Improvements to School Modernization Contract Administration Could Save District Money

October 19, 2020

A report by RSM US LLP for the Office of the District of Columbia Auditor

Kathleen Patterson, District of Columbia Auditor
www.dcauditor.org
October 19, 2020

The Hon. Phil Mendelson, Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue N.W.
Washington, DC  20004

Dear Chairman Mendelson and Councilmembers:

I am pleased to present this school modernization report prepared for the Office of the D.C. Auditor by RSM US LLP, to fulfill our obligation under D.C. Code §38-2973.05 to report on the use of capital funds by the District of Columbia’s Public Schools (DCPS), a task managed for DCPS by the Department of General Services (DGS).

Our previous school modernization audits identified internal control deficiencies across the program and some have focused on individual school modernizations. For this report we issued a request for proposals from firms experienced in public sector construction audits and were pleased to contract with RSM which has experience in the District of Columbia as well as nationally.

We selected the Eliot-Hine Middle School Modernization Project, a Ward 6 school at 1840 Constitution Avenue N.E., with an overall project budget of $84 million and Turner Construction serving as the construction manager. The contract compliance audit was designed with two main tasks: identifying any risks in the contract that could impact cost and legal compliance, and identifying any controls needed to improve DGS contract administration.

Based on the project schedule we had assumed the report would encompass all close-out activities but that proved not to be the case, so in addition to this report we are engaging RSM to also review the final close-out activities on the project during Fiscal Year 2021 and anticipate a follow-up report in spring 2021.

RSM identified several areas for improvement outlined in the Executive Summary and detailed in the report. As we state in our response to DGS’s written comments, we are pleased that the agency has committed to address all of the report’s recommendations. Director Keith Anderson noted that DGS officials “share the common goal of making improvements in the execution of the school modernization program and are taking strides to improve the existing program.” We commend the agency for that commitment and thank them and RSM for the collaboration that resulted in the following report.

Sincerely yours,

Kathleen Patterson
District of Columbia Auditor
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Executive Summary

Why ODCA Did This Audit

D.C. Code § 38-2973.05 requires ODCA to conduct an annual audit of school modernization projects. ODCA selected the Eliot-Hine Middle School modernization project because construction was partially complete during the engagement and there would be an opportunity to implement recommendations and recover costs from the audit. The Eliot-Hine project also was selected because the construction contract is cost-based, which is common for construction contracts, but carries increased risks compared to a fixed-price contract. ODCA contracted with an outside firm with experience auditing construction contracts to audit the contract between the Department of General Services (DGS) and the construction manager, Turner Construction Company (Turner).

What ODCA Found

Turner did not exclude its own subsidiary, Turner Logistics, from the calculation of Subcontractor Default Insurance (SDI) ($70,070). The General Conditions included transactions for disallowed costs ($14,000) and transactions without records to show that they were related to the project ($919). In addition:

- DGS paid Turner for workers not initially listed on the certified payroll and without reconciling the certified payroll to the pay application.
- Some labor costs including positions, employees, hourly rates, and work performed before the Notice to Proceed was issued do not align with the contract terms.

What ODCA Recommends

During final project accounting and closeout, DGS should reconcile SDI costs and request a credit of $70,070 if Turner Logistics is included in the subcontractor listing. DGS should request a credit of $14,919 for the disallowed and unsupported costs.

In future projects, DGS should:

- Reconcile the labor costs submitted with the pay application to the certified payroll.
- Require the construction manager to obtain written pre-approval before billing for items that are not included in the contract documents.
- Specify allowable fringe benefit costs in the contract.

In the closeout for this project, DGS should reconcile the contingency. The Department of Employment Services should verify compliance with local labor requirements.
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SUMMARY OF RESULTS

The primary objective of the engagement was to understand the contractual relationship between the Department of General Services ("DGS") and the Construction Manager ("CM") for the Eliot-Hine Middle School Modernization project, identify primary areas of risk, perform detailed testing procedures designed to validate the contractual compliance of billings and costs of work. Our objectives also included identification of improvements to project management controls during contract administration. During our detailed testing procedures, we identified the following observations and improvement opportunities:

<table>
<thead>
<tr>
<th>Observations and Improvement Opportunities</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Subcontractor Default Insurance (SDI) calculation</td>
<td>$ 70,070</td>
</tr>
<tr>
<td>The CM’s subsidiary was included in the calculation of SDI costs; however, the SDI policy excludes subsidiaries.</td>
<td></td>
</tr>
<tr>
<td>2. Support for General Conditions costs</td>
<td>$ 14,919</td>
</tr>
<tr>
<td>General Conditions included transactions for disallowed costs, and transactions which were not supported by records to evidence actual cost to the project.</td>
<td></td>
</tr>
</tbody>
</table>

**Observations**

**Improvement Opportunities**

IO.1 Certified payroll supporting documentation

Craft employees were charged to the project, but were not initially reported on the CM’s certified payroll reports. Management should reconcile the labor costs submitted with the pay application to the certified payroll support.

IO.2 Allowable labor costs

Some labor costs, while accepted by DGS as appropriate for the project, do not align with the contract terms, including positions, employees, and staff hourly rates inconsistent with the contract. Management should require the CM to obtain pre-approval before billing for items not specifically included in the contract documents.

IO.3 Contract language for fringe benefits

Staff fringe costs, which we have seen restricted or disallowed on other Construction Manager at Risk ("CMAR") projects, were accepted by DGS on this project. Management should include contract language to better define composition and allowability of staff fringe costs.

IO.4 Closeout procedures

Management should incorporate into its project closeout procedures the reconciliation of SDI costs, reconciliation of local labor requirement, and reconciliation of contingency.

The Eliot Hine Modernization project includes a myriad of complex construction budgeting, accounting, and compliance requirements. Our procedures revealed that at the interim date of this report, the project is generally well controlled and accounted for. As discussed in further detail herein, we noted DGS Management has taken certain positions, and / or allowed certain treatments based upon their understanding of the contract and their negotiations with the CM. Consultation with legal counsel to discuss these matters in greater detail may be appropriate. Lastly, we recommend certain procedures be performed upon closeout of the project, due to the inherent complexities associated with shared savings validations and other items outlined in Improvement Opportunity #4.
Eliot-Hine Middle School
RSM Risk Report
ISSUED: September 11, 2020

**PROJECT BACKGROUND**

The Eliot-Hine Middle School campus consists of four adjoining buildings, constructed between 1931 and 1964. The latest building addition resulted in misaligned levels between structures, operational issues, and a facility oversized for the student body. The Department of General Services ("DGS") oversees capital construction and facilities management of existing District-owned properties. In March 2018, DGS released a Request for Proposal ("RFP") for Design-Build services, and ultimately awarded a Construction Manager at Risk ("CMAR") contract to the Turner Construction Company in December 2018. While the RFP and initial agreement utilized the term "Design Builder," the agreement executed between DGS and the CM was converted to use the term Construction Manager.

This multi-year project incorporates renovation of the older, historic structures and demolition of the latest addition. A swing plan was implemented for the construction phase. During the first year of construction, students were moved into the historic portions of the building while the 1961 portion of the building was demolished.

Students were moved into modular classrooms for the second year of construction. During this phase, the remaining school structure was modernized, including work such as redesigning classroom layouts, upgrading the HVAC system, upgrading the building to current code standards (including ADA and life safety systems). An addition was constructed for the gymnasium and other physical education space. During this phase, challenges related to simultaneously sequencing the new construction and abatement of the historical building, other design changes, and contaminated soils resulted in schedule and cost impacts. The CM and DGS negotiated the revised completion date and cost change, and executed the agreement in May 2020. The revised schedule is detailed in the table below. Upon completion, the modernized facility will accommodate 480 students and achieve LEED Gold certification.

<table>
<thead>
<tr>
<th>Key Project Points</th>
</tr>
</thead>
<tbody>
<tr>
<td>Architect</td>
</tr>
<tr>
<td>Construction Manager</td>
</tr>
<tr>
<td>Executed GMP Amount</td>
</tr>
<tr>
<td>Notice to Proceed (NTP)</td>
</tr>
<tr>
<td>Substantial Completion – Original</td>
</tr>
<tr>
<td>Substantial Completion – Revised</td>
</tr>
<tr>
<td>Phased Completion Detail:</td>
</tr>
<tr>
<td>Renovated Eliot-Hine Middle School Building</td>
</tr>
<tr>
<td>Gymnasium and PE Addition</td>
</tr>
<tr>
<td>Music Rooms, Broadcast Media Studio, Site</td>
</tr>
<tr>
<td>Enhancements</td>
</tr>
<tr>
<td>Field and Site Improvements</td>
</tr>
<tr>
<td>Final Completion – Revised</td>
</tr>
</tbody>
</table>
OBJECTIVES, SCOPE, AND APPROACH

Objectives
The primary objective of the engagement was to understand the contractual relationship between DGS and the CM for the Eliot-Hine Middle School Modernization project, identify primary areas of risk, perform detailed testing procedures designed to validate the contractual compliance of billings and costs of work. Our objectives also included identification of improvements to project management controls during contract administration.

Scope
We performed an interim audit of the project; with our scope period covering the period from the project inception through Pay Application 16, July 18, 2018 through January 31, 2020. The project was scheduled for final completion in September 2020.

Approach

Task A – Assessment of Risks
During this phase, we reviewed the procurement of the CM, the executed Construction Manager at Risk Agreement, Guaranteed Maximum Price (“GMP”) Amendment, and all related Exhibits to the agreement. We identified risks, unfavorable terms, instances of ambiguity or contradiction, and other contract provisions not in the best interest of DC government. At the conclusion of this phase, we prepared and submitted a Comprehensive Risk Register and Unusual Risk Report, dated February 14, 2020.

Task B – Review of the Construction Project
With consideration to the risk assessment performed in Task A, we developed test procedures for key requirements noted in the Agreement and GMP. We performed detailed testing procedures to validate the reimbursable nature of costs to DGS incurred by the CM. Our procedures included, but were not limited to:

- Construction Manager’s job cost billings reconciliation
- Review of applications for payment for compliance with the contract
- Subcontractor source document review for contractual compliance and to validate costs had been actually incurred
- Detailed source documentation and contractual compliance review of general conditions, requirements, equipment rental, and contractor labor costs. Our sampled transactions were reviewed to:
  - Determine if costs invoiced are billable under the contract, and determine if they are already included under general conditions or fees (e.g. for the office, self-performed work);
  - Determine if work performed has been approved as specified in the contract;
  - Review labor adjustments to determine if they are appropriate;
  - Determine if construction manager is passing through quantity discounts on materials to DC Government;
  - Determine if total rent for each piece of equipment exceeds the market value for the equipment and if unallowable markups are included on the rental from the construction manager;
  - Review subcontracts and identify any fictitious vendors or related party transactions;
  - Determine if the cost of rework for unacceptable quality was passed through to DC Government, and if any discounts were not passed through to DC Government;
  - Determine if DC Government was billed for unallowable costs;
  - Determine if payment applications and supporting documentation were submitted after the costs they reflect were incurred;
  - Determine if payment applications included a waiver of the right to file a mechanic’s lien and all other claims, subject only to receipt of payment
OBJECTIVES, SCOPE, AND APPROACH

- Review of source documentation and recalculation of insurance
- Detailed testing of other relevant source documentation
- Development of Observations and recommendations to recover costs
- Development of Improvement Opportunities and recommendations for best practices and improvement to future contracts

At the conclusion of our fieldwork, we shared and discussed the nature of our observations and improvement opportunities with the Department of General Services ("DGS") project management and the Office of the District of Columbia Auditor ("ODCA").
OBSERVATION MATRIX

1. Subcontractor Default Insurance Calculation (“SDI”)

In our Unusual Risk Report dated February 14, 2020, we identified that the negotiated SDI rate may be inappropriately applied to costs of work not performed by subcontractors. The purpose of Subcontractor Default Insurance is to insure the project against the risk of loss associated with the default (failure) of third party subcontractors. As such, when a SDI rate is used, it should be applied only to the costs associated with work performed by subcontractors. SDI is not typically intended to cover subsidiaries or partners of the Construction Manager.

