

**SEMINOLE COUNTY  
DEPARTMENT OF PUBLIC WORKS**

**LIMITED REVIEW OF  
PBS&J CONTRACT (PS-5120-02/BJC)**

**REPORT NO. 082009**

**AUGUST 2009**

Prepared by:  
The Office of the  
Clerk of the Circuit Court



**MARYANNE MORSE**  
Clerk of the Circuit Court  
Seminole County

August 20, 2009

The Honorable Bob Dallari  
Chairman  
The Board of County Commissioners  
Seminole County, Florida  
1101 East First Street  
Sanford, FL 32771

Dear Mr. Chairman:

I am very pleased to present you with the attached limited review of the PBS&J Contract (PS-5120-02/BJC).

The review found conditions that warrant management's attention. These conditions and management's corrective action plans are included in the report that follows.

I would like to personally thank the men and women of the Public Works Department and the Purchasing Division for their assistance throughout the course of this review. Their assistance was deeply appreciated. With warmest personal regards, I am

Most cordially,

Maryanne Morse  
Clerk of the Circuit Court  
Seminole County

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**Seminole County  
Department of Public Works  
Engineering Division**

**Limited Review of  
PBS&J Contract (PS-5120-02/BJC)**

The Internal Audit Division of the Office of the Clerk of the Circuit Court has completed a review of the contract between Seminole County and PBS&J (PS-5120-02/BJC). This contract is under the management of the Engineering Division of the Public Works Department.

**PURPOSE**

The purpose of the review was to determine if the administrative controls over the contract are adequate and operating as intended in compliance with applicable laws, regulations, and other Seminole County policies and procedures. Specifically, the purpose of the audit was to ensure that all payments to PBS&J were made in accordance with the contract terms, and the administrative controls, laws, and regulations.

**BACKGROUND**

On November 26, 2002, PBS&J was awarded a master contract to provide consultation services in support of the Seminole County Public Works Department. Services to be rendered by PBS&J are in the form of individual written work orders with a specific term and scope of services that are negotiated by County staff and PBS&J. There are 16 basic work elements identified under this master agreement. They are:

- *Professional Services Support;*
- *Planning;*
- *Project Development and Environmental (PDE) consultant;*
- *Public Participation Support;*
- *Pre-Design Services;*
- *Design Services and Support;*
- *Project Management;*
- *Project Control Services Support;*
- *Administrative Project Support;*
- *Right of Way Mapping;*
- *Value Engineering;*

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- *Geotechnical Engineering Support;*
- *Construction Engineering Management;*
- *Traffic Operations; Survey Services; and,*
- *Accounting Control and Project Services.*

PBS&J is contracted to perform the above services only after the work is authorized via written work orders issued by the County. The work orders assigned to PBS&J describe the services required, the dates for commencement, the dates for completion of work, and the amount and method of payment.

During the period from October 1, 2006 through June 1, 2009 payments to PBS&J for these services totaled \$5.8 million. There have been 73 work orders awarded under this contract. The results of the review are included in the following report.

### **SCOPE**

The scope included a review of the billings and supporting documentation for the period from October 1, 2006 to June 1, 2009. All source documents related to these invoices were subject to review.

The review included:

- Procedures used to ensure compliance with established purchasing policies and procedures, Florida Statutes, and other applicable regulations;
- Internal controls to ensure that all payments to the contractors are in accordance with established terms, conditions, laws, and regulations;
- Invoices for accuracy, completeness, and timeliness;
- The work order process used by the county to ensure that the awards are fair, consistent, and in compliance with policy;
- The process used by the Engineering Division to monitor the firms billings to the county; and,
- The special terms and conditions contained in the contract.

The audit was performed by the Office of the Clerk of the Circuit Court.

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## OVERALL EVALUATION

There are six areas that require improvement so that the administrative controls are adequate, functioning effectively, and in compliance with County and State of Florida policies.

The following areas warrant management's attention:

- Funding decisions are not always properly supported;
- Partial non-compliance with County Manager's Policy Manual;
- No policy requirement to issue a letter of authorization (aka, NTP);
- Certain costs are not specifically addressed in the contract;
- County Manager's Policy Manual does not address rejected invoices; and,
- Task completion schedules (i.e. deliverables) are not always well defined.

### FINDING NO. 1

*Funding decisions are not always properly supported.*

Section 2. (TERM) of the contract states:

***"This agreement shall take effect on the date of its execution by the COUNTY and shall run for a period of one (1) year and, at the sole option of County, may be renewed for two (2) successive periods not to exceed one (1) year each. Expiration of the term of the Agreement shall have no effect upon Work Orders issued pursuant to this Agreement prior to the expiration date. Obligations entered into therein by both parties shall remain in effect until completion of the work authorized by the Work Order."***

The contract was signed on November 26, 2002 for a one year period; the County exercised its option for two consecutive one year renewals. The first renewal extended the contract to November 25, 2004, the second to November 25, 2005. On December 14, 2004 the contract was extended to December 14, 2009.

