



Department of Environmental Protection Office of Inspector General

June 17, 2025

Report A-2324DEP-010

Audit of CN538 with Culpepper Construction Company for Projects at T.H. Stone Memorial St. Joseph Peninsula State Park

INTRODUCTION

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of CN538 (Agreement) with Culpepper Construction Company, Inc. (Construction Manager), for projects at T.H. Stone Memorial St. Joseph Peninsula State Park (Park). This audit was initiated as a result of the OIG Annual Audit Plan for Fiscal Year 2023-2024.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of this audit included a review of activities performed under the Agreement between the Department and the Construction Manager to provide construction management at-risk services for the T.H. Stone Memorial St. Joseph Peninsula State Park – Facilities Redevelopment (Project). The scope included records from execution of the Agreement, December 18, 2020, to the present and may include procurement activities prior to execution of the Agreement.

The objectives of the audit were to:

1. Evaluate the Construction Manager's overall compliance with the Agreement.
2. Determine whether deliverables were completed as specified in the Agreement, and whether payments were made in compliance with the Agreement.
3. Evaluate Department oversight and internal controls over the Construction Manager's compliance with the Agreement.

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, internal operating procedures, and the Agreement.
- Conducting an analysis of invoices, pay requests, payment vouchers, and supporting documentation.
- Interviewing appropriate staff within the Department and the Construction Manager.
- Conducting a site visit to the Park.

BACKGROUND

On October 10, 2018, Hurricane Michael, a category five hurricane, made landfall in the Panhandle of Florida with maximum sustained wind speeds of 161 miles per hour. One of the areas substantially impacted by the storm was the Park, located in Gulf County.

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According to staff within the Department’s Bureau of Design and Construction (BDC), Hurricane Michael destroyed most of the park improvements, flattened barrier dunes, and created a 1,000-foot wide and 40-foot deep breach in the gulf to the bay. The Department issued a notice for Request for Statements of Qualifications for Construction Management at Risk services for the Park. The original estimated construction budget proposed by BDC was \$10,000,000. The solicitation was based on the Negotiated Fee-Guaranteed Maximum Price Construction Contracting procurement method, as defined by Rule 60D-5.002(11), Florida Administrative Code (F.A.C.), which states this is *a method of construction contracting whereby the construction management entity is selected...to provide design phase consulting services, management and contractual responsibility for the total project.* The Department executed the Agreement on December 18, 2020. The Agreement had six documented amendments and two Change Orders bringing the total contract amount for the Agreement to approximately \$22,082,165. As of April 2025, the Construction Manager had received \$20,970,097 in total payments.

RESULTS OF AUDIT

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

Competitive Bidding and Bond Requirements

The Agreement requires the Construction Manager to perform or cause to be performed all work and services necessary to complete the Project. Additionally, the Construction Manager *shall be responsible for complying with the advertising and competitive bidding procedures applicable to public construction projects, including but not limited to, invitations for bids, or requests for proposal when applicable, for all procurements of long lead items, materials and services, and for Subcontractor contracts.*

Competitive Bidding Procedures

The chart below outlines the Agreement’s requirements for bids to be advertised, accepted, and awarded.

Contract Amount	Advertisement of Bid	Proposal Acceptance	Award of Contract
Over \$35,000 but not \$200,000	Request three firms to submit sealed written proposals.	Written proposals will be opened publicly at the location, date and time established.	Qualified firm that submits the lowest quote.
Over \$200,000 but not \$500,000	Public advertisement at least 21 days prior to the bid opening date.	Written proposals will be opened publicly at the location, date and time established.	Prequalified firm that submits the lowest quote.
Over \$500,000	Public advertisement at least 30 days prior to the bid opening date.	Written proposals will be opened publicly at the location, date and time established.	Prequalified firm that submits the lowest quote.

Bid Bond Requirements

Bids over \$100,000 were to be accompanied by *a good faith deposit, in the amount of 5% of the bid by way of a bid bond...or certified check accompanying the bid.* Based on our

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review of bid packages received, we determined bids submitted over \$100,000 did not include bid bonds as required by the Agreement.

