



School District of
OSCEOLA COUNTY
FLORIDA



The School District of Osceola County, Florida Internal Audit Report: Design and Construction

May 19, 2021



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TRANSMITTAL LETTER



May 19, 2021

The School District of Osceola County, Florida
817 Bill Beck Blvd.
Kissimmee, FL 34744

RSM US LLP
7351 Office Park Place
Melbourne, Florida 32940
☎ 321 751 6200
www.rsmus.com

Pursuant to the School District of Osceola County, Florida ("District") approved audit plan for fiscal year ("FY") 2020-21, we hereby present our report on the Internal Audit of the Design and Construction function. We will be presenting this report at the next scheduled Audit Advisory Committee meeting on June 3, 2021. Our report is organized in the following sections:

Executive Summary	This provides a high-level overview and summary of the observations noted in our internal audit of the design and construction function within the Facilities Division.
Background	This provides an overview of the Facilities Division, as well as relevant background information.
Objectives and Approach	The internal audit objectives and focus are expanded upon in this section as well as a review of the various phases of our approach and the results of our audit procedures.
Observations Matrix	This section includes a description of the observations noted during our internal audit and recommended actions.

We would like to thank the staff and all those involved in assisting us with this internal audit.

Respectfully Submitted,

RSM US LLP

RSM US LLP



EXECUTIVE SUMMARY

Background

As of November 2020, The School District of Osceola County has eight (8) significant projects currently under construction, defined as projects with an approved budget greater than \$2M, as well as multiple other major capital improvement projects. The construction of these significant projects, along with various renovation and capital improvement projects, are managed by the Facilities Division.

The Facilities Division is responsible for planning, coordinating, and executing capital projects in a timely and cost-effective manner. The Division is involved throughout the life cycle of a construction project, including the development of a scope of work, project budget, and vendor solicitation package at the beginning of the process. The Facilities Division oversees the daily operations and accounting of a project, coordinating with Construction Managers and vendors to facilitate the completion of projects according to scope, on schedule, and within budget.

The Facilities Division reports to the Chief Facilities Officer and works to facilitate the construction of District facilities. The Facilities Division is comprised of 23 positions in the Design and Construction Group. As of November 2020, the District maintained 28 active construction projects, eight (8) of which were listed as significant. Significant projects include 1 Welding and CNC Program, 2 Air Handler Unit Replacement, 1 transportation, 2 K-8 Schools, 1 comprehensive renovation, and 1 Sun-bridge project.

Objectives and Scope

The objective of this internal audit was to determine if internal controls surrounding key Design & Construction operational functions, such as project budgeting, procurement, project assignment for continuing service contracts, invoice review, change orders and performance monitoring are operating effectively and efficiently. Procedures included:

- Evaluated the design of key processes and controls identified during walkthroughs through industry benchmarking, best practices and comparable client experience.
- Reviewed and tested source documents (procurement packages, contractor submittals, assignment/award documentation, construction contracts, invoices/pay applications, change orders, owner direct purchases, monitoring documents, etc.) for a sample of ongoing and recently completed construction projects.
- Developed recommendations for process and control modification / addition / deletion for any design gaps or non-compliance issues identified during our analysis and testing.

The results of our procedures are summarized in the pages that follow, and have been shared with the Facilities Division.

Overall Summary / Highlights

During our testing we noted observations related to the review of change orders and invoices, negotiation of fixed cost components, retainage calculations, proposal documents & scoring requirements, and the composition of the procurement selection committee. The objective of an internal audit function is to perform testing of controls, and provide reporting of exceptions noted. The observations detailed in the pages that follow represent only the instances where exceptions were noted, and do not detail the instances where testing resulted in no reportable observations.

Fieldwork was performed January 2021 through April 2021. Draft results were shared and exit meetings were held in May 2021.

Summary of Observation Ratings

	High	Moderate	Low
Design and Construction	-	2	1

We would like to thank all District team members who assisted us throughout our procedures.



EXECUTIVE SUMMARY (CONTINUED)

Observations Summary

Below is a summary listing of the observations that were identified during this internal audit. Detailed observations are included in the observations matrix section of the report.

