



PAT FRANK
Clerk of the Circuit Court
13th Judicial Circuit

COUNTY AUDIT

HILLSBOROUGH COUNTY, FLORIDA

HNTB GENERAL ENGINEERING CONSULTANT AGREEMENT

REPORT # 239

NOVEMBER 8, 2012

November 8, 2012

The Honorable Ken Hagan, Chairman
The Honorable Kevin Beckner
The Honorable Victor Crist
The Honorable Al Higginbotham
The Honorable Lesley "Les" Miller
The Honorable Sandra Murman
The Honorable Mark Sharpe

Dear Chairman Hagan and Commissioners:

We have performed an audit of the County's General Engineering Consultant (GEC) contract with HNTB Corporation, Audit Report #239, dated November 8, 2012. Responses to our recommendations were received from the Director of Public Works and the County Administrator's Executive Team and have been included in the report after each finding and recommendation.

We appreciate the cooperation and professional courtesies extended to our auditors by the Director and personnel of Public Works during this audit.

Sincerely,

Peggy Caskey, CIA, CISA, CFE
Director, County Audit

cc: Mike Merrill, County Administrator
Lucia Garsys, Deputy County Administrator, Infrastructure & Development Services
Mike Williams, Public Works Department, Director, Engineering and Environmental Services
Mitch Ramos, Director, Business & Support Services (IDS)
Bruce Dangremond, Manager, Performance Mgmt, Business and Support Services

TABLE OF CONTENTS

EXECUTIVE SUMMARY

Background Information	1
Objective	1
Scope	1
Overall Evaluation	2
Opinion	3
Audit by	3

FINDINGS & RECOMMENDATIONS

Control Activities	4
Observation	14

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EXECUTIVE SUMMARY

BACKGROUND INFORMATION:

The GEC contract with HNTB Corporation for the Transportation Task Force (TTF) Program Management was initially awarded by the BOCC on June 17, 2008, as a 5-year Program with annual negotiated Agreements with an expiration date of the first Agreement on June 17, 2009. The initial Agreement was in the not-to-exceed amount of \$8,558,808.45.

As part of this Agreement, HNTB was to validate the current TTF projects and develop a multiyear implementation plan, as well as perform program management of planning, design, and construction for the TTF program. HNTB was also to provide construction management services for other Capital Improvement Program (CIP) projects. The cost breakdown of this Agreement was: \$4,997,145.07 for basic services, \$2,608,934.30 for optional additional services as authorized by the County, and \$952,729.08 for construction management of non-TTF, CIP projects.

The initial Agreement was then extended to June 30, 2010, by approval of the BOCC on June 30, 2009, of the First Modification Agreement (08-0971). The First Modification Agreement included a not- to- exceed amount of \$12,781,265.77 with an expiration date of June 30, 2010.

The Second Modification Agreement extended the expiration date from June 30, 2010, to December 31, 2010. The Second Modification Agreement did not increase funding. The extension of time was to provide staff with sufficient time to assess the budget impacts on the County's Capital Improvement Program, the TTF Program, and to negotiate a future GEC Contract Modification with HNTB in order to continue implementation of the TTF Program.

The Third Modification Agreement extended the expiration date from December 31, 2010, to December 31, 2011, and increased the not-to-exceed amount by \$891,763.88 to \$13,673,029.65.

OBJECTIVE:

To review and evaluate internal controls related to the duties of the Public Works Department in managing the HNTB GEC contract.

SCOPE:

The audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors. The audit period was from the agreement inception through December 31, 2011. Our audit procedures included interviewing County personnel and HNTB personnel, documenting the contract requirements and reviewing supporting documentation related to these requirements to determine compliance with the contract terms and with County policy and procedures.

OVERALL EVALUATION:

County and HNTB personnel were responsive to our inquiries and provided thorough information when requested. We found knowledgeable and dedicated employees that were receptive to our suggestions for improvement. The County Departments and HNTB provided data and other information in a prompt and courteous manner.

