

BETTER JACKSONVILLE PLAN

MAIN LIBRARY

JANUARY 31, 2006

REPORT #612

ISSUED: May 3, 2006

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OFFICE OF THE COUNCIL AUDITOR

Suite 200, St. James Building



EXECUTIVE SUMMARY

January 31, 2006

Report No. 612

Honorable Members of the City Council
City of Jacksonville

INTRODUCTION

In 2000, the Better Jacksonville Plan was approved with a budget of \$2.25 billion for a comprehensive growth management strategy that provides road and infrastructure improvements, environmental preservation and targeted economic development, and new and improved public facilities. The Plan is funded through a half-percent sales tax and by leveraging existing revenue sources. Included in the new and improved public facilities are library branch improvements and a new main library downtown for a total original budget of \$150 million.

The three major contracts for the construction of the new main library include Auchter, Elkins, Lodestar, and Parris (AELP) as the Construction Manager, Heery International as the Program Manager and Robert A. Stern as the Architect.

STATEMENT OF OBJECTIVES

The objectives of the audit were as follows:

- 1) To determine whether AELP, Heery International, and Robert A. Stern and their subcontractors were paid in accordance with the terms of the contracts; including whether documentation supported the payments.

- 2) To determine that the Amendments for the contracts between AELP, Heery International, and Robert A. Stern were properly approved and executed in accordance with the contracts.

AUDIT CONCLUSIONS

- 1) Payments made to AELP, Heery International, and Robert A. Stern were not in accordance with the contract nor were they all adequately supported. Inappropriate reimbursements and reimbursements exceeding allowances were noted.

- 2) Amendments to the AELP contracts were not approved and executed in accordance with the contract. Payments were made prior to approval of amendments. For Heery International and Robert A. Stern, we were unable to determine compliance with those contracts because of insufficient documentation.

SIGNIFICANT FINDINGS

- Discrepancies between contract language and the contract exhibits.
- Policies and procedures for contract payment review were vague and not descriptive.
- Payment applications with supporting documentation were not properly reviewed by the City to determine the accuracy and appropriateness of the payment requests.
- The Program Manager's (Heery International, Inc.) review of the payment requests from AELP resulted in memos advising the City to make partial payments. There were only five (5) out of the twelve (12) instances when the City followed the Program Manager's advice.
- There is no way to verify that the total for SDBEs is accurate.
- Payments were made before amendments were approved.

OFFICE OF THE COUNCIL AUDITOR

Suite 200, St. James Building



January 31, 2006

Report No. 612

Honorable Members of the City Council
City of Jacksonville

INTRODUCTION

Pursuant to Section 5.10 of the Charter of the City of Jacksonville and Chapter 102 of the Jacksonville Municipal Code, we conducted an audit of the Better Jacksonville Plan Main Library Project, which included contract compliance between Auchter, Elkin, Lodestar, and Parris (AELP), Heery International, and Robert A. Stern and the City of Jacksonville, review of the request for payments from the contractors, and approval of amendments to the contracts and present this report thereon.

In 2000, the Better Jacksonville Plan was approved with a budget of \$2.25 billion for a comprehensive growth management strategy that provides road and infrastructure improvements, environmental preservation and targeted economic development, and new and improved public facilities. The Plan is funded through a half-percent sales tax and by leveraging existing revenue sources. Included in the new and improved public facilities are library branch improvements and a new main library downtown for a total original budget of \$150 million.

For a budget of \$55 million the City was to build six new branch libraries and expand and/or renovate twelve branch libraries. A new main library was to be built with a budget of \$95 million. As of October 24, 2005, the budget for the new main library was \$94,462,395. The amount that has been expended as of October 24, 2005 was \$86,657,648 with an encumbered amount of \$6,665,155 for a remaining balance of \$1,139,591. Additional funding of \$6.3 million and \$970,000 was approved by the City Council in October 2005 and November 2005, respectively, bringing the total construction budget for the new main library to \$101 million.

The three major contracts for the construction of the new main library include Auchter, Elkins, Lodestar, and Parris (AELP) as the Construction Manager, Heery International as the Program Manager and Robert A. Stern as the Architect.

