



Florida Department of TRANSPORTATION

Office of Inspector General
Robert E. Clift, Inspector General

A handwritten signature in blue ink, reading "Robert E. Clift".

Audit Report No. 15C-6005
Kimley-Horn and Associates, Inc. - Agreement C-9063
Contains Confidential Information¹

June 28, 2017

What We Did

The Office of Inspector General (OIG) conducted a post audit of the Standard Professional Services Agreement (agreement) C-9063 between the Florida Department of Transportation (department) and Kimley-Horn and Associates, Inc. (KHA) for the period of December 28, 2010 through October 31, 2015, as amended. We conducted the audit as part of the Fiscal Year (FY) 2015-2016 annual audit plan.

We reviewed the agreement's negotiation process and supporting documentation, tested timesheets to evaluate the adequacy of the job cost accounting system, and reconciled payroll records to the job cost report.² In addition, we reviewed invoices for reasonableness and allowability.

What We Found

We determined the department properly procured the services of KHA. We found KHA's timekeeping and payroll functions were adequate to enable us to rely upon the accounting records and transactions related to the amounts invoiced and incurred. **We also determined** KHA materially complied with applicable laws, rules, and terms of the agreement.

As a result of initially questioning invoiced costs exceeding substantiated costs for terminated lump sum services prior to completion, management recognized the need and will modify the agreement provision to address final payment for termination of lump sum agreements versus termination of limiting amount agreements.

We also presented contract performance metrics in two observations regarding:

- analysis of total contractually allowed, invoiced, and consultant incurred cost; and
- actual utilization of proposed labor resources.

¹ See page 13 regarding restriction on use.

² We relied upon the Cognizant Agency's (North Carolina Department of Transportation) review of KHA's accounting system and internal controls as allowed in 23 U.S.C § 112 (b) (2) (c) and Code of Federal Regulations (CFR) § 172.3 and 172.7.

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BACKGROUND AND INTRODUCTION

On December 28, 2010, KHA entered into Standard Professional Services Agreement (agreement) C-9063 with the department. The purpose of this agreement was for resurfacing and design criteria upgrades on the Polk Parkway from milepost (MP) 8.0 to 21.7 for the Florida Turnpike Enterprise.

The original agreement period was from December 28, 2010 through September 28, 2011. The original total maximum amount of all compensation for the completion of basic design services provided by KHA was not to exceed \$719,618.³ There were six amendments to agreement C-9063 which extended the agreement period to October 31, 2015 and raised the maximum amount to \$1,570,784. See Table 1.⁴

Table 1: Agreement and Amendment Summary

Kimley-Horn and Associates, Inc. Resurfacing Polk Parkway Agreement Summary Description								
	Agreement	Amd 1	Amd 2	Amd 3	Amd 4	Amd 5	Amd 6	Total
Execution Date	12/28/2010	9/26/2011	10/5/2011	3/14/2012	10/31/2013	8/4/2014	2/11/2015	
Contract Summary	Basic Design Services	Time extension to 6/30/2012	Additional Design Services	Post Design Services. Time extension to 10/31/2013	Time extension to 10/31/2015	Optional Design Services	Name change	
Allowed Contract Amount	\$ 719,618	\$ -	\$364,809	\$ 123,469	\$ -	\$362,888	\$ -	\$ 1,570,784

Source: FDOT Turnpike Professional Services Unit and Florida Accountability Contract Tracking System

As reported under the Results of Review section, our analysis compared the agreement's total contractually "allowed" amounts for compensation, amounts "invoiced"⁵ by the consultant, and actual costs "incurred" and recorded in KHA's job cost accounting records.

Allowable compensable costs are defined in the agreement's Exhibit B - Method of Compensation. Supporting the compensation amounts are "Audit Fee" schedules submitted to the department at the time of negotiations, which include payroll registers and labor costs by job class.

³ The contracted amount per Exhibit B was \$719,618. However, the negotiated amount included in the audit fee schedule was for \$719,625.71, which is a \$7.71 difference. The audit fee schedule value of \$719,625.71 was used in the report.

⁴ The agreement's total compensation is based on a combination of lump sum and limiting amounts methods of compensation, which is dependent upon the type of service provided.