Our audit testing determined that the Public Works Department was ensuring that:

- HNTB provided the County with timely progress reports.
- The Consultant’s Automated Performance Evaluation System (CAPES) evaluation and scoring of HNTB’s performance was adequately documented.
- HNTB’s staff and subcontractor staff maintained current professional licenses.
- HNTB maintained current insurance coverage for all types of insurance required in the contract.
- The County provided feedback to HNTB on the TTF Program Implementation Plan.
- The County provided adequate policy, procedure, and review to ensure that contract services were properly performed.

Our audit identified several opportunities to improve controls over contract performance and contract monitoring.

FINDING	DESCRIPTION	PAGE REFERENCE
1	The County did not require HNTB to provide detail (payroll timesheets and the tasks performed by individuals) to support the number of hours invoiced.	See page 4 of this report.
2	The County does not have a variance analysis for the differences between the estimated work and estimated costs and the actual amount of work and actual cost for the work completed.	See page 6 of this report.
3	The contract includes a high number of estimated hours for some HNTB and sub-consultant staff members.	See page 8 of this report.
4	The County does not have written procedures for how the County's approval of work schedule delays is to be documented.	See page 12 of this report.
Observation	The County needs to improve its policy and procedures related to Conflict of Interest risks.	See page 14 of this report.

OPINION:

Based on the results of our audit testing, except as noted in our audit findings, internal controls related to the duties of the Public Works Department in managing the GEC contract with HNTB Corporation are adequate.

The final exit conference was held on September 5, 2012.

AUDIT BY:

Dan Pohto, Former Director, County Audit, CPA, CIA
Mark R. Kolman, Audit Manager, CPA, CIA, CISA, CFE
Marc Hogan, Auditor II

FINDINGS & RECOMMENDATIONS

Control Activities: Listed below are findings that represent opportunities for the Public Works Department to strengthen the internal controls for managing GEC contracts. For each finding, a recommendation has been included.

FINDING 1

The County did not require HNTB to provide detail (payroll timesheets and the tasks performed by individuals) to support the number of hours invoiced.

1. HNTB provided the County with invoices listing the number of hours charged for each contractor employee, multiplied by their approved billing rates. HNTB also provided monthly progress reports summarizing the work performed. Public Works staff met with HNTB's program manager and support staff weekly to review project status schedules and to address issues.

The County did not require HNTB or its sub-consultants to provide payroll timesheets to support the hours invoiced for each employee, or to provide documentation showing specifically what work was performed by each contract employee for the number of hours billed.

The Public Works Department monitored the hours charged against individual CIP projects by HNTB staff and sub-consultant staff in comparison to projections and project activity to ensure that charges were reasonable.

During the contract period, the Public Works Department did request detailed payroll timesheet information from HNTB for a three month period, from the start of the contract. This review resulted in requiring HNTB's invoices to include hours charged by staff towards each CIP project.

The Public Works Department's procedures do not currently require obtaining timesheets that support invoiced charges. Without this information, the County does not have the detail necessary to ensure that actual payroll hours agree to the hours invoiced.

Ensuring that the hours billed agree to specific tasks performed and to the timesheet support is a contract management function.

2. HNTB and its sub-consultants provided the County with certified payroll documents, attesting to each contract employee's pay rate, billing multiplier and billing rate.

The County did not require HNTB to provide actual employee payroll data to confirm that their actual pay rates agreed to the certified payroll documents.

Our testing of the contractor's actual payroll rates to the certified payroll documents showed only a few minor differences. Without a procedure in place to check for this, the County was at

risk for differences to go unnoticed.

Confirming actual contractor pay rates to the certified pay rates is also a contract management function. The County relied on HNTB to manage these aspects of the contract.

Having an adequate separation of duties in contract management provides reasonable assurance that errors or incorrect transactions are identified and/or prevented. To properly manage the contract, it is the County's responsibility, as the client, to ensure that the contractor is performing its job correctly and according to contract terms. This task cannot be assigned to the contractor and still achieve a proper separation of duties.