Summary of Observations	
Observations	Risk Rating
1. Vendor Performance Monitoring Through conversations with Management, we noted the District has a process in place to grade vendor performance subsequent to project completion. However, we noted the District does continually monitor vendor performance or utilize results when assigning vendors to projects.	Moderate
2. Non-Compliance with GMP Stipulated Rates During our detailed testing of construction invoices and in conversations with Management, we noted the District sometimes approves payment for items not included in the Project GMP. In our testing, these items did not exceed rates approved in the Project GMP.	Moderate
3. Improper Retainage Calculation Through our testing of pay applications we noted that retainage was not withheld in accordance with Florida Statute.	Low

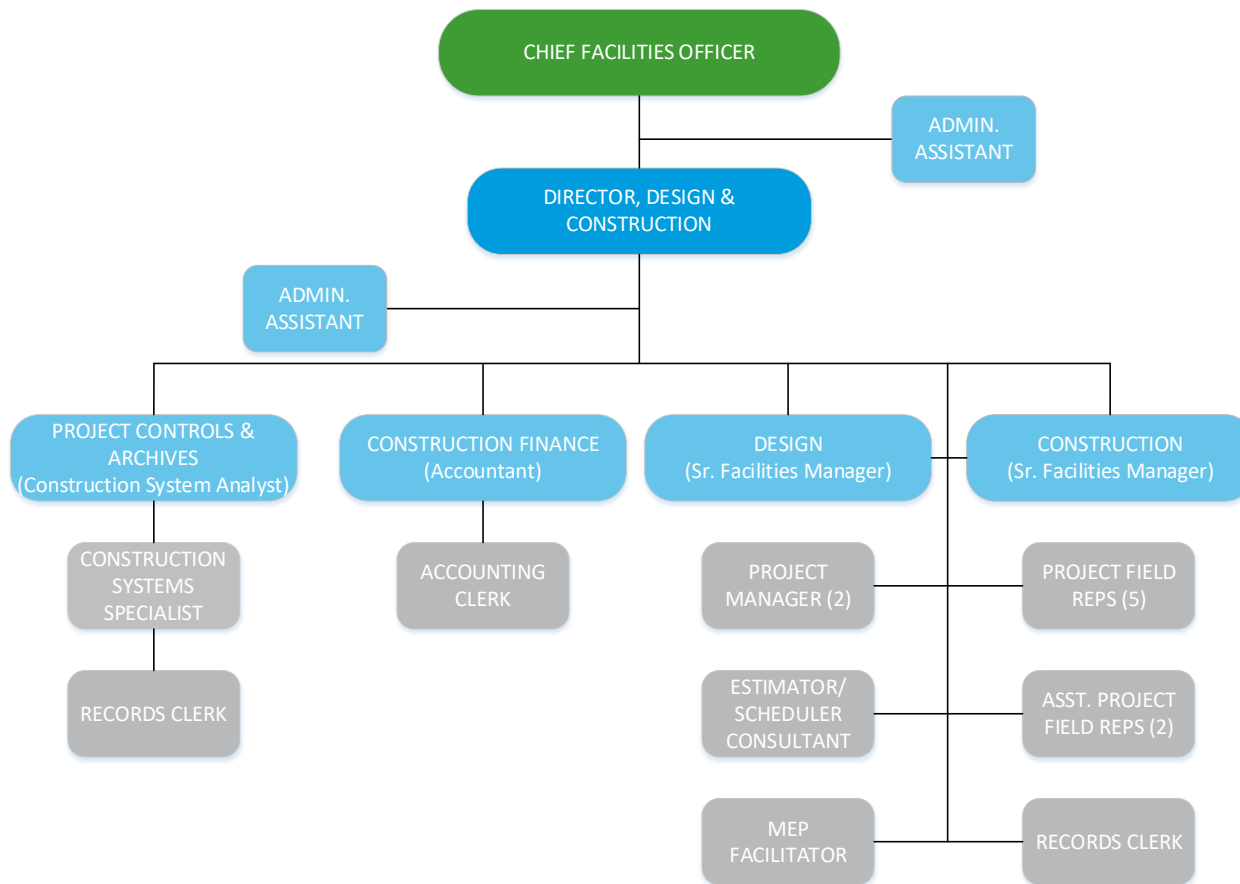


BACKGROUND

Overview

As of November 2020, The School District of Osceola County maintained 28 active construction projects. Projects are for a multitude of different services, spanning from Installation of Security Intercom Systems to Comprehensive Renovations. Of the twenty-eight (28) active construction projects, eight (8) are classified as significant (defined as having an approved budget greater than \$2M) on The School District of Osceola County's Project List. The construction of these eight (8) projects, along with the other major capital improvement projects, are managed by the Facilities Division of The School District of Osceola County. As part of the District's Facilities Division, Design and Construction; and Planning Services are responsible for planning, coordinating, and executing capital projects in a timely and cost-effective manner.

Working to facilitate the construction of District facilities, The Facilities Division reports to the Superintendent and consists of the following as shown below:





BACKGROUND (CONTINUED)

Significant Projects*

As of November 2020, The School District of Osceola County has eight (8) significant projects (defined as project with approved budget over \$2M) currently under construction. The total contract value of significant projects currently in progress is \$223,803,305 (over multiple years). The table below provides additional details related to the eight (8) significant projects.