Through our review of an example SDI policy provided by the CM (as representation of the terms of their SDI program), we noted that subsidiaries and affiliates are excluded from coverage:

Section II DEFINITIONS.

Q. Subcontractor means:

1. Any legal entity that has entered into a Contract with the Insured. Subcontractor shall not include any affiliate or subsidiary of the Insured now existing or hereafter formed or acquired, whether partially or wholly owned or controlled, or any subsidiary of a subsidiary or affiliate (whether direct or indirect), or partnership or joint venture of the Insured.

In our review of the GMP amendment, we noted the stipulated 1.5% SDI was likely applied to estimated costs within Division 23 ($2,635,268), and Division 26 ($2,036,040) to be incurred by Turner Logistics, a related entity to the CM. We requested supporting information from the CM to validate the calculation of SDI costs; however, no additional information was provided. The CM further indicated that a final calculation and “true-up” of final SDI costs would be presented at project closeout.

The table below details the cost impact to the GMP:

<table>
<thead>
<tr>
<th>Entity</th>
<th>Scope</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Turner Logistics</td>
<td>Division 23</td>
<td>$2,635,268</td>
</tr>
<tr>
<td>Turner Logistics</td>
<td>Division 26</td>
<td>$2,036,040</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>$4,671,308</td>
</tr>
<tr>
<td>SDI 1.5%</td>
<td></td>
<td>$70,070</td>
</tr>
</tbody>
</table>

During final project accounting and closeout, we recommend DGS require the CM to provide the listing of subcontractors covered by the SDI policy and the amounts being covered for each subcontractor. DGS should reconcile this list, confirm the accuracy of calculations, and verify Turner Logistics is not included in the subcontractor listing. If costs associated with Turner Logistics are used in the calculation of SDI costs, we recommend DGS request a credit in the amount of the $70,070 noted above.
OBSERVATION MATRIX

2. Support for General Conditions Costs

Through our detailed testing of general conditions and general requirements items, we noted four (4) allocation transactions that were not supported by an invoice or document to evidence the actual costs incurred by the Construction Manager, and two (2) transactions that were not related to the project. Per Section 10.3 of the Agreement, costs shall be fully supported:

§10.3 Documents Required with Application for Payment. Each Application for Payment shall include detailed documentation of costs as a condition to approving progress payments, but the Construction Manager shall nevertheless maintain complete documentation of the costs.

The table below details the unsupported transactions:

Table 2.1

<table>
<thead>
<tr>
<th>PA #</th>
<th>Description</th>
<th>Invoice Reference</th>
<th>Job Cost Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Staff Training</td>
<td>Allocation</td>
<td>$3,500</td>
</tr>
<tr>
<td>10</td>
<td>Staff Training</td>
<td>Allocation</td>
<td>$3,500</td>
</tr>
<tr>
<td>10</td>
<td>Staff Training</td>
<td>Allocation</td>
<td>$3,500</td>
</tr>
<tr>
<td>10</td>
<td>[none]</td>
<td>Allocation</td>
<td>$3,500</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$14,000</td>
</tr>
</tbody>
</table>

Additionally, we identified staff training transactions that were not directly related to the project. The table below shows the transaction details, which were confirmed by the CM as unrelated to the project:

Table 2.2

<table>
<thead>
<tr>
<th>PA #</th>
<th>Description</th>
<th>Invoice Purpose</th>
<th>Job Cost Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Staff Training</td>
<td>&quot;Facilitator Training&quot; travel costs</td>
<td>$674</td>
</tr>
<tr>
<td>8</td>
<td>Staff Training</td>
<td>&quot;Industry Innovation&quot; travel costs</td>
<td>$245</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td></td>
<td>$919</td>
</tr>
</tbody>
</table>

Although the CM indicated the costs in Table 2.1 related to pre-approved training, no additional documentation was provided to support the nature of these allocations, or evidence the actual costs incurred. We understand DGS approved certain training costs, on the condition that all costs invoiced to the project would be fully supported by appropriate documentation (timesheets, hotel and airfare invoices, etc.) and directly related to the project. As such, we recommend DGS request a credit of $14,919 for the unsupported and unrelated staff training costs noted above.
IMPROVEMENT OPPORTUNITIES

IO.1 Certified Payroll Supporting Documentation

Through our detailed testing of general requirements labor costs, we noted during July 2018 four (4) craft employees were charged to the project in the amount of $3,643, but were not reported on the CM’s certified payroll reports. The table below details the noted transactions:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Position</th>
<th>Hours</th>
<th>Job Cost Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee 1</td>
<td>Laborer</td>
<td>25</td>
<td>$1,000</td>
</tr>
<tr>
<td>Employee 2</td>
<td>Laborer</td>
<td>25</td>
<td>$1,310</td>
</tr>
<tr>
<td>Employee 3</td>
<td>Laborer</td>
<td>9</td>
<td>$333</td>
</tr>
<tr>
<td>Employee 4</td>
<td>Laborer</td>
<td>25</td>
<td>$1,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>84</strong></td>
<td><strong>$3,643</strong></td>
</tr>
</tbody>
</table>

Although the CM subsequently produced revised certified payroll records for each of the four (4) transactions noted above, through this finding, we noted that Management’s review of the pay application did not incorporate a reconciliation of the labor cost submitted to the certified payroll support. For this project, Certified payroll records serve as evidence of the craft employees’ time on the project, in lieu of timesheets; however, Certified payroll records are submitted to DGS through the Prolog system and not included as support with the pay applications. As such the reconciliation was not performed timely, and resulted in payments related to hours charged, prior to receipt of proper support.

Without reconciling the labor costs against the supporting documentation, there is an increased risk of inappropriate or unsupported costs being charged to the project. We recommend DGS incorporate steps to perform a reconciliation of the craft labor costs submitted with the pay applications and the certified payroll records. This can be achieved through a sampling process or through examination of the full population of labor costs and certified payroll documents.
IMPROVEMENT OPPORTUNITIES

IO.2 Allowable Labor Costs

Through our detailed testing of General Conditions labor costs and discussion with DGS project management, we noted that some costs, while accepted by DGS as appropriate for the project, may not align with the contract terms. Refer to sections A – D below and on the following pages for specific items noted.

A. Six (6) positions / employees were charged to the project but not included in the Agreement Exhibit E. Per Section 9.2 of the Agreement, staff must be charged at the rates identified in Exhibit E:

§9.2 Cost of General Conditions

§9.2.1 Cost of construction staff (only staff stationed in the field is reimbursable; however, exceptions will be made for scheduling, cost estimating, accounting services and other staff if such functions are normally provided by the Construction Manager's regional and/or home office personnel). The staff identified on Exhibit E shall be chargeable as Cost of General Conditions at the rates set forth thereon.

Specifically, the Senior Procurement Agent and Senior Labor Compliance Analyst positions, and individual employees in the positions of Finance Admin, Cost Analyst, and superintendent were not included in Exhibit E. While the rates charged for these employees were generally consistent with other rates listed in Exhibit E, we noted there was no documented approval of the additional positions or employees on the project. The table below details the positions / employees identified:

<table>
<thead>
<tr>
<th>Table IO 2.1</th>
<th>Position</th>
<th>Rate</th>
<th>Total Job Cost Hours</th>
<th>Total Job Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee 1</td>
<td>Finance Admin</td>
<td>$96</td>
<td>2.00</td>
<td>$192</td>
</tr>
<tr>
<td>Employee 2</td>
<td>Cost Analyst</td>
<td>$96</td>
<td>428.51</td>
<td>$41,137</td>
</tr>
<tr>
<td>Employee 3</td>
<td>Finance Admin</td>
<td>$96</td>
<td>65.75</td>
<td>$6,312</td>
</tr>
<tr>
<td>Employee 4</td>
<td>Senior Procurement Agent</td>
<td>$111</td>
<td>134.00</td>
<td>$14,874</td>
</tr>
<tr>
<td>Employee 5</td>
<td>Sr. Labor Compl. Analyst</td>
<td>$96</td>
<td>54.61</td>
<td>$5,271</td>
</tr>
<tr>
<td>Employee 6</td>
<td>Superintendent</td>
<td>$70</td>
<td>264.00</td>
<td>$18,480</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td></td>
<td></td>
<td><strong>948.87</strong></td>
<td><strong>$86,266</strong></td>
</tr>
</tbody>
</table>

Note 1: Job Cost rate varied from $90.82 to $113.62

The hours and job cost quantities above represent 4% of the General Conditions labor for the project.

(continued)
IMPROVEMENT OPPORTUNITIES

IO.2 Allowable Labor Costs (continued)

B. One (1) employee was charged to the project at an hourly rate greater than rates specified for the position. The employee was charged as an Engineer at $86/hour, although the Engineer rate per Exhibit E is $61-70/hour.

Per Section 9.2 of the Agreement, staff must be charged at the rates identified in Exhibit E:

\[ \text{§9.2 Cost of General Conditions} \]

\[ \text{§9.2.1 Cost of construction staff (only staff stationed in the field is reimbursable; however, exceptions will be made for scheduling, cost estimating, accounting services and other staff if such functions are normally provided by the Construction Manager's regional and/or home office personnel). The staff identified on Exhibit E shall be chargeable as Cost of General Conditions at the rates set forth thereon.} \]

The variance between the job cost and contract rate is detailed in Table IO1.2 below.

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
<th>Total Job Cost Hours</th>
<th>Total Job Cost</th>
<th>Exhibit E Rate</th>
<th>Calculated Total (^2)</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer</td>
<td>$86</td>
<td>$216</td>
<td>$18,576</td>
<td>$61</td>
<td>$13,176</td>
<td>$5,400</td>
</tr>
<tr>
<td>Engineer</td>
<td>$86</td>
<td>$216</td>
<td>$18,576</td>
<td>$70</td>
<td>$15,120</td>
<td>$3,456</td>
</tr>
</tbody>
</table>

Note 2: Calculated for the Engineer rate range per Exhibit E.