RECOMMENDATION:

For similar contracts of this type, to provide an adequate separation of duties and proper contract management, the County should develop monitoring procedures and documentation requirements for ensuring that:

1. Actual payroll hours agree to the hours invoiced and the number of hours charged by each individual.
2. Actual employee pay rates agree to the certified payroll documents.

CLIENT RESPONSE:

Partially Concur

CORRECTIVE ACTION PLAN:

While additional detail was available upon request to the vendor by the County, the contract between the County and HNTB did not require the additional detail mentioned in this finding be submitted with all pay requests. The County believed from a risk analysis stand point that including the additional documentation in each and every pay request was not deemed to be necessary as per Section 3.1 of the contract. The County met both the spirit and letter of the requirements as spelled out in the contract. The County will assess the aforementioned recommendations for future contracts of this type, and from that assessment will adopt revised documentation standards as appropriate.

TARGET COMPLETION DATE:

August 1, 2013

FINDING 2

The County does not have a variance analysis for the differences between the estimated work and estimated costs and the actual amount of work and actual cost for the work completed.

The HNTB contract, Section 12.2, says: “PROFESSIONAL shall make every attempt to design within the COUNTY’S budget for construction. PROFESSIONAL shall monitor costs during design of the PROJECT and advise COUNTY DESIGNEE immediately of any deviations from the COUNTY’S budget amount.”

According to the *Government Accountability Office Cost Estimating and Assessment Guide Best Practices for Developing and Managing Capital Program Costs (GAO-09-3SP)*, “estimates should be updated and the reasons for variances should be documented to identify why the program cost more or less than planned.”

We asked the Public Works Department staff to provide us with information on how much of the planned work (for the original contract and for the Modification) was actually completed. We also asked the Public Works Department staff to provide explanations for variances in the actual hours charged and actual work performed compared to the contract estimates.

According to the Public Works Department staff, the contract was managed against the California Benchmark standards, which is the only program which measures programs of a similar nature. County staff also monitored the progress of HNTB through weekly meetings and reports. Additionally, HNTB provided a variance analysis for the first two years of the program. However, once the program was scaled back, the variance report for subsequent years was not completed. As the program was reduced in scope and projects transitioned back to County staff the project cost attributed to HNTB was not captured in a formal monitoring process. As a result, variance against the California Benchmark standard is not available.

According to the Public Works Department staff, \$13,280,401.37 (97% of the approved contract dollars) was charged against the total approved \$13,673,029.65 contract dollars (the original contract and Modifications). The County does not have a measure of the percentage of estimated work that was completed for this actual cost due to the method in which projects transferred from HNTB to County staff. The data is available and can be reconstructed; however it was not performed during the course of the program.

RECOMMENDATION:

For similar contracts of this type, to provide a measure of how well the contract was estimated and managed, the County should develop monitoring procedures for determining how much of the actual work was completed against the approved contract dollars, and the reasons for variances should be documented to identify why the program costs were more or less than planned.

CLIENT RESPONSE:

Partially Concur

CORRECTIVE ACTION PLAN:

Variances were discussed as part of the monthly progress meetings between the County and HNTB. As the transportation program was scaled back the monthly meeting information was distributed to the County via email as opposed to formal meetings, but the variance information was still being tracked. Even though variances were being tracked per unwritten procedures, for future contracts of this type, a more formal written process will be documented.

TARGET COMPLETION DATE:

August 1, 2013

FINDING 3

The contract includes a high number of estimated hours for some HNTB and sub-consultant staff members.

As part of our review for reasonableness of the contract costs, for employees who were assigned a high number of hours, we looked at the reasonableness of the number of hours assigned.

