



October 28, 2015

CONTRACT PERFORMANCE AUDIT

B&D Industries, Inc.

Citywide

Audit No. 15-101



Photo Credit: City of Albuquerque

**CITY OF ALBUQUERQUE
OFFICE OF INTERNAL AUDIT**

CONTRACT PERFORMANCE AUDIT REPORT
B&D INDUSTRIES, INC.
CITYWIDE
REPORT NO. 15-101

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B&D Industries, Inc. Vendor Audit - City

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The purpose of this audit was to review and report on the City of Albuquerque's management of its contracts with B&D Industries, Inc. (B&D)

Summary

From July 1, 2010 to June 30, 2015 the City paid B&D more than \$16.4 million for work performed on all of its contracts; both individually bid projects and On-Call services. The City of Albuquerque's (City) management of the Electrical and HVAC On-Call Service contracts should be improved. City user departments accepted firm fixed-price quotes from B&D in place of cost estimates. The City user departments did not consistently issue Contract Release Orders (CRO) to B&D prior to the beginning of work. Invoices were missing documentation for materials used and pricing, support for labor charges, and City work order numbers. Subcontractors were used without the City's approval; and documentation of performance and material/labor bonds was not available. One hundred percent of the invoices sampled were missing at least one item required by the contracts. The City was overcharged \$23,936 on the invoices sampled and should request a refund from B&D.

DFAS and DMD agree that additional improvements are needed to increase On-Call contract compliance. DFAS and DMD have taken steps to improve On-Call Contract language, and increase compliance by City departments.

Recommendations & Benefits

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By enforcing contract requirements the City will be able to:

- Better manage its costs for On-Call services,
- Ensure that funds are properly encumbered by issuing CROs prior to work starting,
- Monitor the contracts more effectively,
- Mitigate risks associated with use of unauthorized subcontractors, and
- Ensure the invoices include accurate charges.



City of Albuquerque

Office of Internal Audit

October 28, 2015

Accountability in Government Oversight Committee
P.O. Box 1293
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Audit: Contract Performance – City
B&D Industries, Inc.
Audit No. 15-101

FINAL

INTRODUCTION

The Office of Internal Audit (OIA) conducted a performance audit of contracts between B&D Industries, Inc. (B&D) and the City of Albuquerque (City). The audit was included in the approved fiscal year (FY) 2015 audit plan. The audit objectives, scope and methodology information can be found in **Appendix A**.

The City determined the best way to ensure reliable and timely response times to service requests for vital building functions was to develop On-Call contractor service pools for electrical, HVAC and plumbing services. At the time the audit began, in June 2014, B&D had five contracts in place with the City. The City paid B&D more than \$16,400,000 for work performed on all of its contracts from July 1, 2010 to June 30, 2015. The total amount paid to B&D includes payments for both On-Call contracts and other large, separately bid projects. This audit was limited to the City's Electrical and HVAC On-Call Service Contracts with B&D that were in force during FY2014.

The On-Call electrical contractor service pool performs routine and emergency electrical services at various municipal facilities. In addition to routine and emergency electrical services, the contractor service pool may be used for City electrical service improvement projects. In total, five contractors comprise the electrical contractor service pool. The City paid B&D \$530,985 for On-Call electrical services during FY2014.

The On-Call HVAC contractor service pool, like the electrical contractor service pool, performs routine and emergency HVAC services at various municipal facilities, and may be used for new City HVAC improvement projects. Six contractors were selected for the HVAC contractor service pool. The City paid B&D \$486,006 for On-Call HVAC services in FY2014.

FINDINGS

The following findings concern areas that OIA believes could be improved by the implementation of the related recommendations.

The findings in this report are based on random statistical samples of invoices paid during FY2014. The sample sizes were 22 invoices totaling \$157,061 for work performed under the Electrical Contract, and 22 invoices totaling \$23,726 for work performed under the HVAC Contract.

1. CONTRACT TERMS SHOULD BE ENFORCED.

The Electrical and HVAC Contracts were available for use by any City department needing the services covered by the contracts. However, each contract included specific terms requiring compliance by both B&D and City staff. The Department of Finance and Administrative Services Purchasing Division (DFAS-Purchasing) and the Department of Municipal Development (DMD) worked collaboratively to develop the Request for Proposal (RFP) for Electrical On-Call Services, the Request for Bid (RFB) for HVAC On-Call Services, and on the resulting contracts. DMD personnel were familiar with the terms of the contracts, but other user departments were not. As a result, multiple requirements were overlooked or ignored.

A. Contract Release Orders

User departments issued Contract Release Orders (CRO) numbers after B&D began work on projects. CRO numbers were not provided to B&D timely, e.g. on or before the start of the project. The Electrical Contract requires B&D to obtain a CRO number prior to starting work on City projects. The HVAC contract states, “Contractor must request and be issued a contract release order (CRO) number by the requesting department or division prior to performing services, (excluding emergencies, after-hours and holidays).”