(continued)
C. One (1) position / employee was charged to the project but not included in the contract Exhibits E or F. The employee was charged to the project at three rates, between 128% - 158% greater than the highest level listed (Project Executive) in Exhibit E. Through discussion with DGS, we understand the CM indicated that an additional key personnel was needed due to unforeseen site conditions. DGS accepted this explanation and the position / employee costs, although the approval was issued verbally and not formally documented as indicated by Agreement Section 5.7.1:

§5.7 Key Personnel

§5.7.1 To carry out its duties, the Construction Manager shall provide at least the key personnel identified in Exhibit F to this Agreement (“Key Personnel”), who shall carry out the functions identified in Exhibit F. Among other things, the Key Personnel shall include the project managers that will be responsible for managing the Mechanical, Electrical and Plumbing (“MEP”) Work and the interior work. It is contemplated that these project managers will work from the design stage, purchasing and throughout the bulk of the field work. The Construction Manager’s obligation to provide adequate staffing is not limited to providing the Key Personnel, but is determined by the needs of the Project. The Construction Manager shall not replace any of the Key Personnel without the Department's prior written approval, which shall not be unreasonably withheld. If any of the Key Personnel become unavailable to perform services in connection with the Agreement due to death, disability or separation from the employment of the Construction Manager or any affiliate of the Construction Manager, then the Construction Manager shall promptly appoint a replacement acceptable to the Department. The Department shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

Exhibit F – Key Personnel: Project Executive, Project Manager, Superintendent

The table below details the position / employee costs identified:

<table>
<thead>
<tr>
<th>Position</th>
<th>Rate</th>
<th>Total Job Cost Hours</th>
<th>Total Job Cost</th>
<th>Exhibit E Rate: Project Executive</th>
<th>Calculated Total</th>
<th>Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations Manager</td>
<td>$267</td>
<td>165</td>
<td>$44,055</td>
<td>$208</td>
<td>$34,320</td>
<td>$(9,735)</td>
</tr>
<tr>
<td>Operations Manager</td>
<td>$270</td>
<td>68</td>
<td>$18,225</td>
<td>$208</td>
<td>$14,040</td>
<td>$(4,185)</td>
</tr>
<tr>
<td>Operations Manager</td>
<td>$329</td>
<td>8</td>
<td>$2,468</td>
<td>$208</td>
<td>$1,560</td>
<td>$(908)</td>
</tr>
<tr>
<td>Vice President &amp; Senior Operations Mgr</td>
<td>$267</td>
<td>70</td>
<td>$18,690</td>
<td>$208</td>
<td>$14,560</td>
<td>$(4,130)</td>
</tr>
<tr>
<td>Vice President &amp; Senior Operations Mgr</td>
<td>$329</td>
<td>30</td>
<td>$9,870</td>
<td>$208</td>
<td>$6,240</td>
<td>$(3,630)</td>
</tr>
<tr>
<td>Totals</td>
<td>340</td>
<td></td>
<td>$93,308</td>
<td></td>
<td>$70,720</td>
<td>$(22,588)</td>
</tr>
</tbody>
</table>

(continued)
IMPROVEMENT OPPORTUNITIES

IO.2 Allowable Labor Costs (continued)

D. Thirteen (13) employees charged a total of 566 hours in the amount of $40,151 to the project before the Notice to Proceed (NTP) date of July 18, 2018. The CM was issued a Notice of Award dated June 5, 2018. Through discussions with DGS project management during the execution of our work, DGS indicated this notice was sufficient for the CM to begin assigning cost to the project. Per Sections 9.3.8 and 5.1 of the Agreement:

§9.3 Costs not to be Reimbursed.

§9.3.8 Any costs incurred in performing work of any kind before Notice to proceed, unless specifically authorized by a duly authorized Contracting Officer of the Department in advance and in writing.

§5.1 General. The Construction Phase shall not commence until the Department issues a Notice to Proceed for Construction Phase Services.

The table below details the employees / positions who charged time to the project between Notice of Award date June 5, 2018 and Notice to Proceed date July 18, 2018:

<table>
<thead>
<tr>
<th>Employee</th>
<th>Position</th>
<th>Hours</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee 1</td>
<td>Project Engineer</td>
<td>136</td>
<td>$9,248</td>
</tr>
<tr>
<td>Employee 2</td>
<td>Senior Procurement Agent</td>
<td>133</td>
<td>$14,763</td>
</tr>
<tr>
<td>Employee 3</td>
<td>Accting Manager</td>
<td>1</td>
<td>$81</td>
</tr>
<tr>
<td>Employee 4</td>
<td>Senior Estimating Engineer</td>
<td>20</td>
<td>$2,000</td>
</tr>
<tr>
<td>Employee 5</td>
<td>Project Executive</td>
<td>20</td>
<td>$3,200</td>
</tr>
<tr>
<td>Employee 6</td>
<td>Superintendent</td>
<td>80</td>
<td>$5,600</td>
</tr>
<tr>
<td>Employee 7</td>
<td>Laborer</td>
<td>8</td>
<td>$189</td>
</tr>
<tr>
<td>Employee 8</td>
<td>Laborer</td>
<td>24</td>
<td>$568</td>
</tr>
<tr>
<td>Employee 9</td>
<td>Laborer</td>
<td>6</td>
<td>$224</td>
</tr>
<tr>
<td>Employee 10</td>
<td>Laborer</td>
<td>24</td>
<td>$568</td>
</tr>
<tr>
<td>Employee 11</td>
<td>Laborer</td>
<td>74</td>
<td>$2,459</td>
</tr>
<tr>
<td>Employee 12</td>
<td>Laborer</td>
<td>16</td>
<td>$472</td>
</tr>
<tr>
<td>Employee 13</td>
<td>Laborer</td>
<td>24</td>
<td>$780</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>566</td>
<td>$40,151</td>
</tr>
</tbody>
</table>

Note 3: Senior Procurement Agent and Senior Estimating Engineer are not listed on Exhibit E (see IO.2a)

(continued)
**IMPROVEMENT OPPORTUNITIES**

**IO.2 Allowable Labor Costs (continued)**

The contract includes clauses (§5.7, §9.2, Exhibit E) to specifically define which members of the Construction Manager’s team are approved for the project, and at which rates those personnel should be billed. Through the procurement and contracting process, these provisions have been vetted and approved through appropriate District Departments. Agreements to alter those provisions should be clearly documented in writing, to avoid the risk of future confusion.

Further, the purpose of the NTP is to establish a contractual date for the start of the project timeline and costs. Typically, the CM may not mobilize on the project site before a NTP is issued. Allowing costs prior to the NTP date increases the risk of inappropriate or disallowed costs to be charged to the project.

Contract disputes may arise if the contract specifically defines certain items, but alternative arrangements were agreed verbally. This can be especially problematic in the event of turnover, on either the District or contractor team, as new parties to the project may not have a record of prior verbal agreements. For future projects, we recommend that DGS require the CM to obtain pre-approval before billing for items not specifically included in the contract documents.
IMPROVEMENT OPPORTUNITIES

IO.3  Contract Language for Fringe Benefits

Through our detailed testing of General Conditions labor and reimbursable costs, and through discussion with DGS project management, we noted that staff fringe costs, which we have seen restricted or disallowed on other Construction Manager at Risk ("CMAR") projects, were accepted by DGS on this project. Labor burden refers to the CM’s cost of an employee, aside from salary. Typically, contracts define this cost to include payroll taxes and benefits, such as insurance and paid time off (commonly referred to as “fringe” benefits), incurred by the CM. Refer to sections A – B below and on the following pages for specific items noted.

A. Through our sample analysis, eighteen (18) employees charged a total of 356 hours, or $33,615, of “fringe” time, including holiday, vacation accrued, sick leave, and excused absences. Exhibit E and Sections 8.7.1 and 9.2 of the Agreement, indicates such fringe costs may be incorporated into the staff labor rates; however, it does not specifically define what fringe benefits include.

Exhibit E – General Conditions Staff & Rates

2. Staff Hourly Rates are fully burdened (including EBE [Employee Business Expenses], taxes and overhead).

§8.7 "Direct Cost of the Work" shall mean labor, material and other costs reasonably and necessarily incurred in the proper performance of the Work as approved by the Department and shall include, but not be limited to:

§8.7.1 Labor. Payment will be made for direct labor cost plus indirect labor cost such as insurance, taxes, fringe benefits and welfare provided such costs are considered reasonable. Indirect costs shall be itemized and verified by receipted invoices. If verification is not possible, up to eighteen percent (18%) of direct labor costs may be allowed.

§9.2 Cost of General Conditions.

§9.2.1 Cost of construction staff (only staff stationed in the field is reimbursable; however, exceptions will be made for scheduling, cost estimating, accounting services and other staff if such functions are normally provided by the Construction Manager’s regional and/or home office personnel). The staff identified on Exhibit E shall be chargeable as Cost of General Conditions at the rates set forth thereon.

§9.2.2 Fringe Benefits associated with construction staff costs

§9.2.3 Payroll taxes and payroll insurance associated with construction staff costs

(continued)
**IMPROVEMENT OPPORTUNITIES**

**IO.3 Contract Language for Fringe Benefits (continued)**

A summary of these charges is presented in the table below:

<table>
<thead>
<tr>
<th>Fringe Description</th>
<th>No. Job Cost Transactions</th>
<th>No. Employees</th>
<th>Total Hours</th>
<th>Total Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holiday</td>
<td>17</td>
<td>12</td>
<td>112</td>
<td>$11,689</td>
</tr>
<tr>
<td>Vacation Accrued</td>
<td>13</td>
<td>9</td>
<td>122</td>
<td>$10,791</td>
</tr>
<tr>
<td>Sick Leave</td>
<td>4</td>
<td>3</td>
<td>93</td>
<td>$8,504</td>
</tr>
<tr>
<td>Excused</td>
<td>6</td>
<td>6</td>
<td>29</td>
<td>$2,631</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>40</strong></td>
<td><strong>181</strong></td>
<td><strong>356</strong></td>
<td><strong>$33,615</strong></td>
</tr>
</tbody>
</table>

Note 1: Some employees charged hours to multiple codes.

Typically, overhead includes costs such as time off (i.e. holiday, vacation, sick leave, and other fringe time), retirement, and health benefits and insurance benefits. Sections 8.7.1 and 9.2 of the Agreement, cited above, indicate staff rates are fully burdened, or contain all elements of labor burden in the rate. When the staff rates are fully burdened, fringe time should not be charged to the project, as it would result in duplicative costs to the project.

**B.** Through detailed testing, RSM identified several instances where costs classified as “staff training” were charged to the project. These costs included staff travel expenses to offsite training and catering expenses. The General Conditions cost breakdown does not include a specific line item for staff training. Generally, fringe costs for talent development may be accepted by the Owner when the training directly benefits the project. Although the contract does not specifically define talent development as an allowable or disallowable cost, DGS has accepted training related to Lean project management and scheduling and project management software for this project.

For future projects, we recommend DGS include contract language to better define composition of “fully burdened” staff rates, and to delineate between fringe costs allowed as a cost of work versus those considered disallowed. These components may include, but not be limited to:

- Labor compensation only for the hours CM personnel are performing work on the Owner’s project site
- Optional fringe benefits, as may be provided as an established policy and available to qualified employees, including:
  - Paid holidays, vacation, sick, and other absences
  - Employer’s contribution for employee insurance
  - Employer’s contribution for employee retirement plans
- Employee stock ownership or bonus payments
- Additional liability insurance (i.e. auto), which are not considered an employee benefit
- Time off, and overtime/ premium (i.e. vacation, holiday, and weekend work) – where rates are applied, additional costs for time off should already be included in the rate
- Training – where costs are directly associated with the project, and the allowability of related travel and incidental costs
IMPROVEMENT OPPORTUNITIES

IO.4 Closeout Procedures

Through our discussions with DGS Project management, we understand DGS performs a reconciliation of project costs as part of closeout procedures. In consideration of the Observations and Improvement Opportunities identified above, we recommend DGS consider and incorporate the following in the closeout process:

A. Reconciliation of SDI costs – As identified in Observation #1, the SDI costs were likely calculated to include a CM subsidiary, resulting in a potential overbilling of $70,070. Through inquiry, the CM indicated that an internal “true up” is performed at the end of the project to identify the final and actual costs of subcontractors covered by the SDI policy, thereby determining the final cost of SDI for the project.