The total contract amount along with the amendments as of October 2005 for AELP was \$68,486,856. The construction amount of the contract was \$59,579,054. That amount included a Stated Budget Ceiling of \$40,779,054, and a City Direct Purchase amount of \$18,800,000. The contract also included \$8,907,802 as the Construction Manager's Fee which is not included in the construction amount. The contract with AELP for Construction Management Services has both "lump sum" components and "allowance" components with

changes in work to be based on actual costs, without mark up for Field Support costs and Reimbursable costs. Manager's Fee on changes in work will be priced in accordance with rates provided in Exhibits to the contract.

The total contract amount along with the amendments as of October 2005 for Heery International was \$10,389,580 for Program Management services. These services included the overseeing of the design and construction (performed by others) of the new main library and the other branches. One of their responsibilities was to review and approve payments to others on behalf of the City. Based on the contract language, the Heery contract payments were to be based on actual costs up to a maximum amount in three areas – Initial Program Management Services, Reimbursable Miscellaneous Costs, and Out-of-Town Travel.

The total contract amount, including the amendments as of October 2005 for Robert A. Stern was \$7,111,440. Compensation to the architect per the contract language was to be based on a fee and reimbursables with a maximum indebtedness to the City. However, based on the Exhibit to the contract, the contract fee was comprised of lump sum amounts.

JAXTRACS

In fiscal year 2001 the City of Jacksonville purchased a Project Management Software System known as JaxTracs. The purpose of the system was to centralize the management of data, standardize data formats, retrieve data faster, track multiple projects simultaneously and be aware of project changes, funding and scheduling. Prolog and Prima Vera (P3) are the sub-systems under JaxTracs that were to be utilized managing the Better Jacksonville Plan projects. Prolog is the financial management tool and P3 was to be used for project scheduling. The two systems, including the website application, cost approximately \$329,966. This system was never fully implemented. The reports are printed out and placed in a notebook, but the information is not used to make critical decisions. Management has not required the use of the JaxTracs system and subordinate City employees have not been willing to learn and use the system. Based on our review of the Prolog sub-system and its reconciliation to the City's FAMIS accounting system, for purposes of this audit we relied on the figures presented in the Prolog System.

STATEMENT OF OBJECTIVES

The objectives of the audit were as follows:

- 1) To determine whether AELP, Heery International, and Robert A. Stern and their subcontractors were paid in accordance with the terms of the contracts; including whether documentation supported the payments.

- 2) To determine that the Amendments for the contracts between AELP, Heery International, and Robert A. Stern were properly approved and executed in accordance with the contracts.

STATEMENT OF SCOPE

The audit period for detailed testing of payments made to AELP, Heery International, and Robert A. Stern was August 1, 2001 through March 8, 2005. The scope of the audit included all payments made to the contractors and the services received per the agreements with the City of Jacksonville for the construction of the Jacksonville Main Library and Parking Garage.

STATEMENT OF METHODOLOGY

We reviewed the agreements between AELP, Heery International and Robert A. Stern and the City of Jacksonville. We obtained and performed an analysis on requests for payments including such items as cost detailed reports, payroll records and subcontractor agreements that related to various invoices exhibited in the contracts.

For Objective 1, testing included selecting a sample of pay requests from each of the three contractors. We only reviewed the requests for payment for AELP and Heery International since the budgeted reimbursable amounts were an allowance amount or an amount not to exceed. We did not review Robert A. Stern pay requests due to the fact that the contract exhibit was comprised of lump sum amounts. We also reviewed the monthly SDBE (Small Disadvantaged Business Enterprise) Reports submitted with each of the sample selection pay requests for AELP and all pay requests for Heery International and Robert A. Stern to determine if the SDBEs were paid within the contracted amounts.

For Objective 2, in order to determine whether changes in the project were authorized by an amendment signed by the City before the change was implemented, we compared the AIA Continuation Sheets to the corresponding amendment and noted any changes to the budget or the balance to finish for the AELP contract. We were unable to determine whether work was performed before an amendment was approved for Heery International and Robert A. Stern based on documentation submitted with the requests for payment. Heery International and Robert A. Stern were not required to submit AIA Continuation Sheets since they were not performing the construction of the main library.

