



Department of Environmental Protection Office of Inspector General

November 7, 2023

Report A-2223DEP-011

Audit of Agreement CN541 with Charles Perry Partners, Inc. for Boathouse Replacement at Ellie Schiller Homosassa Springs Wildlife State Park

INTRODUCTION

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of Contract CN541 (Contract) between the Department and Charles Perry Partners, Inc., (Contractor) for the Boathouse Replacement at Ellie Schiller Homosassa Springs Wildlife State Park (Park). This audit was initiated as a result of the OIG Annual Audit Plan for Fiscal Year 2022–2023.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of this audit includes a review of the Bureau of Design and Construction's (BDC) contract for the completion of the Boat House Replacement project at the Park. The objectives of the audit were to:

- Determine the Contractor's compliance with the Contract.
- Determine whether payments were made in accordance with Contract deliverables.
- Evaluate BDC management's oversight of contractual documents.

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, and internal operating procedures.
- Conducting analysis of Pay Requests and Payment Vouchers for the Contract.
- Conducting a site visit to the Park.
- Interviewing BDC and the Project Manager.

BACKGROUND

This Contract was an agreement to perform all construction services required for the Boat House Replacement (Project) at the Park located in Citrus County, Florida. The Park offers boat tours to transport passengers along Pepper Creek from the visitor center to the west entrance of the Park. Following an Invitation to Bid, the awarded contractor was required to provide all labor, materials, equipment, supervision and permitting for the Project. The Contract was executed on February 4, 2021, for a total of \$1,676,600. One construction Change Order was approved and executed on January 3, 2022, in the amount of \$19,799. The final Contract Price for the Project was \$1,696,399. The Contract consisted of the following documents: the Bid Documents including the Invitation for Bids and Addenda, the Base Bid of Contractor with Alternates, the Experience Questionnaire and the Contractor's Financial Statement, the Bid Award; the Agreement for Construction Contract (CN541); General Conditions; Special Conditions; Bonds and Insurance;

**Department of Environmental Protection
Office of Inspector General
Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

Notice to Proceed; Change Orders; Construction Change Directives; Design Documents: Drawings, Specifications; and Survey. During the Project, the Contractor submitted ten Pay Requests, and received payment (Payment Voucher) for the total Contract Price. BDC provided oversight for the Contract and assigned a Project Manager to be the contact point and liaison with the Contractor. According to the Environmental Resource Permit (ERP) issued by the Southwest Florida Water Management District, BDC was required to retain a *design professional registered or licensed in Florida, to conduct on-site observations of construction and assist in the as-built certification requirements of the Project.*

RESULTS OF AUDIT

During the audit, we reviewed deliverables, payments, and supporting documentation provided by BDC to determine compliance with the Contract. Based on our review we found the following:

Contract Compliance

Schedule of Values

The Schedule of Values is a document that allocates the Contract Price to various categories of the Project. According to the Contract, the Contractor was to submit a preliminary Schedule of Values with the bid, and an updated Schedule of Values with each Pay Request. Based on our review, we determined that the Contractor submitted a preliminary Schedule of Values with the bid, and an updated Schedule of Values with each Pay request.

Notice to Proceed

According to the Contract, the Notice to Proceed is a *written notice to the Contractor issued by the Department to proceed with performance of the work.* The Contract also states in part that *work shall not begin before the date set out in the Notice to Proceed.* Our review found that a Notice to Proceed was issued for construction to begin on May 10, 2021. Additionally, the Notice to Proceed included the effective dates for Substantial Completion (240 days from the Notice to Proceed) and Final Completion (30 days past Substantial Competition).

Substantial Completion

Pursuant to the Contract, *the work shall reach Substantial Completion within two hundred forty (240) days of the Contractor's receipt of the Notice to Proceed.* Substantial Completion is achieved when the Department can occupy and use the facility for its intended purpose. Once the work has been accepted, a Certificate of Substantial Completion (Certificate) is issued. The Certificate establishes the date of Substantial Completion and the date(s) of installment for any guaranties or warranties. Based on our review, we found that the Certificate determined the date of Substantial Completion as December 15, 2021, which was within the 240 days allotted per the Contract.