Submission of Sealed Bids and Public Openings

The project was accomplished in two phases. Our review determined the Construction Manager did not require sealed bids or conduct public openings, as required. The Agreement states, *The Construction Manager shall first request at least three (3) firms to submit sealed written proposals.... The written proposals shall all be opened publicly at the location, date and time named by the Construction Manager in the request for proposal.* The Construction Manager solicited bids for Phase 1 of the Project with an advertisement that stated *sealed bids from qualified Trade Contractors* were to be delivered by January 26, 2021, at 2:00 p.m., and that delivery instructions would be included in the bid packages. Based on our review of the bid package, we determined that the Construction Manager instructed bids must be submitted via email *due to social distancing guidelines* and did not include the information regarding the location, date, or time of the public opening. Additionally, there were no instructions describing how the emailed bids were to be sealed. Based on our review, the bids submitted to the Construction Manager and the Department were not sealed when emailed and no public opening was facilitated by the Construction Manager, as required by the Agreement.

Additionally, Phase 2 bids, submitted in the Fall of 2021 and the Spring of 2022, were also required by the Construction Manager to be emailed, and included no instructions specifying how to submit a sealed bid. Based on our review, the Construction Manager continued the practice of instructing bids to be submitted via email, even though no social distancing guidelines were utilized at that time, and no public openings of the bids were conducted as required. Although public bid openings were not held due to the Construction Manager's social distancing guidelines, the Construction Manager held public in-person pre-bid meetings with an on-site walk-through 21 days prior to the emailed bids due date for both Phase 1 and Phase 2. In addition to not conducting public openings, we also found that in some cases, emailed bids appear to have been opened by the Construction Manager, viewed, and responses sent prior to the deadline advertised.

The Agreement authorizes the Construction Manager to request a waiver from these procurement requirements, *In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service).* The Construction Manager stated that the adjustments to bidding protocols were coordinated with the Department due to COVID-19; however, they were unable to provide documentation to show Department approval of the adjusted protocols.

Awarded Bids

Our review noted the Construction Manager themselves competitively bid on seven projects via email submission to themselves. Of those seven bids, four were awarded to the Construction Manager by the Construction Manager. In addition, we found the Construction Manager and another company owned by the Construction Manager (Company-A) were awarded several bids during the project. We also found that bids from Company-A were submitted via email and, at times, were revised and resubmitted. Based

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on our analysis of Pay Requests, the Construction Manager and Company-A were paid over \$14.6 million in awarded contract bids. The following chart depicts a sample of bids submitted by Company-A, the Construction Manager, and the closest competing bidder (Competing Bid).

Project and Phase	Company-A Bid	Construction Manager Bid	Competing Bid	Company Awarded
Ranger Phase 1		\$1,159,612	\$1,060,000	Competing Bid
Sitework Phase 1	\$81,250		\$91,672	Company-A
Restrooms Phase 1		\$298,375	\$155,000	Competing Bid
Debris Removal	\$68,500		\$92,500	Company-A
Cabins Phase 2		\$1,956,889	\$2,768,000	Construction Manager
Sitework Phase 2	\$10,991,440		\$11,480,000	Company-A
Concrete Phase 2		\$243,348	None	Construction Manager
Masonry Phase 2		\$592,076	\$286,969	Competing Bid
General Phase 2		\$648,869	\$910,000	Construction Manager
Carpentry Phase 2		\$479,846	\$39,170	Construction Manager

Based on our review, we found that the Construction Manager did not always comply with the competitive procurement requirements outlined in the Agreement. The Construction Manager did not adhere to bid bond requirements, did not require bids to be submitted sealed, and no public openings of submitted bids were conducted. Additionally, we found that the Construction Manager themselves submitted bids and awarded contracts to themselves as well as awarding contracts to another company owned by the Construction Manager.

Actual Costs, Pay Requests, and Payments

In order to determine whether deliverables were completed as specified in the Agreement, we reviewed the requirements outlined in the Agreement and reviewed 29 approved Pay Requests for the Project. Below is a summary of our review.