CROs were properly issued by the City on or before the indicated service start date for 10 of the 22 projects in the sample of Electrical invoices. For the remaining 12 projects, the CRO numbers were issued between 4 and 268 days after the service start dates.

CROs were properly issued by the City on or before the service start date for two of the twenty-two projects in the sample of HVAC invoices. For the remaining 20 projects, the CRO numbers were issued between 18 and 137 days after the service start dates.

Users issued some CRO numbers under the wrong contract in PeopleSoft. Users are required to select the correct contract when initiating a CRO. Approximately 30 percent of CROs in the initial sample were issued under an incorrect contract.

B. Management of Contracts

The RFP for the Electrical Contract states, “1.7 **Management of Contract:** The contract resulting from this RFP will be managed by the Department of Municipal Development, Facility and Energy Management Division.” The Electrical Contract also states that invoices must be sent in duplicate to the City’s Accounts Payable Division (A/P) and DMD. B&D did not consistently send invoices to DMD for electrical service; instead, invoices were sent to the requesting department and A/P.

Both Electrical and HVAC Contracts state that payment for services and materials is “contingent upon final inspection and acceptance by the requesting Department/Division.” B&D was paid without providing evidence of the City’s final inspection and acceptance of its work.

Although DMD was named as the Electrical Contract manager, it appears that DMD did not take an active role in managing work performed under the contract, except when work was requested directly by DMD staff. The RFB and HVAC contract state, “All service requests for work in DMD maintained facilities must be approved by the facilities official or his designee prior to commencement of work.” The RFB includes an Appendix which lists the facilities maintained by DMD. Seventeen of the twenty-two HVAC projects in the sample were on DMD maintained facilities. Although the DMD Facilities Official said that the requests for work were submitted to him and approved, he did not document his pre-approval of the HVAC work.

C. Quotes for Work

The Electrical Contract states, “The Contractor will assess the situation/problem and provide a cost estimate. . . .All [maintenance and repairs] projects above two thousand dollars (\$2,000) inclusive of all parts, supplies, materials, labor, etc. will require quotes from the contractor pool.” The Contract requires cost estimates for all new and rehabilitation electrical work.

The sample consisted of four invoices for maintenance and repairs, which were each under \$2,000. The remaining 18 invoices in the sample were new or rehabilitation work, which requires written cost estimates. Instead, B&D prepared firm fixed-price quotes for 11 of the new and rehabilitation projects included in the sample. The quotes for the projects ranged from \$465 to \$56,283 and the projects were invoiced at the full amount of the quotation, regardless of B&D’s actual costs. This resulted in a net overcharge to the City of \$7,900.

Some City employees may use the terms “cost estimate” and “quote” interchangeably, but they are different within the context of the contract. A cost estimate is a ballpark figure, where the final actual cost may be higher or lower, or a cost estimate could be a not-to-exceed amount. A quote is a firm fixed-price amount. If the actual cost differs from the quote, the quote is still the amount paid, unless the customer and vendor re-negotiate the price. The terms were not defined in the RFP or Electrical Contract. Defining contract terminology provides all parties the same understanding.

It is possible the City employee(s) requesting the service asked for a quote when they meant a cost estimate. However, B&D is expected to be knowledgeable of the contract requirements and should have provided cost estimates instead of quotes. The City user departments did not identify this non-compliance with the contract terms or the associated overcharges.

D. Cost Estimates

User departments did not request and approve costs estimates from B&D for the electrical and HVAC services. Services provided under B&D’s contracts require cost estimates. The Electrical Contract states:

Upon determination by authorized personnel of the need for electrical services, the contractor will be contacted and informed of the work. The Contractor will assess the situation/problem and provide a cost estimate. The cost will have itemized labor, material, gross receipts and total estimated cost.

The HVAC Contract states:

Prior to performing requests for service, (excluding emergencies, after-hours and holidays) the contractor shall submit a written estimate including an itemization of material, labor and applicable taxes per contract price schedule for the proposed project, [to] an authorized representative of the department or division requesting service.

The City user departments could not provide evidence that cost estimates were requested or obtained for the projects in our sample. The only cost estimation documentation available was the quote documents on 11 electrical projects (see **C.** above). Three of the HVAC projects were excluded from the requirement to provide a cost estimate due to the work being requested and performed after-hours or in an emergency.