Final Completion

Pursuant to the Contract, Final Completion is *the completion by the Contractor of all items required for full completion and inspection of the Work, required no more than 30 days after issuance of the Certificate of Substantial Completion for the Project.* If Final Completion is not reached within 30 days of Substantial Completion, the Contract states in part, that *the Contractor shall pay to the Department as liquidated damages for such delay, and not as a penalty, one-half of the rate indicated for Substantial Completion.* Based on our review, 30 days after the issuance of the Certificate established the date of Final Completion as January 14, 2022. The Contract requires an Affidavit for Final Completion to be submitted to the Department. The Contractor submitted an Affidavit of Contract Completion dated January 24, 2022. Based on interviews with

**Department of Environmental Protection
Office of Inspector General**
**Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

BDC, we found that Final Completion is considered to be the date of the final walk-through. The final walk-through was performed on January 27, 2022, which was 43 days after the date of Substantial Completion. Based on our review, we determined the Contractor did not achieve Final Completion within the required 30 days, and no payments were made for liquidated damages.

Change Orders

According to the Contract, *changes in the Contract Price, changes in the Contract Term, changes in the Scope of Work, or the addition of extra work, shall be made only by Change Order, Construction Change Directive, or formal written amendment.* Our review found there were no Change Directives or formal written amendments issued during the Project; however, there was one approved Change Order. The Change Order was signed by the Contractor on October 27, 2021, and approved by the Department on January 3, 2022, for additional work in the amount of \$19,799. Our review determined that the additional work approved in the Change Order was for work performed by the Contractor prior to the execution of the Change Order, and also included costs for repairs of damage caused by the Contractor.

Payments and Deliverables

According to the Contract, periodic Pay Requests shall be *submitted* no more frequently than monthly, and the Contractor shall be *paid* not less than monthly. In addition, each Pay Request shall include certain items as specified in the Contract. There were ten approved payment requests submitted to the Department by the Contractor. Our review determined that some of the Pay Requests did not include all the required information, were submitted more frequently than monthly, and the Contractor received payment more frequently than monthly.

Management Oversight

Bid Requirements

Section A of the Procurement informed prospective bidders of the required documentation to be submitted with the bid. According to the Contract, each bid was to include a minimum of 3 client references, other than DEP, *for work similar in nature and scope to that specified in this solicitation, performed the last three (3) years.* The Department would then contact two of the client references to ensure that the lowest bidder was qualified based on past experience and performance. Based on our review, we found that the Contractor submitted 3 client references; however, none included a description of the work performed or project completed, and all were for employees and projects of the Department. Subsequently, we determined that client reference evaluations were not performed by the Department prior to awarding the bid.

Contractor's Insurance

According to the Contract, the Contractor will secure and maintain all required insurance. The Department was required to approve insurance policies prior to the execution of the Contract. Based on our review, we found the Contractor obtained the proper insurance which was approved by the Department prior to the execution of the Contract.

Inspection and Testing

According to the Contract, the Project Manager and the Consultant will conduct inspections to determine among other things, the date of Substantial Completion and the date of Final Completion of the Project. The Contract also states in part that *the Consultant has authority to reject Work that does not conform to all of the requirements of the Contract Documents, and it shall notify the Contractor and the Department immediately.* Based on our review, we found that the Project Manager and the Consultant documented inspections and evaluations in order to determine the work completed in compliance with the Contract.

**Department of Environmental Protection
Office of Inspector General
Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

CONCLUSION

Based on our review, the Contractor appears to have completed the Project as described in the Contract and associated documents. Our review noted some areas where internal controls could be strengthened to ensure compliance with the requirements of the Contract; including, management oversight over frequency of Pay Requests/submissions, Change Orders, and bid document requirements. Our findings and recommendations are listed below.

FINDINGS AND RECOMMENDATIONS

Finding 1: Pay Requests – Pay Requests and subsequent payments were submitted and approved more frequently than allowed by the Contract and did not include some required information.