Guaranteed Maximum Price

According to the Agreement, the Construction Manager was to establish a Guaranteed Maximum Price (GMP) which was to be submitted to the Department for approval. According to Rule 60D-5.002(12), F.A.C., the GMP was to include *all fees, profit, overhead direct management costs, and the construction cost*. Although the GMP could be modified throughout the Project, the Agreement stated that *the actual price paid for the work by the Department shall be the actual cost of all Work necessary for the Construction Manager to complete the Project*. Based on our review, we determined that the Construction Manager established and submitted GMPs for both Phase 1 and Phase 2. Additionally, the Agreement states that any bid overage from a GMP line item would be added to the line item marked Contingency and used for unforeseen expenditures related to the Project. According to the Agreement, the Contingency line-item funds would not be released to the Construction Manager without documentation evidencing the expenditures. Our review found that at the completion of Phase 1, the overage amounts from the GMP line items were added to Phase 1's Contingency amount.

Categorized Expenditures

Based on our review, we found at times invoices appeared to be applied to incorrect GMP line items. For example, we found two invoices from a surveying company submitted in the same Pay Request. One invoice was applied to the GMP line item of Site Engineering and the other was applied to Small Tools. Both invoices were for Foundation Location Certifications and Flood Certificates. Another invoice submitted was for the purchase of a mounted bathroom dispenser and was found under the GMP line item of Equipment Rental. Also, we found an iPad keyboard purchased that was charged to the GMP line item labeled, Safety. Additionally, we found an invoice that included a late payment fee, and an invoice that included items labeled restocking fees and profit expenses for a portion of the project that was postponed by the Department. The restocking fees and profit expenses totaled \$59,046.95. Because the Agreement required that any overage to the GMP line item would be applied to the Contingency, we determined that expenses applied to incorrect line items could appear to keep the approved GMP line items within budget and allow overage in other line items to be spent rather than applied to the Contingency at the end of the Project.

Invoices for Site Safety Audits

While reviewing invoices, we found that the Construction Manager had submitted invoices in seven Pay Requests for Site Safety Audits, beginning in October of 2021. Upon further review of the invoices, we found that the company used to conduct the safety audits received an Administrative Dissolution status in September of 2019 from the Department of State, Division of Corporations. We also could not verify the licensing credentials of the company to complete safety audits or the address of the company, which was a residential home in Bay County.

Retainage

The Agreement states, *Pursuant to Section 255.078(1), Florida Statutes, the Department may withhold from each progress payment made to the contractor an amount not exceeding five (5) percent of the payment as retainage.* Our review found that the Department withheld 5% retainage from the Construction Manager's pay requests in compliance with the Agreement.

The Agreement also authorizes the Construction Manager to withhold retainage from its subcontractors stating, *The Construction Manager shall promptly, within 10 days after receipt of payment from the Department, pay all the amount due subcontractors and suppliers less a retainage of five percent (5%), and the specific amount to be withheld must be determined on a case-by-case basis.* Our review determined the Construction Manager applied 10% retainage to most subcontractor invoices for both phases of the Project. The Agreement further states, *the Construction Manager may not request the release of such retained funds from the Department.* However, based on a review of pay requests from the Construction Manager, we determined the Construction Manager requested the full invoiced amount from subcontractors which included the 10% retainage that was withheld by the Construction Manager. See examples in the Table below:

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Examples of Subcontractor Invoice Amounts versus what the Construction Manager Invoiced to the Department					
Construction Manager Invoice No.	Subcontractor Invoice for Work Completed	10% Retainage withheld by Construction Manager	Amount due to Subcontractor	Amount Construction Manager invoiced Department	Amount Over-billed to Department
8	\$35,206.85	\$3,520.69	\$31,686.17	\$35,206.82	\$1,760.34
14	\$135,399.00	\$13,539.90	\$121,859.10	\$135,399.00	\$6,769.95
16	\$72,677.95	\$7,267.80	\$65,410.16	72,677.95	\$3,633.89
Total					\$12,164.18

Site Visit

During the audit we conducted a site visit to the Park and found the Project had mostly been completed and the Construction Manager was no longer on site. Based on our review, we found the Project Manager performed and documented site visits of the work completed on the Project. The Project Manager stated the site visits were used to inspect the work completed as well as ensure an accurate amount was requested in Payment Applications.

