January 18, 2022

Keith Anderson  
Director  
Department of General Services  
2000 14th Street, N.W., 8th Floor  
Washington, DC  20009

Dear Mr. Anderson:

Attached is our report entitled, Eliot-Hine Middle School Modernization Construction Closeout Report. I greatly appreciate the cooperation and collaboration of you and your team on this and other efforts to improve District services. We are encouraged at the areas you have indicated where reforms are now underway and hope this effort continues.

We track the implementation status of recommendations made in our audit reports and report on recommendation compliance each year in advance of the D.C. Council’s performance hearings. We will be back in touch at a later time to ask what actions have been taken to implement the recommendations contained in this report. In the meantime, please let me know if you have any questions regarding the report or the compliance process.

Thank you very much.

Sincerely yours,

Kathleen Patterson  
District of Columbia Auditor
January 18, 2022

The Hon. Phil Mendelson
Chairman, Council of the District of Columbia
The John A. Wilson Building
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).

This report, Eliot-Hine Middle School Modernization Construction Closeout Report, follows the report, Improvements to School Modernization Contract Administration Could Save District Money, published in October 2020. Together they present a comprehensive review of DGS oversight of Turner Construction's compliance with the contract to serve as construction manager for the Eliot-Hine Middle School Modernization Project. The initial report sought to identify any risks in the construction contract that could impact cost and legal compliance, and identify any controls needed to improve DGS's contract administration.

After the first report ODCA engaged RSM to review the final closeout activities on the project during Fiscal Year 2021. RSM identified several opportunities for improvement outlined in the Executive Summary and detailed in the report and in their comments on the draft report. DGS states they concur with the major findings and will move forward on a majority of recommendations. The report includes Turner’s failure to meet the statutory requirement that 51% of workers be D.C. residents, having reached just 39% local hires. In their comments DGS acknowledges not reaching the 51% threshold for new hires but noted hiring targets were reached in specific job categories. The report documents that change orders raised the contract cost 25% from $73 million to $91 million including multiple design changes. RSM recommended the contractor reimburse the District an amount under $50,000 to reflect overcharges or math errors and DGS indicates they will seek reimbursement for the majority of those funds. Referencing both reviews, RSM concluded that “the project is generally well controlled and accounted for.”

ODCA greatly appreciates the collaboration on the part of DGS on school modernization audits, and we value the partnership with RSM in completing this comprehensive review.

Sincerely yours,

Kathleen Patterson
Auditor of the District of Columbia
November 29, 2021

Ms. Kathy Patterson, DC Auditor  
Office of the District of Columbia Auditor (“ODCA”)  
717 14th Street, NW, Suite 900  
Washington, DC 20005

Dear Ms. Patterson:

Pursuant to our Consulting Services Agreement dated April 28, 2021, RSM is pleased to present the following deliverables as required by Article 1 of our agreement:

- Task 5 - DRAFT Project Report

Our approach to this work consisted of the following procedures as they relate to the Eliot-Hine Middle School Modernization project:

- Review of the construction manager’s (“CM”) cost accounting report and reconciliation to final project billings to validate the accuracy of the final accounting for contingency and calculation of savings to be returned to the Owner
- Review of a sample of final subcontractor pay applications and evidence that the Construction Manager has paid each subcontractor the full balance of their final subcontract value
- Review of the final listing of vendors included in the calculation of Subcontractor Default Insurance (“SDI”), to validate accuracy of the calculation and to identify any potential overbillings
- Review of final Small Business Enterprise (“SBE”) and local workforce calculations

The results of these procedures have been detailed in the pages that follow this transmittal. We anticipate meeting with ODCA to discuss the results of our procedures in the coming weeks, and look forward to incorporating any feedback you provide.

We would like to thank all ODCA and DGS team members who assisted us throughout this review.

Sincerely,

RSM US LLP
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EXECUTIVE SUMMARY

Eliot-Hine Middle School Modernization Project

This multi-year project incorporated renovation of the older, historic structures and demolition of the latest addition. Remodeling work included redesigning classroom layouts, upgrading the HVAC system, upgrading the building to current code standards (including ADA and life safety systems). The District of Columbia ("DC") Department of General Services ("DGS" or collectively the "Owner") engaged Turner Construction Company as the Construction Manager ("CM"). Work was performed from July 2018 to September 2021, with a final contract amount of $91,497,061.

Scope, Approach, and Objectives

RSM was engaged to provide interim (mid-project) and closeout (end of project) construction audit services for the project. Our procedures included, but were not limited to:

- Development of an Assessment of Risks based on the CM's construction agreement
- Evaluation of CM procurement
- Analyzed contractual compliance of billings by the CM through detailed testing
- Identified improvements to DGS project management and contract administration

At the conclusion of our work, we reviewed the results with DGS and obtained their responses herein.

Summary of Results

The Eliot-Hine Modernization project required complex construction budgeting, accounting, and compliance processes. Unforeseen conditions, including contaminated soil remediation and COVID-19 delays extended the project duration by 9 months. The associated costs for the schedule extension, along with scope additions, increased the construction contract amount from $73,188,608 to $91,497,061 (25%). Our procedures revealed that through our interim and closeout reviews, the project is generally well controlled and accounted for.

During our interim and closeout work, we identified several areas of improvement, including:

- Labor costs billed in accordance with the construction agreement
- Utilization of small businesses headquartered in the District of Columbia
- Mathematical errors in CM records
- Documentation retention
- Construction contract language clarifications

In our closeout observations, we recommend recovery from the CM of $49,032, and note an earlier recovery of $14,919 as a result of our interim report. The closeout observations, improvement opportunities, and recommendations for our closeout procedures are individually summarized on the next page and are detailed further in this report.
### SUMMARY OF RESULTS

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><strong>O.1 Disallowable Labor Costs</strong></td>
<td></td>
</tr>
<tr>
<td>• Two (2) employees were billed at higher rate than approved in Exhibit E of the agreement</td>
<td>$ 44,982</td>
</tr>
<tr>
<td>• Two (2) positions were billed to the project, but not approved in Exhibit E of the agreement</td>
<td></td>
</tr>
<tr>
<td><strong>O.2 Change Order Calculations</strong></td>
<td></td>
</tr>
<tr>
<td>• Three (3) change orders had mathematical errors</td>
<td>$ 4,050</td>
</tr>
<tr>
<td><strong>O.3 Pay Application Accuracy</strong></td>
<td></td>
</tr>
<tr>
<td>• The pay applications did not carry forward accurately period-over-period</td>
<td>No cost impact</td>
</tr>
<tr>
<td><strong>O.4 General Conditions Credit</strong></td>
<td></td>
</tr>
<tr>
<td>• Staff training costs totaling $14,919, identified in interim report, were credited back to the project during the closeout scope period</td>
<td>No closeout cost impact</td>
</tr>
<tr>
<td><strong>O.5 Local Labor Reporting</strong></td>
<td></td>
</tr>
<tr>
<td>• The CM achieved 39% local labor utilization; however, the contract required 51% utilization.</td>
<td>No cost impact</td>
</tr>
<tr>
<td><strong>O.6 Reporting Variances and Payments to Subcontractors</strong></td>
<td></td>
</tr>
<tr>
<td>• Discrepancies in payments reported by the CM, DSLBD, and subcontractors</td>
<td>No cost impact</td>
</tr>
<tr>
<td>• Discrepancies in Small Business Enterprise (“SBE”) certification numbers</td>
<td></td>
</tr>
<tr>
<td>• Variances between subcontractor billing and the CM’s payment record</td>
<td></td>
</tr>
<tr>
<td><strong>Total Potential Exposure</strong></td>
<td>$ 49,032</td>
</tr>
</tbody>
</table>