Based on our review, we found that Pay Requests from the Contractor and pay submissions by BDC occurred more frequently than allowed by the Contract. We also determined that some required information was not always submitted with the Pay Requests, as required by the Contract. According to the Contract, periodic Pay Requests shall be submitted no more frequently than monthly, and the Contractor shall be paid not less than monthly. In addition, each Pay Request shall include the following:

- Properly completed Certificate for Payment form.
- Properly completed Schedule of Values.
- Invoice on the Contractor's letterhead.
- Completed Minority Participation Report.
- Digital color construction progress photographs, drawings, maps, and diagrams, particularly for those items and work that will not be visible upon completion of the work.

There were ten approved Pay Requests submitted to the Department by the Contractor (see chart below). Of the ten Pay Requests submitted, only three included photographs, as required. The Project Manager explained that the Contractor was told that digital color construction progress photographs were not required with each Pay Request because the Project Manager would be visiting the site weekly. Additionally, we found that Minority Participation Reports were submitted, but not completed in compliance with the Contract. We determined one subcontractor obtained for the Project was a Florida Certified Minority Business Enterprise and was not identified on the Minority Reports submitted.

Payment Number	Invoice Date	Submitted to Finance	Invoice Service Dates	Amount
1	04/01/2021	04/02/2021	02/22/21 - 03/31/21	\$30,495.00
2	05/28/2021	05/28/2021	04/01/21 - 05/24/21	\$90,250.00
3	06/25/2021	07/08/2021	05/25/21 - 06/25/21	\$311,125.00
4	07/27/2021	07/27/2021	06/25/21 - 07/27/21	\$190,190.00
5	08/27/2021	09/10/2021	07/28/21 - 08/31/21	\$310,239.89
6	09/29/2021	10/05/2021	09/01/21 - 09/28/21	\$296,542.00
7	10/25/2021	10/25/2021	09/29/21 - 10/26/21	\$84,930.00
8	11/24/2021	12/03/2021	10/27/21 - 11/24/21	\$208,952.50
9	01/21/2022	01/27/2022	11/25/21 - 12/20/21	\$88,854.66
10	01/24/2022	01/27/2022	12/21/21 - 01/25/22	\$84,819.95
TOTAL:				\$1,696,399.00

**Department of Environmental Protection
Office of Inspector General**
**Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

While the Contract states the Contractor may submit periodic Pay Requests no more frequently than monthly, our review determined that Pay Requests were occasionally submitted more frequently than monthly. Based on interviews, BDC management stated that “no more frequently than monthly” means no more frequently than 30 days from the previous date a correct Pay Request is received. If a Pay Request is returned to the Contractor to be revised, it is rejected and considered not to be received. Although the service dates billed by the Contractor were for approximately thirty days, some Pay Requests were submitted more often than every thirty days. Specifically, Pay Requests 3, 6, 7 were submitted just shy of thirty days apart, and Pay Requests 9 and 10 were submitted to the Department on the same day. The Contract also states, *The Contract Price shall be paid to the Contractor periodically, not less than monthly, upon receipt of a proper and correct Pay Request.* Based on our review of Payment Vouchers, the Project Manager submitted Pay Requests to Finance less than monthly. The following are examples of Pay Requests submitted to Finance by the Project Manager:

- Pay Requests 3 and 4 were submitted to Finance 19 days apart.
- Pay Requests 5 and 6 were submitted to Finance 25 days apart.
- Pay Requests 6 and 7 were submitted to Finance in the month of October, 21 days apart.
- Pay Requests 9 and 10 were submitted to Finance on the same day, January 27, 2022.

Recommendations:

- 1.1 We recommend BDC ensure Contractors submit Pay Requests, and are paid by the Department, no more frequently than allowed under the terms specified in the Contract.
- 1.2 We recommend BDC ensure Contractor Pay Requests are submitted with the appropriate supporting documentation, as specified in the Contract.