CONCLUSION

During the audit we conducted a site visit to the Park and we reviewed deliverables, payments, and supporting documentation provided by BDC and the Construction Manager to determine compliance with the Agreement. While the Project appeared to have been completed, we noted some aspects of BDC's oversight could be strengthened. Specifically, our review found that the Construction Manager did not comply with the competitive procurement requirements as outlined in the Agreement; billed the Department for retained funds withheld from its subcontractors; and did not always appropriate expenses correctly. Our findings and recommendations are listed below.

FINDINGS AND RECOMMENDATIONS

Finding 1: Competitive Procurement Requirements: The Construction Manager did not facilitate sealed bidding or hold public openings of sealed bids as required by the competitive procurement requirements outlined in the Agreement.

The Agreement requires the Construction Manager to perform or cause to be performed all work and services necessary to complete the Project. Based on our review, we determined the Construction Manager did not always comply with the competitive procurement requirements outlined in the Agreement. The Construction Manager did not adhere to bid bond requirements, did not require bids to be submitted sealed, and no public openings of submitted bids were conducted. Additionally, we found that the Construction Manager themselves submitted bids and awarded contracts to themselves as well as awarded contracts to another company owned by the Construction Manager. Although public bid openings were not held due to the Construction Manager's social distancing guidelines, the Construction Manager held public in-person pre-bid meetings with an on-site walk-through 21 days prior to the emailed bids due date for both Phase 1 and Phase 2.

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The Agreement authorizes the Construction Manager to request a waiver from some procurement requirements, *In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service)*. The Construction Manager stated that the adjustments to bidding protocols were coordinated with the Department due to COVID-19; however, they were unable to provide documentation to show Department approval of the adjusted protocols.

Recommendations:

We recommend the Division strengthen internal controls and oversight to ensure competitive procurement requirements are followed in accordance with applicable requirements in each Agreement.

Management's Response:

The Division concurs with the finding and will work to ensure that competitive procurement requirements are followed in accordance with each Agreement. Internal controls will be implemented to ensure better practices moving forward.

Construction Manager's Response:

See attached, the Construction Manager's response and OIG comments.

Finding 2: Categorized Expenditures – Some invoices contained expenditures which were not applied to the correct line item and expenditures for safety audits were conducted by an inactive company.

The Construction Manager established and submitted a GMP for both Phase 1 and Phase 2. Based on our review, we found some invoiced costs appeared to be applied to incorrect GMP line items. For example, we found two invoices from a surveying company submitted in the same Pay Request. One invoice was applied to the GMP line item of Site Engineering and the other was applied to Small Tools. Both invoices were for Foundation Location Certifications and Flood Certificates. Another invoice submitted was for the purchase of a mounted bathroom dispenser and was found under the GMP line item of Equipment Rental. Also, we found an iPad keyboard purchased that was charged to the GMP line item labeled, Safety. Additionally, we found an invoice that included a late payment fee, and an invoice that included items labeled restocking fees and profit expenses for a portion of the project that was postponed by the Department. The restocking fees and profit expenses totaled \$59,046.95. Because the Agreement required that any overage to the GMP line item would be applied to the Contingency, we determined that expenses applied to incorrect line items could appear to keep the approved GMP line items within budget and allow overage in other line items to be spent rather than applied to the Contingency at the end of the Project.

Based on our review of invoices, we noted the Construction Manager submitted invoices in seven Pay Requests for Site Safety Audits, beginning in October of 2021. Upon further review of the invoices, we found that the company used to conduct the safety audits received an Administrative Dissolution status in September of 2019 from the Department of State, Division of Corporations.

Recommendations:

We recommend the Division strengthen internal controls and oversight to ensure pay requests are complete, accurate, and submitted in compliance with each Agreement.

Management Response:

The Division concurs with the finding and will work to ensure that pay requests are complete, accurate, and submitted in compliance with each Agreement. In the future, the Division will verify all submitted data before approval.

Construction Manager's Response:

See attached, the Construction Manager's response and OIG comments.