School Code	Project Description	Contract Amount	Date Created	Project Status
oTECH	Welding and CNC Program (FY 20-21)	\$ 2,063,078	07/16/2020	Active
KMMS	Air Handler Unit Replacement (FY 18-19)	\$ 3,404,869	04/19/2019	Active
HZMS	Air Handler Unit Replacement (FY 18-19)	\$ 3,935,000	04/19/2019	Active
Transportation West Facility	(FY 19-20)	\$ 20,100,000	06/27/2019	Active
CCK8	Canoe Creek K8 Year Two (FY 19-20)	\$ 30,021,000	01/08/2020	Active
K-8 School at Kindred "AA"	(FY 18-19)	\$ 42,779,358	05/10/2018	Active
Sunbridge K-8 School	(Tavistock) (FY 20-21)	\$ 43,500,000	08/12/2020	Active
GWHS	Comprehensive Renovation (FY 18-19)	\$ 78,000,000	07/26/2018	Active

**information in this section is unaudited and was provided by Facilities Division*



Middle School AA
Harmony, FL

MOSS



Canoe Creek K-8





BACKGROUND (CONTINUED)

Completed Projects*

As of November 1, 2020, there were 28 active projects within the Facilities Division. Sixteen (16) projects were created and completed in 2020, totaling \$664,396 in approved contract costs. Details pertaining to the sixteen (16) active projects created and completed in 2020 are indicated below:

School Code	Project Description	Project Created Date	Final Contract Value
SCHS	Sink Replacement (FY 19-20)	01/21/2020	\$1,814
CYES	Entrance Wrap Install (FY 19-20)	05/05/2020	\$2,590
CYES	Entrance Sign Replacement (FY 19-20)	04/23/2020	\$3,994
OCSA	Drainage Issue Repairs (FY 19-20)	05/26/2020	\$5,954
HLES	Walkway Install (FY 19-20)	01/22/2020	\$15,457
TRANS KM	Call Center Noise Abatement (FY 20-21)	08/17/2020	\$16,692
HLES	Electric Gate Power Conversion (FY 20-21)	09/14/2020	\$20,000
NPES	Drainage Corrections (FY 19-20)	04/20/2020	\$23,534
KMES	Driveway Painting (FY 19-20)	04/30/2020	\$27,241
OTECH W	Exterior Door Replacement (FY 20-21)	08/27/2020	\$28,766
CK8S	Gutter & Downspout Install (FY 19-20)	02/20/2020	\$31,000
PWMS	Air Conditioning Units Install (FY 19-20)	02/21/2020	\$88,127
PNHS	Clinic Expansion (FY 19-20)	01/09/2020	\$109,280
NPMS	Air Conditioning Units Install (FY 19-20)	02/21/2020	\$122,677
WK8S	Reception Area Construction (FY 19-20)	04/29/2020	\$167,270
PNHS	Front Dugout Fence Install (FY 19-20)	04/29/2020	Not Listed

*information in this section is unaudited and was provided by the Facilities Division



BACKGROUND (CONTINUED)

Procurement

Currently, construction-related procurements are centralized and performed in-house by the Purchasing Department with the assistance of the Facilities Division. The Purchasing Department is responsible for ensuring competitive selection for construction services is advertised in accordance with the requirements of state law. The Purchasing Department also oversees the appointment of a professional services selection committee for the purpose of selecting the firm to provide the construction services, however in the event it is unable to resolve a committee position, the Chief Facilities Officer is responsible for doing so. In addition, the selection committee is responsible for reviewing vendor proposals, scoring proposals and ultimately presenting the Purchasing Department with their final selections for approval.

The following graphic represents the process followed for construction procurement:



The Facilities Division serves as a subject matter expert for negotiating the vendor contract following School Board ratification of the RFQ selection. The Purchasing Department utilizes an RFQ template with standardized contract language for every solicitation, whether it's for a Construction Manager ("CM") or, Architect/Engineer ("A/E"). The standardized contract language comprises the majority of the package; however, the Facilities Division provides the scope of work and any construction-specific details such as bonding and licensing requirements. When the procurement package has been assembled, the solicitation is advertised to the public by the Purchasing Department. After all RFQ submissions have been received at the bid closing date, the "Selection Committee", will convene to evaluate the submittals and assign each firm a score. Each Committee Member or "evaluator" completes a standard evaluation form that outlines the required qualifications and selection criteria.

Examples of selection criteria considered during the evaluation of proposing vendors include:

- Past Performance
- Price
- Timeline & Budget Adherence
- Experience & Ability
- Location of firm offices
- Current and projected workloads of the firms

Using the calculated score from the evaluation sheet, each firm is ranked and a "Short List" is developed at the first selection committee meeting. Short Listed applicants are then notified and the selection committee proceeds to further evaluate and rank short listed vendors based on oral presentations. During oral presentations, firms are again evaluated, scored, and ranked in order of highest to lowest. Top-Ranked Firm(s) are then sent to the School Board for approval before a firm is awarded and the negotiation process begins. When the qualified firms have been determined, a notice of the District's intention to negotiate with those firms is posted for 72 hours. The Facilities Division works with top applicants / applicant to negotiate a contract. The final contract(s), signed by the top-ranked firms, are presented to the School Board for approval. Following award of the contract for a Project specific RFQ, Facilities Division submits a requisition for a purchase order to Purchasing. Purchasing will then validate the requisition and create a purchase order for the contract, and Facilities Division will issue a Notice to Proceed ("NTP") to the vendor.