On May 23, 2006, the BCC approved another contract extension for another two years to December 2011. Also, the not to exceed amount was increased from \$975,000 per year to \$2 million per year. The original master agreement had spending capped at \$700,000 per year.

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The support for Amendment #3 was the narrative to the BCC which stated the following:

“PS-5120-02/BJC provides Consultant support for a wide range of engineering, architectural, technical, management, and administrative service for the Seminole County Public Works Department. The Consultant functions as an extension of the Seminole County Public Works Department’s resources and by providing qualified technical and professional personnel to perform the duties and responsibilities assigned under the terms of the Agreement for General Engineering Services.

Amendment #3 will allow expansion of the ongoing activities by the Consultant to provide:

- Program Management Services of engineering production activities. This is necessary due to the shortage of professional engineers in Florida as well as market constraints.
- Continuity of service related to both project and database management for the term of the 2<sup>nd</sup> Generation Sales Tax Program.
- A one-time only use of the contract for the planning, design and post construction services for Soldier’s Creek and Jetta Point Parks which are key in-line sites to the Cross-Seminole trail corridor.

Amendment #3 will enable the above service expansions by increasing total not to exceed annual limit from \$975,000 to \$2,000,000.00 and extending the contract through December 15, 2011. This contract will continue to require work orders issued based upon annual and project budgets, and will require annual renewals to occur during the month of November.”

Also provided to the BCC was Exhibit A which outlined the services to be performed by PBS&J through the period December 15, 2011.

There are two issues with the justification noted above:

1. The initial contract provided for a specific expiration date and annual spending limits. The contract allowed for two consecutive one year renewals which would have extended the contract to November 25, 2005. This contract was extended without re-bidding an additional six years with the potential for awarding PBS&J with up to \$10 million in work.

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2. No financial analysis was submitted of what the cost/benefit is to be achieved and what county functions are being eliminated as a result of providing PBS&J with the additional work. A financial analysis should be done prior to contracting out project management.

Part of the increase in monies awarded to PBS&J was the transfer of responsibility of the "Pavement Management Program" from the Roads Division to the Engineering Division with PBS&J administering the program. Public Works provided a copy of the reorganization to the County Manager's Office for approval. If duties that are performed in-house are outsourced (i.e. PBS&J), a financial analysis of the cost/benefit to be achieved should support management's decisions. A detailed financial analysis was not submitted with the reorganization plan. For an audit trail, a copy of the analysis should be included in the contract file.

Financial funding decisions not properly documented may result in misuse of taxpayer funds.

### **Recommendation**

1. Future submittals to the BCC should be properly documented with a financial analysis and/or an economic savings presentation. The BCC might consider asking for quarterly performance reports detailing how the \$2 million is supporting department goals, objectives, and end item deliverables.
2. Utilize the re-bidding process to ensure that costs are based on market conditions and to provide leverage in the negotiation process.

### **Management Response**

Recommendation No. 1: Concur.

Recommendation No. 2: This is a decision of the Board of County Commissioners (BCC) to approve the terms and conditions of these agreements. Although re-bidding at times may provide benefits, the purpose of this amendment was to continue program management support over critical programs within Public Works' Engineering Division that were in progress. Staff followed proper procedures by bringing these amendments to the BCC for approval.

### **Audit Comment**

BCC should require staff to utilize the re-bidding process to ensure that costs are based on market conditions and also to provide leverage in the negotiation process.

**FINDING NO. 2**

*Partial non-compliance with County Manager's Policy Manual.*

Per Section P (1) of the County Manager's Policy Manual:

***"Each work order shall describe the services required; state the date for commencement and the due date for delivery or completion of work"***

In addition, Section P C (3) (1) states:

***"The detailed scope of services shall specifically address each aspect of the project and tell in detail how the consultant will accomplish the work. At a minimum list of milestones must be described in sufficient detail for the Department to evaluate the consultants understanding of the project and action plan for completion"***

Of 45 work orders reviewed, 23 did not have specific start dates, completion dates, and/or had insufficient description of the services to be rendered as required by the County Manager's Policy Manual.

Examples:

WO# 26 states: "The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed with THREE HUNDRED SIXTY FIVE (365) DAYS from Notice to Proceed". There was no Notice to Proceed issued for this work order. The official start and completion dates cannot be determined. The County's obligation on this work order was limited to \$95,820.90.