We recommend DGS obtain the list of subcontractors and corresponding final costs from the CM and reconcile the data to validate the amounts are appropriate. During this review, DGS should verify that costs associated with the CM’s subsidiary are not included in the calculation of SDI costs.

B. Reconciliation of local labor requirement – As of our testing scope period, through January 2020, the local labor workforce employed on the project was 39%. The project is required to achieve 51% over its lifetime, per Section 12.2.2 of the Agreement. Through our discussions with DGS, we understand projects historically employ a greater number of local labor for scopes performed toward the end of the project.

§12.2 Equal Employment Opportunity and Hiring of District Residents

§12.2.2 The Construction Manager shall ensure that at least fifty-one percent (51%) of the Construction Manager’s team and every subconsultant’s and subcontractor’s employees hired after the execution of the Agreement, or after such subconsultant or subcontractor enters into a contract with the Construction Manager, to work on the Project shall be residents of the District of Columbia. This percentage shall be applied in the aggregate, and not trade by trade.

We recommend the Department of Employment Services verify DGS’ reconciliation of local labor at the end of the project to validate the workforce achieved 51% of local labor.

C. Reconciliation of contingency – Contingency use throughout the project duration is monitored by DGS. As of July 10, 2020, a balance of $643,325 remained. We understand DGS, in agreement with the CM, will identify the final contingency balance and deobligate the CM’s purchase order for that amount, effectively decreasing the CM’s contract amount and transferring the savings to DGS.

During the final reconciliation, we recommend DGS validate that the contingency transferred for use was fully billed, or identify opportunities for additional savings where the CM did not use all contingency approved.
APPENDIX – TASK A RISK ASSESSMENT
The Parties acknowledge that certain of the preconstruction activities described in Article 3 of this Agreement as well as the services to be provided pursuant to the Agreement which shall include the Preconstruction Phase Services and the services required to be completed before final completion (see 5.1.1.0), shall be performed by the Construction Manager. The services to be provided under Article 3 constituting the preconstruction phase services to be performed by the Construction Manager shall be in a form and contain such detail as may be agreed upon by the Parties. The Preconstruction Phase shall be completed no later than the date agreed upon in Exhibit J 2.2 and as modified by Change Order or Change Directive issued by the Department. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties. The Project Schedule shall be in a form and contain such detail as may be agreed upon by the Parties.

The Client Agency shall be responsible for ensuring that the Preconstruction Phase is completed no later than the date agreed upon in Exhibit J 2.2 and as modified by Change Order or Change Directive issued by the Department.

Any toxic substance or hazardous chemical defined or regulated pursuant to federal, state or local laws relating to the pollution, treatment, storage or disposal of waste, or protection of human health or the environment. Such laws include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Water Act, the Clean Air Act and laws relating to emission, spills, leaks, releases or threatened releases of toxic substances or hazardous substances. The term "controlling person" means any person who owns or controls a controlling interest in the Construction Manager; (3) any entity that controls, is controlled by, or is under common control with the Construction Manager; (4) any entity that is a member of the Construction Manager's controlled group; (5) any person who, directly or indirectly, through one or more intermediaries, owns or controls 10% or more of the voting securities of the Construction Manager; (6) any person who directly or indirectly through one or more intermediaries has the power to direct or cause the direction of the management or policies of the Construction Manager, whether through the ownership of voting securities, by contract or otherwise; (7) any person who is a director, manager or officer of the Construction Manager (or any equivalent position in a foreign entity); (8) any person who is a member of a family group with the Construction Manager; or (9) any entity that is under common control with any entity listed in (1) through (8).

The Client Agency shall be responsible for ensuring that the Preconstruction Phase is completed no later than the date agreed upon in Exhibit J 2.2 and as modified by Change Order or Change Directive issued by the Department.

The Client Agency shall be responsible for ensuring that the Preconstruction Phase is completed no later than the date agreed upon in Exhibit J 2.2 and as modified by Change Order or Change Directive issued by the Department.

The Client Agency shall be responsible for ensuring that the Preconstruction Phase is completed no later than the date agreed upon in Exhibit J 2.2 and as modified by Change Order or Change Directive issued by the Department.
The Project consists of preconstruction and construction services necessary to modernize and/or construct Eliot-Hine Middle School as shown on Exhibit A. The school is located in the District of Columbia School System ("DCPS"), within the District of Columbia, United States, at 2501 5th Street, NW, Washington, D.C. 20015. The existing Eliot-Hine building was originally constructed in the late 1920s, with a north wing addition in 1960, and a 1964 addition of a new gymnasium, a first floor addition in the north wing of original 1927 building, and a northeast wing addition. The school serves students from pre-kindergarten to grade 12. Currently, the school serves a population of 650 students per school year. It is anticipated the school attendance will grow to a maximum of 405 students per year in the next eight years. Throughout the Preconstruction Phase, the Construction Manager shall schedule and attend regular meetings with the Department, Program Manager, and the Architect to ensure timely and coordinated development of the Project. The school also follows the Behavior and Education Support ("BES"), the Communication and Education Support ("CES") curricula from the District of Columbia Public Schools ("DCPS") educational stream, as well as hosting an alternative school program. The Project includes the modernization of the existing building, as well as the addition of a single-story, four-level addition. The project is expected to begin in early 2023 and be substantially complete by late 2025.

The school is also served by the District's or Federal's laws, codes and regulations. The Construction Manager and any Subcontractors who utilize, access, or store personally identifiable information as part of the performance of this Agreement are required to safeguard this information and immediately notify the Department of any breach or unauthorized access.

The Mission charter will determine whether use of the information is necessary to perform the Work, and the Construction Manager shall at all times use the standard of care used by Construction Managers that construct projects similar to the Project. The Construction Manager shall use its best efforts to perform the Work and complete the Project in an expeditious and economical manner among the Department, Construction Manager, the Architect, Program Manager, and other persons or entities involved in the performance of the Project. The Construction Manager shall have the authority to issue Change Orders or Change Directives on the Department's behalf. As of the date that this Agreement is signed, the Department's duly authorizing contracting officers are set forth in Exhibit I.

The Construction Manager hereby acknowledges and agrees that only a duly authorized and designated contracting officer of the Department may amend, modify or terminate this Agreement. In the event the Construction Manager shall at any time perform any work in violation of this Agreement, except such items that the Department specifically agrees to supply or furnish to or for the use of the Construction Manager, then such work in violation of this Agreement, except such items that the Department specifically agrees to supply or furnish to or for the use of the Construction Manager, then such work shall be at the sole risk and expense of the Construction Manager. Any labor, materials, equipment, tools, services or supervision not specifically described in this Agreement shall be at the sole risk and expense of the Construction Manager.

Throughout the Preconstruction Phase, the Construction Manager shall provide a list of all design professionals engaged, and all design professionals engaged shall be subject to approval by the Department. The Construction Manager is responsible for all such selected professionals as it shall choose. The Construction Manager shall perform all work represented by such selected professionals as it shall choose. The Construction Manager is responsible for all such selected professionals as it shall choose. All such selected professionals as it shall choose shall be under the direction and control of the Construction Manager.

The Construction Manager shall supply and furnish at the location where the Work is to be performed all labor, materials, equipment, tools, services or supervision necessary to properly advance the Project as follows: condition assessments, preconstruction plans, preconstruction tabulations to the Department.

The Construction Manager shall perform all work necessary to properly advance the Project as follows: condition assessments, preconstruction plans, preconstruction tabulations to the Department.

The Construction Manager shall perform all work necessary to properly advance the Project as follows: condition assessments, preconstruction plans, preconstruction tabulations to the Department.
<table>
<thead>
<tr>
<th>No.</th>
<th>Contract Doc.</th>
<th>Article Title</th>
<th>Article</th>
<th>Article Subtitle</th>
<th>Article Subsection</th>
<th>Article Reference</th>
<th>Article Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Main Agreement</td>
<td>Preconstruction</td>
<td>3</td>
<td>3.2.10.0</td>
<td>In the Preconstruction Phase the Construction Manager will receive the Project drawings and specifications together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
<td>In the Preconstruction Phase the Construction Manager will receive the Project drawings and specifications together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
<td>In the Preconstruction Phase the Construction Manager will receive the Project drawings and specifications together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
</tr>
<tr>
<td>42</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.1.0.0</td>
<td>During the Preconstruction Phase, the Architect shall prepare a set of Drawings and Specifications upon which, together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
<td>During the Preconstruction Phase, the Architect shall prepare a set of Drawings and Specifications upon which, together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
<td>During the Preconstruction Phase, the Architect shall prepare a set of Drawings and Specifications upon which, together with the Construction Manager’s assumptions and clarifications, shall serve as the basis of the Construction Manager’s guaranteed maximum price (see Section 4.1.3.6, Prior to Notice to Proceed).</td>
</tr>
<tr>
<td>43</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.2.0.0</td>
<td>The Architect shall be responsible for preparing and submitting all of the permit applications that are necessary to the Completion of the Project.</td>
<td>The Architect shall be responsible for preparing and submitting all of the permit applications that are necessary to the Completion of the Project.</td>
<td>The Architect shall be responsible for preparing and submitting all of the permit applications that are necessary to the Completion of the Project.</td>
</tr>
<tr>
<td>44</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.3.0.0</td>
<td>It is contemplated that the Construction Manager will have met with representatives of the Department as well as other construction professionals to discuss the impact of permits and other licenses on the Project schedule.</td>
<td>It is contemplated that the Construction Manager will have met with representatives of the Department as well as other construction professionals to discuss the impact of permits and other licenses on the Project schedule.</td>
<td>It is contemplated that the Construction Manager will have met with representatives of the Department as well as other construction professionals to discuss the impact of permits and other licenses on the Project schedule.</td>
</tr>
<tr>
<td>45</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.4.0.0</td>
<td>The Department may, at its sole discretion, issue an early release of any long-lead materials for the Project.</td>
<td>The Department may, at its sole discretion, issue an early release of any long-lead materials for the Project.</td>
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</tr>
<tr>
<td>46</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.5.0.0</td>
<td>The Construction Manager shall certify that the GMP established thereby (i) contains no line-item variance, (ii) contains no unreasonably withheld contingency, and (iii) contains no line-item variances.</td>
<td>The Construction Manager shall certify that the GMP established thereby (i) contains no line-item variance, (ii) contains no unreasonably withheld contingency, and (iii) contains no line-item variances.</td>
<td>The Construction Manager shall certify that the GMP established thereby (i) contains no line-item variance, (ii) contains no unreasonably withheld contingency, and (iii) contains no line-item variances.</td>
</tr>
<tr>
<td>47</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.6.0.0</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
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</tr>
<tr>
<td>48</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.7.0.0</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
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</tr>
<tr>
<td>49</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.8.0.0</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
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<tr>
<td>50</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.9.0.0</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
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<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
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<tr>
<td>51</td>
<td>Main Agreement</td>
<td>Main Agreement</td>
<td>3</td>
<td>4.10.0.0</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
<td>The Contingency Amendment shall contain a description of the contingency and the justification for its use, and without receiving the Department’s written approval.</td>
</tr>
</tbody>
</table>

### Calculate the Total Project Cost

The total project cost is calculated by summing up all the project costs, including the estimated contingency. The formula for calculating the total project cost is as follows:

\[
\text{Total Project Cost} = \sum_{i=1}^{n} \text{Cost}_i + \text{Contingency}
\]

Where:
- \( \text{Cost}_i \) is the cost of each individual component of the project.
- \( \text{Contingency} \) is the estimated contingency cost.

