

2023 Library Expansion Construction Audit

This Capital Improvement Project was a design build project which is not a typical approach for the City.

As of 5/16/2023							Update as of 6/2024	
Audit Report Received by Audit Committee	Audit Report Received by City Council	Moss Adams Observations	Moss Adams Recommendations	Did the City Agree?	Status	Completion Date/ Estimated Completion Date		
4/24/2023	5/16/2023	Questioned Non-Compliant Change Order, Foreman Rate	The City should implement change order management controls to prevent charging change order labor rates in excess of contractually allowable amounts, as required by the Contract terms. The City should consider seeking credit for excess labor charges.	Yes	Completed	The City implemented change order cost management controls that align with the City's assessment of risk. September 2023.		
		Contract Compliance – Excessive Change Order Markups	The City should review change order management controls and associated contract language to prevent incurring excessive fee markups. The City should consider whether it is worthwhile to pursue cost recovery of markups associated with the PCOs identified.	No	City not in agreement	The change orders expenses were in alignment with the agreement between the contractor and the City and thus no additional exchange of funds is warranted.		
		Contract Compliance – Skilled Labor Documentation Control	The design build entity should implement billing controls to ensure adequate skilled labor documentation, as required by the Contract terms. For example, the City should ensure that all Skilled and Trained Workforce documentation is consistently reported in the monthly application for payment with the appropriate level of detail required to ensure compliance with Public Contract Code. Compliance with this requirement should be tracked by the City and Project Management for compliance.	Yes	Completed	Compliance with California Department of Industrial Relations requirements lies with the design build entity. CIP has implemented the practice of requesting/filing the monthly certified payroll throughout the life of the project to confirm compliance. (ongoing item)		
		Contract Compliance – Select payment applications reviewed were not fully executed	The design build entity should implement billing controls to ensure adequate sign-offs, as required by the Contract terms. The City and its project managers should require the design build entity to fully execute all payment applications prior to submission.	Yes	Completed	All payment applications are fully executed with signatures by Construction Manager and City (Capital Improvement Program Manager or Director of Public Works). (ongoing item)		
		Contract Compliance – Inadequate Conditional Waiver Controls	As a best practice and consistent with contractual language, the design build entity should obtain and provide to the City conditional waivers from each subcontractor and material supplier once payment is made to support the City ensuring all parties are being paid timely and there are payment issues which may be an indicator of performance issues. At the end of a subcontractor's work, or at the Project's completion, conditional waivers for all subcontractors should be obtained to validate full payment for performance of the Contract and mitigate potential exposures for the City. Additionally, the City should consider updating policies and procedures to develop a methodology with project management personnel to determine which subcontractors are required to provide conditional waivers based on initial subcontracting plan including attributes such as contract size and or scope complexity.	Yes	Completed	As part of CIP's payment approval procedure, CIP requests conditional waiver releases and final waiver releases throughout the payment process. (ongoing item)		
		Contract Compliance – Flow Down Contract Provisions Not Included in Subcontracts	The City should consider implementing contract administration controls to ensure flow down contract provisions, are included within contracts, as required by the Contract terms. For example, the City should request a copy of a typical subcontract agreement template ahead of the design build entity's buyout process to confirm compliance with flow down requirements.	Yes	Completed	As part of CIP procedures, City requests a copy of design build entity's typical subcontract agreement template to confirm compliance with flow down requirements. (ongoing item)		
		Contract Compliance Self-Performed Work Change Order Delivery Method	The City should evaluate the time and materials and allowance use within the change orders identified for cost substantiation and reasonableness as required by the Contract. The City should consider developing change order forms and update as needed to include information such as change type (e.g., cost plus not to exceed, time and materials, lump sum, unit price, etc.), itemized change amounts, percentages, descriptions, change responsibilities, schedule impacts, dates of approval, subtotals, and totals to enhance internal change order controls and to support contract compliance.	Yes	Completed	The City implemented change order cost management control procedures that align with the City's assessment of risk. September 2023.		
		Contract Compliance – Drawing Rights Secured Confirmation	The City should consider including more specific contract language regarding the right of use and ensuring that all parties involved in the Project's design understand their responsibilities regarding their design documents. If deemed necessary at this point in the Project, the City should request that the design build entity obtain the necessary documentation from its subcontractors and subconsultants to secure the rights of use for the City.	No	City not in agreement	Section 2.3(D) of the General Conditions broadly confers that all ownership rights, including copyrights and possessory rights, in the Design Documents as well as additional documents accrue to the City.		
		Contract Compliance – Incorrect Payment Application Calculations	Billing controls should be implemented to ensure accurate calculations within payment application submissions, as required by the Contract terms payment applications with material calculation errors should be revised prior to finalization and processing to avoid overbillings and overpayment.	Yes	Completed	The City implemented cost management controls that align with the City's assessment of risk. September 2023.		