We recommend the Owner deduct $49,032 from the CM’s final payment, or, if the final payment is not sufficient to cover the credit owed, we recommend the Owner issue a deductive change order and reimbursement from the CM.
Observations and Improvement Opportunities

<table>
<thead>
<tr>
<th>Improvement Opportunities</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>IO.1 Subcontractor Default Insurance (&quot;SDI&quot;)</strong></td>
</tr>
<tr>
<td>- The contract allows for 1.5% of direct costs and does not contemplate reimbursement for only enrolled subcontractors. The exposure for SDI paid for subcontractors not enrolled and other costs is $196,511.</td>
</tr>
<tr>
<td><strong>IO.2 Fringe Benefits in Labor Cost</strong></td>
</tr>
<tr>
<td>- The CM billed for employee time not worked on the project; labor rates typically include fringe benefits for time not worked, resulting in duplicative billing of employee time.</td>
</tr>
<tr>
<td><strong>IO.3 Document Control</strong></td>
</tr>
<tr>
<td>- During the course of our fieldwork, some documents were not provided.</td>
</tr>
<tr>
<td><strong>IO.4 Contract Provision Recommendation</strong></td>
</tr>
<tr>
<td>- Insurance and bonds are calculated based on Volume of work, but are also included in the calculation of Volume, creating a contradiction in the contract terms.</td>
</tr>
</tbody>
</table>

The details of these observations and improvement opportunities are included in the pages that follow.

As discussed previously in our interim report, and 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.
PROJECT BACKGROUND

Project Highlights
The Eliot-Hine Middle School campus consisted 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. 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. This multi-year modernization project incorporated renovation of the older, historic structures and demolition of the latest addition. Remodeling work included 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. The modernized facility will accommodate 480 students and achieve LEED Gold certification.

Project Cost Summary
The original Guaranteed Maximum Price (“GMP”) contract value was $73,188,608. Of the 14 post-GMP change orders executed, five (5) resulted in increases to the contract value by 25%. These changes were related to challenges of simultaneously sequencing the new construction with asbestos abatement of the historical building, multiple design changes, and contaminated soils. The chart below details the starting contract and executed change orders.

<table>
<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Duration</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preconstruction Services</td>
<td>1/18/2019</td>
<td>-</td>
<td>$13,000,000</td>
</tr>
<tr>
<td>Change Order 1 – Primary Construction Phase</td>
<td>1/30/2019</td>
<td>-</td>
<td>$60,188,608</td>
</tr>
</tbody>
</table>

| Total Guaranteed Maximum Price                  | 805 days |        | $73,188,608  |
| Change Orders                                   |         |        |             |
| 2 – Scope revisions                             | 10/18/2019 | -       | $ -         |
| 3 – Update scope per Change Order 2             | 10/18/2019 | -       | $ -         |
| 4 – Scope revisions                             | 10/18/2019 | -       | $ -         |
| 5 – Scope revisions                             | 2/20/2019  | -       | $ -         |
| 6 – Add/Alternate scope per Change Order 2      | 4/23/2020  | -       | $ -         |
| 7 – Cancel scope per Change Order 3             | 4/23/2020  | -       | $ -         |
| 8 – Reallocation of project funds between scopes | 6/2/2020  | -       | $ -         |
| 9 – Unforeseen conditions, additional scope     | 6/22/2020 +135 days | $7,236,193 |
| 10 – Unforeseen conditions, additional scope    | 8/3/2020 +82 days | $3,358,366  |
| 11 – Capital ineligible supplies and equipment  | 8/31/2021  | -       | $260,674    |
| 12 – Additional scope, redesign costs           | 11/3/2020  | -       | $739,325    |
| 13 – Additional scope, redesign costs           | 12/7/2020  | -       | $6,713,896  |
| 14 – Document funding for scope per Change Order 13 | 1/25/2021  | -       | $ -         |
| 15 – Extension of substantial completion date    | 3/1/2021 +58 days | $ -     |

| Total Change Orders                            | +275 days | $18,308,454 |
| Total Project Contract Amount                  | 1,080 days | $91,497,062 |
Mid-project, there were cash flow concerns related to the ability to fund changes to the project. DGS directed the CM to temporarily deduct scope from future portions of the work to fund the Owner’s Allowance and partially fund some change order work to be performed by SBE subcontractors. For example, the mechanical/plumbing scope was reduced in change order 8 to make available funds to be for scopes such as contaminated soils costs and abatement. This action was approved with change order 8, a net-zero cost change, and later reversed with change order 9 to reinstate the scope previously deducted after the Owner was approved to increase the contract amount, shown in the project contract summary above.

Project contingency was approved by the Owner to reimburse the CM for unanticipated costs, schedule recovery, and COVID-19 costs. These items did not increase the CM’s contract amount and was disbursed among the project cost categories. Below, we summarized the project billings by cost category.

<table>
<thead>
<tr>
<th>Project Billing Summary</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>General Conditions</td>
<td>$ 4,666,741</td>
</tr>
<tr>
<td>General Requirements</td>
<td>$ 6,210,494</td>
</tr>
<tr>
<td>Direct Work</td>
<td>$ 72,421,655</td>
</tr>
<tr>
<td>Insurance</td>
<td>$ 4,080,457</td>
</tr>
<tr>
<td>Fee</td>
<td>$ 3,717,704</td>
</tr>
<tr>
<td>COVID-19 Costs</td>
<td>$ 400,010</td>
</tr>
<tr>
<td><strong>Total Billed through Pay App #34 (June 30, 2021)</strong></td>
<td><strong>$ 91,497,061</strong></td>
</tr>
<tr>
<td><strong>Remaining Contract Value to bill</strong></td>
<td><strong>$ 0</strong></td>
</tr>
<tr>
<td><strong>Retention as of Pay App #36</strong></td>
<td><strong>$ 0</strong></td>
</tr>
</tbody>
</table>

### Project Schedule Summary

The project was originally scheduled for final completion in September 2020. As described above, the project experienced schedule challenges with project sequencing, asbestos abatement of the historical building, multiple design changes, contaminated soils, and COVID-19 restrictions. Schedule extensions were approved through multiple change orders over the duration of the project, with the most recent extension approved through change order 15, summarized below:

<table>
<thead>
<tr>
<th>Project Timeline</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Notice to Proceed (&quot;NTP&quot;)</td>
<td>July 15, 2018</td>
</tr>
<tr>
<td>Guaranteed Maximum Price (&quot;GMP&quot;) Executed</td>
<td>July 21, 2019</td>
</tr>
<tr>
<td>Original Substantial Completion</td>
<td>July 29, 2020</td>
</tr>
<tr>
<td>Original Final Completion</td>
<td>September 27, 2020</td>
</tr>
<tr>
<td><strong>Revised</strong> Substantial Completion (per Change Order #15)</td>
<td>April 30, 2021</td>
</tr>
<tr>
<td><strong>Revised</strong> Final Completion (per Change Order #15)</td>
<td>June 30, 2021 (275 day extension)</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 a closeout audit of the project; with our scope period covering the period from the project inception through Pay Application 36, July 18, 2018 through August 31, 2021.