⁵ The method of compensation's cost driver is direct labor, which is burdened with an approved overhead, direct expense, facilities capital cost of money (FCCM), and operating margin mark ups. Our reporting of incurred costs in the cost analyses below relied upon contractually allowed mark ups of direct labor.

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RESULTS OF REVIEW

We determined KHA materially complied with applicable laws, rules, and terms of the agreement. We also determined the department properly procured the services of KHA. We found KHA's timekeeping and payroll functions were adequate to enable us to rely upon the accounting records and transactions related to the amounts invoiced and incurred.

There are three observations in this report:

- cost analysis comparison of contractually allowed, invoiced, and consultant incurred costs;
- optional design services termination; and
- utilization of proposed labor resources measured by hours.

Observation 1 – Analysis of Allowed, Invoiced, and Incurred Cost

As reported in the background section of the report, we prepared an analysis comparing the agreement's total compensation allowed, amount invoiced by the consultant, and actual costs incurred by the consultant. See Table 2. This agreement contracted the following services:

- basic services (original agreement, amendment 2);
- post design (amendment 3); and
- optional design (amendment 5), see Observation 2, page 6 of 13

Table 2 – Summary of Total Allowed, Invoiced, and Incurred Costs

Kimley-Horn and Associates, Inc Contract C-9063 Resurfacing Polk Parkway Total Allowed, Invoiced, and Incurred Costs			
	Total Allowed	Total Invoiced	Total Incurred
Hours (KHA)	7110	5957	6815
Direct Labor			
Overhead			
Burdened Labor			
Operating Margin			
FCCM			
Direct Expense			
KHA Subtotal			
Data Transfer Solutions, In			
TBE Cardno - Utility			
TBE Cardno - Survey			
Tierra, Inc			
Subconsultant Subtotal			
Total	\$1,570,792	\$1,167,503	\$1,177,007

Source: Contract C-9063, KHA invoices, and job cost

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We observed, as a whole, KHA's incurred costs exceeded the costs invoiced to the department, which includes combination of lump sum and limiting amount methods of compensation. Reported below are cost analyses for the different design services contracted.

Basic Services - Original Agreement and Amendment #2 Cost Analysis

The purpose of Amendment No. 2 was to add design services to substantiate design recommendations and to prepare a complete set of construction plans for upgrades on the Polk Parkway from MP 8.0 to MP 21.7. Amendment 2 increased the allowable amount by \$364,809, 34 percent, to a total maximum compensation of \$1,084,435.

Our review found KHA was reimbursed 96 percent of allowed (lump sum) basic services, or \$808,403 of the allowed amount of \$842,086, or a difference of \$33,684. In an email to the department, dated 01/04/2016, KHA confirmed "all services have been invoiced for and paid in full." In addition, the Florida Turnpike Enterprise Professional Services Unit acknowledged the 96 percent as complete and acceptable.⁶

As shown in table 3 below, we observed the invoiced amounts did not exceed contractually allowed cost and the consultant's incurred cost of \$1,027,625 substantiates the invoiced amounts.

Table 3 – Original Agreement and Amendment #2 Cost Analysis

Kimley-Horn and Associates, Inc. Original Agreement & Amendment #2 Resurfacing Polk Parkway			
	Total Allowed	Total Invoiced	Total Incurred
<u>Basic Services (Lump Sum)</u>			
Hours (KHA)	5048	4846	5,788
Direct Labor			
Overhead			
Labor Subtotal			
Operating Margin			
FCCM			
Direct Expense			
KHA Subtotal			
Data Transfer Solutions, Inc.			
TBE Cardno - Utility			
Subtotal			
<u>Limiting Amount</u>			
TBE Cardno - Survey			
Tierra, Inc.			
Subtotal			
Total	\$1,084,435	\$1,007,162	\$1,027,625

Source: Contract C-9063, KHA invoices, and job cost

⁶ Per the Certification of Completion Agreement dated 1/15/2016.

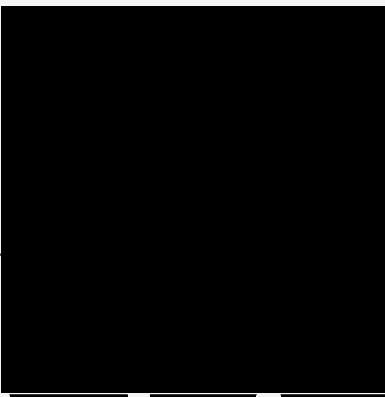
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Post Design Services - Amendment #3 Cost Analysis

At the request of Turnpike Enterprise, Amendment No. 3 was to add post design services, which increased the allowable amount by \$123,469, to a total maximum compensation to the Consultant of \$1,207,896. KHA invoiced \$86,899 of the allowed \$123,469, or 70 percent.