WO#27 states: "The services to be provided by the CONSULTANT shall commence upon execution of this Agreement by the parties and shall be completed by SIX (6) months after completion of construction." The scope of work section states "The work described herein will be performed within a period of twelve (12) weeks from the date the Notice to Proceed (NTP) is received by PBS&J." The official start and completion dates cannot be determined.

There are many other examples of work orders that were issued without clearly defined start and completion dates and the description on the work orders do not agree with the "Scope of Services" contained within.

Management contends that the consultant's services are often based on future construction schedules, which might not be available at the time of the award to PBS&J. Thus, it is very difficult to state a concrete start and completion

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date. Additionally, the funding to the consultants is limited regardless of the completion dates. There is some merit to this view point. Management also contends that some of the work orders identified in this report were issued prior to the current version of the County Manager's policy.

By having open-ended work orders there is opportunity for the project schedules and milestones to be of no value.

**Recommendation**

New work orders issued to the professional consultants should comply with the County Manager's Policy Manual.

**Management Response**

Note that some of these work orders were issued prior to the current version (July 2007) of the County Manager's policies. Staff will continue to review the work orders to ensure compliance. Both work orders mentioned were issued in September 2005.

**FINDING NO. 3**

*No policy requirement to issue a notice to proceed (aka NTP).*

Of 45 work orders reviewed, six made reference to commence upon issuance of an NTP. The work was to be completed a certain number of days after the PBS&J received the NTP. There was no record of an NTP being issued for these six work orders. The remaining 37 of 45 made no reference to an NTP. In addition, two of the work orders made no reference to a start date.

A NTP is a letter of authorization to the contractor to commence with a work order that was recently awarded. It is designed to ensure that:

1. The County is prepared for the contractor to start accumulating charges;
2. The Division has actual dates to track construction and engineering activity; and,
3. The Division, County Finance, and the contractor know when the work is scheduled to be started and completed.

Per Seminole County Code section (qq): Notice to Proceed:

***A written notification from the Purchasing Division or Project Manager to the contractor to establish commencement of the contractor's responsibilities under the provision of the contract.***

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There is no formal requirement in the County Manager's Policy Manual to issue a NTP for each work order published. Without a formal NTP authorizing the start of work it is difficult to track the construction and engineering activity. For example, with County Finance responsible for conducting a pre-audit function and without an NTP to assist them in tracking the charges, they can make an erroneous payment on an expired work order.

**Recommendation**

Update County Manager's Policy manual to include a requirement to issue a NTP for each work order published.

**Management Response**

Since 2007, the County uses NTP for construction contracts only. Under these professional services work orders, the proper method to capture an "end date" is by stating a date for scope of services to be completed, rather than a number of days from NTP.

**Audit Comment**

An NTP is a letter of authorization to commence with a work order that was recently awarded. It provides for a schedule for the division, County Finance, and the contractor to know when the work is scheduled to be started and completed. NTP's were not issued for the work orders under this contract. Nineteen work orders reviewed did not have a specific completion "end date" in the scope of services. It was a common practice to state in the work orders "so many days" from NTP or "so many days from completion of construction". The County has two options to correct this deficiency: (1) issue NTP's for all work orders awarded; or (2) establish firm start and completion dates within each work order so that all parties are in agreement as to the duration of the work order.

**FINDING NO. 4**

*Certain costs are not specifically addressed in the contract.*

During negotiations, Seminole County and PBS&J agreed to add a multiplier to raw labor rates. Although the contract does not define what is covered by the multiplier, we believe it is to cover the consultant's indirect and/or overhead related expenses. Since negotiating the multiplier, some of PBS&J's staff has been physically relocated with the Seminole County Public Works Department.

Since PBS&J is now using County space, some costs are being paid by the County that may already be covered by the multiplier, including:

1. The lease of five computers being used by PBS&J employees at the Reflections Building;
2. The rental of office space being used by PBS&J staff
3. The cost of utilities (i.e. electric, telephone, water and sewer, etc)
4. The cost of janitorial; and,
5. Office supplies.

These costs, in our opinion, may need to be offset against the current PBS&J invoices or a second multiplier may need to be established for the employees that are located at the Reflections Building. Management contends that these costs were factored into the negotiated rates for 2006. The negotiated rates for 2006 provided for a six percent increase in the billing rates from 2005.

By not adequately defining costs in the contract, overpayments may result due to changes in conditions.

#### **Recommendation**

1. In future contracts identify the costs to be covered in the multiplier.
2. Negotiate a second multiplier for those PBS&J employees who are being relocated with Seminole County Public Works Department.

#### **Management Response**

The multiplier covers general and administrative expenses, overhead and profit. The County uses the last audit and executes the Truth in Negotiations statement during the negotiation process. This was adequately completed when the contract was awarded in November 2-002. Amendment #3 issued in June 2006, modified the scope which allowed for PBS&J staff on site and increased the estimated amount from \$700k to \$2M and the duration of the term to 2011. The cost considerations mentioned in this finding were considered in the scope that supported the new billing rates and these billing rates included the negotiated multiplier. Concur with the recommendation to negotiate a second multiplier for those employees who are being located on-site, when these situations are known at the time of a new contract formulation.