Approach

Task 1: Obtain and review Turner Construction's (“Construction Manager,” or “CM”) cost accounting report, and perform a reconciliation to final project billings to identify overcharges and to validate the accuracy of final shared savings calculations. In addition, perform the following steps:
- Review of applications for payment for compliance with the contract
- 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 compliance with Davis Bacon requirements;
  - 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

Task 2: Select a sample of subcontractors from the final cost report, obtain and review final subcontractor pay applications, and obtain evidence that the Construction Manager has paid each subcontractor the full balance of their final subcontract value.
- Review subcontracts and identify any fictitious vendors or related party transactions

Task 3: Obtain and review the final listing of vendors included in the calculation of Subcontractor Default Insurance (“SDI”), to validate accuracy of the calculation and to identify any potential overbillings.

Task 4: Obtain and review final Small Business Enterprise (“SBE”) and local workforce calculations.

Task 5: At the conclusion of Tasks 1-4, Consultant will produce a final report, inclusive of any observations and / or cost recoveries identified through the procedures outlined above.
- Development of Observations and recommendations to recover costs
- Development of Improvement Opportunities and recommendations for best practices and improvement to future contracts

Task 6: At the direction of the DC Auditor, prepare and provide briefings to stakeholders, including members and/or staff of the Council of the District of Columbia, DC government agencies, and the press.
Through detailed testing of a judgmental sample of general conditions labor costs, we identified $44,982 in labor costs which are not compliant with the contract. Specifically, we noted:

A. Two (2) employees were charged to the project at an hourly rate greater than rates specified in the Agreement staff rate schedule, Exhibit E. Through discussions with DGS, we noted no formal approval was granted for the rates charged.

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.

The table below summarizes the impact identified:

**Table O1.1**

<table>
<thead>
<tr>
<th>Employee Position</th>
<th>Hours in Job Cost</th>
<th>Rate Billed</th>
<th>Maximum Allowable Rate</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Superintendent</td>
<td>1,184</td>
<td>$153</td>
<td>$149</td>
<td>$4,736</td>
</tr>
<tr>
<td>Engineer</td>
<td>2,296</td>
<td>$86</td>
<td>$70</td>
<td>$36,736</td>
</tr>
<tr>
<td><strong>Total Impact</strong></td>
<td></td>
<td></td>
<td><strong>$41,472</strong></td>
<td></td>
</tr>
</tbody>
</table>

B. An invoice for two (2) employees was charged to the project (rather than recording the employees’ time with other general conditions labor); however, the employees’ positions and rates were not included in the Agreement staff rate schedule, Exhibit E. Through discussions with DGS, we noted no formal approval was granted for the positions or rates to be charged to the project. Additionally, these employees were charged to the project general conditions by an internally produced invoice from Turner, rather than the staff labor detail. The table below summarizes the impact identified:

**Table O1.2**

<table>
<thead>
<tr>
<th>Employee Position</th>
<th>Rate Billed</th>
<th>Hours Sampled¹</th>
<th>Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Design Manager</td>
<td>$208</td>
<td>6</td>
<td>$1,246</td>
</tr>
<tr>
<td>Director Geotechnical Engineering</td>
<td>$213</td>
<td>3</td>
<td>$534</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>9</strong></td>
<td><strong>$1,780</strong></td>
</tr>
</tbody>
</table>

Note 1: While there may be other similar costs billed, due to the description of the job cost transaction sampled, we were unable to identify the total amount of similar billings in the job cost population.

(continued)
OBSERVATION MATRIX

O.1 Disallowed Labor Costs

C. We calculated the cumulative project impact of the observations identified above.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Employees billed at unapproved rates</td>
<td>$ 41,472</td>
</tr>
<tr>
<td>B. Positions not approved were billed to the project</td>
<td>$ 1,780</td>
</tr>
<tr>
<td><strong>Subtotal Observation 2</strong></td>
<td><strong>$ 43,252</strong></td>
</tr>
<tr>
<td>CM Fee 4%</td>
<td>$ 1,730</td>
</tr>
<tr>
<td><strong>Total Impact Observation 2</strong></td>
<td><strong>$ 44,982</strong></td>
</tr>
</tbody>
</table>

We recommend the District deduct $44,982 from Turner’s retention or, if retention is not sufficient to cover the credit owed, a deductive change order and reimbursement from Turner should be issued.

O.1 Management Response

The amounts in Table O2.1 were billed in error above and beyond the amount included in Exhibit E to Contract No. DCAM-18-CS-0054 (the “Contract”). The amount of $41,472 was overbilled. The amounts in Table O2.2 were design professionals working with the CMAR. DGS believes that it was an error to assign these costs ($1,780) to General Conditions and they should instead have been part of the Cost of the Work (i.e., inside the Guaranteed Maximum Price). While DGS acknowledges that it made an error in not making sure these costs were assigned to the Cost of the Work, it would have been reimbursed at cost to the CMAR in either instance. Therefore, DGS believes that the total financial impact of this observation should be $41,472. Note that there would not have been a mark-up on this work since it would not have been considered a contract modification and all changes to the CM Fee were addressed in multiple contract modifications.
**OBSERVATION MATRIX**

### O.2 Change Order and Contingency Calculations

Through our detailed testing of a judgmental sample of change order and contingency support (referred to as potential change order, or “PCO”), we identified $4,050 in errors resulting from mathematical calculations and unsupported costs. The table below summarizes the results of our analysis:

<table>
<thead>
<tr>
<th>Item</th>
<th>Total PCO</th>
<th>Mathematical Errors</th>
<th>Total Impact¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>PCO 26</td>
<td>$880,374</td>
<td>$1,200</td>
<td>$1,303</td>
</tr>
<tr>
<td>PCO 71</td>
<td>$2,898,724</td>
<td>$131</td>
<td>$142</td>
</tr>
<tr>
<td>PCO 255</td>
<td>$5,139,077</td>
<td>$2,400</td>
<td>$2,605</td>
</tr>
<tr>
<td><strong>Total Impact</strong></td>
<td><strong>$8,918,175</strong></td>
<td><strong>$3,731</strong></td>
<td><strong>$4,050</strong></td>
</tr>
</tbody>
</table>

Note 1: Cumulative impact including fee, insurance, and bond

We recommend the District deduct $4,050 from Turner’s retention or, if retention is not sufficient to cover the credit owed, a deductive change order and reimbursement from Turner should be issued.

