



Department of Environmental Protection Office of Inspector General

September 22, 2025

Report A-2425DEP-020

Audit of Agreement CN646 with Biltmore Construction Co., Inc. for Lighthouse Repairs at Anclote Key State Park

INTRODUCTION

The Florida Department of Environmental Protection (Department) Office of Inspector General (OIG) conducted an audit of Agreement CN646 (Agreement) with Biltmore Construction Co., Inc. (Construction Manager) for Lighthouse Repairs at Anclote Key Preserve State Park (Park). This audit was initiated as a result of the OIG Annual Audit Plan for Fiscal Year 2024-2025.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

The scope of the audit included a review of activities performed under Agreement CN646 between the Department and Construction Manager for the completion of the Anclote Lighthouse Repair and Painting Project (Project) at the Park in Pinellas County, Florida. This scope also included a review of the Department and Construction Manager's compliance with the Department of Management Services (DMS) Continuing Construction Contract CM226 (DMS Contract), which was used to procure the Construction Manager's services.

The objectives of the audit were to:

1. Determine if the Department followed state laws, rules, policies, and federal laws in establishing the Agreement.
2. Determine the Construction Manager's overall compliance with the Agreement and the DMS Contract.
3. Determine whether deliverables were completed, and payments were made in accordance with the Agreement and DMS Contract.
4. Evaluate Department oversight and internal controls over the Construction Manager's compliance with the Agreement and DMS Contract.

To achieve our audit objectives, our methodology included:

- Reviewing applicable statutes, regulations, Department procedures, and requirements of the Agreement, attachments, change orders, and amendments.
- Conducting analysis and verifying the Construction Manager's compliance with the Agreement's term and conditions.
- Interviewing appropriate Department employees and management regarding the processes and controls used in the duration of the Agreement.

BACKGROUND

The Park is located three miles off the coast of Tarpon Springs, Florida, and only accessible by boat or ferry. The Anclote Lighthouse, located within the Park, is a cast-iron structure built in 1887 and stands approximately 110 feet tall. In September 2022, the Department's Bureau of Design and Construction (BDC), within the Division of Recreation and Parks (Division) issued an Activation Letter to the Construction Manager for Pre-Construction Phase services for the Project at the Park, totaling \$11,192. The Activation Letter was later amended in February 2023, for Construction Phase Services at a total guaranteed maximum price of \$1,438,614. The Activation Letters were issued based on the terms of the DMS Contract. In January 2022, DMS executed the DMS Contract with the Construction Manager to perform continuing construction services for *Project South Region – Statewide*.

Construction Manager continuing contracts are issued by DMS's Division of Real Estate Development and Management (REDM) pursuant to Section 255.32, Florida Statutes (F.S.). DMS continuing construction contracts are long-term agreements with pre-qualified contractors for a variety of services, typically in the areas of construction and professional services. These contracts streamline the procurement process for state agencies by having pre-approved contractors available for specific types of projects. Agencies desiring to use REDM's Construction Manager continuing contracts must seek permission from REDM prior to utilizing these contracts. Such agencies must implement any activations through an agency contract and may not issue a purchase order using a REDM continuing contract. In March 2015, BDC was granted permission from DMS to manage construction projects utilizing the DMS statewide construction management contracts.

At the time of our review, the Project had been completed, and the Construction Manager had received \$1,392,219.00 in total payments.

RESULTS OF AUDIT

During the audit, we reviewed the DMS Contract, Project documentation, payments, and supporting documentation to determine compliance with the Agreement. Based on our review, we determined that there was no agency contract executed for this Project, as required by Rule 60D-15.002(2), Florida Administrative Code (F.A.C.) A summary of our review is below.

Agency Contract Requirements

Rule 60D-15.002, F.A.C., provides agency procedures for contracting with DMS continuing contract entities and states that state agencies serving as the managing agency of a state-owned facility or a state construction site are authorized to utilize the services of any current Construction Manager Continuing Contract through activation. Activation is defined as an agency negotiation for a specific project with a construction management entity under continuing contract with DMS, which results in an agency contract. Per Rule 60D-15.002(2), F.A.C., all agency activations shall be implemented through an agency contract that is exclusive between the agency and a continuing

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contract entity. An agency contract is defined as a *proprietary construction project contract between a state agency and a construction management entity under continuing contract with the [DMS]*.