As shown in table 4 below, we observed the invoiced amounts did not exceed contractually allowed cost and the consultant's incurred cost of \$86,312 substantiates the invoiced amounts.

Table 4 – Amendment #3 Cost Analysis

Kimley-Horn and Associates, Inc. Amendment #3 Resurfacing Polk Parkway			
	Total Allowed	Total Invoiced	Total Incurred
Limiting Amount			
Hours (KHA)	416	544	544
Direct Labor			
Overhead			
Subtotal			
Operating Margin			
FCCM			
Direct Expense			
KHA Subtotal			
Data Transfer Solutions, Inc.			
TBE Cardno - Utility			
TBE Cardno - Survey			
Tierra, Inc.			
Subtotal			
Total	\$ 123,469	\$ 86,899	\$ 86,312

Source: Contract C-9063, KHA invoices, and job cost

Observation 2 – Optional Design Services Termination

The purpose of Amendment 5 was to add preparation of plans and specifications package for a canal protection project in Polk County. Prior to completion of services required under Amendment 5, the department reached a decision to close the project.

During the closure process, the department requested hours expended to date and analyzed the engineering services completed. KHA submitted to the department an estimated project staff hour summary, which reported 567 out of 1,940 hours expended to date, or 29.2 percent. Based upon this information, and the engineering services

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performed to date, KHA invoiced 30 percent of the lump sum agreement amount of \$244,807, or \$73,443. See Table 5.

Table 5 – Amendment 5 Cost Analysis

Kimley-Horn and Associates, Inc Amendment #5 - Optional Design Services				
	Total Allowed	Total Invoiced*	Total Incurred	Invoiced vs. Incurred
Basic Services (Lump Sum)				
Hours (KHA)	1,646	567	484	(83)
Direct Labor				
Overhead				
Labor Subtotal				
Operating Margin				
FCCM				
Direct Expense				
KHA Subtotal				
Data Transfer Solutions, Inc.				
TBE Cardno - Utility				
Subtotal				
Limiting Amount				
TBE Cardno - Survey				
Tierra, Inc.				
Subtotal				
Total	\$ 362,888	\$ 73,443	\$ 63,071	\$ (10,372)

* Based upon 30% completion.

Source: Contract C-9063, KHA invoices, and job cost

The cost analysis of KHA's job cost records found KHA incurred 484 hours, or \$63,071 in costs, versus 567 hours. In addition, we observed \$4,742 of subconsultant costs invoiced and no costs incurred by KHA. In the initial draft audit report submitted for consultant and department response, we questioned the portion of the payment of \$73,443 that exceeded the incurred cost of \$63,071, or \$10,372, due to the substantiation language in the termination provision of the agreement⁷.

Based upon audit inquiry with the Office of Procurement and department management, we were informed the intent of the termination provision is to follow the method of compensation for determination of final payment. Management further clarified, final payment for lump sum contracted services should be solely based upon the percentage

⁷ The Standard Professional Services Agreement, Termination and Default, section 6(A)(3) states, "If the Agreement is terminated before performance is completed, the Consultant will be paid for the work satisfactorily performed. Payment is to be on the basis of substantiated costs, not to exceed an amount which is the same percentage of the contract price as the amount of work satisfactorily completed is a percentage of the total work called for by the Agreement."

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of the scope of services completed from an engineering basis, not labor hours expended or on a cost incurred basis.

Management recognized the need, and will modify, the agreement provision to address final payment for termination of lump sum agreements versus termination of limiting amount agreements.

Observation 3 – Utilization of Proposed Labor Resources

From a post-contract performance perspective, we compared KHA's personnel used to perform the scope of services versus those individuals proposed during the initial procurement and negotiation process. To conduct this work, we compared the list of individuals and the hours proposed to individual timesheet hours recorded in KHA's job cost accounting records. We then determined the percentage utilized. See Table 6 below.