BACKGROUND (CONTINUED)

The RFQ Selection Committee

The composition of the Selection Committee varies depending on the scope of work of an RFQ; however, the Committee is comprised of a cross-functional team of District employees appointed by the Purchasing Department as members, and in the event that Purchasing cannot resolve committee membership, the Chief Facilities Officer resolves open membership. The Purchasing Department is responsible for facilitating Committee meetings and conducting trainings for Committee member responsibilities. Meetings are considered public meetings and are posted to the Purchasing Department website, and proposals are evaluated according to a point system enumerated in the RFQ. The Purchasing Department follows the Board approved evaluation criteria.

Continuing Services Contracts (CCNA)

For projects that have a total project cost of less than \$2 million, the District utilizes Continuing Services contracts to perform smaller capital projects. For continuing service contracts, the District is able to issue an RFQ and award contracts to multiple firms under one solicitation. For example, ten (10) firms can be awarded and kept under contract for one (1) year; renew with Board approval. The District can then use these firms to perform small capital projects without going through the procurement process on each individual project. According to the District's CCNA Procedures Manual, every effort is made to facilitate the equitable distribution of project assignments. Projects are generally assigned on a cost basis (lowest total cost of services); however other factors may determine the selection of a specific vendor. These factors typically include, but are not limited to:

- Scope of project, which could require a vendor that specializes in a particular field;
- Vendor's current work load;
- Total fees that have been paid to the vendor for previously assigned projects; and
- If the vendor previously designed projects for the facility at which the current project is located.

Payment Applications & Invoice Review Process

A payment application or "pay application" is a detailed invoice submitted by a contractor to the owner (the District) for the purposes of receiving payment for completed work during a particular time period. Due to the complexity and cost of larger construction projects, a traditional single-page invoice does not provide a sufficient amount of detail to support the project costs claimed by the contractor. A payment application serves as the contractor's request for payment and also the architect's certification of the work completed by the contractor. The District utilizes the standard AIA (The American Institute of Architects) certified payment application, which includes a cover page (the Application and Certificate for Payment) as well as a continuation sheet (the Schedule of Values) which provides a detailed accounting of the work completed on a given project.

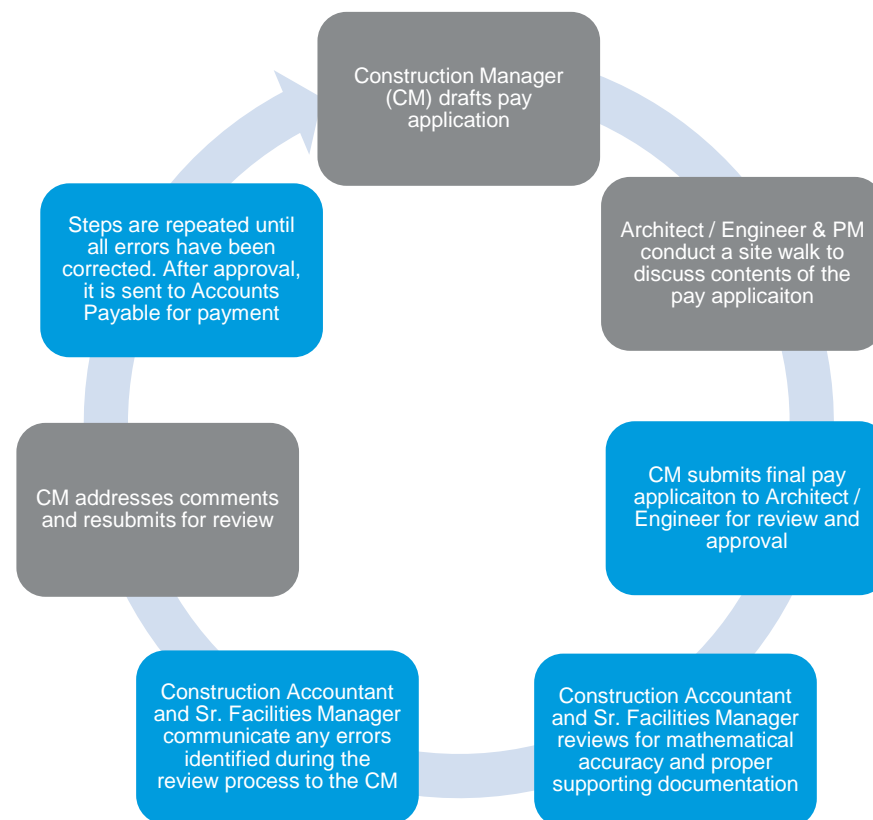
In order for a payment application to be approved by the owner, the contractor is required to provide documentation to support invoiced costs; however, the documentation required depends on the type of contract (i.e. Lump Sum vs GMP). Examples of supporting documentation include:

- Labor reports and timesheets for supervision or labor costs;
- Invoices or receipts for general requirement costs (i.e. jobsite trailers, small tools, dumpsters, construction management software, etc.);
- Subcontractor payment applications or invoices for work completed by subcontractors; and
- Lien waivers



BACKGROUND (CONTINUED)

Together, the AIA payment application and supporting documentation provided by the contractor form a payment application package. Each month, Design and Construction reviews each of these packages as they are received from contractors. Before a pay application is approved and paid, Design and Construction is responsible for reviewing the contractor's payment application package for completion, accuracy, and proper supporting documentation. The payment application process begins when the contractor creates a draft of a pay application, often referred to as a "pencil draw", which Design and Construction expects to receive by the end of each month. Prior to the finalization of a payment application, the Facility Engineer and/or Architect and Project Manager ("PM") will often conduct a "site walk" or meeting to discuss the contents of the application. The purpose of this meeting is to walkthrough the progress made on the project and determine the percentage of completion for various line items included in the schedule of values. After the site walk has been completed the contractor will prepare the final official pay application, it is reviewed and approved by the Architect/Engineer, who is a District agent independent of the contractor. After the Architect/Engineer conducts their review, the pay application is then forwarded to the Construction Accountant and Construction Analyst for signature. Errors or omissions that are identified during the review process are communicated and vetted with the Contractor before the final review is performed. Once the pay application discrepancies have been corrected, it is sent to Accounts Payable for final review and processing. If the Contractor does not make the necessary corrections, Design and Construction will provide additional comments to the contractor and return the payment application. The process is repeated until the payment application is free from error and sent to Accounts Payable for final approval of payment.



Change Order Process

Change management is a critical component in keeping capital projects in scope, on schedule, and within budget. Owners and contractors must have systems in place to adapt and deal with the various issues that arise during the construction process. Proper planning and change management controls can mitigate the risk of having to alter a contract or scope of work mid-way through a large capital construction project. In the event that a change must be made, both the contractor and owner must come to an agreement on those changes, and a formal document must be provided that details the proposed changes. A "change order" is used to document this agreement, as an official addition to the contract documents. A change order should include a description or justification for the proposed change, and supporting documentation such as vendor invoices and labor and materials breakdowns. Examples of change orders include additive and deductive changes to the original contract amount, time extensions to the project schedule, and the addition or deletion of certain scope items.

The change order process often begins with a meeting between the Facilities PM, the Architect/Engineer, and the Construction Manager to discuss potential changes in the work to be performed. Change orders will be preceded by a proposal request initiated by the Architect, which details the specific change in work. The Construction Manager will review the request and provide any supporting documentation to support the request to the Architect.



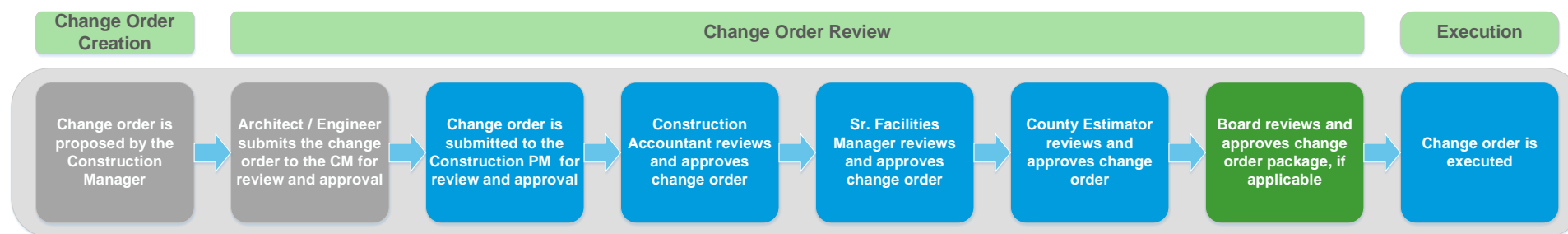
BACKGROUND (CONTINUED)

After receipt of the supporting documentation from the CM, the Architect will then certify in writing and attach to the proposed change order that the cost of the requested change is fair and reasonable. The Architect will then forward the completed proposal request to the CM to submit the Change Order request to the Facilities Division for review and approval. The CM will send the change order request to the Facilities PM, the Construction Accountant and the Sr. Facilities Manager of Construction for an in-depth examination of the contents of the change order. The change order is reviewed for the following:

- Completion (the change order is sequentially numbered and includes all necessary line items and descriptions);
- Proper approvals or signatures;
- Mathematical accuracy (contract amounts, labor and materials, overhead and profit, and sales tax); and
- Proper supporting documentation (vendor invoices, purchase orders, etc.)