Finding 3: Retainage – The Construction Manager applied a 10% retainage to subcontractor invoices and requested the retained funds from the Department.

The Agreement authorizes the Construction Manager to withhold retainage from its subcontractors stating, *The Construction Manager shall promptly, within 10 days after receipt of payment from the Department, pay all the amount due subcontractors and suppliers less a retainage of five percent (5%),* and the specific amount to be withheld must be determined on a case-by-case basis. Our review determined the Construction Manager applied 10% retainage to most subcontractor invoices for both phases of the Project. The Agreement further states, *the Construction Manager may not request the release of such retained funds from the Department.* However, based on a review of pay requests from the Construction Manager, we determined the Construction Manager requested the full invoiced amount from subcontractors which included the 10% retainage that was withheld by the Construction Manager.

Recommendations:

We recommend the Division strengthen internal controls and oversight to ensure retainage applied by the Construction Manager to subcontractors is appropriate and such retained funds are not requested from the Department, in compliance with each Agreement.

Management Response:

The Division concurs with the finding and will work to ensure that retainage applied by the Construction manager is appropriate and retained funds are not requested from the Department. The Division will review and verify that the retainage fee meets the terms laid out in the Agreement.

Construction Manager's Response:

See attached, the Construction Manager's response and OIG comments.

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 Section 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

Construction Manager's Response

TO: Department of Environmental Protection
Office of Inspector General

Date: May 21, 2025

RE: Audit of CN538 Contractor Response

Audit: Bids submitted over \$100,000 did not include bid bonds as required.

Response: This project was going through the bid process in the last quarter of 2020 when the COVID pandemic was still in full swing. During this time the construction industry was experiencing unprecedented inflation and material disruption. It should also be noted that the remote location of the park created logistical concerns for subcontractors who could not predict costs associated with daily commutes to the park given the state of the industry at the time. Therefore, the Construction Manager determined that the bid bond requirement would greatly restrict the already limited participation of bidders for this project. In order to get the best value for DEP, the bid bond requirement was waived from the trade bid requirements. The Department did not protest this method of bidding and allowed the GMP process to move forward.

Audit: CM did not require sealed bids or conduct public openings.

Response: Culpepper provided the Department's auditor documentation at the time of this audit that described the process being used under restrictive COVID protocols. This process was delineated in both the bid packages sent out to the perspective bidders, and the Department's representatives. There were no responses back from the Department disagreeing with our process, therefore the bids were received and "opened" electronically as per the written COVID protocols which were suggested at that time.

Audit: In person pre-bid was held during the same COVID period as the bidding process.

Response: The "in person" pre-bid meeting was held on site at T.H. Stone State Park. As such, this was an outdoor meeting, and all attendees were socially distanced. Additionally, attendees were encouraged to mask. This comment should have no bearing on the CM not holding a public bid opening in a closed setting where multiple attendees would not be able to socially distance.

Audit: Emailed bids appear to have been opened, viewed, and responses sent prior to the deadline advertised.

Response: In discussions with the Department, they requested that staff be copied on emailed bids as part of the process. This was made known to the bidders in the written directives that were part of the bid package. In fact, all bids were received "early" meaning that they had to be there prior to the opening deadline. Some bidders early by minutes and others by days.

Audit: No DEP approval of adjusted bid protocols

Response: CM previously provided the auditor with email notification to the Department at the time of bidding which stated the bidding process being used. The Department staff did not respond to this notification which gives tacit approval by lack of dispute. Being late with the project would have been unacceptable should the CM have waited on written acceptance; DEP staff was aware of what the CM was doing as it pertained to the COVID protocol's effect on the bid process.

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Audit: CM competitively bid on seven projects via email submission to themselves

Response: As noted above, the marketplace conditions and remote location of the park was limiting bid participation from subcontractors. Therefore, it was in the best interest of the project for the CM to bid on those scopes of work that were underrepresented. The audit itself states "CM competitively bid" and includes a chart of the bid results which shows that the CM was the low bidder on only 4 out of 7 packages. The project actually benefited from the CM's bids as well as the completion of those scopes of work.

