

COUNTY OF MILWAUKEE
Inter-Office Communication

Date: May 5, 2008
To: Lee Holloway, Chairman, Milwaukee County Board of Supervisors
From: Jerome J. Heer, Director of Audits
Subject: Audit of War Memorial HVAC Renovation Costs

The Department of Audit engaged the firm of Jefferson Wells to audit the construction costs associated with the War Memorial HVAC renovation – Phase I. The Department of Transportation and Public Works was responsible for overall management of the project, including the work of the contractor, secured under a lump-sum contract.

The primary objectives of the audit included the following:

- Review the lump-sum contract to identify risks and determine the appropriateness of terminology.
- Determine if the invoiced amounts were in compliance with contract terms.
- Identify potential opportunities for improvement in the administrative process.

As a result of its audit, Jefferson Wells indicated that there did not appear to be material deficiencies in the contractor's performance. However, it did offer recommendations to improve a number of contractual provisions.

Please refer this report to the Committee on Finance and Audit.

Jerome J. Heer

JJH/PAG/cah

Attachment

cc: Milwaukee County Board of Supervisors
Scott Walker, Milwaukee County Executive
George Torres, Director, Department of Transportation and Public Works
Greg High, Director, DPW-Architectural, Engineering & Environmental
Delores Hervey, Chief Committee Clerk, County Board Staff
Steven Paquette, Construction Services Manager – Midwest Region, Jefferson Wells

Milwaukee County

War Memorial – HVAC Renovation Phase 1

MAY 2, 2008

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EXECUTIVE SUMMARY

Scope and Objectives

The Milwaukee County Department of Audit (County) engaged Jefferson Wells to audit the construction costs of the War Memorial-HVAC Renovation-Phase 1. The Department of Public Works was responsible for overall management of the project to renovate the HVAC at the War Memorial Center. Mared Mechanical Contractors was awarded the lump-sum contract.

The project is divided into two phases. Phase one involved replacing two boiler units of the current heating system. One of the boilers was to be demolished and replaced and the other was to be renovated. Phase two work included the demolition and replacement of nine air handler units with new components. Completion of Phase two was October 2007.

The primary objectives of the audit included:

- Review the County's contract to determine the contract risks and appropriateness of terminology.
- Determine if the amounts invoiced to the County were in compliance with contract terms.
- Identify potential opportunities for improvement in the administrative process.

Procedures Performed

Jefferson Wells performed the following procedures:

- Reviewed the County's contract and identified improvements to contract language.
- Performed billing roll-forward to ensure prior payments were included correctly in Mared's payment applications.
- Verified mathematical accuracy of payment applications.
- Reviewed the Allowance Authorizations.
- Determined that subcontractors' and material suppliers' obligations have been satisfied.
- Determine that deliverables described in the contract, i.e. as-built drawings, operating manuals and warranty information have been provided.

Overall Assessment

This Contract is a Lump Sum form of contract and therefore, unless there are significant Change Orders to the contract there is minimal opportunity for cost recovery. In this case, there were no net additions to the contract, instead there was a (\$ 20,728.64) deduct Change Order issued to address the unspent Miscellaneous Allowances account.

Based on the procedures performed and documentation we reviewed, there did not appear to be material deficiencies in the contractor's performance. As a result of the contract review, we have provided recommended modifications to the contract language for future projects. Specific issues are discussed below and recommendations for improvement are offered for management's consideration.

Summary of Observations

1. Contract Language – Right-to-Audit-Clause

A right-to-audit clause is included in the County's current contract. The current language of the clause is vague. We recommend the right-to-audit-clause include language to establish a time frame for which the audit must occur. In addition, the clause should include all payees in the scope of the audit and define "records" to be included as available for examination. Expanding the right-to-audit-clause creates a greater incentive for contractors to be more responsible for record keeping and reinforces the importance of being compliant with contract terms.

Recommendation:

Jefferson Wells has provided a sample right-to-audit-clause for the County to consider in revising the existing clause (See Exhibit A).

Management Response:

From a Project Management and Construction Management perspective any practical improvement to the audit clause is desirable provided Corporation Counsel and the Department of Audit review and concur with the specific revisions recommended.