### Contingency Calculation

The contingency is calculated as a percentage of the total project cost. The formula for calculating the contingency is as follows:

\[
\text{Contingency} = \frac{\text{Total Project Cost}}{100} \times \text{Contingency Percentage}
\]

Where:
- \( \text{Total Project Cost} \) is the calculated total project cost.
- \( \text{Contingency Percentage} \) is the percentage of the total project cost allocated for contingency.
<table>
<thead>
<tr>
<th>Contract Doc</th>
<th>Article Title</th>
<th>Section Title</th>
<th>Article</th>
<th>Subsection</th>
<th>Article Description</th>
<th>Risk Category</th>
<th>Risk Rating</th>
<th>Movement Requested</th>
<th>Fit Test</th>
<th>Fit Step</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>2</td>
<td>3.1.0</td>
<td><strong>Formation of GMP</strong></td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

The following are examples of categories of projects eligible for capital financing:

- **Formation of GMP**

This Section 4.3.1 sets forth the Department's guidelines for capital eligible expenditures. These guidelines are intended to ensure that projects are consistent with the District's financial and operational objectives.

### General Restrictions for Capital Financing Eligibility

- Projects must be requested in accordance with the District's established procedures.
- Projects must be approved by the Board of Education or the appropriate governing body.
- Projects must be consistent with the District's long-range strategic plan.
- Projects must be financially viable and able to be funded within the District's budget.
- Projects must be executed in accordance with the District's policies and procedures.

### Specific Eligible Expenditures

- **Alteration of an existing public facility to make it more functional for a new use, including temporary relocation costs**
- **Roof membrane sealing**
- **Replacement modular furniture**
- **Windows and doors**
- **Replacement of an existing public facility to make it more functional for a new use, including temporary relocation costs**
- **Major renovation of an existing public facility and/or improvement of an existing public facility to make it more functional for a new use, including temporary relocation costs**
- **Construction or acquisition of a public facility to be owned, occupied, and for use by the District for the useful life of the asset. Exceptions include: ___________**
- **Land purchased for building sites, improvements, rights-of-way, and other public purposes owned by the District and ballots approved for the payment of costs**
- **Building and improvements, such as HVAC, structural or entire lighting systems, or architectural components of existing public facilities**
- **Improvements to economic development projects owned by the District**
- **Furniture, fixtures and equipment associated with construction or substantial rehabilitation of public facilities (not limited to improvements of re-sale value)**
- **Hazardous materials remediation costs, e.g., asbestos removal and abatement, landfill closure activities**
- **Major infrastructure projects, e.g., a five-year renovation budget over $25,000,000**
- **Artwork which has less than $250,000 unit cost.**
- **Furniture, fixtures and equipment associated with construction or substantial rehabilitation, including transportation of a public facility (not limited to improvements of re-sale value)**

### Ineligible Projects

- Projects must not result in a asset that will be owned by the District for the useful life of the asset.
- Projects must not result in an asset that will be owned by the District for the useful life of the asset.
- Projects must not be requested in accordance with the District's established procedures.
- Projects must not be approved by the Board of Education or the appropriate governing body.
- Projects must not be consistent with the District's long-range strategic plan.
- Projects must not be financially viable and able to be funded within the District's budget.
- Projects must not be executed in accordance with the District's policies and procedures.

### Additional Considerations

- The Board of Education or the appropriate governing body must approve all capital projects.
- Capital projects must be funded through the District's capital budget.
- Capital projects must be consistent with the District's long-range strategic plan.
- Capital projects must be financially viable and able to be funded within the District's budget.
- Capital projects must be executed in accordance with the District's policies and procedures.

To be eligible for funding in the capital budget, a project must result in a District owned asset, and be at minimum value (calculated as $0.0000/acre) to be secured on the books as such and depreciated over the life of the asset, or a revenue generating project which is in the asset pool. In general, to be capital eligible the project must also result in one of the following conditions during the GMP negotiations, and in connection with the approval of contingency draws and subsequent requests.

### General Restrictions for Capital Financing Eligibility

- Projects must be requested in accordance with the District's established procedures.
- Projects must be approved by the Board of Education or the appropriate governing body.
- Projects must be consistent with the District's long-range strategic plan.
- Projects must be financially viable and able to be funded within the District's budget.
- Projects must be executed in accordance with the District's policies and procedures.

### Specific Eligible Expenditures

- **Construction or acquisition of a public facility to be owned, occupied, and for use by the District for the useful life of the asset. Exceptions include: ___________**
- **Land purchased for building sites, improvements, rights-of-way, and other public purposes owned by the District and ballots approved for the payment of costs**
- **Building and improvements, such as HVAC, structural or entire lighting systems, or architectural components of existing public facilities**
- **Improvements to economic development projects owned by the District**
- **Furniture, fixtures and equipment associated with construction or substantial rehabilitation of public facilities (not limited to improvements of re-sale value)**
- **Hazardous materials remediation costs, e.g., asbestos removal and abatement, landfill closure activities**
- **Major infrastructure projects, e.g., a five-year renovation budget over $25,000,000**
- **Artwork which has less than $250,000 unit cost.**
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<th>No.</th>
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### Comprehensive Risk Assessment

**Eliot Hine Middle School**

**RIS Report**

**February 14, 2020**

**Comprehensive Risk Assessment**

<table>
<thead>
<tr>
<th>Appendix page 5 of 31</th>
</tr>
</thead>
</table>
Contract Doc
Main Agreement

The Construction Phase shall not commence until the Department issues a Notice to Proceed for Construction Phase of Review deliverables as defined in Exhibit C prior to Sufficient or complete. The Construction Manager shall meet with the Department to review the GMP Proposal and the written statement of its

See 4.4.1

The Construction Manager shall keep detailed records documenting Work done so that the Department may

A construction administration (CA) services plan for the construction phase. The Construction Administration Plan will

As part of the GMP Proposal submitted in accordance with this Article, the Construction Manager agrees to specifically

Reporting/ Deliverable See 4.6 Moderate See 4.6 See 4.6 See 4.6

The deliverables set forth in Exhibit C are required during the Preconstruction Phase. In the event that the Construction

1. Job cost report

2. See pay application testing at 10.1

Building permit and associated expediting services and to pay all necessary fees for utility connections. The Work shall be carried out in a good and workmanlike, first-class manner, and in a timely fashion. All materials and equipment to be safe, and properly built in strict accordance with the approved Construction Documents and the other requirements of the EPA and all jurisdictional agencies as well as all laws relating to safety, health welfare, and building codes and regulations pertaining to the means and methods of construction to the best of... Rely on Subcontractors and Subcontractors

Obtain project records for hazardous material use/availability and/or disposal, and the appropriate unit price(s) evidence of proper disposal. Require GC to provide documentation of its acknowledged hazardous material usage

2. List of approved subcontractors/suppliers

1.15

The Construction Manager shall develop a purchasing strategy to address the expedited schedule and conditions of... Minimum/maximum price

3.1.8

Hazardous Materials. If any notices to governmental authorities are required, the Construction Manager shall also give those notices at the appropriate times.

4 13.3.0

4 13.1.0

4 8.0.0

4 7.0.0

4 6.9.0

4 6.8.0

4 11.0.0

Construction Manager's Key Personnel

The Construction Manager shall be entitled to submit a Change Request in accordance with Article 17 in the event the

Construction Administration Plan will be effective as of the Department's written approval thereof. The GMP Proposal must be accompanied by a bid for the Department's preconstruction services as defined in Exhibit C. If the preconstruction services are awarded to another contractor, the approved bid for the GMP Proposal will automatically become the GMP for the purposes contained in this Section 5.9. The Construction Manager shall be entitled to an effective date of GMP Proposal of 30 days from the issuance of the Notice to Proceed for Construction Phase. The Department may, in its sole discretion, direct the Construction Manager to accept a bid from a qualified bidder if the Construction Manager fails to provide any deliverable so listed, and unless such failure is the result of any event of Force Majeure, the Department shall have the right to terminate this Agreement, and if requested by the Department, the Construction Manager shall complete the Project. Failure to Reach GMP

3.4.2

The Construction Manager shall notify any Hazardous Material that is not customarily used in a facility of the type and similar to the Project, it shall

Subcontracting and Subcontractors

Observe the Hazardous Materials Requirements during the Project and report any violations. Such strategies may include, but are not limited to, (i) subcontracts/subcontracts with qualified and experienced contractors, (ii) cutting water shipments for work/design coordination, and (iii) other techniques as approved by the Department. Place the contractor/contractor's liability.

2.7.0

Construction Manager's Key Personnel

Construction Manager's Designated Representative

The Department may issue a Change Order under Article 17 in the event the Construction Manager's Key Personnel fail to comply with any of the above requirements. If any

- The Construction Manager's Name and Address.
- A detailed description of the work or service to be performed.
- A detailed statement of the expected duration of the work or service.
- A detailed statement of the expected cost of the work or service.
- Any other information required by the Department.

The Construction Manager's Designated Representative shall be responsible for ensuring that the scope of work set forth in the Change Order is properly attended to by the Construction Manager.

2.7.0

Review of the third party contract by the Construction Manager shall be required before any approved change in the GMP Proposal, regardless of the department the construction Manager is responsible. The third party contract shall be reviewed and approved by the Construction Manager. The third party contract shall be reviewed and approved by the Construction Manager.

3.1.8

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Appendix page 7 of 31

Eliot Hine Middle School
RMF Site Report
February 14, 2021
Comprehensive Risk Assessment
Delays due to job site labor disputes, work stoppages or suspensions of work. See 5.5.0 Moderate See 5.5.0 See 5.5.0 5.5.0 See 5.5.0

**See 17.2**

The Construction Manager shall maintain an open book reporting system with the Department, allowing the...

**See 9.2.1**

The Construction Manager shall be entitled to an adjustment in the Substantial Completion Date due to an Excusable...

**See 17.2**

Construction

**See 17.2**

Main Agreement

**See 17.2**

Main Agreement

**See 9.2.1**

Construction

**See 17.2**

Construction

A change order is issued for a...

**See 17.2**

Main Agreement

A change order for time...

Unauthorized personnel are...

Construction Manager's warranty excludes remedies for damage or defect caused by abuse, modifications not...

Key Personnel subject to the liquidated damages provisions of this Agreement, then all of the Key Personnel shall be...

any person who is unfit for the work or fails to conduct herself or himself in a proper and cooperative manner. If the...

any person who is unfit for the work or fails to conduct herself or himself in a proper and cooperative manner. If the...

the one (1) year period following the Substantial Completion Date the work will be free from defects not inherent in the...

Remediation shall be deemed an Excusable Delay...
### Contract Agreement

#### Clause 14.2.0

- **Description:** Excludes delays due to acts of God, war, unavoidable casualties, civil unrest, and other similar causes that are beyond control.

#### Clause 15.1.1

- **Description:** Requires the Construction Manager to organize work to minimize impact.