Audit: Categorized Expenditures, billing expenses to incorrect line items to allow other line items to not be overspent.

Response: A GMP is a maximum overall total and not a standalone line-item budget. When a line item has a surplus while another one has a deficit, that does not mean that the project benefits from the surplus, but the CM has to absorb the deficit. While it's true that a contingency modification could have been initiated and approved for each occurrence thereby moving funds from one line item to another, the Department chose to allow billing as needed under cost codes that had funds available. The project was not negatively impacted by this method of billing; no funds were misspent.

Audit: Restocking fees and profit expenses totaling \$59,046.95

Response: The Bayview Campground portion of the project was not postponed, it was cancelled by the Department due to the lack of an environment permit. However, the scope was not cancelled until after large quantities of materials were purchased by subcontractors, much of which was non-refundable. All of these materials were meticulously inventoried and turned over to the Department and remain at the park. Other materials were able to be returned but required a restocking fee. The CM reviewed these materials with the Department and the decision was made to pay the restocking fees in order to receive as much of a refund as possible. Additionally, all of the subcontractors were allowed by contract to retain some of the overhead and profit associated with the portion of work that was cancelled. The CM vigorously negotiated these fees to minimize the effect on the budget even though the cancellation occurred late in the process.

Audit: Invoices for site safety audits, company not listed with Division of Corporations.

Response: See attached registration. There was an issue with a company that had a similar name, so this vendor changed their registration.

Audit: CM applied a 10% retainage to subcontractor invoices while Department held 5%

Response: It must be remembered that these subcontracts were entered into during the transition period for the State from 10% to 5%. Also, referring back to the issue of limited bidders during this time period, the CM allowed the bidders to agree with a 10% retainage amount in lieu of providing P&P bonds for the work. Each of the subcontractors agreed with this approach which in effect lowered expenditures on the project by not including the cost for bonds on a substantial amount of work.

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Detail by Entity Name

DIVISION OF CORPORATIONS



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Detail by Entity Name

Florida Profit Corporation
A TO ZERO SAFETY, INC.

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Principal Address

21022 FRONT BEACH ROAD
PANAMA CITY BEACH, FL 32413

Mailing Address

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PANAMA CITY BEACH, FL 32413

Registered Agent Name & Address

Turner, Matthew Scott
21022 FRONT BEACH ROAD
PANAMA CITY BEACH, FL 32413

Name Changed: 11/15/2024

Address Changed: 11/15/2024

Officer/Director Detail

Name & Address

Title PTSD

TURNER, MATTHEW
21022 FRONT BEACH ROAD
PANAMA CITY BEACH, FL 32413

Annual Reports

Report Year	Filed Date
2023	11/15/2024

<https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=ATOZERO...> 1/2

5/15/25, 11:15 AM

Detail by Entity Name

2024	11/15/2024
2025	02/25/2025

Document Images

02/25/2025 -- ANNUAL REPORT	View image in PDF format
11/15/2024 -- REINSTATEMENT	View image in PDF format
07/09/2018 -- Domestic Profit	View image in PDF format

OIG Comments to the Construction Manager's Response

Based on the Construction Manager's response to the audit report, the following OIG comments serve to clarify audit results. See the Construction Manager's full response attached to this report.

Finding 1: Competitive Procurement Requirements: The Construction Manager did not facilitate sealed bidding or hold public openings of sealed bids as required by the competitive procurement requirements outlined in the Agreement.

Bids submitted over \$100,000 did not include bid bonds as required.

- Construction Manager Response: *...the Construction Manager determined that the bid bond requirement would greatly restrict the already limited participation of bidders for this project. In order to get the best value for DEP, the bid bond requirement was waived from the trade bid requirements. The Department did not protest this method of bidding and allowed the GMP process to move forward.*
- OIG Comments: Based on our review of bid packages received, we determined bids submitted over \$100,000 did not include bid bonds as required by the Agreement. The Agreement authorized the Construction Manager to request a waiver from some procurement requirements, *In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service)*. However, no documented Department approval was given for the bid bond requirement.

CM [Construction Manager] did not require sealed bids or conduct public openings.

