive of the fee at 3.95%.

Recommendation: *The City should confirm the intent of the contract provision and if applicable, inform HEFL of its unallowable use of the fee markup and reconcile Owner Contingency change orders and provide a change order credit. For future change orders, the City should ensure HEFL excludes the fee markup.*

City Response: General Services will review contract terms and philosophy with City Attorney's office to determine path forward for this contract and future contracts by April 1, 2021.

4. **Unallowable Subcontractor Markup on Sub-subcontractor Change Orders**
Markups of 10% for overhead and 5% for profit for change order work performed by the subcontractor are allowed per the CMAR Agreement. Additionally, Special Conditions, Exhibit G, of the subcontractor agreement allows for an additional 5% markup on work performed by a sub-subcontractor. However, Article 5.1.3 of the CMAR Agreement limits the subcontractor overhead and profit at 10% and profit at 5% for additive change orders. Exhibit G Provision A13 states the following:

"It is agreed and understood that the Owner Contract takes precedence over the paragraph if the requirements are more stringent."

Subcontractor, CM Steel, Inc, had numerous changes orders containing markups of 15% for overhead and profit and 5% markup on sub-subcontractor work. For example, Contingency Authorization OC-24, Item 4, CM Steel, Inc Request 002, illustrates the 5% markup or $618 on $12,360 of sub-subcontractor, Carolina Structural Welding, work. C.M. Steel, Inc does not perform any site structural steel erection or installation activities. Hence, the considerable amount of structural steel changes occurring at the project site is subject to the additional 5% markup.

Recommendation: *The City should require HEFL to reconcile all markups on CM Steel, Inc and other subcontractor change orders and seek credit for any additional 5% markups that are applied on a sub-subcontractor. In future change orders, the City should ensure that HEFL excludes these markups.*

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City Response: Per AIA A133, Article 5.1.3, Overhead and Profit are limited to 10% and 5%, respectively, on Add Change Orders. Additionally, in case of conflict, AIA A201, Article 1.2.5, outlines the order of precedence of the contract documents. Conditions outlined in The Agreement, AIA A133 would take precedent over conditions outlined in a Subcontractor Agreement. General Services will work with HEFL to reconcile appropriate credits by April 01, 2021.

5. **Unallowable Application of Markup for Bond in Subcontractor Change Orders**

Subcontractor, C.M. Steel, Inc is including an additional 1% markup on the total change order value for a bond. The change order value is comprised of equipment, material, and labor costs that utilize unit labor rates as per the subcontract agreement. However, HEFL standard subcontract agreement indicated the bond is contained within the agreed labor rates.

The agreement states:

"Subcontractor specifically acknowledges that the following prices include……labor burden, fringes, …bond and markup for overhead and profit."

Additionally, Talson identified subcontractor, Waterproofing Specialties, Inc, utilizes a 2% markup for bond costs.

Recommendation: *The City should require HEFL to reconcile all change orders for C.M. Steel, Inc, Waterproofing Specialties, Inc and other subcontractors that are not enrolled in the Subcontractor Default Insurance program and seek credit for any unallowable bond markups. For future change orders, the City should require HEFL to review all markups for bond costs.*

City Response: Per AIA A201, Article 11.10, The CMAR shall furnish bonds covering faithful performance of the Contract and payment obligations arising thereunder in the full amount (100%) of the Contract Sum. The Contract Sum includes both Construction and Owner's Contingencies. Any use of funds out of either contingency is already covered by bond thereby determining any additional bond expense as an unallowable expense when included in a change order. General Services will review change orders, identify bond markups, and work with HEFL to reconcile appropriate credits by April 01, 2021.

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III. CONTINGENCY AND ALLOWANCES

6. **Owner's Contingency at Risk of Being Depleted**
The Owner's Contingency funding is at risk of being depleted, which is partially due to expenses associated with COVID-19. As of August 20, 2020, the forecasted balance of Owner's Contingency represented approximately 14% or $446,392 of the approved value of $3.2 million included in the CMAR contract value. However, the forecasted allowance usage amount contains approximately $0.7 million in submitted costs to the City and pending costs of $1.1 million for design considerations, unforeseen site conditions, allowance reconciliation, and COVID-19 scope that require further review and funding considerations by the City.