Our review determined that the Division had issued Activation Letters to the Construction Manager, but had not executed an agency contract with the Construction Manager, as required by Rule 60D-15.002(2), F.A.C. The Activation Letters were signed only by Division staff and the Department's Office of General Counsel. Additionally, the proposals from the Construction Manager were only signed by the Construction Manager. BDC stated they did not execute an agency contract as they believed the Activation Letter and the DMS Contract served as the contract with the Construction Manager. However, the DMS Contract does not contain any provisions or deliverables specific to the Project nor to the Department. Specifically, Article 18.3 Scope of Contract states, *This Agreement is entered into pursuant to Section 255.32, Florida Statutes, for the coordination and supervision of construction projects at any location in the State of Florida. This Agreement is not an exclusive contract, and no amount of work is guaranteed as a result of this Agreement. The assignment of Projects to the Construction Manager will be at the Owner's discretion.*

There are certain provisions that must be included in written agreements for contractual services and there are also Federal requirements for contracts funded with Coronavirus State and Local Fiscal Recovery Funds (SLFRF), as detailed below. As there was not an agency contract executed for this project, these provisions and requirements were not specified nor agreed to by the Construction Manager.

- Statutory Contract Requirements: Section 287.058, F.S., states a written agreement for contractual services shall be signed by the agency head or designee and the contractor before the rendering of any contractual service, and also details the provisions which shall be included in any written agreement for contractual services, including a provision:
 - a) That bills for fees or other compensation for services or expenses be submitted in detail sufficient for a proper pre-audit and post-audit thereof.
 - b) Specifying a scope of work that clearly establishes all tasks the contractor is required to perform.
 - c) Dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment.
 - d) Specifying the criteria and the final date by which such criteria must be met for completion of the contract.
 - e) Specifying the financial consequences that the agency must apply if the contractor fails to perform in accordance with the contract.
 - f) Allowing unilateral cancellation by the agency for refusal by the contractor to allow public access to all documents, papers, letters, or other material made or received by the contractor in conjunction with the contract, unless the records are exempt from s. 24(a), Art. I of the State Constitution and Section 119.07(1), F.S.

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- **Federal Contract Requirements:** Additional requirements for this Project included Federal requirements for contracts funded by SLFRF. While the SLFRF requirements were listed as *incorporated by reference* in the Activation Letter, the Construction Manager did not agree to these terms in writing.

While there was no written agreed-upon deliverables, costs, or scope of work, there were documents that contained some of these elements. The Activation Letters and the Construction Manager's proposal contained some budget information and due dates. The Division issued a Notice to Proceed on May 8, 2023, authorizing the Construction Manager to begin work on the Project. The Activation Letter specified the begin construction date (May 8, 2023), the substantial completion date (December 8, 2023), and the final completion date (December 22, 2023). However, as previously mentioned, these terms were not formally agreed to as these documents were not signed by both parties. We also reviewed daily logs provided by the Construction Manager that detailed weather, contained pictures, and summarized work completed. These logs also noted BDC staff site-visits took place. However, without an agency contract between the Department and the Construction Manager there are no agreed upon terms, deliverables, or financial consequences to hold the Construction Manager or the Department accountable.

DMS Reporting Requirements

Additionally, pursuant to Rule 60D-15.002(7), F.A.C., the Department shall report quarterly to DMS using form FP-01 *Agency Continuing Contract Activity Quarterly Report*. Based on communication with BDC, the FP-01 form was not submitted for this Project during the Project. However, the Division did report sending the FP-01 form to DMS on July 2, 2025, although the Project had been completed.

DMS Contract

When using a DMS continuing construction contract, the Department is required to adhere to terms of the DMS Contract. While some of the provisions in the DMS Contract were followed by BDC, we noted some inconsistencies. Article 2.1.2, Master Project Schedule, of the DMS Contract requires that the project management system have a Master Project Schedule completed within 30 days of award of an agreement. The Construction Manager shall submit a Master Project Schedule covering the planning and design approvals, and construction. The schedule is to serve as the framework for the subsequent development of all detailed schedules. The Construction Manager is also required to submit a Construction Schedule within 30 days after the date of the Division's issuance of the Notice to Proceed. Based on our review, the Division was unable to provide a Master Project Schedule or the Construction Schedules.

Payments

Pursuant to the DMS Contract, Article 12.1 Monthly Payments, *The Construction Manager shall submit to the Owner a notarized monthly pay request, along with the cost reports required under Article 2.1.2, showing in detail all monies paid out, costs accumulated, or costs incurred on account of the Cost of the Project during the previous monthly period, and the amount of the Construction Manager's fees due as provided in Article 8. Five percent (5%) retainage shall be held on all payments, except when approved by the Owner.*

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We reviewed 9 payments and supporting documentation submitted by the Construction Manager totaling the amount in the table below. Based on our review, we determined supporting documentation was provided and invoices were paid within compliance of the DMS Contract, and the Construction Manager followed the terms of the DMS Contract by submitting invoices on a monthly basis with the scope of values and percentages completed in each phase of the values per the Agreement. The Division was also in compliance with terms by retaining 5%.