For future projects, we recommend DGS require the CM to provide detailed documentation, such as subcontractor invoices and quotes, and detailed calculations, to support all cost represented in the change order. DGS should recalculate the change orders for mathematical accuracy and proper application of fees.

Additionally, we identified contradicting contract terms for the calculation of insurance and bond rates. Refer to IO.4.

### O.2 Management Response

DGS acknowledges that did not fully cross-check the calculations of Turner Construction Company (the “CMAR” or “Turner”) for the items noted as “Mathematical Errors” in this observation. DGS further acknowledges that the total impact was $4,050, as DGS’ previous response to this observation did not account for mark up on the PCOs, including fees, insurance and bonds. On future projects, DGS will independently calculate and verify the line items in all change orders.
O.3 Pay Application Accuracy

Through our analysis of the pay applications, we noted the contract value on the pay applications did not carry forward accurately. The application for payment summary (Form G702) and schedule of values detail (Form G703) should agree. However, the CM's G702 reflected the overstated contract value, shown below, while the G703 listed the accurate contract amount.

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Contract Value</th>
<th>Change Orders</th>
<th>Total Contract Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay application 36 - Form G702</td>
<td>$ 73,216,226</td>
<td>$ 18,280,835</td>
<td>$ 91,497,061</td>
</tr>
<tr>
<td>Pay application 36 - Form G703 and Executed contract and modifications</td>
<td>$ 73,188,608</td>
<td>$ 18,308,453</td>
<td>$ 91,497,061</td>
</tr>
<tr>
<td><strong>Variance</strong></td>
<td><strong>($27,618)</strong></td>
<td><strong>$27,618</strong></td>
<td><strong>$</strong></td>
</tr>
</tbody>
</table>

Additionally, additive and deductive amounts included in the CM's G702 change order summary did not agree to executed changes:

- In pay application 27, a deductive change amount for $27,618 was reported by the CM; in this instance, a balance of $27,618 was deducted from the change order total and carried forward as a budget transfer balance for the general requirements cost line. Budget transfers should net to $0 for each period.
- In pay application 28, a deductive change amount for $67,891 was reported by the CM. This was reversed in the final pay application, appearing as an additive change order. The executed change orders do not support this activity. As of this report date, Turner has not provided a response for the reporting inconsistencies identified.

For future projects, we recommend DGS mathematically recalculate pay applications for accuracy and tie the G702 to the G703 to identify reporting inconsistencies.

O.3 Management Response

DGS agrees that between Pay Application No. 26 and Pay Application No. 27, the “Original Contract Sum to Date” changed from $73,188,608.00 to $73,216,226.00. However, between the two pay applications, the “Net Change by Change Orders” changed from $11,594,557.76 to $11,566,939.76. Therefore, while an adjustment to the Original Contract Sum to Date is not proper per the Contract, the total Contract Sum to Date remained unchanged, and therefore DGS does not believe any overbilling occurred because of the changes.
**Observation Matrix**

### O.4 General Conditions Credit

In our interim report, 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.

We identified $14,919 staff training costs were credited to the Owner in pay application 30. Through our analysis of costs at project closeout, we did not identify additional indications of staff training costs inappropriately charged to the project. Because this credit has already been returned to the Owner, no action is required for recovery.

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, including training, where costs are directly associated with the project, and the allowability of related travel and incidental costs.

### O.4 Management Response

DGS agrees with the recommendations.
O.5 Local Labor Reporting

Through our analysis of local labor utilization and reporting, we identified the project achieved 39%. The Agreement requires the CM ensure the project achieves 51% utilization of District of Columbia 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. In addition, the Construction Manager shall use commercially reasonable best efforts to comply with the workforce percentage goals established by the recently adopted amendments to the First Source Employment Agreement Act of 1984 (D.C. Code §§ 2-219.01 et seq.) and any implementing regulations, including, but not limited to the following requirements:

i. At least 20% of journey worker hours by trade shall be performed by District residents;

ii. At least 60% of apprentice hours by trade shall be performed by District residents

iii. At least 51% of the skilled laborer hours by trade shall be performed by District residents; and

iv. At least 70% of common laborer hours shall be performed by District residents.

The CM’s April 30, 2021 Local Labor Report and our sample test results are summarized below:

### Table O5.1

<table>
<thead>
<tr>
<th>Description</th>
<th>Per Turner 4/30/21 Report</th>
<th>Per RSM Sampling¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Local Labor Hours</td>
<td>193,947</td>
<td>6,954</td>
</tr>
<tr>
<td>Total Project Labor Hours</td>
<td>493,586</td>
<td>19,373</td>
</tr>
<tr>
<td><strong>Total % Local Workforce (recalculated)</strong></td>
<td><strong>39.3%</strong></td>
<td><strong>35.9%</strong></td>
</tr>
<tr>
<td>Total Journey Worker Hours</td>
<td>288,685</td>
<td></td>
</tr>
<tr>
<td>District Journey Worker Hours</td>
<td>73,543</td>
<td></td>
</tr>
<tr>
<td>% District Journey Worker Hours (20%)</td>
<td>25%</td>
<td></td>
</tr>
<tr>
<td>Total Apprentice Hours</td>
<td>57,724</td>
<td></td>
</tr>
<tr>
<td>Total District Apprentice Hours</td>
<td>35,630</td>
<td></td>
</tr>
<tr>
<td>% of Apprentice Hours (60%)</td>
<td>62%</td>
<td></td>
</tr>
<tr>
<td>Total Skilled Laborer Hours</td>
<td>94,367</td>
<td></td>
</tr>
<tr>
<td>District Skilled Laborer Hours</td>
<td>48,171</td>
<td></td>
</tr>
<tr>
<td>% of Skilled Laborer Hours(51%)</td>
<td>51%</td>
<td></td>
</tr>
<tr>
<td>Total Common Laborer Hours</td>
<td>52,811</td>
<td></td>
</tr>
<tr>
<td>District Common Laborer Hours</td>
<td>36,603</td>
<td></td>
</tr>
<tr>
<td>% of Common Laborer Hours(70%)</td>
<td>69%</td>
<td></td>
</tr>
</tbody>
</table>

Note 1: Examined 2 weeks per subcontractor

(continued)
OBSERVATION MATRIX

O.5 Local Labor Reporting

The CM's report included 101 subcontractors. Of those, 46% utilized local labor resources.