Recommendation: *The City should closely monitor the remaining risks including open design items and COVID expenses against the available Owner's Contingency to ensure appropriate risk coverage or need for additional funding. Furthermore, the City and HEFL should resolve the pending items reducing the cost uncertainty with an acceptance or rejection.*

City Response: General Services will continue to monitor risks and resolve any outstanding change order requests as appropriate including COVID expenses. In December, City Attorney's Office and City Engineer documented path forward on evaluating COVID expenses.

7. **Allowances Not Transparent in Subcontractor's Payment Application**
Subcontractor Wayne Brothers, Inc's subcontract agreement contains a precast stair allowance of $200,000 that is not identified as an allowance in Wayne Brothers' Payment Application.

Exhibit G Provision A26 of the HEFL's typical subcontract states the following:

"When there are stated allowance included in the Subcontract / Purchase order, no part of the allowances may be used by Subcontractor / Vendor without the Contractor's written authorization."

Recommendation*: The City should require HEFL to review and reconcile all subcontractor Payment Applications to ensure that subcontractor allowances are properly identified, segregated, and monitored.*

City Response: Per AIA A201, Article 3.8, the CMAR shall submit an allowance log monthly detailing allocations of approved allowances. General Services will work with HEFL to review and reconcile all prior subcontractor pay applications to ensure the subcontractor allowances are properly identified, segregated and monitored and provide contract required allowance log. General Services will remind HEFL that all future pay applications must include an allowance log, including proper identification of allowance expenses in subcontractor pay applications.

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8. **Allowances Not Properly Reconciled and Invoiced to the City**

The allowance of $200,000 for Structural 1 Modifications after site investigations included in subcontractor C.M. Steel, Inc contract award appears unapproved as of October 21, 2020, despite the work being performed during the period November 2019 through March 2020. C.M. Steel's May 2020 Payment Application shows an amount of $160,000 as work completed to date. The CMAR Agreement, GMP Revision 2, Clarifications, states:

"These allowances will be used at Contractor's discretion and will be reconciled with Owner's Contingency."

Regarding Exhibit G Provision A26, noted under Observation 1, Talson was unable to obtain approval of the allowance usage by C.M. Steel, Inc. The unsigned Owner Contingency OC-95 represents the reconciliation of $200,000.

Recommendation: *The City should require HEFL to review the allowance procedures and confirm the approval status of allowances identified as reconciled. Additionally, the City should require HEFL to review existing allowances and reconcile subcontractor Payment Applications containing subcontractor charges for appropriate billing of allowance usage.*

City Response: Per AIA A201, Article 3.8, the CMAR shall submit an allowance log monthly detailing allocations of approved allowances. General Services will work with HEFL to review and reconcile all prior subcontractor pay applications to ensure the subcontractor allowances are properly identified, segregated and monitored and provide contract required allowance log. General Services will remind HEFL that all future pay applications must include an allowance log, including proper identification of allowance expenses in subcontractor pay applications.

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IV. COST MANAGEMENT

9. **Inconsistent Hourly Charge Rates**
The charge rates for certain hourly offsite staff did not comply with the contractual agreement (Exhibit 2). The hourly charge rate for the Project Director was $188.52; and the Project Executive was $209.43. These rates are different from the allowed contract billing rates per Exhibit 2.

Recommendation*: The City should require HEFL to reconcile hourly charges and provide any credit due to the City.*

City Response*:* The GMP contract includes a Rate Sheet and Salaries Estimate containing hourly rates for onsite and offsite positions. HEFL may bill up to the amount listed in the Rate Sheet. The rates charged were less than the amount on the Rate Sheet therefore no credit would be due. General Services will discuss with HEFL.

10. **Unallowable Relocation Expenses**
Holder Construction invoiced the City for relocation expenses totaling $1,033 for an intern that appeared to have only 320 hours billed to the Project. Holder Construction's relocation policy appears to only address relocation expenses for Associate employees assigned to the jobsite.

Recommendation**:** *The City should require HEFL to identify any additional relocation expenses for the intern and provide a credit to the City for all unallowable relocation expense.*

City Response: The GMP contract contains $50,000 of relocation expenses in the CMAR General Conditions, outlined in Exhibit 2. The contract provides no further guidance on the use of these funds, but we will consult with the City Attorney's Office.

Relocation expenses are only valid when they are incurred within the contract timeframe. Contained in HEFL Pay Application #2 is a security deposit, billed to the City, in the amount of $1,498, dated 09/27/18 for a lease agreement. This expense predates the GMP contract.