If errors or omissions are identified at any point in the review process, findings will be vetted with the appropriate party and the change order will be returned to the architect / engineer for revision. Once the Construction Accountant and Sr. Facilities Manager for Construction perform their reviews, the requested change order is sent to the Facilities Estimator for additional review and approval. Final approval of the change order is performed by either the Superintendent or the School Board. Requested change orders for an amount less than twenty-five thousand (\$25K) or 10% of the contract amount may be approved by the Superintendent, any change order over the twenty-five thousand (\$25K) or 10% threshold requires School Board approval. After the final approval stage, the change order is executed and included on the contractor's next application for payment, and paid through the monthly review process.

The following graphic depicts the change order process utilized by the Facilities Department:



Direct Materials Purchases & Project Savings

Change orders can be used as a tool to save the District money as potential savings are identified. Change orders can be issued to deduct tax savings made possible by Owner Direct Purchases ("ODP"). As a government entity, the District can take advantage of tax-exempt status by purchasing goods directly from a supplier. An owner direct purchasing program allows the District to coordinate with a contractor to issue a change order to reduce the contract amount for materials purchased by the District, plus associated taxes. As part of the planning process, Facilities calculates the anticipated tax savings at the beginning of each project. During construction, the Project Manager (PM) assigned to the project will review invoices and identify opportunities for potential tax savings. During our review of change orders, we noted that Facilities is actively using direct materials purchases to reduce project costs. In addition to deductive change orders for direct materials purchases and schedule reductions, a change order can be issued at the end of a project if it is completed under budget and project savings are credited back to the District.



OBJECTIVES AND APPROACH

Objectives

The objective of this internal audit was to assess the design and effectiveness of the internal control structure as it relates to specific processes (procurement, invoicing, and change orders) within Design and Construction and whether the system of controls is adequate and appropriate for promoting and encouraging the achievement of management's objectives.

Approach

Our approach to the audit execution consisted of the following phases:

Understanding and Documentation of the Process

To gain an understanding of the key personnel, processes, risks, and controls, we performed the following:

- Conducted an entrance conference with senior and executive management from Facilities Planning and Construction to discuss the scope and objectives of the audit work, obtain preliminary data, and establish working arrangements;
- Conducted interviews with representatives from the Facilities Division to obtain an understanding of the District's operating policies and procedures, monitoring functions, contractual arrangements, and key documents; and
- Performed walkthroughs of the processes to validate our understanding.

Evaluation of the Process and Controls Design and Testing of Operating Effectiveness

The purpose of this phase was to evaluate the design of the key process and controls and test compliance and internal controls for operating effectiveness based on our understanding of the processes obtained during the first phase. We utilized sampling and other auditing techniques to meet our audit objectives outlined above. We conducted the following testing, and other procedures as deemed necessary.

- Evaluated the design of key processes and controls related to project budgeting, procurement, project assignment for continuing service contracts, invoicing/pay applications, change orders, and performance monitoring which were identified during walkthroughs through industry benchmarking, best practices and comparable client experience;
- Reviewed and tested source documents (procurement packages, contractor submittals, assignment/award documentation, construction contracts, invoices/pay applications, change orders, owner direct purchases, monitoring documents, etc.) for a sample of ongoing and recently completed construction projects; and
- Developed recommendations for process and control modification / addition / deletion for any design gaps or non-compliance issues identified during our analysis and testing.

Reporting

We summarized and reviewed the results of this audit with appropriate members of Management, the CFO, General Counsel and the Superintendent and will present to the Audit Advisory Committee at the next scheduled meeting.



OBJECTIVES AND APPROACH (CONTINUED)

Observation Risk Rating Definitions	
Rating	Explanation
Low	Observation presents a low risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of low importance to business success/achievement of goals.
Moderate	Observation presents a moderate risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of moderate importance to business success/achievement of goals. Action should be in the near term.
High	Observation presents a high risk (i.e., impact on financial statements, internal control environment, brand, or business operations) to the organization for the topic reviewed and/or is of high importance to business success/achievement of goals. Action should be taken immediately.