STATEMENT OF AUDITING STANDARDS

We conducted our audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgements and conclusions regarding the organization, program, activity, or function under audit. This audit also included an assessment of applicable management controls and compliance with requirements of laws and regulations when necessary to satisfy audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

AUDITEE RESPONSES

Responses from the auditee have been inserted after the respective finding and recommendation and are *italicized*. We received these responses from the Interim Director of Public Works, E. T. Hall in a memorandum dated April 6, 2006.

AUDIT CONCLUSIONS

- 1) Payments made to AELP, Heery International, and Robert A. Stern were not in accordance with the contract nor were they all adequately supported. Inappropriate reimbursements and reimbursements exceeding allowances were noted.

We, in good faith, believe that most payments have been made in accordance with the three (3) contracts associated with this project. Although there have been some documentation and supporting back-up deficiencies, no payment approvals ever exceeded the executed total contract amount. However, we also believe that these deficiencies should be eliminated in the future.

- 2) Amendments to the AELP contracts were not approved and executed in accordance with the contract. Payments were made prior to approval of amendments. For Heery International and Robert A. Stern, we were unable to determine compliance with those contracts because of insufficient documentation.

We believe that the AELP contract and subsequent amendments were approved and executed in accordance with the major components of the contract but agree that there were some components that were neglected. However, although not excusable, the neglected components were solely associated with the project management effort to reduce delays on the project and keep the contractor progressing.

OVERALL FINDINGS

Finding #1 Contract Language

A review of the contracts between the City and the contractors revealed discrepancies between contract language and contract exhibits, specifically in the area of compensation. Whereas the contract language may address compensation based on specific rates, the attached exhibits to the contract refer to “lump sum” amounts. The conflicting language between the contract payment terms and the exhibits reduced the City’s ability to control contract costs or to quantify services delivered to the City. Another discrepancy is between the stated amounts within the contract documents and the amounts in the exhibits. This conflicting language and the fact that the language in the Exhibit supercedes the language in the body of the contract, the City has been subject to potential cost that may not have been the original intent of the parties drafting and agreeing to the contract.

Recommendation to Finding #1

We recommend the Public Works Department request that the City’s General Counsel’s Office become more proactive in the drafting and review of all City contracts to insure that all contractual exhibits and attachments are consistent with the language of the contract and serves the best interest of the City. In order to effectively defend the City’s contractual rights, the legal expertise of the General Counsel should be used to improve, standardize, and clarify contract terms that are less ambiguous and specific in their terms and payment calculations. We also recommend that the contracts give the City quantifiable services for payments rendered against the projects. We further recommend that either the American Institute of

Architects (AIA) standard contracts be utilized, if appropriate, or be used as a format to ensure all terms and conditions are addressed.

PUBLIC WORKS RESPONSE TO FINDING #1

We agree that there is conflicting language in the contract and exhibits concerning the interpretation of whether this is a “lump sum” or “unit cost” type contract. However, it was always our intent for all three of the contracts to be "lump sum".

We also agree that the Office of General Counsel (OGC) should "become more proactive in the drafting and review of all City contracts to insure that all contractual exhibits and attachments are consistent with the language of the contract". Furthermore, we are happy to report that OGC is already actively involved in the preparation of Public Works contracts.

Finding #2 Policies and Procedures

After reviewing the Better Jacksonville Plan Division’s policies and procedures for contract management, it was determined that policies and procedures related to the payment review process for the Contract Specialist and the City Project Managers’ responsibilities were vague and not descriptive of actual procedures to be followed.

Recommendation to Finding #2

We recommend that the BJP Division revise the current policies and procedures for the City Project Managers and the Contract Specialist to be descriptive and clear and to advise employees to follow the policies and procedures. Furthermore, administration needs to review the responsibilities of the Contract Specialist and City Project Managers to determine if there is adequate staff.

PUBLIC WORKS RESPONSE TO FINDING #2

Public Works understands the determination that the payment review procedure responsibilities for the Contract Specialist and City Project Managers were “vague and non descriptive”. This was never the intent of our process and we agree that the more detailed and clear the process is defined, the more consistent and complete this process will function.