E. Materials Pricing

B&D’s Electrical Contract requires pricing on materials to be trade-list **less** an 18 percent discount. B&D invoiced electrical materials at cost **plus** 18 percent. Other vendors in the Electrical On-Call Services pool complied with the contract terms and charged trade-list less the percentage they proposed in their response to the RFP. City user departments did not detect B&D’s errors in invoicing the City for materials used on electrical work. Trade list prices, before discounts, should be the same from every vendor. Since B&D is not in compliance with the contract terms, the City cannot verify the cost of the materials.

F. Project Management Costs

The contracts do not mention Project Management time. The RFP and the RFB request information about the vendors' project management capabilities, but the contracts do not include a project manager labor classification. Sixteen of the twenty-two electrical invoices included project management labor charges, totaling \$3,593. The project management charges should be repaid by B&D. Nine of the twenty-two HVAC invoices also included project management labor charges, totaling \$579, which are also included in the totals discussed at **H.** below.

G. Use of Subcontractors

B&D used three subcontractors, on three projects in the Electrical Contract invoice sample, that were not included in the listing of subcontractors submitted with its original response to the RFP. The three subcontractors' work had a total cost of \$12,443. B&D only included information for its other divisions as potential subcontractors on the Subcontractor Listing Form. The RFP, section 2.1.5 states:

Each Offeror shall complete the Subcontractor Listing Form included in this proposal. The Offeror shall provide a list of all subcontractors that will perform work on this project. The Offeror may not change any of the listed subcontractors without the City's consent.

The work was performed for the Parks and Recreation Department (PRD). The PRD staff did not identify the contract violation related to the use of unapproved subcontractors.

H. Accurate Invoices

B&D's HVAC invoices included both overcharges and potential undercharges. Ten of the twenty-two HVAC invoices in the sample included overcharges resulting from incorrect material amounts, incorrect labor rates, incorrect labor hours, and invoices that included project management labor hours. The overcharges, including the \$579 of project management hours identified in **F.** above, totaled \$1,088.

The HVAC Contract allows for a set labor rate for work performed from 7:00 a.m. to 5:00 p.m. on weekdays. When work is performed outside those hours and on holidays, a higher labor rate is allowed. B&D did not always charge the higher rate when it was allowable and did not always invoice for all hours. An additional \$1,186 could have been charged for work performed outside normal work hours and for work hours B&D did not include on one invoice.

User departments did not identify the inaccuracies in B&D's invoices. Because the overcharges and undercharges net to a small undercharge to the City, repayment for overcharges on the HVAC Contract is not recommended at this time.

I. Invoice Requirements

The Electrical and HVAC contracts specify required information that must be included on invoices to the City or on documents that accompany the invoices. B&D did not consistently meet the requirements, but the invoices were approved and paid by the City.

Required Information Missing	Number Missing on Electrical Invoices	Number Missing on HVAC Invoices
CRO Number	11 of 22	20 of 22
City Work Order No.	21 of 22	17 of 22
Service Time	21 of 22	22 of 22
Hourly Rate	11 of 21	0
Brief Description of Service & Materials	0	1 of 22
Verification of Cost of Materials	17 of 19	13 of 13

J. High Dollar Requirements

PRD used B&D for electrical services on two projects with electrical costs in excess of \$50,000. The Electrical contract states that new or rehabilitation “Projects exceeding twenty-five thousand dollars (\$25,000) shall require a performance and material/labor bonds at 100% of the project cost to be provided by the Contractor on forms provided by the City.” PRD’s files for the projects did not include any evidence that the required bonds were provided by B&D. Performance and material/labor bonds reduce the City’s risk on large projects.

City staff did not identify the issues of noncompliance with contract terms. In some cases, the City paid B&D more than necessary for work performed on the Electrical and HVAC Contracts. Additionally, allowing B&D to price materials using a different methodology may have restricted competition with the other vendors in the pools that complied with the contract terms.

RECOMMENDATIONS

DFAS and DMD should:

- Provide training to employees on the proper process and timing for issuing a CRO and ensuring it is set up under the correct contract.
- Provide documentation of DMD service request approval to the user department requesting service at DMD maintained facilities.

- Request that DFAS – Accounts Receivable process an invoice to request a refund from B&D for overcharges and work performed by unapproved subcontractors as follows:

Overcharges due to quoted work	\$7,900
Overcharges for Project Management	3,593
Costs for Unapproved Sub-Contractors	<u>12,443</u>
TOTAL	\$23,936

- Review each contractual requirement in the On-Call Services RFP/RFBs and contracts to determine if each is necessary for the City to properly manage the contract, and delete any unnecessary requirements in future contracts.
- Include definitions of terms in future contracts to ensure there is common understanding of contractual requirements.
- Develop easy to read materials to assist user departments when using the On-Call Services contracts, such as definitions of terms, decision trees, listings or checklists of important requirements, labor rates and materials pricing, etc.