Management Response:

- 1.1 The Division concurs with the finding and will work to ensure that submission and payment of contractor’s invoices are in accordance with the Contract. BDC leadership will also work with the Office of General Counsel to clarify the language in the contract regarding submission and payment of contractor’s invoices.
- 1.2 The Division concurs with the finding and will work to ensure that the required documentation for invoices is submitted by the Contractor in accordance with the Contract.

Finding 2: Final Completion and Liquidated Damages – The Contractor did not timely reach the Final Completion of the Project in accordance with the terms of the Contract and no payments were made for liquidated damages, as required by the Contract.

Based on our review, we determined that Final Completion was reached 43 days after the date of Substantial Completion, and no payments were made to the Department for liquidated damages. Pursuant to the Contract, Final Completion is *the completion by the Contractor of all items required for full completion and inspection of the Work, required no more than 30 days after issuance of the Certificate of Substantial Completion for the Project.* If Final Completion is not reached within 30 days of Substantial Completion, the Contract states in part, that *the Contractor shall pay to the Department as liquidated damages for such delay, and not as a penalty, one-half of the rate indicated for Substantial Completion.* Based on our review, 30 days after the issuance of the Certificate established the date of Final Completion as January 14, 2022. The Contract

**Department of Environmental Protection
Office of Inspector General
Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

requires an Affidavit for Final Completion to be submitted to the Department. The Contractor submitted an Affidavit of Contract Completion dated January 24, 2022. Based on interviews with BDC, we found that Final Completion is considered to be the date of the final walk-through. The final walk-through was performed on January 27, 2022, which was 43 days after the date of Substantial Completion.

Recommendations:

- 2.1** We recommend BDC ensure Final Completion occurs within the timeframe specified in the Contract, or the Contractor shall pay to the Department liquidated damages in accordance with the terms of the Contract.

Management Response:

- 2.1** The Division concurs with the finding and will work to ensure that Final Completion occurs within the Contract, or the Contractor will be assessed Liquidated Damages in accordance with the Contract.

Finding 3: Change Orders – An approved Change Order included costs for work completed prior to the execution of the Change Order, and also included costs for repairs of damage caused by the Contractor.

During the Project there was one approved Change Order that included costs for work that was completed prior to the execution of the Change Order, and also included costs for repairs of damage caused by the Contractor.

Change Order

According to the Contract, *changes in the Contract Price, changes in the Contract Term, changes in the Scope of Work, or the addition of extra work, shall be made only by Change Order, Construction Change Directive, or formal written amendment.* Our review found there were no Change Directives or formal written amendments issued during the Project; however, there was one approved Change Order. A Change Order is a modification to the contract, executed by the Department and the Contractor authorizing adjustments to the work, price, or term of the contract. The Change Order was signed by the Contractor on October 27, 2021, and approved by the Department on January 3, 2022, for additional work in the amount of \$19,799. Our review determined that the additional work approved in the Change Order was for work performed by the Contractor prior to the execution of the Change Order, and also included payment to repair damages caused by the Contractor. According to the Contract, *the Contractor shall not claim, nor shall the Department have any liability for, any compensation for work claimed to be in addition to that expressly required by the Contract Documents when such work is performed by the Contractor without a properly executed Change Order or Construction Change Directive.* Based on interviews with the Project Manager, the Contractor was informed they could proceed with the change in work prior to the Change Order being authorized; however, the Contractor would assume the risk that the Change Order may not be approved.

Payment for Damage Caused by Contractor

As stated above, the approved Change Order included costs of repairs for damage caused by the Contractor. According to the Contract, *the Contractor shall be responsible for all damage to the Work caused by its acts or omissions or the acts or omissions of its agents, Subcontractors, equipment suppliers, or material suppliers...* Additionally, *costs of such repair or replacement shall be paid by the Contractor.* Our review found the Consultant's Environmental Department Manager outlined to the Contractor the preferred method of clearing and grubbing regarding tree