Consequently, we will completely review and evaluate the current payment review policies and procedures in an effort to bring more clarity and detail to the process. To ensure the most effective procedural improvements, we would certainly appreciate any specific modification recommendations from your Office.

AUDIT OBJECTIVE #1

In order to determine if AELP, Heery International, and Robert A. Stern and their subcontractors were paid in accordance with the terms of their contracts and whether the documentation submitted to the City supported the payments, we reviewed requests for payments submitted by the contractors.

Finding #3 City Review of Payment Requests

Payment applications with supporting documentation were not properly reviewed by the City to determine the accuracy and appropriateness of the payment requests resulting in overpayments, underpayments, payments for disallowed costs, and payments for items lacking sufficient documentation. Although the dollar value of these errors in the payments tested were immaterial to the total cost of the project, the potential cost of errors amongst the payments not tested could be much greater. In addition, the errors are indicative of the lack of proper review of payment requests.

Heery Contract (Program Manager)

Within the contract documents for Amendment #1 of the Heery contract, Exhibit G-1 lists out the items that are allowable for reimbursement. There were some reimbursements from the City to Heery that appeared to be inappropriate expenses according to the contract. We reviewed nine (9) pay requests, which included a total of 215 vendor invoices.

Out of 215 invoices, we found the following:

Number of Instances	Percentage of Instances	Finding	Dollar Value
10	5%	Inappropriate for reimbursement per the Contract	\$1,671
20	9%	Insufficient supporting documentation	\$64,505
36	16.7%	Charged to the wrong reimbursable category (i.e. Travel reimbursements were charged to Printing and Reproduction)	\$20,737
9	4%	Date of the invoice was more than 3 to 13 months prior to the period being billed	\$4,556

Due to the number of reimbursements for travel, we performed additional testing. Included in the 215 invoices were 72 travel reimbursements of which 32, or 44%, of the requested reimbursements appeared to be inappropriate. For example, one person in travel mode was claiming three dinners due to the fact that this person took two other people to dinner. As stated in the contract travel expenses shall be reimbursed according to the City’s Ordinance Code.

AELP Contract (Construction Manager)

Exhibit H of the contract between the City and AELP determines what is appropriate for reimbursement. We reviewed nine (9) pay requests that included a total of 470 vendor invoices submitted for reimbursement.

Out of 470 vendor invoices, we found the following:

Number of Instances	Percentage of Instances	Finding	Dollar Value
37	8%	In appropriate for reimbursement per the Contract	\$10,446
77	16%	Insufficient supporting documentation	\$139,681

We also reviewed 92 subcontractor AIA documents, which is the supporting documentation for the site work payments made to AELP. The site work portion of the payments also included 153 supplier invoices, which are not required to submit AIA documents, and cost detail reports for labor. Of the 153 supplier invoices observed, 12 or 8% were insufficient to support payment and totaled \$175,773.

Out of 92 subcontractor AIA documents, we found the following

Number of Instances	Percentage	Finding
13	14%	Payment requests were not notarized
52	56%	Lien releases were not provided

In addition, there were eight (8) instances where payment was being requested for stored materials, none of which had invoices or back up documentation.

Reimbursements made to AELP exceeded the allowance amount of \$1,288,004 by a total of \$48,889. Although the dollar values associated with these findings are immaterial, they are indicative of the lack of adequate review of pay requests.

Robert A. Stern Contract (Architect)

Detailed testing of payment requests was not performed because according to the contract exhibits in the Robert A. Stern contract, the contract was comprised of lump sum amounts.

Recommendation to Finding #3

We recommend that the City review all pay requests to ensure all requests have sufficient documentation, are appropriate for reimbursement, charged to the appropriate budgeted reimbursable category based on the contract documents and that the date of the invoice coincides with the period of the request.