Table 6 – Utilization of Labor Resource Proposed

Kimley-Horn and Associates, Inc. Percentage of Work Performed by Employees Initially Proposed						
	Basic Services		Post Design		Optional Design Services	
	Actual Hours		Actual Hours		Actual Hours	
	Proposed Staff	5,025 87%	509 94%	273 56%		
	Other Staff	763 13%	35 6%	211 44%		
Total Hours Expended	5,788		544		484	

Source: Contract C-9063 and KHA's job cost records

As reported in Table 6, KHA utilized the following percentages of original staff proposed:

- Original and amendment 2 - 87 percent utilized;
- Amendment 3 - 94 percent utilized; and
- Amendment 5 - 56 percent utilized.

The analysis reported above was provided for informational purposes to the Turnpike's Professional Services Unit.

APPENDIX A – Purpose, Scope, and Methodology

The **purpose** of this engagement was to determine:

- compliance with department Procedure Topic No. 375-030-004, Audit Process for Professional Services Consultants and Contracts, requirements of Rule 14-75, Florida Administrative Code, Consultant Qualification Process (procurement process); and
- if claimed and reimbursed costs were reasonable, allowable, and in accordance with the provisions of the agreement; and
- compliance with applicable laws and regulations.

The **scope** of this audit included the contract agreement between the department and KHA for Agreement C-9063, Resurfacing and Design Upgrades on the Polk Parkway from MP 8.0 to 21.7, from December 28, 2010 through October 31, 2015, as amended.

The **methodology** included:

- reviewing applicable laws, rules, and regulations, including 48 C.F.R., Part 31, Contract Cost Principles and Procedures; and section 112.061, Florida Statutes;
- examining and testing KHA's job cost records, payroll records, timesheets, invoices submitted through CITS, and other direct cost documents; and
- reviewing department negotiation documents.

APPENDIX B – Affected Entity Response

Kimley Horn & Associates, Inc. emailed the following response on June 17, 2017:

“We appreciate our relationship with Florida DOT and worked closely with the auditors throughout this engagement. We have the following comments on the observations:

Observation 1: We accept the auditor’s observation that we under billed Amendment 2 of Contract C-9063 by \$33,684. We would like to work with the state to appropriately invoice the under billed amount.

Observation 2: We accept this observation.

Observation 3: We accept this observation.”

APPENDIX C – Management Response

Florida Turnpike Enterprise responded with no comment on June 23, 2017.

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PROJECT TEAM

Engagement was conducted by:
Brittnee Clark, Auditor

Under the supervision of:
Ryan Moore, Senior Audit Supervisor
William Pace, Audit Manager
Kristofer Sullivan, Director of Audit

Approved by:
Robert Clift, Inspector General

STATEMENT OF ACCORDANCE

The department's mission is to provide a safe transportation system that ensures the mobility of people and goods, enhances economic prosperity, and preserves the quality of our environment and communities.

The Office of Inspector General's mission is to promote integrity, accountability, and process improvement in the Department of Transportation by providing objective, fact-based assessments to the DOT team.

This work product was prepared pursuant to section 20.055, Florida Statutes, in accordance with the Association of Inspectors General *Principles and Standards for Offices of Inspector General*, and conforms with The Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

Please address inquiries regarding this report to the department's Office of Inspector General at (850) 410-5800.

RESTRICTION ON USE

The cost information presented in this report are subject to certain disclosure requirements contained in 23 United States Code §112(b)(2)(e).⁸ Release of this information (in response to a public information request) must be coordinated with the Florida Department of Transportation's Office of General Counsel to ensure appropriate steps are taken to ensure compliance with these requirements and the requirements of state law.⁹

⁸ 23 U.S.C. §112(b)(2) (E) PRENOTIFICATION; CONFIDENTIALITY OF DATA.—A recipient of funds requesting or using the cost and rate data described in subparagraph (D) shall notify any affected firm before such request or use. Such data shall be confidential and shall not be accessible or provided, in whole or in part, to another firm or to any government agency which is not part of the group of agencies sharing cost data under this paragraph, except by written permission of the audited firm. If prohibited by law, such cost and rate data shall not be disclosed under any circumstances.

⁹ Pursuant to the Supremacy Clause of the United States Constitution, Art. VI, U.S. Constitution, the state must keep the records confidential.