**Department of Environmental Protection
Office of Inspector General**
**Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

stumps and root balls. Tree stumps were to be cut flush to the ground unless the area would be graded and sodded. For trees in areas that would be graded and sodded, the Contractor was instructed to grind tree stumps 6 inches below grade so that the tree stump hole could be filled with clean dirt. The Contractor was instructed to leave tree root balls in place in order to maintain the ground stabilization and erosion control. A Field Report from the Consultant, dated May 2021, contained pictures and notes related to the demolition phase of the Project. The Field Report noted damage to multiple portions of the existing concrete pad, including one concrete slab on the northwest corner of the building where an existing tree was removed. The Consultant also noted, "Contractor proceeded with the tree stump and root ball removal within the wet land area (south and east of the building) even though CPPI [Contractor] was instructed not to remove the existing root balls and to minimize the impact of the wet land area as part of the site preparation by MBI during the preconstruction meeting." Based on our communication, the Consultant believed the Contractor had some responsibility for some of the damaged slab areas. Therefore, the Consultant recommended a reduction to two line-items in the Change Order, citing one line-item should be reduced by one-third, and one line-item should be split fifty percent. However, neither line-item costs were reduced in the approved Change Order.

Recommendations:

- 3.1 We recommend BDC ensure modifications of work to a contract are not completed without a properly executed amendment, Change Order, or Change Directive, as required by the Contract.
- 3.2 We recommend BDC ensure that additional compensation is not approved for damage caused by a Contractor.

Management Response:

- 3.1 The Division concurs with the finding and will work to ensure that modifications to the work to a contract are not completed without a properly executed Amendment, Change Order or Change Directive, in accordance with the Contract.
- 3.2 The Division concurs with the finding and will ensure that BDC project managers do not approve additional compensation for any damage caused by a Contractor.

Finding 4: Procurement – Required bid documentation and bid awarding procedures were not completed in compliance with the Contract.

Our review found that the Contractor did not submit properly completed Client Reference Forms, and client reference evaluations were not performed by the Department prior to awarding the bid to the Contractor. According to the Contract, procedures for awarding the bid includes the Department contacting two client references, to evaluate past performance. Based on our review, we determined that the Department did not obtain accurate client references or perform reference evaluations prior to awarding the bid, as required by the Contract. Section A of the Procurement informed prospective bidders of the required documentation to be submitted with the bid. According to the Contract, each bid was to include a minimum of 3 client references, other than DEP, *for work similar in nature and scope to that specified in this solicitation, performed the last three (3) years*. The Department would then contact two of the client references to ensure that the lowest bidder was qualified based on past experience and performance. Based on our review, we found that the Contractor submitted 3 client references; however, none included a description of the work performed or project completed, and all were for employees and projects of the

**Department of Environmental Protection
Office of Inspector General
Audit of Agreement CN541 with Charles Perry Partners Inc., for Boathouse Replacement
at Ellie Schiller Homosassa Springs Wildlife State Park**

Department. Subsequently, we determined that client reference evaluations were not performed by the Department prior to awarding the bid.

Recommendations:

- 4.1 We recommend BDC ensure all bids are submitted accurately and include all documentation outlined in the bid documents.
- 4.2 We recommend BDC ensure all steps required to award bids are followed and all documentation is retained.

Management Response:

- 4.1 The Division concurs with the finding and will work to ensure that all responsive bids are submitted accurately and include all documentation outlined in the bid documents.
- 4.2 The Division concurs with the finding and will work to ensure that all steps required to award bids are followed and all documentation is retained in accordance with all procurement laws, and the Department's policies and procedures.

STATEMENT OF ACCORDANCE

Statement of Accordance

The Mission of the OIG is to promote accountability, integrity, and efficiency by providing quality audits, investigations, management reviews, and technical assistance.

This work product was prepared pursuant to § 20.055, Florida Statutes, in accordance with the *Principles and Standards for Offices of Inspectors General* as published by the Association of Inspectors General and the *International Standards for the Professional Practice of Internal Auditing*, as published by the Institute of Internal Auditors, Inc. The audit was conducted by Andrea Kramer and supervised by Susan Cureton.

This report and other reports prepared by the OIG can be obtained through the Department's website at <https://floridadep.gov/oig> or by contacting:

Office of Ombudsman and Public Services
public.services@floridadep.gov
(850) 245-2118

Candie M. Fuller,
Inspector General