PUBLIC WORKS RESPONSE TO FINDING #3

Public Works does not disagree with the findings that some payment applications contained inconsistencies with reimbursement items. Although we agree that this is not appropriate, it is our belief that this occurred with the sole purpose of reducing further project delays. Furthermore, at no time were payments approved that exceeded the City's overall contract

limit. Concerning the specific instances provided, we have the following comments;

Heery Contract

The “Inappropriate for reimbursement” instances, should have been returned and not approved until such time as adequate support for the expense had been produced. At that time, an appropriate Contract Amendment should have been executed and then payment made. The “Insufficient supporting documentation” should have been cleared up at the time of payment review. It is believed that these invoices were appropriate and they just required adequate documentation that, if requested, would have validated the expense. The “Charged to the wrong reimbursable category” was the result of trying to reduce additional delays to the contract. Although it is understood that the appropriate procedure would have been to execute a Contract Amendment, the project management team inappropriately made the decision to proceed without appropriate approval. The “Date of the invoice was more than 3 to 13 months prior to the period being billed” is inappropriate and is a hardship on the consultant. However, on many occasions the original invoice is not complete or a dispute with the City Project Manager and the consultant delays approval for payment. Although the appropriate manner to address such issues is to return the payment application unpaid with documentation, the City did not suffer any financial penalty for this action.

AELP Contract

The “Inappropriate for reimbursement” instances, should have been returned and not approved until such time as adequate support for the expense had been produced. At that time, an appropriate Contract Amendment should have been executed and then payment made. The “Insufficient supporting documentation” should have been cleared up at the time of payment review. It is believed that these invoices were appropriate they just required adequate documentation that, if requested, would have validated the expense. The “Payment requests were not notarized” and “Lien releases were not provided” items associated with Subcontractor documents is unacceptable. These are important procedural deficiencies that we will address in the future.

Robert A. Stern Contract

The contract was lump sum that was defined by a Scope of Services. There were, however, several reimbursable components to the contract.

Further, we agree with the recommendation and understand the need to ensure/validate adequate pay requests’ documentation and that they are appropriately addressed by the contract. It is, however, our belief that any delinquent activities were directly associated with the sole desire to reduce project’s delays and move the design/construction forward as effectively as possible. Additionally, no payments were ever authorized beyond the City’s overall contractual indebtedness. Nonetheless, we recognize the issues addressed herewith, their importance to the proper execution of City contracts and will ensure that the recommendations are implemented.

Finding #4 Program Manager (Heery) Review of Payments

The Program Manager's review of the payment requests from AELP resulted in memos advising the City to make partial payments due to AELP's omission of certain required information with their pay requests. Twelve (12) of the 26 requests for payment or 46% had memos suggesting a reduction in payment. The total suggested reductions were \$1,360,790. Out of the twelve (12) memos, only five (5) or 42% of the recommended reductions were withheld from the payments for a total of \$694,693. The suggested reductions were due to AELP not satisfying contractual responsibilities, including not posting the budget to JAXTRACS, not providing a Construction Market Analysis, not providing a Quality Control Program or not providing a detailed Construction Schedule. Per the contract between AELP and the City, there are certain reports required to be submitted with each payment request. Other suggested reductions were due to line items that were indicating they were over 100% complete. There were also concerns about work being performed under change orders that were not formally approved and were being funded by a temporary reduction of contingency funds. Article 10 of the contract states "all changes in the project must be authorized by an amendment signed by the City before the change is implemented and/or work performed."

Recommendation to Finding #4

Whenever the City contracts for Program Manager services that include their review and approval of payment requests from other contractors, the City should support the recommendations of the Program Manager unless the City can document reasons for not doing so. If the City cannot rely on the review and recommendations of the Program Manager, the services of that Program Manager should be terminated. Furthermore, when the City enters into a contract that contains certain contractor obligations, then the City should enforce the requirements of the contract.

PUBLIC WORKS RESPONSE TO FINDING #4

Public Works does not disagree with the findings that the City's Program Manager suggested payment reductions concerning the Contractor's (AELP) payment applications that were not followed by the City's Project Manager. It is very important to understand that the Program Manager's "suggested" changes were taken under advisement by the City's Project Manager and we believe the payments were made in the best interest of the City to keep from adversely impacting the project. Although the Program Manager's suggestions were valid, the City Project Manager's judgment differed in only 5 of 26 requests for payment (as they were in agreement with the other 21 requests).