The original contract lists the estimated annual rates and hours for the following positions:

Original Contract		Estimated	Estimated
		Annual	Annual
GEC Positions	Hourly Rate	Staff Hours	Cost
Sr. Project Manager/Program Manager	204.57	1952	399,320.64
Project Manager/Deputy Program Manager	135.42	1970	266,777.40
Project Manager/Project Controls & Scheduling	145.55	2002	291,391.10
Clerical Document Control Liaison	60.27	2032	122,468.64
Sr. Project Manager/Project Support Manager	180.56	1944	351,008.64
Project Manager/Program Utility Coordinator	132.78	2032	269,808.96
Sr. Project Manager/Intersections	197.32	1936	382,011.52
Proj Engineer/Prog Construction Manager	173.56	2032	352,673.92
Clerical/EEO - Office Administrator	47.27	2032	96,052.64

The total available hours at 40 hours per week for a 52 week period would be 2,080 (including holidays). Based on a 40-hour work week, these estimates project the contractors charging 93%-98% of their time to the County's contract.

The First Modification (6/3/09) estimates these annual rates and hours for the following positions for the period 6/17/09 – 6/30/10:

First Modification		Estimated	Estimated
		Annual	Annual
GEC Positions	Hourly Rate	Staff Hours	Cost
Sr. Project Manager/Program Manager	213.38	2232	476,264.16
Project Manager/Project Controls & Scheduling	156.12	2232	348,459.84
Project Budget Cost (Tech/CADD Drafter)	60.51	2232	135,058.32
Program Utility Coordinator 10%	131.16	2232	292,749.12
Project Manager	138.82	2232	309,846.24
Project Manager	129.70	2232	289,490.40
Project Manager	147.06	2232	328,237.92
Project Manager	156.55	2232	349,419.60
Project Manager	174.96	2232	390,510.72

The First Modification covers a 13-month period (June 2009 through June 2010). Based on a 40-hour work week, the total available billable hours for this period were 2,240 hours (56 weeks x 40 hours). These estimates project the contractors charging 100% of their time to the County’s contract.

The contract’s estimated hours do not take into account the contract employees’ time that would not normally be chargeable to the contract (administrative, training, other projects, holidays, etc.).

According to the Public Works Department staff, when the initial contract was negotiated the delivery of the TTF program needed to be expedited to minimize the effect of project cost escalation and meet the established timeline.

According to the Public Works Department staff, the purpose of including this many hours was to make sure that whatever amount of work needed to be done would be sufficiently funded. For instance, sick time and vacation time were not excluded from the estimate for project managers because, when the listed employee is not charging time (due to being off for sick or vacation time), another employee would fill in and bill for those hours.

In County staff’s opinion, since HNTB and its sub-consultants would only be paid for actual work done, having additional hours in the estimate did not put the County at risk.

We selected a sample of employees who were assigned a high number of estimated hours and compared their estimated costs to the actual costs.

For the Period 6/15/08-6/30/09		2008 Actual Dollars Billed	2008	Percent
			Budgeted	of Budgeted
			Dollars	Dollars
			Per Contract	Actually
GEC Positions	GEC			Charged
Sr. Project Manager/Program Manager	HNTB	382,643.84	399,320.64	95.82%
Project Manager/Project Controls & Scheduling	HNTB	283,300.23	291,391.10	97.22%
Clerical/Document Control	HNTB	121,148.53	122,468.64	98.92%
Sr. Project Manager/Intersections	HNTB	367,078.34	382,011.52	96.09%

The original contract’s estimated dollars are more than they should be. For the employees sampled, the actual dollars charged come very close to equaling the dollars estimated in the contract.

For the Period 7/1/09-6/30/10		2009-10 Actual Dollars Billed	2009-10 Budgeted Dollars Per Contract	Percent of Budgeted Dollars Actually Charged	Percent of Actual Less Than Budgeted Dollars				
GEC Positions	GEC								
Sr. Project Manager/Program Manager	HNTB					403,672.78	476,264.16	84.76%	15.24%
Project Manager/Project Controls & Scheduling	HNTB					272,483.51	348,459.84	78.20%	21.80%
Tech/CADD Drafter	KCA	106,910.54	135,058.32	79.16%	20.84%				
Project Manager	KCA	225,787.26	289,490.40	77.99%	22.01%				

The estimated dollars in the contract Modification are more than they should be. For the four highest cost employees sampled, the actual dollars charged are 15% to 22% less than the dollars estimated in the contract. This could indicate that the Modification’s estimated hours were overstated and therefore the Modification was overfunded.