OBSERVATIONS MATRIX

Observation	1. Vendor Performance Monitoring
<p>Moderate</p>	<p>Currently, the District has a process in place to review and grade vendor performance subsequent to project completion. Vendors are assigned a grade of "A, B, or C" based upon a predefined scoring breakdown. All vendor performance grades are stored within e-Builder, where reports may be generated for specific vendors or classes of vendors. Although the District has an established process for grading vendor project performance, the District does not review and consider past performance grades when assessing future contracting decisions. For example, if a vendor receives multiple "C" grades, the impact of such an assessment is not taken into account prior to project assignment or contract renewal decisions.</p> <p>Through our walkthrough conversations, we noted that the District does not maintain formal procedures designed to leverage vendor performance grading when determining project assignment of vendors under Continuing Service or Trade Contracts with the District. Instead, trade vendors are assigned to projects based upon the lowest bid received and CCNA vendors are assigned based upon a fiscal equitable distribution (lowest total cost of services). Additionally, limited consideration is applied to the vendor grading process when assessing the effectiveness of the District's various vendor "pools", and making decisions as to which vendors in such a pool are eligible for contract renewal.</p> <p>During our detailed testing, we noted thirteen (13) instances where Vendors received two (2) or more "C" grades and were subsequently assigned a project, detailed below:</p> <ul style="list-style-type: none"> • Five (5) Vendors received three (3) "C" grades for projects completed • One (1) Vendor received four (4) "C" grades for projects completed • One (1) Vendor received five (5) "C" grades for projects completed • Two (2) Vendors received six (6) "C" grades for projects completed • Three (3) Vendors received seven (7) "C" grades for projects completed • One (1) Vendor received nine (9) "C" grades for projects completed <p>We did note that as part of the Selection Committee scoring criteria, Vendors are expected to provide information regarding projects of a similar scope performed over the past five (5) years. The Selection utilizes the information provided to score the Vendor's experience with projects of a similar scope. However, the Selection Committee does not take into account the internally developed performance measurements when making their scoring determinations, and instead relies solely on external information provided by the Vendor.</p> <p>By not continually monitoring the past performance of vendors under Continuing Service Contracts and Trade Vendor Contracts, the District risks assigning key projects to vendors with a reputation of poor performance. Improper vendor assignment may lead to economic risk, as vendor performance may deviate from the expectations of the District leading to the inability to meet District objectives in an efficient and effective manner. Additionally, overreliance on external information provided by a vendor during the Vendor selection process may risk inappropriate Vendor selection.</p>
<p>Recommendation</p>	<p>We recommend that the Purchasing Department work with the District General Counsel to construct a process to consider vendor performance while maintaining compliance with applicable Florida State Statutes. Vendor grading may be continually monitored to identify vendors receiving low grades on multiple projects. Where allowable under Florida State Statute, vendor grades may be taken into consideration when assigning projects, assessing vendor pools, or determining contract renewal decisions.</p>



OBSERVATIONS MATRIX - CONTINUED

Observation	1. Vendor Performance Monitoring (Continued)
Management's Action Plan	<p>Response: We will work in conjunction with Finance and the District General Counsel on a plan to implement vendor performance management.</p> <p>Responsible Party: Purchasing</p> <p>Estimated Completion Date: July 2021</p>



OBSERVATIONS MATRIX - CONTINUED

Observation	2. Non-Compliance with GMP Stipulated Rates
<p>Moderate</p>	<p>Through discussions with management, we noted the District negotiates with contractors to establish the rates within Construction Manager at Risk ("CMAR") agreements. Through detail testing, we noted that although rates are agreed to with contractors, rates were used that are not stipulated by the guaranteed maximum price ("GMP"). Although approved verbally, contract documents were not updated to reflect acceptable billing support for these items.</p> <p>Of the ten (10) projects selected for testing, two (2), included standard contract language establishing individual staff members of the Contractor who are pre-approved to work on the Project under the General Conditions. Contracts establish an agreed upon labor rate, as well as an associated labor burden percentage for each pre-approved Contractor staff member. Although pre-approved Contractor staff members are defined in the contracts, we noted one (1) case where a Contractor staff member that was not pre-approved in the GMP had their labor and labor burden reimbursed on a pay application without prior written approval. Additionally, although labor rates and labor burdens are stated in the contracts, we identified one (1) instance where a labor rate and labor burden inconsistent with what was established in the contract was used for reimbursement on a pay application without prior written approval.</p> <p>Although terms established by the GMP were not appropriately applied for two (2) of ten (10) projects tested, we noted that the rates utilized on the two (2) pay applications did not exceed the predefined rates established within the GMP.</p> <p>Contract disputes may arise if a contract requires specific supporting documentation, but alternative arrangements were informally agreed. This can lead to project delays and inefficiencies, especially in the event of turnover, on either the District or contractor team, as new parties to the project may not have a formal record of project expectations and agreements.</p>
<p>Recommendation</p>	<p>We recommend the District review the process of establishing rates within CMAR agreements. If management agrees to make payment towards rates not stipulated in the CMAR agreement, a formal process should be implemented to sufficiently document review and approval of deviations. This may include a formal amendment to the contract, specifying any updates to or changes to reimbursable cost. Additionally, approval of all Contractor staff members not previously identified in the GMP should be obtained prior to payment of a pay application.</p>
<p>Management's Action Plan</p>	<p>Response: The Facilities Division requires a signed letter from the Construction Manager when staffing changes are made after the agreement has been signed for the following positions: Project Manager, Assistant Project Manager, Superintendent, Assistant Superintendent, etc. It has always been our practice to confirm that changes of staff on a project do not exceed the hourly labor rates that were agreed upon within the contract prior to approval of a pay application. We have now expanded the requirement to include all positions; Administrative Assistants, Accountants, and other clerical staff. These letters will serve as the formal documentation for the change.</p> <p>Responsible Party: Construction Accountant and Senior Facilities Manager (Construction)</p> <p>Estimated Completion Date: Completed</p>



