

OFFICE OF THE COUNCIL AUDITOR
Suite 200, St. James Building



March 20, 2006

Audit Letter 2006-03

Councilwoman Pat Lockett-Felder
Jacksonville City Council District 7
117 West Duval Street, Suite 425
Jacksonville, Florida

Dear Councilwoman Lockett-Felder,

In response to your request, we have completed a review of the contract disagreement between Brown Brothers Concrete Inc. (BBCI) and JEA over work performed under Contract #sWSC-159-02 (Restoring Disturbed Concrete Paved Areas-West) and WSC-160-02 (Restoring Disturbed Concrete Paved Areas-East). We are not attorneys and cannot opine on whether or not JEA legally owes any compensation for the claims stated below. However, based on our review, we have calculated the dollar amount of compensation that it appears JEA should pay BBCI for the claims.

BBCI Claims for Compensation from JEA

Uncompensated Demolition and Hauling of Concrete
Uncompensated Utility Locates
Contributing to the Misappropriation of Funds by the Surety Company
Award of Subsequent Concrete Contracts to Another Company

Summary of Work Performed

We performed the following work in reviewing the contract disagreement:

1. We met with representatives of BBCI, JEA, and the City of Jacksonville.
2. We reviewed the change order request, civil claim statement, contract, bid documents, invitation for bid documents, contract specifications, City standard specifications, spreadsheets summarizing work tickets, the JEA purchasing code, documents related to BBCI's surety company and the surety's lockbox system, documents related to the City of Jacksonville's SBE/SDBE and JSEB programs, and other miscellaneous documents.
3. We listened to the tape recording of the JEA Appeals Board Hearing.
4. We researched each of BBCI's claims for compensation stated above, as well as a few additional items mentioned to us in meetings with BBCI.
5. We calculated the amount due from JEA to BBCI to close out the contract.

Assumptions Utilized

1. BBCI demolished everything it hauled. This assumption gives BBCI credit for demolishing more concrete than it actually did, but it is necessary in calculating a uniform rate for demolition and hauling.
2. The average thickness of the concrete sidewalks and driveways demolished and hauled was 5 inches.
3. Twenty linear feet of curb equals one cubic yard.

Uncompensated Demolition and Hauling of Concrete

The question to be answered is whether there is any ambiguity in the contract regarding demolition and hauling of concrete and if so, at what rate should JEA compensate the contractor. It appears that some demolition and hauling was contemplated in the contract, but maybe not to the extent or in the quantity actually performed. We agree with the quantities submitted by BBCI, but disagree with their requested rates, which we found to be excessive and without basis. The rate we used to calculate the compensation due is the rate that BBCI bid for the same exact work on the subsequent JEA contract for restoring disturbed concrete. Based on our review, it appears that JEA should pay BBCI \$106,740.83 for demolition and hauling of concrete. (Refer to the report exhibit for the calculation.) BBCI has stated publicly that this amount will not cover the cost of their rental equipment. The contract in dispute is not a cost-plus or time and materials contract. The contract in dispute is a unit price contract, where the contractor is paid a unit price for each unit of work completed. The amount that the contractor spent to perform the work is not a factor.

Uncompensated Utility Locates

Calling in utility locates is the act of calling the State of Florida's "Call Before You Dig" 800#. The State will then send someone out at no charge to the contractor, to mark the underground utilities in an effort to prevent damage to the utilities and provide a safe working environment for the contractor. Although BBCI claims that calling in utility locates was not a requirement of the contract, we found it in Section V, Paragraph 14 which states "Contractor shall make all necessary arrangements and take all actions which may be required to avoid interference with the maintenance and operation of power, telephone, water, sewer, gas and other utility lines, properties and facilities of JEA or others all in a manner satisfactory to JEA and operators thereof." Based on our review, it appears that JEA owes BBCI nothing for performing utility locates.