#### Clause 15.1.2

- **Description:** Requires an authorized person to gain access to the site.

#### Clause 15.2.0

- **Description:** Periodic visits to the job site to ensure compliance with the safety plan.

#### Clause 15.3.0

- **Description:** Submission of project files to the City Agency.

#### Clause 15.4.0

- **Description:** Documentation of punch list items.

#### Clause 15.5.0

- **Description:** Submission of outreach plan.

#### Clause 15.6.0

- **Description:** Submission of safety plan.

---

### Comprehensive Risk Assessment

**Date:** February 14, 2020  
**Location:** Eliot Hine Middle School

<table>
<thead>
<tr>
<th>No.</th>
<th>Contract Doc</th>
<th>Article Title</th>
<th>Section Title</th>
<th>Article Number</th>
<th>Clause/Reference</th>
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<th>Document Request List</th>
<th>Test Step</th>
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<td>Construction Manager</td>
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<td>13</td>
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<td>Change Order</td>
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<td>Low</td>
<td>13</td>
<td>N/A</td>
<td>N/A</td>
<td>None</td>
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<tr>
<td>6</td>
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<td>Construction Manager</td>
<td>Change Order</td>
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<td>13</td>
<td>N/A</td>
<td>N/A</td>
<td>None</td>
</tr>
</tbody>
</table>

---

### Risk Management

- **Methodology:** Comprehensive Risk Assessment

---

### Notes

- **Risk Rating:** Low, Moderate, High
- **Document Request List:** N/A
- **Test Step:** N/A
- **Key Risk Management Controls:** None
The Construction Manager shall assist Client Agency in relocating FF&E and other items as necessary within the Main Agreement. The Construction Manager shall develop a quality control plan for the Project (the “Quality Control Plan”). A draft of the Quality Control Plan shall be submitted to the Department, with an opportunity for the Department to provide comments. The Quality Control Plan shall be submitted to the Department with a substitute recovery plan (“Recovery Plan”) that is reasonably designed to address the concerns raised in such notice. The Construction Manager shall immediately, after the receipt of the substitute recovery plan, provide the Department with a substitute recovery plan (“Recovery Plan”) that is reasonably designed to address the concerns raised in such notice. The Construction Manager shall immediately, after the receipt of such notice, provide the Department with a substitute recovery plan (“Recovery Plan”) that is reasonably designed to address the concerns raised in such notice.

The monthly report should specifically address issues raised during the month and outline the steps that have been taken to address these issues. The monthly report shall include a detailed summary of the steps that are being taken to provide quality construction and maintenance. The monthly report shall cover at least the following:

1. Document Management’s actions related to the Quality Control Plan.
2. Verification of elements of the quality control plan to ensure monitoring for compliance.
3. Verification of the Quality Control Plan’s implementation and effectiveness.
4. Validation of the corrective action plan.
5. Review of change orders and requests for information.
7. Review of the Quality Control Plan’s effectiveness.
8. Review of the Quality Control Plan’s compliance with the requirements of this Section.

The monthly report should be submitted to the Department at least forty eight (48) hours after the receipt of the proposed corrective action plan, the Department shall have the right to direct such corrective action measures as the Department, in its reasonable judgment, deems necessary. Provided the Department complies with the provisions of this Section, the cost of any acceleration directed under this Section shall not justify an adjustment to the Contract Price. The Department’s review and approval of the Quality Control Plan is not intended to, and shall not be construed as, a finding by the Department that the total quality of the work is adequate or that the total quality of the work is being performed in accordance with the specifications or the requirements of the Contract.

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### Change Order Work

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### Pay Application

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<td>PA2</td>
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### General Conditions

- **Construction Manager:** Responsible for ensuring that the work is performed in accordance with the specifications and the contract documents.
- **Client:** To provide necessary information and approvals for the work.
- **Change Orders:** To be prepared and submitted as needed to accommodate changes in the project scope.
- **Payments:** To be made in accordance with the payment schedule provided in the contract documents.

---

**Note:** The above table is a simplified representation of the changes and payments related to the project. Actual details may vary and should be reviewed in the original contract documents.
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**Comprehensive Risk Assessment**

**RSM Risk Report**

February 14, 2021

**Eliot Hine Middle School**

**Appendix page 12 of 31**
The Construction Manager shall be compensated in a series of progress payments and a Final Payment for Work. Payments are made for the Work and shall include reimbursable costs and expenses directly related to the Work, and in particular, but without limitation, the following:

- Field office expenses, postage, facsimile transmissions;
- Costs and expenses directly related to the Work and in particular, but without limitation, the Cash Discounts obtained on payments made by the Construction Manager shall accrue to the Department if: (i) before the Department has deposited funds with the Construction Manager.
- Rebates and discounts are not reimbursable.
- Work associated with swing space and moving other than that performed pursuant to the Letter Contract shall not be reimbursable.
- Work and shall not be reimbursable.
- The Cost of Work does not include any double-payment for tax applicable to the Work.

The Department will provide the Construction Manager with the necessary information relating to the tax exemption. In the event such information is not provided, the Construction Manager shall not be entitled to share in such savings.

The Contractor shall keep full and detailed records of amounts paid to subcontractors or material suppliers at all tiers. The Contractor shall preserve such documentation relating to the Project for a period of three years after final payment, or for a longer period of time as may be required by law.

The Pay Application is properly applied against the Cost of the Work and shall not be reimbursable. In particular, but without limitation, the Cost of the Work does not include any equipment extensively supplied and reports in property damaged by the Construction Manager or its Subcontractors or material suppliers.
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By submitting an Application for Payment, the Construction Manager warrants to the Department that title to all Work shall be deemed to mean completed and forecasted work through the end of the Application for Payment period. All amounts paid to the Construction Manager on the previous Application for Payment that were attributable to Work which payment has been previously made, and additional forms of waiver acknowledging receipt of final payment under N/A N/A N/A N/A N/A.

Each Application for Payment shall be accompanied by the Construction Manager's signed certification that, to the extent of knowledge available to the Construction Manager, the Work or materials or equipment for which payment is requested have been properly (i) brought in, (ii) properly priced, and (iii) paid for by the Department with a realistic and acceptable Recovery Plan in accordance with Section 5.18. The certification shall be in accordance with Section 5.18 if requested by the Department.

The Department will not be required to pay for Work that is not in accordance with Section 5.18 if requested by the Department.

The Department will not be required to pay for Work that is not in accordance with Section 5.18 if requested by the Department.
The amount of the Final Payment shall be calculated as follows:  

The Construction Manager shall provide evidence satisfactory to the CO that it has performed in accordance with Sections 10.1.0 of the Standard Contract Provisions. The CO may cancel any portion of the Final Payment if any of the stipulations in the contract documents are not met or if the Construction Manager is not in compliance with the requirements of the contract documents.

The Construction Manager shall provide evidence satisfactory to the CO of employer's liability insurance as follows: $500,000 per accident for injury; $500,000 per employee for disease; and $500,000 for an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Construction Manager or its subcontractors (including any retroactive date applicable to coverages under the policy) precedes the contract documents.

The Construction Manager shall provide evidence satisfactory to the CO of evidence of the required coverage prior to commencing performance under this contract. In no event shall any deductible be required. The CO shall be entitled to proceed in accordance with Article 7 of the Standard Contract Provisions.

The Construction Manager shall provide evidence satisfactory to the CO that it is in compliance with the requirements of the contract documents.

The Construction Manager shall provide evidence satisfactory to the CO that it is in compliance with the requirements of the contract documents.
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**Appendix page 16 of 31**
If the CO determines the Contractor’s failure to be a material breach of the contract, the CO shall have cause to terminate the contract under the default provisions in clause 8 of the SCP, Default. A contractor that is found to have breached its subcontracting plan for utilization of CBEs in the performance of a subcontract shall be responsible to:(A) immediately correct the deficiency in the subcontracting plan; (B) confirm that GC is either meeting its goals or has a plan approved by the Department for removing subcontractor from the contract; (C) The amount paid by the prime contractor under the subcontract; and (D) the price that the prime contractor will pay each subcontractor. **At least 35% of the work required for the construction须由受保的本地企业完成。** 有资格的本地供应商的费率须符合率表的定义。 为确保合同目标的执行，应进行以下分析：(1) 确保GC达到其计划目标；(2) 确保达到规定比例的本地工作须由受保的本地企业完成；(3) GC按照规定比例提供本地工作；(4) GC按照规定比例提供本地工作；(5) 确保GC按照规定比例提供本地工作；(6) 确保GC按照规定比例提供本地工作；(7) 确保GC按照规定比例提供本地工作；(8) 确保GC按照规定比例提供本地工作；(9) 确保GC按照规定比例提供本地工作；(10) 确保GC按照规定比例提供本地工作；(11) 确保GC按照规定比例提供本地工作；(12) 确保GC按照规定比例提供本地工作；(13) 确保GC按照规定比例提供本地工作；(14) 确保GC按照规定比例提供本地工作；(15) 确保GC按照规定比例提供本地工作；(16) 确保GC按照规定比例提供本地工作；(17) 确保GC按照规定比例提供本地工作；(18) 确保GC按照规定比例提供本地工作；(19) 确保GC按照规定比例提供本地工作；(20) 确保GC按照规定比例提供本地工作；(21) 确保GC按照规定比例提供本地工作；(22) 确保GC按照规定比例提供本地工作；(23) 确保GC按照规定比例提供本地工作；(24) 确保GC按照规定比例提供本地工作；(25) 确保GC按照规定比例提供本地工作；(26) 确保GC按照规定比例提供本地工作；(27) 确保GC按照规定比例提供本地工作；(28) 确保GC按照规定比例提供本地工作；(29) 确保GC按照规定比例提供本地工作；(30) 确保GC按照规定比例提供本地工作；(31) 确保GC按照规定比例提供本地工作；(32) 确保GC按照规定比例提供本地工作；(33) 确保GC按照规定比例提供本地工作；(34) 确保GC按照规定比例提供本地工作；(35) 确保GC按照规定比例提供本地工作；(36) 确保GC按照规定比例提供本地工作；(37) 确保GC按照规定比例提供本地工作；(38) 确保GC按照规定比例提供本地工作；(39) 确保GC按照规定比例提供本地工作；(40) 确保GC按照规定比例提供本地工作；(41) 确保GC按照规定比例提供本地工作；(42) 确保GC按照规定比例提供本地工作；(43) 确保GC按照规定比例提供本地工作；(44) 确保GC按照规定比例提供本地工作；(45) 确保GC按照规定比例提供本地工作。
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**Explanation:**
- **Subcontracting Requirements** refer to the provisions that govern the subcontracting arrangements between the contractor and subcontractors.
- **Liquidated Damages** are a type of economic damages in which the damages are specified in the contract in an amount that is easily ascertainable.
- **Economic Risk Rating** indicates the potential impact of subcontracting failures on project costs and schedule, with Low being the least significant.

**Note:** The table above provides a simplified view of the contractual risk management. Detailed provisions and potential controls are outlined in the complete contract document.
The headings or captions used in this Agreement or its table of contents are for convenience only and shall not be construed as part of this Agreement, and any such headings or captions shall not be deemed to limit or otherwise affect the scope of any provision of this Agreement.