OBSERVATIONS MATRIX - CONTINUED

Observation	3. Improper Retainage Calculation
<p>Low</p>	<p>Through our testing of pay applications we noted that retainage was not released in accordance with Florida Statute for two (2) of ten (10) projects tested. We noted that retainage remained at 10% and was not reduced to 5% after 50% completion of the construction services, as required by Florida Statute. It should be noted that as of October 1, 2020, Florida Statute has been amended to reduce the maximum retainage rate on public construction projects to a flat 5%, applicable to any construction services contracts advertised for bid or entered into by state or local government entities in Florida after October, 1 2020. However, this amendment does not apply to the results of our testing, as the projects we selected were dated prior to October, 1 2020.</p> <p>Retainage is defined as a portion of payment withheld, until work is substantially complete. Retainage is common in construction and used to assure that the contractor and subcontractors will satisfy obligations to fully complete a construction project. Specifically, during the period under audit Florida Statute allowed 10% retainage to be withheld, until the project reaches 50% completion, at which time retainage should be reduced to 5%. The specific requirement of Florida Statute 255.078 are outlined below:</p> <p><i>Florida State Statute 255.078</i></p> <ol style="list-style-type: none"> (1) <i>With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 10 percent of the payment as retainage until 50-percent completion of such services.</i> (2) <i>After 50-percent completion of the construction services purchased pursuant to the contract, the <u>public entity must reduce to 5 percent</u> the amount of retainage withheld from each subsequent progress payment made to the contractor. For purposes of this section, the term "50-percent completion" has the meaning set forth in the contract between the public entity and the contractor or, if not defined in the contract, the point at which the public entity has expended 50 percent of the total cost of the construction services purchased as identified in the contract together with all costs associated with existing change orders and other additions or modifications to the construction services provided for in the contract.</i> (4) <i>After 50-percent completion of the construction services purchased pursuant to the contract, the contractor may present to the public entity a payment request for up to one-half of the retainage held by the public entity. The public entity shall promptly make payment to the contractor, unless the public entity has grounds, pursuant to subsection (6), for withholding the payment of retainage. If the public entity makes payment of retainage to the contractor under this subsection which is attributable to the labor, services, or materials supplied by one or more subcontractors or suppliers, the contractor shall timely remit payment of such retainage to those subcontractors and suppliers.</i> <p>We recognize that the language stated in Florida State Statute 255.078 may cause some confusion regarding which party is responsible for initiating a retainage reduction. Contractors are required to submit pay applications to the District over the course of the construction process, and is the responsibility of the District to review and promptly pay the contractor. Although the contractor submits a pay application to the District, subsection 2 of the statute quoted above states that the public entity must reduce retainage. Noncompliance with Florida Statues may expose the District to regulatory and reputational risks impacting the ability to achieve District strategic objectives.</p>



OBSERVATIONS MATRIX - CONTINUED

Observation	3. Improper Retainage Calculation (Continued)
Recommendation	We recommend the District review all current projects, to assess whether retainage is withheld in accordance with statute, and to reduce retainage where appropriate. We further recommend the District implement additional steps as part of the pay application review process to validate that retainage is appropriately calculated.
Management's Action Plan	<p>Response: Prior to the state statute change in October 2020, it was the District's practice to withhold 10% retainage at the beginning of a project and reduce to 5% retainage when 50% of the work had been completed, per the contractor's request. We noted that State Statute requires retainage to be reduced to 5% by the public entity, we plan on implementing additional steps to ensure retainage is appropriately calculated in the future. The contractors were notified that the state statute had changed in October 2020 and that retainage could then be dropped to 5% automatically. Some contractors chose not to reduce their retainage at that time. All current contracts are now reduced to 5% retainage and new contracts issued after October 1, 2020, have the updated contract percentages.</p> <p>Responsible Party: Construction Accountant, Senior Facilities Manager (Construction) and Construction Systems Analyst</p> <p>Estimated Completion Date: Completed</p>



RSM US LLP
7351 Office Park Place
Melbourne, Florida 32940
321.751.6200
www.rsmus.com

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