Payment Date	Payment Amount
1/10/2023	\$11,192.00
3/13/2023	\$33,049.00
6/22/2023	\$340,679.00
9/7/2023	\$219,732.00
9/18/2023	\$300,379.50
10/9/2023	\$174,527.00
12/4/2023	\$130,435.50
12/4/2023	\$127,575.00
3/7/2024	\$ 54,650.00
TOTAL	\$1,392,219.00

CONCLUSION

During the audit, we reviewed the DMS Contract, Project documentation, payments, and supporting documentation to determine compliance with the Agreement. Based on our review, we determined that there was no agency contract executed for this Project, as required by Rule 60D-15.002(2), F.A.C. Our findings and recommendations are listed below.

FINDINGS AND RECOMMENDATIONS

Finding 1: Agency Contract Requirements – The Department utilized a DMS continuing contract but did not execute an agency contract, with signatures from the agency head and Construction Manager, nor submit required quarterly reports to DMS for the Project as required by Chapter 60D-15, F.A.C.

Procedures for the utilization of DMS construction management entities is contained in Chapter 60D-15, F.A.C. Per Rule 60D-15.002(2), F.A.C., all agency activations shall be implemented through an agency contract that is exclusive between the agency and a continuing contract entity. An agency contract is defined as a *proprietary construction project contract between a state agency and a construction management entity under continuing contract with the [DMS]*. Our review determined that the Division had issued Activation Letters to the Construction Manager but had not executed an agency contract with signatures from the agency head and the Construction Manager as required. The Activation Letters were signed only by Division staff and the Department's Office of

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General Counsel, and the proposals from the Construction Manager were only signed by the Construction Manager.

Section 287.058, F.S., states a written agreement for contractual services shall be signed by the agency head or designee and the contractor before the rendering of any contractual service, and also details the provisions which shall be included in any written agreement for contractual services, including, but not limited to, compensation, a scope of work, deliverables, due dates, and financial consequences for failure to perform. The Division relied upon the terms within the DMS Contract; however, the DMS Contract does not contain any provisions or deliverables specific to the Project nor to the Department. And specifically, Article 18.3 Scope of Contract states, *This Agreement is entered into pursuant to Section 255.32, Florida Statutes, for the coordination and supervision of construction projects at any location in the State of Florida. This Agreement is not an exclusive contract, and no amount of work is guaranteed as a result of this Agreement. The assignment of Projects to the Construction Manager will be at the Owner's discretion.*

Additionally, pursuant to Rule 60D-15.002(7), F.A.C., the Department shall report quarterly to DMS using form FP-01 *Agency Continuing Contract Activity Quarterly Report*. Based on communication with BDC, the FP-01 form was not submitted for this Project during the Project. However, the Division did report sending the FP-01 form to DMS on July 2, 2025, although the Project had been completed.

Without an agency contract between the Department and the Construction Manager there are no agreed-upon terms, deliverables, or financial consequences to hold the Construction Manager or the Department accountable. During the audit, a similar finding was noted in another OIG report¹. Management's response to the finding stated they would work with the Office of General Counsel to ensure that a proprietary construction project contract is fully executed when utilizing a DMS continuing contract.

Recommendations:

We recommend BDC ensure that a proprietary construction project contract, between the Department and a construction management entity under continuing contract with DMS, is executed prior to issuing all agency activations, as required by Rule 60D-15.002(2), F.A.C. We further recommend BDC ensure compliance with DMS reporting requirements.

Management's Response:

The Division will work with the Office of General Counsel to ensure that a proprietary construction project contract with a construction management firm, operating under a continuing contract with DMS, is fully executed. Additionally, we will ensure full compliance with DMS reporting requirements.

Agency Contract Requirements:

The executed construction activations includes the backup document that provides the scope of work, due dates, and estimated budget as an offer to enter into contract. To strengthen this process, we have now added an additional signature line on the

¹ OIG Report A-2425DEP-004, *Risk-Based Compliance Audit of Contracts Executed for the Preceding Three Fiscal Years Department-Wide*, issued June 24, 2025.

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construction activation for the vendor's Construction Manager to sign, ensuring the vendor is bound to the agreement.

Quarterly Reporting:

A quarterly report was submitted to DMS for this project and BDC is providing DMS quarterly contract reports for completed projects we are managing.

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 audit was conducted pursuant to Section 20.055, F.S., and in accordance with the *Government Auditing Standards*, as published by the United States Government Accountability Office, and the *Principles and Standards for Offices of Inspectors General*, as published by the Association of Inspectors General. The audit was conducted by Brian Johnson and supervised by Susan Cureton.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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