RESPONSE FROM DFAS AND DMD

“As part of the ERP, Purchasing, PeopleSoft remediation project the DFAS Purchasing Division will be amending the Contract Release Order (CRO) business and system processes. Part of this project involves the implementation of an electronic approval process which will ensure the proper issuance of CROs. All end-users will be trained in issuing CROs and ensuring that the CRO is set-up under the correct contract.

“DFAS Purchasing already provides this information to end-users but will remind end-users at its next scheduled Purchasing Liaison User Group (PLUG) meeting. In addition, DFAS Purchasing will post the information at its SharePoint website.

Estimated Completion Date: April 2016.

“DFAS and DMD will evaluate methodologies for documenting DMD approval of service requests by user departments at DMD maintained facilities and will incorporate clear language in new contracts.

Estimated Completion Date: November 2015.

“DMD, which is the most appropriate end-user of the B&D contract will request a refund from B&D for overcharges and work performed by unapproved subcontractors in the amount of \$23,936.

Estimated Completion Date: November 2015.

*“Contractual requirement in the On-Call Services contracts will be reviewed to determine if each is necessary for the City to properly manage the contract, and delete any unnecessary requirements in future contracts.
Estimated Completion Date: November 2015.*

*“Definitions of terms will be included in the new contract that is scheduled to be issued by the end of November 2015.
Estimated Completion Date: November 2015.*

*“DFAS already provides instructions to end-users regarding the use of On-Call Services contracts, but will review the material to determine if changes can make it easier to understand.
Estimated Completion Date: November 2015.”*

2. B&D EMPLOYEES HAVE THE REQUIRED SKILLS AND CERTIFICATIONS TO PERFORM THE WORK REQUIRED.

The Electrical and HVAC Contracts require licensed Journeyman electricians and HVAC professionals certified by the State of New Mexico and able to perform the contracted services for different City departments. B&D provided the current license information for each Journeyman identified as working on City projects. This information was verified with the State of New Mexico’s Contractor Licensing website. Also, the apprentices used on electrical jobs were all verified as officially enrolled in a State licensed Apprentice program.

RECOMMENDATION

None

CONCLUSION

Numerous contract requirements, which were not met by B&D, remained unnoticed by the City's user departments. As a result, the City was overcharged on some invoices, cost estimates were not consistently obtained prior to the performance of services, subcontractors performed work on City facilities without City approval, important information was not provided consistently or maintained by user departments, and the City's risk was not properly mitigated for large projects. Additionally, formal authorization to start work was not provided to B&D timely by City departments. DFAS-Purchasing and DMD should work together to provide information needed by City user departments to increase compliance with contract terms.

Throughout the audit, the DFAS-Purchasing and the DMD Facilities and Energy Management Division personnel were cooperative, involved and welcoming of the audit. Their time and assistance were greatly appreciated.

Principal Auditor

REVIEWED:

Internal Audit Manager

REVIEWED and APPROVED:

APPROVED FOR PUBLICATION:

Debra Yoshimura, CPA, CIA, CGAP
Director, Office of Internal Audit

Chairperson, Accountability in
Government Oversight Committee

APPENDIX A

OBJECTIVES

The objectives of the audit were to determine:

- Is B&D submitting all required information per the Electrical and HVAC On-Call contracts with their invoices for payment?
- Is B&D using employees with the required skills and certifications to perform the work as required by the Electrical and HVAC On-Call contracts?
- Is B&D submitting the correct charges for labor and materials for work performed as allowed by the Electrical and HVAC On-Call contracts?

SCOPE

The audit used two distinct populations: one population from the Electrical On-Call contract and one population from the HVAC On-Call contract. Our scope was limited to the objectives above for the 12 month audit period between July 1, 2013 and June 30, 2014, fiscal year (FY) 2014.

This report and its conclusions are based on information taken from a sample of transactions from the two populations and do not represent an examination of all related transactions and activities. The audit report is based on our examination of activities through the completion of fieldwork on June 30, 2015 and does not reflect events or accounting entries after that date.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

METHODOLOGY

Methodologies used to accomplish the audit objectives include but are not limited to the following:

- Reviewing the B&D response to the Request for Proposal and the resulting Electrical On-Call Contract,
- Reviewing the B&D response to the Request for Bid and the resulting HVAC On-Call Contract,
- Testing a sample of Electrical On-Call invoices for contract requirements,
- Testing a sample of HVAC On-Call invoices for contract requirements,
- Testing B&D's compliance with licensing requirements under the Electrical and HVAC On-Call contracts,

- Testing the invoices selected under both contracts for information documenting when a CRO number was issued, and
- Testing of documentation of meeting City requirements for high dollar invoices.

Audit sampling software was used to generate statistical and random attribute test samples to accomplish audit objectives. Population data was derived from payments made by the City to B&D during FY 2014 for each contract.