<table>
<thead>
<tr>
<th>Description</th>
<th># Subs</th>
<th>Total Hours</th>
<th>Local Hours</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subcontractors with no project hours</td>
<td>11</td>
<td>11%</td>
<td>-</td>
</tr>
<tr>
<td>Subcontractors with project hours, no local labor hours</td>
<td>44</td>
<td>44%</td>
<td>18,305.86</td>
</tr>
<tr>
<td>Subcontractors with project hours, with local labor hours</td>
<td>46</td>
<td>46%</td>
<td>475,280.50</td>
</tr>
<tr>
<td><strong>Subcontractors with project hours and local labor</strong></td>
<td>101</td>
<td>493,586.36</td>
<td>193,947.33</td>
</tr>
</tbody>
</table>

Additionally, we noted for 13 of the 101 subcontractors (representing 2% of total project labor, and 1% of local labor per Turner’s report), the certified payroll records were not on file. Certified payroll is required to be submitted to the District by the subcontractor and serves to validate local labor, prevailing wage, and other labor requirements.

For future projects, we recommend DGS and DLSBD validate compliance with the Agreement requirement for local workforce utilization through the duration of the project. In instances where the project is not meeting its goal, the departments should require the CM to provide an action plan for goal achievement. Regular monitoring will aid to mitigate the risk of noncompliance.

O.5 Management Response

DGS agrees with the recommendations.
O.6 Reporting Variances and Payments to Subcontractors

Through our analysis of Small Business Enterprise ("SBE") compliance and subcontractor payments, we identified discrepancies between the CM and subcontractor reporting.

A. For one subcontractor, we noted variances in the amount paid as reported by Turner, Turner's job cost records, and the Department of Small and Local Business Development's ("DSLBD") records. The subcontractor (Saxon Collaborative Construction) reported fewer payments than the amount reported by the CM. However, the subcontractor’s Vendor Verification Form was not provided for the period of March 2021 to validate the payments reported (see also IO.3). The amounts reported by each source is detailed below.

<table>
<thead>
<tr>
<th>SBE Subcontractor Name</th>
<th>Turner Monthly SBE Report (March 2021)</th>
<th>Turner Job Cost (through March 2021)</th>
<th>DSLBD Report (through March 2021)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saxon Collaborative Construction</td>
<td>$797,391</td>
<td>$669,944</td>
<td>$439,875</td>
</tr>
</tbody>
</table>

B. We noted two SBE third-tier subcontractors (Dynamic PSG and Ideal Electrical Supply Corporation) were included on the DSLBD Quarterly report but were not included on Turner’s Monthly report. The absence of the subcontractors on Turner’s report did not impact the CM's ability to meet its SBE goals. However, no reconciliation was performed by the project management team or DSLBD to address the reporting variance.

C. Through our validation of SBE registration, we identified 19 instances where a SBE’s certification number per the online District Enterprise System ("DES") differed from the certification number reported by Turner and/or DSLBD in their respective project specific reports. Below is an example of the certification number discrepancies noted:

<table>
<thead>
<tr>
<th>SBE Subcontractor Name</th>
<th>Turner SBE Report</th>
<th>DSLBD Report</th>
<th>District Enterprise System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Keystone Plus Construction</td>
<td>LSDZR26158052021</td>
<td>LSDZR26158042021</td>
<td>LSZXR28076042024</td>
</tr>
<tr>
<td>R&amp;R Mechanical Contractors</td>
<td>LZR70550032021</td>
<td>LZR70550032021</td>
<td>LZR36745032024</td>
</tr>
</tbody>
</table>

While the differences in A-C noted above impact Turner’s ability to meet their SBE participation percentage, errors of this nature and magnitude could result in inaccurate reporting. DSLBD should obtain and review Contractors’ monthly reports against their own reporting for accuracy. Additionally, DGS and DSLBD should obtain a Vendor Verification Form from Saxon to confirm the amount paid to them by Turner, and adjust their reported payments accordingly.

(continued)
O.6 Reporting Variances and Payments to Subcontractors

D. We identified two instances where Turner’s cost accounting record and payment records did not agree to the total Completed and Stored to Date (“CSTD”) as submitted by the subcontractors. The subcontractors (R&R Mechanical and HRGM Mechanical), Turner’s payments and cost accounting record are less than the subcontractors’ CSTD. The variances are not due to retention held; it indicates the CM has withheld payments from the subcontractors while fully billing the Owner for the work.

Table O6.3

<table>
<thead>
<tr>
<th>Subcontractor</th>
<th>(A) Subcontractor CSTD</th>
<th>(B) Turner Job Cost Total</th>
<th>(C) Validated Payments from Turner to Sub</th>
<th>(B-A) Variance</th>
<th>(C-B) Variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>R&amp;R Mechanical</td>
<td>$13,932,539</td>
<td>$13,930,456</td>
<td>$13,703,223</td>
<td>$(2,083)</td>
<td>$(227,233)</td>
</tr>
<tr>
<td>HRGM Corporation</td>
<td>$6,592,765</td>
<td>$6,586,082</td>
<td>$6,389,993</td>
<td>$(6,683)</td>
<td>$(196,089)</td>
</tr>
</tbody>
</table>

As of this report date, Turner has not provided a response for the variances identified. We recommend DGS require the CM to provide evidence of payment to the subcontractors to match the CSTD billed to the Owner. If payments to subcontractors were less than the work billed to the Owner, the Owner may be entitled to a credit from the CM, supported by Article 9.1.1 of the Agreement, below:

§9.1.1. Payments made by the Construction Manager to Subcontractors and suppliers, other than design subconsultants, but only in accordance with the subcontracts and supply agreements

O.6 Management Response

DGS agrees with the recommendations. Per Item D, DGS will follow up with the CMAR regarding potential credits or amounts owed back to the District.
IMPROVEMENT OPPORTUNITIES

IO.1 Subcontractor Default Insurance Calculation (“SDI”)

The Agreement includes provisions favorable to the CM, resulting in a non-recoverable exposure of $196,511 for Subcontractor Default Insurance (“SDI”) fees.

While Turner billed SDI according to the Agreement, 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, General Requirements Costs, or subcontractors not enrolled in the policy.

The table below details the cost impact to the contract value:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct Work - Pay Application 36</td>
<td>$78,961,196</td>
</tr>
<tr>
<td>SDI 1.50% (a)</td>
<td>$1,184,418</td>
</tr>
<tr>
<td>Direct Work - Enrolled Subcontractors</td>
<td>$65,860,434</td>
</tr>
<tr>
<td>SDI 1.50% (b)</td>
<td>$987,907</td>
</tr>
<tr>
<td>Non-recoverable Exposure (a-b)</td>
<td>$196,511</td>
</tr>
</tbody>
</table>

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. Upon review of the contract provision related to SDI, we noted that the contract allows for the CM to apply the SDI percentage across all of the “Direct Work”. Article 11.3 states:

§11.3 Insurance and Bond Rates.
The Construction Manager’s Insurance and Bond Rates include the use of a Contractor Controlled Insurance Program (CCIP) and Subcontractor Default Insurance (SDI), at the following rates:

SDI 1.50% of Direct Work
CCIP 2.25% of Volume
P&P Bonds .95% of Volume

Volume is defined as the sum of Direct Work, General Conditions, Insurance, Surety Bond, Contingency and Fee. Direct Work is defined as Volume less General Conditions, Insurance, Surety Bond, Contingency and Fee. Cost of Work is defined as Volume less Fee. Insurance and premium rates are stipulated and audit provisions extend only to confirming the stipulated rate multiplier as established above, have been applied properly to the total project Volume or Direct Work, as applicable.