- Construction Manager Response: *The Construction Manager provided the Department's auditor documentation at the time of this audit that described the process being used under restrictive COVID protocols. This process was delineated in both the bid packages sent out to the perspective bidders, and the Department's representatives. There were no responses back from the Department disagreeing with our process, therefore the bids were received and "opened" electronically as per the written COVID protocols which were suggested at that time.*
- OIG Comments: The Agreement required the Construction Manager to request sealed written proposals that shall all be opened publicly at the location, date, and time named by the Construction Manager. Our review determined that these requirements were not completed by the Construction Manager and no documented Department approval was given to alter the competitive bidding requirements.

In person pre-bid was held during the same COVID period as the bidding process.

- Construction Manager Response: *The "in person" pre-bid meeting was held on site at T.H. Stone State Park. As such, this was an outdoor meeting, and all attendees were socially distanced. Additionally, attendees were encouraged to mask. This*

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comment should have no bearing on the CM not holding a public bid opening in a closed setting where multiple attendees would not be able to socially distance.

- **OIG Comments:** Public bid openings were not held due to the Construction Manager's social distancing guidelines, but the Construction Manager held public in-person pre-bid meetings with an on-site walk-through at the Park. A public bid opening could have also been facilitated in an outdoor setting or via an electronic meeting. The Agreement authorized the Construction Manager to request a waiver from some procurement requirements, *In the event of a valid emergency (such as an immediate danger to the public, an immediate danger of loss of public or private property, or an interruption in the delivery of an essential government service).* However, no documented Department approval was given to waive the submission of sealed bids or the public bid opening.

Emailed bids appear to have been opened, viewed, and responses sent prior to the deadline advertised.

- **Construction Manager Response:** *In discussions with the Department, they requested that staff be copied on emailed bids as part of the process. This was made known to the bidders in the written directives that were part of the bid package. In fact, all bids were received "early" meaning that they had to be there prior to the opening deadline. Some bidders early by minutes and others by days.*
- **OIG Comments:** The Agreement states, *The Construction Manager shall first request...sealed written proposals.... The written proposals shall all be opened publicly at the location, date and time named by the Construction Manager in the request for proposal.* The Construction Manager did not require sealed bids to be submitted and did not facilitate a public bid opening. No documented Department approval was given to waive the submission of sealed bids or the public bid opening. The Agreement also states, *It must be expressly noted in all advertisements and solicitations that all submitted quotations or bid proposals are made to the Construction Manager and that the Department is not a party. Nothing in the bid documents, either express or implied, enjoins the Department as a party to the receipt, review, or award of the bids received by the Construction Manager.*

No Department approval of adjusted bid protocols

- **Construction Manager Response:** The Construction manager stated they *previously provided the auditor with email notification to the Department at the time of bidding which stated the bidding process being used. The Department staff did not respond to this notification which gives tacit approval by lack of dispute.*
- **OIG Comments:** The Agreement authorized the Construction Manager to request a waiver from some procurement requirements, *In the event of a valid emergency...*; however, no documented Department approval was given to waive the competitive procurement requirements.

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Audit of CN538 with Culpepper Construction Company for Projects at T.H. Stone
Memorial St. Joseph Peninsula State Park**

Construction Manager competitively bid on seven projects via email submission to themselves.

- Construction Manager Response: *As noted above, the marketplace conditions and remote location of the park was limiting bid participation from subcontractors. Therefore, it was in the best interest of the project for the CM to bid on those scopes of work that were underrepresented. The audit itself states “CM competitively bid” and includes a chart of the bid results which shows that the CM was the low bidder on only 4 out of 7 packages. The project actually benefited from the CM’s bids as well as the completion of those scopes of work.*
- OIG Comments: In accordance with Section 287.001, F.S., the State’s purchasing laws are designed to promote fair and open competition in the public procurement process. The goal is to reduce the appearance and opportunity for favoritism and to inspire public confidence that contracts are awarded equitably and economically. Our review noted the Construction Manager themselves, as well as another company owned by the Construction Manager, emailed non-sealed bids to themselves and awarded contracts to themselves and the other company owned by the Construction Manager. The Agreement allowed for the Construction Manager to perform portions of the work themselves without going through the bidding process. The Agreement states, *If bids are not received for a portion of the work at or below the applicable line item amount in the GMP, the Construction Manager reserves the right to perform that portion of the work after receiving prior written consent and as acknowledged and approved by the Department, and/or negotiate for its performance for the specified line item lump sum amount or less.* The Agreement also states, *The Construction Manager covenants that it presently has no interest and shall not acquire any interest which would conflict in any manner or degree with the performance of services required.*