Nothing in this Agreement shall be deemed to grant any person or entity any right to use any part of the Project except as specifically granted by the Agreement. All trademark names, logos and images that appear in this document are the sole property of their respective owners, and are used for illustrative purposes only. Any such use is for illustrative purposes only, and should not be deemed to be an endorsement or approval by the trademark owner of the agreement. Such owner has not reviewed this Agreement and is not responsible for the accuracy of any such information.

All of the documents comprising the Agreement should be read as complementary, so that what is called for by one is not precluded by another.

The Agreement supersedes all contemporaneous or prior negotiations, representations, course of dealing, or oral statements.

Suspension

In case of an Order of Suspension, the Construction Manager shall have exclusive authority to manage, direct, and control the Work, and shall be responsible for all costs incurred in connection with such Order of Suspension.

The Construction Manager agrees that the applicable work performed under this Agreement shall be subject to the Davis-Bacon Act.

The Contractor is required to include in its subcontracts a clause that requires the prime contractor to:

1. Indemnify the Department against any loss, damage, or expense caused by or resulting from any breach of the Agreement, or any part thereof, by the Contractor or any subcontractor of the Contractor.

2. Hold harmless the Department from any liability or obligation that may arise or be incurred by the Contractor or any subcontractor of the Contractor.

3. Assume full responsibility for all work performed under this Agreement, and for all acts or omissions of any subcontractor or employee of any subcontractor.

4. Insure all work performed under this Agreement against loss or damage by fire, theft, or other casualty.

5. Deliver and maintain the Work in a safe condition and without danger to the public or to property.

6. Meet the requirements of the Federal Acquisition Regulation (FAR).
Main Agreement

The Department may terminate the Agreement for default if the Construction Manager fails to perform any of its duties.

Other Conditions

If the parties fail to reach an agreement within sixty (60) days after the Department receives the Construction

Changes in the

The Department may, upon seven (7) calendar days written notice to the Construction Manager, terminate the

Termination or

Upon receipt of the Change Directive or Change Order, the Construction Manager shall provide, further cost breakdowns, clarifications, documentation or back-up if the

Unauthorized payments are

The Department may bill the Construction Manager for any inappropriately submitted costs at any time available, the notice must state the nature of the Change Event and describe, generally, all changes in the

Construction Management Fee, or the Guaranteed Maximum Price.

Unauthorized payments are

2.0.0

Changes in the

If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Construction Manager a Change Directive or Change Order.

Other Conditions

This Agreement and the rights and obligations of the Department and Construction Manager herein are subject to the

Contract changes are not made

The parties cannot agree to terminate the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions, or modifications to the Project by whatever method it deems expedient, including accepting assignment of all outstanding Subcontracts and the Construction Manager fails to give the Department prompt and reasonable assurances of its ability to perform.

In particular, but without limitation, a written Change Directive or Change Order executed by the Department is the only

15 4.0.0

Changes in the

The parties cannot agree to modify the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions, or modifications to the Project by whatever method the Department deems expedient, including acceptance of all outstanding Subcontracts and the Construction Manager fails to give the Department prompt and reasonable assurances of its ability to perform.

In particular, but without limitation, the Department may terminate the Agreement and require the Construction Manager to proceed with the Work as directed by the Department, to fulfill the terms of the Agreement, to assume any of the Construction Manager's obligations under the Agreement, to assume any of the Construction Manager's trade subcontracts upon such terms and conditions as the Department may require.

Unauthorized payments are

2.0.0

Changes in the

If the Department wishes to make a change in the Work or to accelerate the Work, it will execute and issue to the Construction Manager a Change Directive or Change Order.

Other Conditions

Authorized change orders with records to support the

17 3.3.0

Changes in the

Construction Management Fee or the Guaranteed Maximum Price.

Unauthorized payments are

The parties cannot agree to modify the Agreement, and without notice to or approval of any surety, order changes in the Work, including additions, deletions, or modifications to the Project by whatever method it deems expedient, including acceptance of all outstanding Subcontracts and the Construction Manager fails to give the Department prompt and reasonable assurances of its ability to perform.

In particular, but without limitation, the Department may terminate the Agreement and require the Construction Manager to proceed with the Work as directed by the Department, to fulfill the terms of the Agreement, to assume any of the Construction Manager's obligations under the Agreement, to assume any of the Construction Manager's trade subcontracts upon such terms and conditions as the Department may require.

Unauthorized payments are

The Section 8.5. The Construction Manager is not entitled to any markup on any kind of Change Orders except as authorized in Section 8.5.
Payments are made for Changes in the Agreement, the Construction Manager encounters Differing Site Conditions or Hazardous Materials not identified in the Contract documents, or if permitted by Section 5.11 of this Agreement. Change Orders have priority over: Addenda, Contract drawings and Specifications. Any action by the Construction Manager shall be treated as a Change Order unless such action is specifically provided for in any or all of the Addenda or Change Orders.

The Construction Manager shall notify the Contracting Officer in writing of any request to proceed with work in connection with a Change Order, or if permitted by Section 5.11 of this Agreement. The Contracting Officer will furnish from time to time such detail drawings and other information as he may require for this purpose.

The Construction Manager agrees that any Change Order executed by the Department and Construction Manager shall not be the basis for or entitled to a claim for an equitable adjustment. If the Department claims entitlement to a change in the Agreement, and the Construction Manager proceeds with the work as specified in the Change Order, the Department will be liable for all costs incurred by the Construction Manager in connection with the work as specified in the Change Order.

If the Department issues a Change Directive or Change Order that directs the Construction Manager to proceed with work, the Construction Manager shall not be entitled to any equitable adjustment. If the Construction Manager claims entitlement to a change in the Agreement, and the Department does not agree that there is a change to the contract, the Construction Manager shall not be entitled to any equitable adjustment.

If the Construction Manager claims entitlement to a change in the Agreement, and the Department does not agree that there is a change to the contract, the Construction Manager shall not be entitled to any equitable adjustment. If the Construction Manager claims entitlement to a change in the Agreement, and the Department does not agree that there is a change to the contract, the Construction Manager shall not be entitled to any equitable adjustment. If the Construction Manager claims entitlement to a change in the Agreement, and the Department does not agree that there is a change to the contract, the Construction Manager shall not be entitled to any equitable adjustment.
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Exhibit J -

Key DGS Management Controls

of

Complete performance of such part of the work as shall not have been terminated by the Notice of Termination.

Exhibit J -

If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure

Exhibit J -

the Government, the Contractor's right to proceed with the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Article 7 herein. If, after notice of termination of the Contractor's right to proceed under the provisions of the Act, it be found that the Contractor, in his judgment, and not justifiably, failed to prosecute the work with such diligence as will assure the continuance of his work and tend to the convenience of the Government provided in this Article, the rights and obligations of the parties shall be in accordance with Article 6 herein. Failure to agree to any such extension shall be final for all purposes of this Article.

The Contracting Officer shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of the Contract or to take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of any materials, plant, and other property which are or may be on the site of the work and necessary to the completion of the Contract or paid in such other manner as the Contracting Officer may direct.

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<table>
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<tr>
<th>Page</th>
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<th>Risk Category</th>
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<th>Document Requested</th>
<th>Post Map</th>
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<td>50</td>
<td>Exhibit J - Standard Contract Provisions</td>
<td>Disputes</td>
<td>7</td>
<td>B.3.</td>
<td>Claims by the Government against a Contractor</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>51</td>
<td>Exhibit J - Standard Contract Provisions</td>
<td>Disputes</td>
<td>7</td>
<td>C.0.</td>
<td>(d) The Contractor's request for relief or other action by the Contracting Officer.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>52</td>
<td>Exhibit J - Standard Contract Provisions</td>
<td>Disputes</td>
<td>7</td>
<td>C.0.</td>
<td>(e) All cost data, pricing data, and task data of claims hereunder must be certified as accurate, complete, required, and necessary to the basis of the Contractor's knowledge and talent. Further, all cost data in the claim must be supported by the number and unit of work. The Contracting Officer may require any additional documentation or explanations of the information contained in the claim.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>53</td>
<td>Exhibit J - Standard Contract Provisions</td>
<td>Disputes</td>
<td>7</td>
<td>C.0.</td>
<td>(f) The parties agree that time is of the essence and all claims hereunder must be presented to the Contracting Officer as soon as possible and in no event later than 60 days after the occurrence of the circumstances giving rise to such claim.</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>54</td>
<td>Exhibit J - Standard Contract Provisions</td>
<td>Disputes</td>
<td>7</td>
<td>C.0.</td>
<td>(g) The Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the Government.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<td>Exhibit J - Standard Contract Provisions</td>
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<td>7</td>
<td>C.0.</td>
<td>(h) Nothing herein shall be construed to require the Government to notify the Contractor prior to the issuance of the Contracting Officer's final decision.</td>
<td>N/A</td>
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<td>56</td>
<td>Exhibit J - Standard Contract Provisions</td>
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<td>C.0.</td>
<td>(i) A claimant shall be deemed to be a denial of the claim and shall authorize the commencement of an appeal on the claim as otherwise provided.</td>
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<td>57</td>
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<td>Disputes</td>
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<td>C.0.</td>
<td>(j) If the Contractor submits a claim in good faith and it is determined that the claim is not allowable, the Government may for such cause terminate the Contract and the Contractor shall be relieved of any further liability thereunder.</td>
<td>N/A</td>
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<td>C.0.</td>
<td>(k) If such consideration is specifically authorized by the Contract.</td>
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<td>Exhibit J - Standard Contract Provisions</td>
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<td>C.0.</td>
<td>(l) If a Contractor is unable to support any part of his or her claim and it is determined that the inability is attributable to failure to meet the conditions specified in the Contract, the Contractor shall be deemed to have waived the right to the unallowable portion of the claim.</td>
<td>N/A</td>
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### Notes
- Unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor. In any action or proceeding to determine the rights of any party under the Contract, the Court shall be deemed to be in all respects a party to the Contract. The rules of evidence shall be the same as those provided by any other party. The Court may order the preservation of records, documents, and other evidence. The parties may agree to extend or modify these provisions. The Court may adopt any other rules necessary to the conduct of the case. The Court may enter such orders as may be necessary to prevent or effectuate the preservation of records, documents, and other evidence. The Court may enter any other orders necessary to the conduct of the case.

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**Exhibit J - Surplus Materials Use**

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<td>Exhibit J - Standard Contract Provisions</td>
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<td>B.0.</td>
<td>unless otherwise provided by law, neither the Contract nor any interest therein may be transferred or assigned by the Contractor.</td>
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<td>Exhibit J - Standard Contract Provisions</td>
<td>Surplus</td>
<td>10</td>
<td>B.0.</td>
<td>In any action or proceeding to determine the responsibilities of the Contractor, the Contractor shall be deemed to be in all respects a party to the Contract.</td>
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<td>Exhibit J - Standard Contract Provisions</td>
<td>Surplus</td>
<td>10</td>
<td>B.0.</td>
<td>The rules of evidence shall be the same as those provided by any other party. The Court may order the preservation of records, documents, and other evidence. The parties may agree to extend or modify these provisions. The Court may adopt any other rules necessary to the conduct of the case. The Court may enter such orders as may be necessary to prevent or effectuate the preservation of records, documents, and other evidence. The Court may enter any other orders necessary to the conduct of the case.</td>
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**Exhibit J - Disputes**

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<td>B.0.</td>
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**Exhibit J - General**

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<td>C.0.</td>
<td>In any action or proceeding to determine the responsibilities of the Contractor, the Contractor shall be deemed to be in all respects a party to the Contract.</td>
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<td>General</td>
<td>3</td>
<td>C.0.</td>
<td>The rules of evidence shall be the same as those provided by any other party. The Court may order the preservation of records, documents, and other evidence. The parties may agree to extend or modify these provisions. The Court may adopt any other rules necessary to the conduct of the case. The Court may enter such orders as may be necessary to prevent or effectuate the preservation of records, documents, and other evidence. The Court may enter any other orders necessary to the conduct of the case.</td>
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</table>

**Eliot Hine Middle School**

**RSM Risk Report**

**February 14, 2021**

**Comprehensive Risk Assessment**
Waiver 23

Exhibit J - CM does not comply with the National Institute of Standards and Technology (NIST) standards. The Contractor agrees to indemnify the Government for any loss or damage resulting from the Contractor's failure to comply with these standards.