General Services will work with HEFL to reconcile appropriate credits by April 01, 2021.

11. **Approved Subcontract Change Order Differs from Subcontractor Payment Application**
In May 2020, a $11,444 Construction Contingency (CC) - 22 was approved for subcontractor, Wayne J. Griffin Electric, Inc (Wayne) but Wayne's July 2020 Payment Application shows a value of $12,856.

Recommendation: *The City should require HEFL to adjust Wayne J. Griffin Electric, Inc. Payment Application to correct the change order value prior to any work performed.*

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***City Response**:* Subcontractor billing for change orders shall not exceed the Owner approved change order amount. General Services will work with HEFL to adjust Wayne J. Griffin Electric, Inc. pay Application to correct the change order value to match Owner approved change order amount.

12. **Unallowable Legal Fees**

HEFL expenditures include unallowable legal fees payable Jones Walker LLP in the amount of $6,852. Legal fees are typically included in the contractor's overhead and not directly charged to the Owner unless special circumstances are present. HEFL indicated the additional fees were attributable to negotiating the work sequencing and final GMP contract value. However, as a CMAR, this process appears to be a standard procedure and included in HEFL's overhead costs.

Recommendation: *The City should require HEFL to provide a credit of $6,852 and obtain City approval prior to invoicing for legal fees in future billings.*

***City Response**:* Per AIA A133, Article 6.6.7, Legal, mediation and arbitration costs, including attorney's fees, other than those arising from disputes between the Owner and CMAR, reasonably incurred by the CMAR after the execution of this Agreement in the performance of the Work and **with the Owner's prior approval**, shall not be unreasonably withheld.

General Services will work with HEFL to reconcile appropriate credits by April 01, 2021. General Services will remind HEFL that they will need to obtain City approval prior to invoicing for legal fees in future billings.

APPENDIX A

DOCUMENTS REVIEWED AND INTERVIEWS CONDUCTED

Construction/HEFL Documents

1. Executed GMP, dated November 26, 2018
2. HEFL Organizational Chart
3. Applications for Payment, dated March and July 2020
4. Workforce & Business Development Presentation, dated 7/28/2020
5. Relocation Policy, dated 9/1/2020
6. Change Order Requests

City of Charlotte Documents

7. Capital Project Management and Construction Manager at Risk Contracting Presentation, dated 7/23/2020
8. Project Management Team Update, dated July & August 2020

Subcontractor Documents

9. Subcontractor Subledger Detail Status, dated 8/27/2020
10. Subcontractor Agreements:
    a. Structural Steel – C.M. Steel, Inc.
    b. Crane – Maxim Crane
    c. Building Concrete – Wayne Brothers, Inc.
    d. Drywall – Manganaro Southeast
    e. HVAC – SPC Mechanical
    f. Electrical – Wayne Griffin Electric

Insurance Documents

11. CCIP Insurance Policy Manual, dated 10/14/2019
12. CCIP Enrollment Status Report, undated
13. CCIP Contractor Participation Report, dated 8/24/2020
14. CCIP Burden Breakdown, dated 11/13/2018
15. CCIP Owner Billing Schedule, dated 12/23/2019
16. CCIP Rates, through March 31, 2021
17. SDI Enrolled Subcontractors, dated 9/29/2020
18. Builders Risk Policy Declaration, through 12/8/2021
19. Premium Costs in 2020-21 for various insurances

Monthly Project/Status Reports

20. Monthly Progress Report, dated July 2020
21. Project Schedule, dated 8/17/2020
22. Project Job Cost Report, dated 8/27/2020

APPENDIX A

23. Owner Contingency Tracking Log, dated 8/20/2020 & 9/25/2020
24. Allowance Log, dated 8/20/2020 & 9/25/2020
25. Submittal & RFI Logs, undated
26. Non-Conformance Report, dated 8/24/2020
27. OAC Meeting Minutes, dated 8/19/2020
28. Purchase/Owned Equipment Log, dated August 2020

Interviews Conducted
Six (6) virtual interviews between September 30 and October 2020

Project Interviews

- Shaun Haycock, Project Director, HEFL
- Raleigh Flowers, Project Manager, HEFL
- Chris Foxhall, Vice President – Finance, HEFL
- Christine Martin, Accounting Manager, HEFL
- Sweet Stewart, Vice President, HEFL
- Monifa Hendrickson-Woodside, Senior Project Manager, City of Charlotte