As noted in our interim report, the sample policy provided by the CM as a representation of their SDI policy explicitly states that subsidiaries and affiliates of the CM 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.
**IMPROVEMENT OPPORTUNITIES**

**IO.1 Subcontractor Default Insurance Calculation ("SDI")**

In our review of the GMP and the total cost accounting report, we noted the stipulated 1.5% SDI was likely applied to all estimated trade and General Requirement ("GR") costs, which includes GR costs incurred by Turner Construction Company, and trade costs incurred by Turner Logistics, a related entity to the CM.

For future projects, we recommend DGS include contract language to specify only SDI costs solely related to the project, or costs for enrolled subcontractors only, may be allowable. The contract language should also specify the actual costs are subject to audit review. In cases where DGS agrees to a rate to be applied to enrolled subcontractors, DGS should obtain evidence from the CM during the GMP development to validate the rate is reflective of actual costs.
**Improvement Opportunities**

10.2 Fringe Benefits in Labor Costs

Through our judgmental sample analysis of general conditions costs, we identified 482 hours, or $40,263, 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

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

<table>
<thead>
<tr>
<th>Fringe Description</th>
<th>Interim Review Total Hours</th>
<th>Closeout Review Total Hours</th>
<th>Total Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Holiday</td>
<td>112</td>
<td>40</td>
<td>$ 15,641</td>
</tr>
<tr>
<td>Vacation Accrued</td>
<td>122</td>
<td>32</td>
<td>$ 13,487</td>
</tr>
<tr>
<td>Sick Leave</td>
<td>93</td>
<td>-</td>
<td>$ 8,504</td>
</tr>
<tr>
<td>Excused</td>
<td>29</td>
<td>-</td>
<td>$ 2,631</td>
</tr>
<tr>
<td><strong>Totals</strong></td>
<td><strong>356</strong></td>
<td><strong>72</strong></td>
<td><strong>$ 40,263</strong></td>
</tr>
</tbody>
</table>

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.

(continued)
**IMPROVEMENT OPPORTUNITIES**

### IO.2 Fringe Benefits in Labor Costs

We applied the exception rate across all general conditions labor to calculate the potential project-wide impact of duplicative fringe benefit costs, summarized below:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Sampled GC Labor</td>
<td>$425,778</td>
</tr>
<tr>
<td>Fringe Exception (Table O 1.3)</td>
<td>$40,263</td>
</tr>
<tr>
<td>Ratio %</td>
<td>9.5%</td>
</tr>
<tr>
<td>Total General Conditions Labor</td>
<td>$4,465,365</td>
</tr>
<tr>
<td><strong>Potential Exposure (per rate above)</strong></td>
<td><strong>$424,210</strong></td>
</tr>
</tbody>
</table>

Because judgmental sampling is nonstatistical and not intended for extrapolation, the table above is intended for illustrative purposes of the potential impact of these costs.

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 be included in the burdened rate
IMPROVEMENT OPPORTUNITIES

10.3 Document Control

During the course of our fieldwork, some documents were not provided, detailed below:

A. Saxon Collaborative Construction’s Vendor Verification Form (“VVF”) – Requested 8/16/2021

   To confirm the payments received from the CM as reported by Saxon, we requested from the DSLBD Saxon’s VVF. This form is meant to be submitted and signed by the subcontractor to verify payment received from the CM. As noted in Observation 6, we observed that for Saxon Collaborative Construction, the CM’s cost accounting ledger and the DSLBD reported fewer payments to the subcontractor than the amount reported by the CM on its small business report.

B. Potential Change Order (“PCO”) 323 support for $400,000 – Requested 7/21/2021

   As part of our testing procedures, we performed a reconciliation of contingency usage, as well as perform detailed testing of a judgmental sample of contingency uses. Following our document request, no detailed breakdown was obtained for the PCO to review the appropriateness of the costs proposed by the CM. However, through our analysis of the CM’s cost accounting record, we noted the total expenditures related to PCO 323 were equal to the approved amount.

As of this report date, the records have not been produced. We recommend DSLBD and DGS confirm the appropriate records are received from the respective CM or subcontractor as documents are processed, to confirm completeness of project records.
IO.4 Contract Provision Recommendation

Through our review of the contract provisions and their application to change order billing, we identified contradictory terms for insurance and bond calculations. The CCIP and Bond calculations are based on the project volume, defined by Article 11.3 below. However, Volume is inclusive of CCIP and Bond totals, creating a circular calculation and a conflict of terms.

§11.3 Insurance and Bond Rates.

The Construction Manager’s Insurance and Bond Rates include the use of a Contractor Controlled Insurance Program (CCIP) and Subcontractor Default Insurance (SDI), at the following rates:

SDI 1.50% of Direct Work

CCIP 2.25% of Volume

P&P Bonds .95% of Volume

Volume is defined as the sum of Direct Work, General Conditions, Insurance, Surety Bond, Contingency and Fee. Direct Work is defined as Volume less General Conditions, Insurance, Surety Bond, Contingency and Fee. Cost of Work is defined as Volume less Fee. Insurance and premium rates are stipulated and audit provisions extend only to confirming the stipulated rate multiplier as established above, have been applied properly to the total project Volume or Direct Work, as applicable.

For future projects, we recommend DGS modify the contract language so elements of Volume are not also calculated on the Volume total.
APPENDIX: GLOSSARY OF TERMS

Agreement – A written contract specifying the construction services to be performed and the arrangement between the Owner and Construction Manager.

Change Order / potential change order (“PCO”) – An amendment to the construction agreement that changes the project scope, contract amount, or completion date.

Construction Manager (“CM”) – Provides project management services for the project, including subcontractor management, scheduling, cost monitoring, quality control, etc. as defined in the agreement. Turner Construction is the Construction Manager for this project.

Construction Manager at Risk (“CMAR”) – Contract delivery method which requires the Construction Manager to deliver the project within a Guaranteed Maximum Price.

Contingency – Funds to reimburse the Construction Manager for unanticipated costs reasonably inferable from the contract documents. For this project, the contingency is for the sole use of the Construction Manager and not for use by the Owner, or for use of any matter for which the Construction Manager is entitled to an adjustment or Change Order.

Cost Accounting Report – A detailed accounting record of the expenses incurred by the Construction Manager for the project.

Davis Bacon Act of 1931 (“Davis Bacon”) – a federal law that requires all on-site employees to be paid a fair wage, benefits, and overtime while working on government-funded construction projects.

Department of General Services (“DGS”) – District department which oversees capital construction and facilities management of existing District-owned properties.

Final Completion - The point at which Substantial Completion has been achieved, all final items noted at Substantial Completion have been completed and all documents the Construction Manager is required to deliver to the Owner as a condition to receiving final payment have been delivered.