Finding 2: Categorized Expenditures – Some invoices contained expenditures which were not applied to the correct line item and expenditures for safety audits were conducted by an inactive company.

Categorized Expenditures, billing expenses to incorrect line items to allow other line items to not be overspent.

- Construction Manager Response: *A GMP is a maximum overall total and not a standalone line-item budget. When a line item has a surplus while another one has a deficit, that does not mean that the project benefits from the surplus, but the CM has to absorb the deficit. While it’s true that a contingency modification could have been initiated and approved for each occurrence thereby moving funds from one line item to another, the Department chose to allow billing as needed under cost codes that had funds available. The project was not negatively impacted by this method of billing; no funds were misspent.*
- OIG Comments: The Agreement required that any overage to the GMP line item be applied to the Contingency. We determined that expenses applied to incorrect line items could appear to keep the approved GMP line items within budget and allow overages in other line items to be spent rather than applied to the Contingency at the end of the Project.

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Restocking fees and profit expenses totaling \$59,046.95

- Construction Manager Response: *The Bayview Campground portion of the project was not postponed, it was cancelled by the Department due to the lack of an environment permit. However, the scope was not cancelled until after large quantities of materials were purchased by subcontractors, much of which was nonrefundable. All of these materials were meticulously inventoried and turned over to the Department and remain at the park. Other materials were able to be returned but required a restocking fee. The CM reviewed these materials with the Department and the decision was made to pay the restocking fees in order to receive a much of a refund as possible. Additionally, all of the subcontractors were allowed by contract to retain some of the overhead and profit associated with the portion of work that was cancelled. The CM vigorously negotiated these fees to minimize the effect on the budget even though the cancellation occurred late in the process.*
- OIG Comments: The Department notified the Construction Manager that the Bayview Campground portion of the project was cancelled due to funding and the need to utilize funds for other construction at the Park. According to the Agreement, for claims of costs resulting from changed conditions, the Construction Manager must submit a written Notice of Claim to the Department within 20 days of the event giving rise to the claim, and the Department must provide a written determination. The Construction Manager did not submit a Notice of Claim regarding the restocking fees or related profit expenses.

Invoices for site safety audits, company not listed with Division of Corporations.

- Construction Manager Response: *See attached registration. There was an issue with a company that had a similar name, so this vendor changed their registration.*
- OIG Comments: Our review noted the Construction Manager submitted invoices in seven Pay Requests for Site Safety Audits, beginning in October of 2021. The Site Safety Audits were conducted by a company that received an Administrative Dissolution status in September of 2019 from the Department of State, Division of Corporations. The registration document provided with the Construction Manager's response shows the company listed was reinstated in November 2024, after this project was completed.

Finding 3: Retainage – The Construction Manager applied a 10% retainage to subcontractor invoices and requested the retained funds from the Department.

CM applied a 10% retainage to subcontractor invoices while Department held 5%

- Construction Manager Response: *It must be remembered that these subcontracts were entered into during the transition period for the State from 10% to 5%. Also, referring back to the issue of limited bidders during this time period, the CM allowed the bidders to agree with a 10% retainage amount in lieu of providing P&P bonds for the work. Each of the subcontractors agreed with this approach which in effect lowered expenditures on the project by not including the cost for bonds on a substantial amount of work.*

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- OIG Comments: The Agreement authorizes the Construction Manager to withhold retainage from its subcontractors; however, the Construction Manager may not request the release of such retained funds from the Department. Our review determined the Construction Manager requested the full invoiced amount from subcontractors which included the 10% retainage that had been withheld by the Construction Manager.