Contributing to the Misappropriation of Funds by the Surety Company

BBCI had a funds administration agreement whereby JEA would send BBCI's contract payments to a specified bank account and address for the funds administrator to administer on BBCI's behalf. The funds administrator went bankrupt and is still in possession of between \$75,980.56 (per BBCI's attorney) and \$69,211 (per the funds administrator's attorney) of BBCI's money. BBCI claims that unauthorized actions taken by JEA have contributed to the misappropriation of BBCI's funds by the funds administrator. BBCI initially claimed that JEA without BBCI's knowledge or authorization, began making checks out in the name of the funds administrator and sending them to a different address than had been agreed upon. We found that JEA did receive a written authorization from BBCI and the funds administrator on November 3, 2003 regarding the change in question. When we showed this written authorization to representatives of BBCI, they first questioned its authenticity, but later just disagreed with the meaning of the document.

During the term of the contract, JEA paid the funds administrator \$881,672.41 on behalf of BBCI. The funds administrator remitted all but the contested amount (\$69,211 or \$75,980.56) for the benefit of BBCI. The amount of contested funds is the amount of BBCI funds that was on hand with the funds administrator when the funds administrator declared bankruptcy. Per BBCI, it has not filed

a proof of claim with the bankruptcy court in an attempt to recover the funds that JEA paid to the funds administrator on BBCI's behalf. The deadline for filing a claim with the bankruptcy court is April 10, 2006. It appears that BBCI's claim should be with the funds administrator and not JEA.

Award of Subsequent Concrete Contracts to Another Company

BBCI claims that it is owed compensation for contracts that it was not awarded, specifically the east and west contracts for restoring disturbed concrete, Solicitation Number WCS-034-05. The solicitation for bid states that the "Contractor must have a current certification as a JSEB to participate in the Sheltered Market Bid". JEA received two bids, one from BBCI and one from another contractor. JEA correctly determined that neither bidder was eligible to bid because neither was a JSEB at the time of the bid opening on April 5, 2005. (JEA later rebid the contracts and awarded them to the lowest bidders, neither of which was BBCI).

BBCI states that they were a JSEB at the time of the bid. This is incorrect. BBCI had previously been certified as an SBE, but was not certified as a JSEB. The SBE/SDBE Program was replaced by the JSEB program in accordance with City Ordinance Code Section 126.609. The City EBO office provided us with documentation showing that it had notified BBCI five times in writing of the need to apply for or provide additional documentation to the EBO office for the JSEB Program. BBCI did not comply and therefore was not a JSEB. In addition, JEA's bid documents clearly state that "JEA has the right, and acting in its best interest, to either accept or reject any or all Bids". It appears that BBCI's claim is without merit.

Conclusion

Based on our review, it appears that JEA should pay Brown Brothers Concrete Inc. \$106,740.83 to close out the contracts.

Respectfully submitted,

Kirk A. Sherman

Kirk A. Sherman, CPA
Council Auditor

Audit performed by:
Kyle Billy, CPA
Thomas Carter, CPA

- xc. Jim Dickenson, JEA Managing Director
- John McCarthy, JEA Director of Procurement
- Keith Brown, President, Brown Brothers Concrete, Inc.

Council Auditor's Office
JEA/Brown Brothers Concrete Contract Dispute
Calculation of Additional Compensation For Demolition and Hauling

Quantity of Curb Demolition and Hauling (linear feet)	CAO Recommended Rate of Compensation	(1)	Compensation Recommended for Curb Demo & Hauling	Total Compensation
<u>2317.78</u>	\$	3.00 (linear ft)	6,953.34	\$ 6,953.34
	\$	60.00 (cubic yd)		
Quantity of SW/DW Demolition and Hauling (square yards)	CAO Recommended Rate of Compensation	(1)	Compensation Recommended for SW/DW Demo & Hauling	
<u>11979.29</u>	\$	8.33 (sq. yard)	99,787.49	99,787.49
	\$	60.00 (cubic yd)		
Total				<u><u>\$ 106,740.83</u></u>

(1) This is the rate that BBCI bid for the same exact work on the subsequent JEA contract for restoring disturbed concrete.