Fringe Benefits – Benefits an employer offers to employees, such as health insurance, vacation pay, or retirement contribution.

General Conditions – Items and resources needed to facilitate project completion which will not be part of the finished product.

Guaranteed Maximum Price (“GMP”) – The maximum amount that will be paid the Construction Manager to fully complete the project as stipulated in the agreement.

Labor Burden – The cost of the employee to the employer above the base salary or wage. This may include fringe benefits and payroll taxes.

Labor Costs – The costs of supervisory and site labor, including the base cost of labor plus labor burden.

Owner – This term generally means the end user of the project, District of Columbia (“DC”), and the contract administrator, Department of General Services (“DGS”).

Pay Application – A detailed construction invoice produced by the Construction Manager and submitted to the Owner, or prepared by the subcontractor and submitted to the Construction Manager. It typically accompanied by supporting schedules and invoices supporting the amount billed.
Project Schedule - The schedule for the project agreed to by the Owner and the Construction Manager in the agreement.

Risk – With relation to construction projects, risk means any exposure to possible loss or failure to meet an objective of the project.

Small Business Enterprise (“SBE”) – A business that is headquartered in the District of Columbia and has been certified by the Department of Small and Local Business Development (“DSLBD”).

Subcontractor – A entity contracted by the Construction Manager to perform any portion of the work required by the construction agreement. The subcontractor does not enter a contract with the Owner.

Subcontractor Default Insurance (“SDI”) – An insurance policy which provides coverage for the Construction Manager caused by default of performance by a subcontractor. Based on the project, some subcontractors may be enrolled or covered by the policy, while other subcontractors are not enrolled.

Substantial Completion – The date a project, or portion of the project, is fit for its intended use. This date is stipulated in the agreement.
Agency Comments

On November 29, 2021, 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 January 22, 2022. Agency comments are included here in their entirety.
Office of the Director

January 4, 2022

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

Re: Department of General Services Response to Eliot Hine Middle School Modernization Construction Closeout Report

Dear Ms. Patterson:

The Department of General Services (“DGS”) is in receipt of the above-referenced draft report. Thank you for the opportunity to provide our responses to it. DGS appreciates the feedback and insight and welcomes the opportunity to constructively review the feedback on these critical District functions, as DGS continues our ongoing focus and efforts to improve and enhance the administration of our facilities modernization and new construction projects. DGS has prepared a response to address each of the noted observations and improvement opportunities.

RSM US made the following 6 observations in the draft report:

Observation 1: Disallowable Labor Costs
- Two (2) employees were billed at higher rate than approved in Exhibit E of the agreement
- Two (2) positions were billed to the project, but not approved in Exhibit E of the agreement

DGS Response:

The amounts in Table O1.1 were billed in error above and beyond the amount included in Exhibit E to Contract No. DCAM-18-CS-0054 (the “Contract”). The amount of $41,472 was overbilled. The amounts in Table O1.2 were design professionals working with the CMAR. DGS believes that it was an error to assign these costs ($1,780) to General Conditions and they should instead have been part of the Cost of the Work (i.e., inside the Guaranteed Maximum Price). While DGS acknowledges that it made an error in not making sure these costs were assigned to the Cost of the Work, it would have been reimbursed at cost to the CMAR in either instance. Therefore, DGS believes that the total financial impact of this observation should be $41,472. Note that there would not have been a mark-up on this work since it would not have been considered a contract modification and all changes to the CM Fee were addressed in multiple contract modifications.
Observation 2: Change Order Calculations
- Three (3) change orders had mathematical errors

DGS Response:
DGS acknowledges that did not fully cross-check the calculations of Turner Construction Company (the “CMAR” or “Turner”) for the items noted as “Mathematical Errors” in this observation. On future projects, DGS will independently calculate and verify the line items in all change orders.

Observation 3: Pay Application Accuracy
- The pay applications did not carry forward accurately period-over-period

DGS Response:
DGS agrees that between Pay Application No. 26 and Pay Application No. 27, the “Original Contract Sum to Date” changed from $73,188,608.00 to $73,216,226.00. However, between the two pay applications, the “Net Change by Change Orders” changed from $11,594,557.76 to $11,566,939.76. Therefore, while an adjustment to the Original Contract Sum to Date is not proper per the Contract, the total Contract Sum to Date remained unchanged, and therefore DGS does not believe any overbilling occurred because of the changes.

Observation 4: General Conditions Credit
- Staff training costs totaling $14,919, identified in interim report, were credited back to the project during the closeout scope period

DGS Response:
DGS agrees with this observation.

Observation 5: Local Labor Reporting
- The CM achieved 39% local labor utilization; however, the contract required 51% utilization.

DGS Response:
DGS disagrees in part with this observation. Section 12.2.2 of the Contract states that “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.” (emphasis added)
The 51% First Source requirements referenced above refer to **new hires**, in accordance with D.C. Official Code Section 2-219.03(e)(1)(A) – not to overall local project labor hours. The expanded labor requirements, by trade, were established by the Workforce Intermediary Establishment and Reform of the First Source Amendment Act of 2011 (codified at D.C. Official Code Section 2-219.03(e)(1A)(A), and require the following overall local project labor hours:

- At least 20% of journey worker hours by trade shall be performed by District residents;
- At least 60% of apprentice hours by trade shall be performed by District residents;
- At least 51% of the skilled laborer hours by trade shall be performed by District residents; and
- At least 70% of common laborer hours shall be performed by District residents.

While Turner did not fulfill its 51% First Source hiring requirements, with only 35.35% of **new hires** being local District residents, Turner did meet its expanded workforce requirements, with District residents accounting for 25% of journey worker hours, 62% of apprentice hours; 51% of skilled labor hours; and 71% of common labor hours (based on final LCP Tracker data). In the future, DGS will work to ensure that all certified payroll is submitted and on file with the District throughout the course of the project so the DGS can continually monitor compliance.

**Observation 6: Reporting Variances and Payments to Subcontractors**

- Discrepancies in payments reported by the CM, DSLBD, and subcontractors
- Discrepancies in Small Business Enterprise (“SBE”) certification numbers
- Variances between subcontractor billing and the CM’s payment record

**DGS Response:**

DGS agrees with the observations. Per Item D, DGS will follow up with the CMAR regarding potential credits or amounts owed back to the District.

**RSM US made the following 4 recommendations for improvement in the draft report:**

**Improvement Opportunity 1: Subcontractor Default Insurance (“SDI”)**

- The contract allows for 1.5% of direct costs and does not contemplate reimbursement for only enrolled subcontractors. The exposure for SDI paid for subcontractors not enrolled and other costs is $196,511.

In our review of the GMP and the total cost accounting report, we noted the stipulated 1.5% SDI was likely applied to all estimated trade and General Requirement (“GR”) costs, which includes GR costs incurred by Turner Construction Company, and trade costs incurred by Turner Logistics, a related entity to the CM. For future projects, we recommend DGS include contract language to
specify only SDI costs solely related to the project, or costs for enrolled subcontractors only, may be allowable. The contract language should also specify the actual costs are subject to audit review. In cases where DGS agrees to a rate to be applied to enrolled subcontractors, DGS should obtain evidence from the CM during the GMP development to validate the rate is reflective of actual costs.