**FINDING NO. 5**

*County Manager's Policy Manual does not address rejected invoices.*

There are two sections of the Florida Prompt Payment Act that Seminole County is required to comply with as a local government entity. FS 218.73 is related to payments for non construction services and FS 218.735 is for construction related services.

Per FS 218.74:

**The payment due date for local government entity for the purchase of goods or services other than construction services is 45 days from the date specified in s 218.73.**

In addition, Florida Statute 218.735 (2) states:

**“The local government entity may reject the payment request or invoice within 20 business days after the date on which the payment request or invoice is stamped as received as provided in s. 218.74 (1). The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.**

When an invoice is rejected, a contractor (or supplier) may be contacted by phone, receive a written notice or email, or may receive an actual copy of the rejected invoice with hand written notes on it. The process is not consistent throughout the County and there is not always a permanent record (i.e., audit trail) of actions taken by staff. Florida Statutes states that the entity may reject the invoice. Our contractual agreements often state that invoices be sent to both County Finance and the department. Seminole County does not have a policy on who is responsible for rejecting the invoices. Also, County financial records indicate that for some invoices are paid or rejected long after the 20 day threshold required by FS 218.735 (2).

Per FS 218.735 (2) the County has 20 days to reject the payment. The rejection must (1) be in writing, (2) must specify the deficiency in the payment request, and (3) the action necessary to make the payment request or invoice proper. These requirements are not adequately addressed in a Seminole County policy.

By not having a written policy, there is risk of processing delays, non compliance with both Florida Statute 218.74 and 218.735 (2), and additional costs to the taxpayers. Also, by not having a standard procedure and audit trail there is risk of a contractor seeking interest for payment delays.

**Recommendation**

Update County Manager’s Policy Manual to include a procedure for consistent processing of rejected invoices.

**Management Response**

Public Works has an internal policy to deal with rejected invoices (attached). It is a memo to the vendor informing them of the error with concurrence from the County project manager, fiscal staff and copy to County Finance for their records. Public Works will continue to use the current procedure until such time that a County policy is implemented to address a procedure for the processing of rejected invoices. This policy will be jointly formulated by County Finance and County staff and might be appropriate to be contained in Finance’s polices and procedure to ensure compliance with prompt payment.

**Audit Comment**

County Finance does not have, nor should have, any role in the formulation and establishment of county policies. This authority is vested in the Board of County Commissioners. County Finance currently complies with the Prompt Payment Act as promulgated by Florida Statute.

**FINDING NO. 6**

*Task completion schedules (i.e., deliverables) are not always well defined.*

County policy requires that milestones and a schedule of completion be included in the work order.

Per P (4) (c) (i) of Seminole County Manager Policy Manual states:

**“The detailed scope of services shall specifically address each aspect of the project and tell in detail how the consultant will accomplish the work. At a minimum, it shall include a list of milestones and a schedule of completion.”**

In several of the work orders, the scope of services provides a general description of the work by PBS&J, but does not identify the specific dates that tasks will be completed. A majority of the Work Orders issued to PBS&J are issued Time Basis or Time Basis with a limitation of funds.

Per the County Manager's Policy P (b):

**Time Basis Method- For Scope of Services that cannot be clearly define the extent, cost or duration of the work. If a not-to exceed amount is provided, the Consultant shall perform all work required by the Work Order, but, in no event, shall the Consultant be paid more than the not-to exceed amount specified in the applicable Work Order.**

Although County Manager Policy P (b) does not specifically require these types of work orders to state specific task completion dates, a specific commitment from the consultant as to when specific tasks are to be completed ensure that the project is on schedule. We also believe that issuing Work Orders without specific task completion dates does not promote efficiency.

Inefficient use of taxpayer funds may result from not defining the task completion schedules (i.e., deliverables).

**Recommendation**

On future work orders, include well defined deliverables.

**Management Response**

Concur; however, when the work orders are project specific, they (work orders) have specific deliverables with time schedules as part of the scope. As for the general service work orders, that will not be possible at the time of the work order issuance since the services that are required are not defined or known. These services are usually for support for expertise that is not available within County staff such as: drainage permitting support, environmental support, drainage design support, structural design support and plan reviews. Furthermore, these work orders are not-to exceed, limitation of funds work orders which will not be used unless such time as these services are required.

**Audit Comment**

No work order should be issued without specific tasks, milestones and a schedule of completion. This ensures that County management is intimately aware of the tasks to be completed and the contractor is held to a high standard of efficiency.