For the period 6/15/08 – 6/10/10, HNTB charged the County \$2,329,145.62 (17.5% of the total contract dollars billed) for the work performed by the individuals in these positions.

According to the Public Works Department staff, this HNTB contract was budgeted to include these senior management individuals at a full-time (40 hours a week) level. HNTB established a separate Tampa office which was dedicated solely for the TTF program. These individuals were not assigned to work on other projects. Any work that they did, whether it was direct management oversight of the work, attending staff meetings, or performing other job functions, was considered by the Public Works Department staff to be work related to the County’s project.

The Florida Department of Transportation (FDOT) Reimbursement Rate Guidelines, Section 3 – Uniform Audit & Accounting Guide, September 2005, discusses the charging of General & Administrative (G&A) expenses. According to the Guide, G&A hours should be charged as indirect labor and time worked on the project should be charged as direct labor.

The billing rate that the County paid HNTB was based on the contract employee’s salary times a multiplier that included an approved FDOT overhead rate, a Profit percentage, and an Expense and a Facilities Capital Cost of Money (FCCM) percentage. Indirect labor is one of the components included in overhead costs. If HNTB billed the County for G&A expenses as part of the full-time billing, then the County overpaid for overhead costs, since these costs were being billed at an hourly rate and were also included in the rate multiplier.

Every hour of charged contractor time costs the County that individual’s hourly pay rate times a multiplier of almost 300%. To ensure that the County receives value for this cost, the contractor should be required to provide detailed information of the work provided for the hours charged.

Since the County did not require HNTB to provide a detailed accounting of what specific work was done for the actual hours charged, the County does not have the detail to ensure that time charged for G&A and the time charged for direct work on the project were separately and accurately accounted for.

Assigning reasonable estimates for contractor hours provides a standard for measuring actual hours charged against the contract's estimate and provides a basis for appropriately funding the contract.

RECOMMENDATION:

For similar contracts of this type, to provide a measure of how well the contract was estimated and managed and to appropriately fund the contract:

1. The County should include a reasonable amount of non-billable time when budgeting for contractor hours.
2. The contractor should be required to provide billing information that details the work performed for the hours charged.

CLIENT RESPONSE:

Partially Concur

CORRECTIVE ACTION PLAN:

The finding described above does not appear to be based on any industry standard or precedent set by a previous contract of similar scope. The County conducted an analysis of estimated staff hours based on the California Multi-Agency CIP Benchmarking Study and found the estimates to be reasonable given the scope of the contract. Estimated staff hours were established at the beginning of the contract and adjusted as time went on. Initial estimates were high due to the large volume of work identified and the accelerated delivery date mandated by the BOCC at the time the contract was approved. As the transportation program progressed, and the scope was reduced, estimates were adjusted accordingly. Additionally, staff hours in the GEC contract included program management in addition to mere project management, which speaks to the need and identification of additional staff hours. Nonetheless, the County shall reassess its procedures in relation to the above recommendation and implement appropriate procedural changes.

TARGET COMPLETION DATE:

August 1, 2013

FINDING 4

The County does not have written procedures for how the County's approval of work schedule delays is to be documented.

The County's contract with HNTB, Section 5.2, says "PROFESSIONAL acknowledges that time is of the essence with respect to its performance under this AGREEMENT. Should PROFESSIONAL be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of PROFESSIONAL, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of COUNTY, fires, floods, epidemics, quarantine regulations, strikes or lockouts, then PROFESSIONAL shall notify COUNTY in writing within ten (10) working days after commencement of such delay, stating the cause or causes thereof, or may be deemed to have waived any right which PROFESSIONAL may have had to request an extension to the schedule."