Exhibit J - CM does not have sufficient security measures in place to protect the confidentiality of the data collected under the Contract.

Execution of Related Party Disclosure Form

Exhibit J - The Contractor does hereby irrevocably designate and appoint the Clerk of the Superior Court of the Government and its successors to receive all process, papers, and pleadings served in any and all proceedings arising out of the Contract.

Patent Indemnity

Exhibit J - The Contractor shall be responsible for the protection of the Government's intellectual property rights and shall indemnify the Government for any damages resulting from the Contractor's failure to comply with these requirements.

Buy America Act

Specifically, the Contractor shall ensure that all products, materials, and supplies used in the performance of the Contract are manufactured in the United States.

Covenant Against Contingent Fees

The Contractor agrees not to engage in any activity that directly or indirectly results in the payment of contingent fees to any individual, entity, or organization.

Appointment of Counsel

The Contractor shall ensure that any legal counsel or representative appointed to represent the Government in any legal proceeding is qualified and experienced in the area of law governed by the Contract.

Additional Bond Security

The Contractor must provide additional bond security as required by the Contracting Officer. Any such surety fails to furnish reports as to its financial condition from time to time as requested by the Government, the Contractor may be deemed in default of its obligations and the Contract may be terminated.

21. In the event of a dispute arising out of or related to the Contract, the parties shall first attempt to resolve the dispute through informal negotiation. If informal negotiation is unsuccessful, the parties may submit the dispute to mediation. If mediation is unsuccessful, the parties may submit the dispute to arbitration. The arbitrator shall award costs and expenses to the prevailing party. The parties shall have the right to have their attorneys present during the arbitration.

23. The Contractor shall indemnify the Government for any loss or damage resulting from the Contractor's failure to comply with the terms and conditions of the Contract.

47. The Contractor shall provide a detailed schedule of the work to be performed under the Contract, including the anticipated completion dates. The schedule shall be submitted to the Contracting Officer at least thirty (30) days prior to the commencement of the work.

477. This Contract is subject to the Federal Acquisition Regulations (FAR) and all applicable laws and regulations. The Contractor agrees to comply with all applicable laws and regulations, including those governing the procurement and performance of the work described in the Contract.

635. In the event of a dispute arising out of or related to the Contract, the Contractor may seek resolution through alternative dispute resolution mechanisms, including mediation or arbitration.

16. The Contracting Officer may order the Contractor to clean up the project site at any stage of work at no added expense. In such an event, the Contractor shall bear the cost of cleaning up the site.

11.3; Exhibit J - Periodically visit the job site to ensure compliance with the Buy America Act and other sourcing requirements of the Contracting Officer.
<table>
<thead>
<tr>
<th>Article Title</th>
<th>Section Title</th>
<th>Article Subtitle</th>
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<th>Post Step</th>
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<td>26 A.1.</td>
<td></td>
<td></td>
<td>In addition to any other liquidated damages provided for in the Contract, the Contractor hereby agrees that the Government may use all or any portion of any payment, consideration or refund owed the Government that is due the Contractor under the Contract, to satisfy, in whole or part, any debt owed the Government to the extent specified in the Contract.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>26 A.2.</td>
<td></td>
<td></td>
<td>The Contractor hereby agrees that the Government may use all or any portion of any payment, consideration or refund owed the Government that is due the Contractor under the Contract, to satisfy, in whole or part, any debt owed the Government to the extent specified in the Contract.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<td>26 B.0.</td>
<td></td>
<td></td>
<td>No claim under this Article shall be allowed:</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>26 C.0.</td>
<td></td>
<td></td>
<td>For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of its inability to perform as well as a description of the force majeure and its effect on Contract performance. The Contractor shall also take or cause to be taken such additional safety measures as the Contracting Officer may require to ensure the safety of the Contractor or others engaged in the contract at any future time.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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<tr>
<td>26 D.0.</td>
<td></td>
<td></td>
<td>The Construction Manager shall be responsible for working with the Department to ensure that all required safety standards are met.</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
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**Comprehensive Risk Assessment**

**Exhibit J - Key DGS Management Controls**

See 10.1

**Exhibit J - Safety Program**

See Exhibit J 27A

**Exhibit J - Pay Application**

See Exhibit J 27A

**Memo, procedure, or other details pertaining to variance handling process**

See Exhibit J 27A
1.0. Exhibit O - At-Risk

If a GMP is agreed upon by the Construction Manager and the Department no later than March 13, 2019, the Guaranteed Maximum Price shall be the total maximum cost to be paid by the Construction Manager, for the modernization of the ELIOT HINE MIDDLE SCHOOL and to establish a Guaranteed Maximum Price. The evaluation of the Construction Quality At-Risk Portion will coincide with the review and approval of each application. The construction quality at-risk portion of the award fee pool shall be evaluated and compensated on a monthly basis beginning at 50% completion and calculated pro rata from 50% completion through Substantial Completion as set forth below.

2.0. The evaluation of the Construction Quality At-Risk Portion will coincide with the review and approval of each application. The construction quality at-risk portion of the award fee pool shall be evaluated and compensated on a monthly basis beginning at 50% completion and calculated pro rata from 50% completion through Substantial Completion as set forth below.

3.0. The Construction Manager shall earn twenty-five percent (25%) of the award fee pool. In the event this metric is achieved, then this portion of the award fee pool shall be paid in the first progress payment that is due after Substantial Completion of the Project. For the avoidance of doubt, the construction quality at-risk portion of the award fee pool shall be paid in the first progress payment that is due after Substantial Completion of the Project.

4.0. The Construction Manager shall represent, warrants and guarantees to the Department that the total maximum cost to be paid by the Construction Manager is less than One Hundred Three percent (103%) or the GMP as organized by trade categories, allowances, contingency, and other items and the fee that comprise the Guaranteed Maximum Price. Six Thousand Three Hundred Fifty Seven Dollars ($2,946,357).
<table>
<thead>
<tr>
<th>No.</th>
<th>Contract Doc</th>
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**Appendix page 30 of 31**

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**Eliot Hine Middle School**

**RSM Risk Report**

**February 14, 2021**

**Comprehensive Risk Assessment**
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Agency Comments

On September 18, 2020, we sent a draft copy of this report to the Department of General Services (DGS) for review and written comment. DGS responded with comments on October 2, 2020. Agency comments are included here in their entirety, followed by ODCA’s response.
October 2, 2020

Kathleen Patterson, Auditor  
Office of the D.C. Auditor  
717 14th Street NW, Suite 900  
Washington, DC 20005


Dear Ms. Patterson:

Thank you again for the opportunity for DGS to provide comments to the above Draft Report. Again, we value the opportunity to review and improve DGS’ implementation of the District’s school modernization program. We provide the following responses to the specific ODCA recommendations outlined in the Draft Report:

RECOMMENDATION #1

Turner did not exclude its own subsidiary, Turner Logistics, from the calculation of Subcontractor Default Insurance (SDI) ($70,070). During final project accounting and closeout, DGS should reconcile SDI costs and request a credit of $70,070 if Turner Logistics is included in the subcontractor listing.

RESPONSE:

DGS’ Capital Construction Services Division (“CCSD”) will reconcile these costs as part of the final financial closeout of the project.

RECOMMENDATION #2

The General Conditions included transactions for disallowed costs ($14,000) and transactions without records to show that they were related to the project ($919). DGS should request a credit of $14,919 for the disallowed and unsupported costs.
RESPONSE:

CCSD will reconcile these costs as part of the final financial closeout of the project.

RECOMMENDATION #3

DGS paid Turner for workers not initially listed on the certified payroll and without reconciling the certified payroll to the pay application. In future projects, DGS should reconcile the labor costs submitted with the pay application to the certified payroll.

RESPONSE:

CCSD will incorporate the recommendation to reconcile rates as part of our project kick-off process to ensure appropriate rates are being billed. CCSD will also update its project management guidelines, which are being revised in Fiscal Year 2021 (“FY21”).

RECOMMENDATION #4

Some labor costs including positions, employees, hourly rates, and work performed before the Notice to Proceed was issued do not align with the contract terms. In future projects, DGS should require the construction manager to obtain written pre-approval before billing for items that are not included in the contract documents.

DGS RESPONSE:

CCSD will ensure that our project managers are aware of the required process and will implement immediately.

RECOMMENDATION #5

DGS accepted and paid for staff fringe benefits costs, which usually are restricted or not allowed in this project type, and which the contract did not explicitly define. In future projects, DGS should specify allowable fringe benefit costs in the contract.

DGS RESPONSE:

In FY21, DGS will revise its contract language to qualify “fully burdened” staff rates, and to delineate between fringe costs allowed as a cost of work versus those costs which would be considered disallowed.

RECOMMENDATION #6

As of the testing scope period, the local labor employed on the project was only 39%, 51% is the amount required. The Department of Employment Services (“DOES”) should verify compliance with local labor requirements.
DGS RESPONSE:

As part of its closeout process, DGS will continue confirm with DOES that compliance with local labor requirements has been achieved with respect to the project in its entirety.

RECOMMENDATION #7

In the closeout for this project, DGS should reconcile the contingency.

DGS RESPONSE:

As part of its closeout process, DGS will reconcile the contract’s contingency.

CONCLUSION:

DGS welcomes the recommendations from the ODCA and the opportunity to improve upon the school modernization program. DGS and DCPS have already implemented various improvements to the school modernization program to enhance planning, accountability and cost controls. We share the common goal of making improvements to the execution of the school modernization program and are taking strides to improve the existing program. Please do not hesitate to contact me at 202.727.2800 if you have questions or require additional information.

Sincerely,

Keith A. Anderson
Director

cc: Xavier Beltran, General Counsel
    Yohance Fuller, Chief Operating Officer
    Paul Blackman, Jr., Deputy Director Capital Construction
    Brian Butler, Executive Program Manager
    George Lewis, Chief Procurement Officer
ODCA Response to Agency Comments

We appreciate the response to the draft report provided by the Department of General Services (DGS), including the spirit of cooperation embodied in the comment from Director Keith Anderson that “DGS welcomes the recommendations from the ODCA and the opportunity to improve upon the school modernization program.”

We are pleased that DGS concurred with all our recommendations and appreciate its agreement to implement them within the next year: some as it revises internal documents in fiscal year 2021, some during the project close out, and one immediately.

Director Anderson’s comments describe DGS and DCPS as sharing “a common goal of making improvements to the execution of the school modernization program.” It is a goal that ODCA shares, too, and we are gratified by DGS’s willingness to put our recommendations into effect.
About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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