Implementation of any change to the current audit clause should first depend on Corporation Counsel and the Department of Audit opinion about this. If any provisions are added they should be kept realistic and practical and not subject contractors to overly burdensome obligations.

Mandatory response information

1. Supplementary Conditions can be modified to expand the language in Article 13.9 Audit.
2. DTPW Management will be responsible for implementation of this recommendation.
3. Approved changes can be added to new master bidding documents after review of final changes.
4. Alternative solutions to the problem will probably not be required.

2. Change Orders– Contract Language

The Original Contract amount was \$ 1,816,800 and included an allowance of \$100,000. There were no net contract additions, only adjustments made to the allowance balance in accordance with 12 Allowance Authorizations. All but \$ 20,728.64 of the Allowance was expended and a deduct Change Order was issued for this amount resulting in a Final Contract Amount of \$ 1,796,071.36.

The County’s contract does not clearly define “costs” allowable for change orders. Pre-defining costs in the contract language facilitates the change order process by giving clear guidelines for contractors to follow. For example, we have found labor rates used in change orders are often excessive and may be as much as 50% above actual cost. Defining direct construction costs to be actual costs paid, plus a specified percent for overhead reduces the risk of incurring overcharges in change orders.

Recommendation:

We suggest that you consider adding language to the County’s contract that clearly defines the method used to price change orders. Jefferson Wells has provided an example in Exhibit B.

Management Response:

Generally, a better specification for how change order costs will be determined would be a benefit provided that the specification is carefully considered to result in fair and readily verifiable costs. Given limited resources, the most difficult Construction Management task relative to Change Orders is verifying legitimate expenses submitted by the Contractor. Any change should be thoroughly considered to make sure specifications are clear and that adequate resources are available to the Project Managers to properly verify change order and allowance costs.

It would be more helpful if Jefferson Wells would put their example in the format of a supplementary condition item that modifies the standard AIA General Conditions. If we are to implement any part of this it will need to be in that context and format (or in EJCDC format as the case may be).

Mandatory response information

1. Supplementary Conditions can be modified to expand the language in Article 7 Changes in Work (Note: Division 1 Section 01210 Allowances does state that Miscellaneous Costs shall be determined on the basis of Subparagraphs in the General and Supplementary Conditions).
2. DTPW Management will be responsible for implementation of this recommendation.
3. Approved changes can be added to new master bidding documents after review of final changes.
4. Alternative solutions to the problem in this section could be developed through review and discussion among a work group established including staff from Audit, Corporation Counsel and DTPW.

3. Contract Language – Waiver of Subrogation Clause

The contract does not require “waivers of subrogation” from the contractors’ insurance carriers. The contractors’ insurers may seek compensation for losses incurred on the job from the County. Having the “waiver of subrogation” from the insurance carrier strengthens the contractor’s indemnification of the County from claims. The “waiver of subrogation” indicates the insurer acknowledges it is relinquishing its right of recovery.

Recommendation:

The contract language should require that all contractors, including subcontractors and sub-subcontractors provide a waiver of subrogation by endorsement in their insurance policies. The evidence of the waiver of subrogation should be included on each Certificate of Insurance the contractors provide.

Management Response:

Implementation of this recommendation would be subject to review, modification and approval by Corporation Counsel and Risk Management.

Mandatory response information

1. Supplementary Conditions can be modified to include the waiver language(Note Risk Management did remove Article 11.4.7 Waivers of Subrogation in the General and Supplementary Conditions after bidding of this Contract, however the Waiver was included in this Contract).
2. DTPW Management will be responsible for implementation of this recommendation at the direction of Corporation Counsel, Risk Management and Audit
3. Approved changes can be added to new master bidding documents after review of final changes.
4. N/A.

4. Contract Language – Labor Rates

The contract contains language to ensure that the Labor Laws of the State of Wisconsin and the Prevailing Wage Rate are adhered to. This language addresses the minimum amounts that can be paid to workers on the project. The contract is silent on establishing a maximum amount to be billed for labor.

Contractors and subcontractors should be required to submit the labor rates billed for change orders along with the initial bid. These labor rates should be forwarded to the County for review. The contract language should require actual wages and benefits be used in calculating change-order costs. The County should consider requiring contractors to fill out labor rate exhibits and provide documentation to support the rates charged, such as union contracts and worker’s compensation rates. Excessive labor rates can be identified and adjusted before any actual change-order work begins. Negotiating labor rates in advance can reduce potential delays or conflicts that can occur after construction begins.