We sampled two HNTB projects to determine that documentation was available showing:

1. The planned work schedule.
2. Actual work schedule, documentation for delays, and the cause of the delays.
3. The County's approval for the delays.

The sampled projects were:

63073.062 Durant and Mulrennan
63073.068 Big Bend Rd and Lincoln Rd

Public Works and HNTB provided documentation showing:

1. The planned work schedule.
2. Actual work schedule, documentation for delays and the cause of the delays.

Public Works does not have documentation showing approval for the delays or written procedures for documenting approval for delays.

According to the Public Works Department staff, a record of the County's approval might have been captured in an email, but most likely the approval would have been acknowledged verbally in one of the weekly or monthly meetings.

RECOMMENDATION:

To ensure that a contractor has received proper and timely County approval for delays, Public Works should develop written procedures that define how work schedule delays are to be documented and approved.

CLIENT RESPONSE:

Partially Concur

CORRECTIVE ACTION PLAN:

The finding does not fully address the procedure employed by the County regarding approval for schedule delays. All schedule delays were discussed in regular weekly and monthly meetings between the County and HNTB. At that point the County would give approval/disapproval. This procedure was followed without exception for all schedule variances. Even though variances were being tracked per unwritten procedures, for future contracts of this type, a more formal written process will be documented.

TARGET COMPLETION DATE:

August 1, 2013

OBSERVATION

Listed below is an item we observed during the audit which we felt was either outside the scope of our audit or not directly within the control of the department audited but worthy of being brought to the attention of management.

OBSERVATION 1

The County needs to improve its policy and procedures related to Conflict of Interest risks.

County Policy HR-6.06 – “Employee Disclosure-Conflict of Interest” addresses the County’s conflict of interest reporting requirements.

1. We selected a sample of Public Works employees that worked on the HNTB contract and reviewed their Conflict of Interest forms to ensure they were in compliance with County policy.

One of the six sampled employees, whose form was dated 11/27/89, and who has had several promotions in the past 23 years, did not have an updated Conflict of Interest form on file with Human Resources. (During the audit, this employee completed an updated Conflict of Interest form and submitted it to Human Resources.)

2. We interviewed the sampled employees to gain an understanding of their knowledge and awareness of the County’s Conflict of Interest policy requirements.

The employees interviewed did not have a good recollection of the “Employee Disclosure/Conflict of Interest” policy. They said they signed a Conflict of Interest form when they were hired, and they were aware of a requirement to update it if their conflict of interest status changed. They were not aware of the specific County Conflict of Interest Policy requirements.

For policies to be effectively implemented, they need to be timely and adequately communicated to those responsible for following them and compliance with the policies needs to be effectively monitored.

3. We inquired about the County’s requirements for ensuring that conflicts of interest risks are effectively addressed for contract employees.

According to Public Works, HNTB and its sub-consultants were not required to sign the County’s Conflict of Interest form. HNTB has its own Conflict of Interest policy. Its employees and sub-consultants are required to abide by HNTB’s policy, but they do not sign a disclosure form.

Contract employees acting as employees of the County share many of the same conflict of interest risks of regular County employees. Providing training to contract employees on the County’s Conflict of Interest Policy and holding them accountable for following the policy would provide assurance that the County is protected from any related conflict of interest risks.

RECOMMENDATIONS:

1. The County should enhance its Conflict of Interest procedures to include periodic training or other reminders to employees of the Conflict of Interest Policy requirements and provide employees with periodic opportunities (for example, annually) to document whether any conflicts of interest have arisen for them.
2. County contracts that use contract employees that act as County employees should include a provision for those contract employees to sign a County's Conflict of Interest form and to be trained on the requirements of the County's Conflict of Interest Policy.

CLIENT RESPONSE:

Concur

CORRECTIVE ACTION PLAN:

As the County looks to expand the use of contracted professional services in the future, this observation shall be referred to the Executive Team who (in consultation with the County Attorney) can draft and implement the appropriate organization-wide policy and procedural changes.

TARGET COMPLETION DATE:

September 1, 2013

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