Public Works doesn't disagree that "work being performed under change orders that were not formally approved and were being funded by a temporary reduction of contingency funds" occurred. However, the intent associated with this activity was solely to reduce project delays. In each of these cases, the Contractor's progress would have been adversely impacted by not proceeding and this process was the most effective way to proceed. Nonetheless, it is understood that this procedure was not in accordance with the contractual requirements and is not acceptable.

Additionally, Public Works agrees that the City's Project Manager should support the recommendations of the Program Manager and should better document reasons for not

doing so. However, we respectfully do not agree that just by rejecting Program Manager's recommendation on 5 of 26 instances, there is no need for their services. The City's Project Manager relies upon the Program Manager to perform significant documentation and detail associated with the project's contractual management effort, he/she must then utilize their recommendations, and other factors, to make a decision that is in the best interest of the City. The Program Manager's input is one large component to a final decision but not the only component.

Public works agrees with the recommendation to enforce all requirements of an executed contract. We do believe, however, that there may be a need to modify some of the current contractual language to better accommodate specific construction projects. We will discuss this with City construction contract experts within the Office of General Counsel.

Finding #5 Small Disadvantaged Business Enterprise (SDBE) Reports

The amounts listed on the SDBE Reports are unreliable. Two totals are listed on the report, one is titled SDBEs and the other is titled Non-SDBEs. The amounts listed for SDBEs are actually included in the non-SDBE totals. The payment requests submitted by the subcontractors do not include supporting documentation from their subcontractor/SDBEs that performed the work. Therefore there is no way to verify that the total for SDBEs is accurate. Also, according to documentation provided by the Equal Business Opportunity Office, 14 out of 69 subcontractors were not approved SDBEs. According to Exhibit C of the contract between the City and AELP, "MBEs participating on City Projects must be certified as an MBE with the City's Equal Business Opportunity Office or the State of Florida's Office of Supplier Diversity."

Recommendation to Finding #5

We recommend that the SDBE Reports include guidelines to ensure accurate completion. We also recommend that SDBEs participating on a City Project be verified to make sure that they are certified as an SDBE with the Equal Business Opportunity Office or the State of Florida's Office of Supplier Diversity according to contract documents.

PUBLIC WORKS RESPONSE TO FINDING #5

Public Works agrees that the SDBE Reports were not completely reliable and some of the payment requests were deficient of supporting documentation. Consequently, we have since worked closely with the City's SDBE office to modify our reporting process. This modified reporting process better validates SDBE participation on a monthly basis.

AUDIT OBJECTIVE #2

Our second objective was to determine that the amendments for the three major contracts for the construction of the Main Library with the City of Jacksonville are properly approved and executed in accordance with the contracts.

Finding #6 AELP Amendments

For amendment #2, payments were made resulting in negative line item balances (i.e. over budget) before the approval of the amendment. Amendments #4 through #12 added dollars to change the bottom line of the contract rather than allocating to each line item in the Schedule of Values. The Schedule of Values on the AIA payment applications were changed based on negative values or needed changes to reflect work modifications; however, the total changes to the Schedule of Values did not always equal the total value of the amendment.

Recommendation to Finding #6

We recommend that payments not be made for items in excess of budgeted amounts before an amendment is approved. In accordance with Article 10 of the contract, amendments should be approved only for changes in the scope of the work and not just to cover cost overruns. Amendments should be allocated to each line item on the Schedule of Values rather than a change to the bottom line.

PUBLIC WORKS RESPONSE TO FINDING #6

Public Works agrees with the construction Amendments #4 through #12 added contract value to the “bottom line of the contract rather than allocating to each line item in the Schedule of Values”. However, as this contract was a Lump Sum type document, the contractual effect of these Amendments were not associated with the Schedule of Values, they were directly related to the total value.

Nonetheless, we understand the recommendations and agree that no payments should be authorized that exceed contractual amounts. Concerning changes in construction scope, it should be noted that changes in the scope can include quantity overruns that are attributable to design modifications and/or omissions. These types of “overruns” are a justifiable contract increase. Lastly, we will work to ensure that future Contract Amendments are reflected throughout the project’s Schedule of Values as recommended.

Respectfully submitted,

Kirk A. Sherman

Kirk A Sherman, CPA
Council Auditor

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