**DGS Response:**

DGS agrees with this recommendation and will include contract language, as soon as practical: (i) to specify that only SDI costs solely related to the project, or costs for enrolled subcontractors only, may be allowable; and (ii) to specify the actual costs are subject to audit review. DGS will also ensure that the SDI rate is validated during the GMP process.

**Improvement Opportunity 2: Fringe Benefits in Labor Cost**

- The CM billed for employee time not worked on the project; labor rates typically include fringe benefits for time not worked, resulting in duplicative billing of employee time.

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 be included in the burdened rate

**DGS Response:**

DGS agrees with this recommendation and will add contract language, as soon as practical, 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.

**Improvement Opportunity 3: Document Control**

- During the course of our fieldwork, some documents were not provided.
A. Saxon Collaborative Construction’s Vendor Verification Form (“VVF”) – Requested 8/16/2021. To confirm the payments received from the CM as reported by Saxon, we requested from the DSLBD Saxon’s VVF. This form is meant to be submitted and signed by the subcontractor to verify payment received from the CM. As noted in Observation 6, we observed that for Saxon Collaborative Construction, the CM’s cost accounting ledger and the DSLBD reported fewer payments to the subcontractor than the amount reported by the CM on its small business report.

B. Potential Change Order (“PCO”) 323 support for $400,000 – Requested 7/21/2021 As part of our testing procedures, we performed a reconciliation of contingency usage, as well as perform detailed testing of a judgmental sample of contingency uses. Following our document request, no detailed breakdown was obtained for the PCO to review the appropriateness of the costs proposed by the CM. However, through our analysis of the CM’s cost accounting record, we noted the total expenditures related to PCO 323 were equal to the approved amount.

As of this report date, the records have not been produced. We recommend DSLBD and DGS confirm the appropriate records are received from the respective CM or subcontractor as documents are processed, to confirm completeness of project records.

DGS Response:

DGS does not manage DSLBD’s reporting requirements/compliance process, and cannot speak to their inability to provide the document noted in part A above. With respect to part B, DGS acknowledges that it was unable to provide the detailed breakdown for PCO 323, and will work to ensure that detailed support for all change orders is requested from contractors on future projects.

Improvement Opportunity 4: Contract Provision Recommendation

• Insurance and bonds are calculated based on Volume of work, but are also included in the calculation of Volume, creating a contradiction in the contract terms.

Through our review of the contract provisions and their application to change order billing, we identified contradictory terms for insurance and bond calculations. The CCIP and Bond calculations are based on the project volume, defined by Article 11.3 below. However, Volume is inclusive of CCIP and Bond totals, creating a circular calculation and a conflict of terms.

§11.3 Insurance and Bond Rates. The Construction Manager's Insurance and Bond Rates include the use of a Contractor Controlled Insurance Program (CCIP) and Subcontractor Default Insurance (SDI), at the following rates:
SDI 1.50% of Direct Work  
CCIP 2.25% of Volume  
P&P Bonds .95% of Volume  

Volume is defined as the sum of Direct Work, General Conditions, Insurance, Surety Bond, Contingency and Fee. Direct Work is defined as Volume less General Conditions, Insurance, Surety Bond, Contingency and Fee. Cost of Work is defined as Volume less Fee. Insurance and premium rates are stipulated and audit provisions extend only to confirming the stipulated rate multiplier as established above, have been applied properly to the total project Volume or Direct Work, as applicable.

For future projects, we recommend DGS modify the contract language so elements of Volume are not also calculated on the Volume total.

**DGS Response:**

DGS agrees with this recommendation and will add contract language, as soon as practical, so elements of Volume are not also calculated on the Volume total.

Sincerely,

Keith A. Anderson  
Director  
Department of General Services  

Cc: Danielle Meadors, Interim Chief Operating Officer  
Tiffany Moore, Deputy Director Capital Construction  
Cassidy Mullen, Operations Manager  
Xavier Beltran, General Counsel
ODCA Response to Agency Comments

ODCA appreciates DGS's responses to the draft report and would like to reiterate our appreciation for their cooperation and timely response to RSM inquiries and requests throughout the audit. While pleased that DGS agrees with most of the findings and observations discussed within the report, it is our hope that the agency moves to clarify and strengthen project management controls surrounding complex construction budgeting, accounting, and compliance processes for all District modernization projects.

RSM made six observations and outlined four “opportunities for improvement” in this review. DGS agreed with the four recommendations for improvement identified by RSM. DGS also agreed with observations 2, 4, and 6, and provided further explanation for the other three.

For example, Observation 1 noted $44,982 in labor costs that were not compliant with contract terms. DGS acknowledged $41,472 of this amount was overbilled while the remaining $1,780 was incorrectly assigned as general labor. DGS indicated this cost was unavoidable and would have been reimbursed regardless of its billing category. We believe processes should be implemented to ensure project costs are accounted for and properly assigned in compliance with contract terms.

Observation 3 discusses inaccuracies with contract values on subcontractor pay applications and noted amounts included in the change order summaries that did not agree with executed changes. Due to a lack of oversight and quality control surrounding pay applications, internal processes should be implemented to ensure proper oversight over pay applications. DGS acknowledged pay application inaccuracies but stated it had no impact due to the Contract Sum to Date amount remaining unchanged.

And finally, DGS disagreed in part with Observation 5 that Turner failed to ensure that 51% of new hires were District of Columbia residents. Despite the failure to fulfill this requirement, DGS stated that Turner met other expanded workforce requirements, including that 60% of apprentice hours, 51% of skilled labor hours, and 70% of common laborer hours were performed by D.C. residents. Previous ODCA reports have documented the failure of other District contractors to meet the workforce requirements and found that agency oversight is key to enforcing the requirements. RSM recommends an action plan for ensuring these requirements are met throughout the duration of the contract and, further, monitoring progress against requirements should be a consistent part of DGS's contract administration process.

As mentioned above, DGS agreed with the remaining observations and recommendations. Observation 2 notes $4,050 in errors in calculations and unsupported costs for subcontractor invoices and quotes. DGS pledged to independently calculate and verify line items in all change orders going forward. Developing a formal process to ensure invoice amounts are accurate and supported should be prioritized and implemented for all construction projects overseen by DGS.

RSM also identified $14,919 in staff training costs that was credited back to the project. This was a result of contract terms not specifying acceptable fringe costs that may benefit the project. ODCA agrees with RSM’s recommendation to better define allowable fringe costs such as training, incidentals, and travel. DGS agreed with RSM’s observation on variances between subcontractor and Turner cost accounting
records and concurred with the recommendation that the construction manager provide evidence of payment to subcontractors that should match the DGS Completed and Stored to Date amounts.

ODCA appreciates the DGS commitment in agency comments to improve its contract management processes and we look forward to the formal implementation of the controls outlined in the draft report.
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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