Recommendation:

Consider adding contract language establishing labor rates billed by contractors and subcontractors. This can be done by requiring labor rates be submitted along with bids. Jefferson Wells has provided an example of a labor rate exhibit (See Exhibit C).

Management Response:

This implementation of this recommendation should be considered. However, on large projects with a varied workforce of many subcontractors and trades this may not be practical. Also, requiring submission of labor rates with the bid may open up other issues regarding bid responsiveness. Instead, this submission could be required following award of the contract.

Also, there is some concern for the comment regarding contract being silent on establishing a maximum amount to be billed for labor. It is clear in the AIA general conditions (and others like EJCDC and FAA that are used) that the actual cost for labor is to be paid in a change order. Rates paid by a contractor may be higher than an established union or minimum prevailing wage rate. However, since a low bid contractor won the award using those rates and the contractor is not making the rates higher just for change orders, it may not be appropriate or fair to require a contractor to pay a lower rate for change orders. The emphasis should not be on identifying excessive rates but rather on establishing that labor rates are no higher for change orders than for the work as bid.

Mandatory response information

1. Supplementary Conditions can be modified to include the Labor Rate language in Article 3.4 Labor and Materials and Bid Documents can be updated to require Labor Cost Information.
2. DTPW Management will be responsible for implementation of this recommendation at the direction of Corporation Counsel, Risk Management and Audit
3. Approved changes can be added to new master bidding documents after review of final changes.
4. N/A.

5. Allowance Authorizations

The original contract contains a Miscellaneous Allowance of \$ 100,000. Allowance Authorizations 1-12 were issued authorizing various expenditures totaling \$ 79,271.36 for unforeseen conditions and additional project scope. A deduct Change Order was issued in the amount of \$ 20, 728.64, thereby eliminating the remaining allowance amount.

Documentation to support the \$79,271.36 in Allowance Authorizations included approved "Allowance Authorization" forms by the Managing Engineer-Construction and quotes by the general and sub contractors showing total costs and markup for the change.

The contract states in Article 7, section 7.3.10, subparagraph .6:

In order to facilitate checking of quotations for extras or credits, proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In

no case will a charge over five hundred dollars (\$500) be approved without such itemization.

Itemized documentation, including a breakdown of labor, materials and equipment costs, to support allowance adjustments was not obtained.

Recommendation:

Require the contractor to provide detail for their costs in accordance with the terms and conditions of section 7.3.10. The General and Subcontractors should be required to provide itemized documentation to support allowance adjustments in accordance with contract requirements. Such requirements include a break down of labor, materials and equipment charges. Milwaukee County personnel responsible for reviewing and approving allowance adjustments should ensure support in accordance with the contract is provided and reviewed prior to approving the adjustment.

Management Response:

Current practice for AE&ES Project Managers is that an itemization is required unless otherwise justified by the Project Manager as appropriate and fair (independent estimate, judgment based on experience and cost of similar work, etc.). While Project Managers currently adhere to Article 7 in general, DTPW will review the documentation required for conducting a Change Directive review and emphasize to Project Managers the need to document their decision making process.

Mandatory response information

1. Supplementary Conditions can be modified to expand the language in Article 7 Changes in Work (as noted in Item 2 above, Change Orders - Division 1 Section 01210 Allowances does state that Miscellaneous Costs shall be determined on the basis of Subparagraphs in the General and Supplementary Conditions).
2. DTPW Management will be responsible for implementation of this recommendation
3. Approved changes can be added to new master bidding documents after review of final changes.
4. N/A.

EXHIBIT A: Right-to-Audit

1. Whenever the Customer enters into any type of contractual arrangement including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts), Contractor's "records" shall upon reasonable notice be open to inspection and subject to audit and/or reproduction at during normal business working hours. Customer's representative or an outside representative engaged by Customer may perform such audits. The Customer or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law.
2. Contractor's "records" as referred to in this contract shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Customer's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Customer in connection with contractor's dealings with the Customer (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of: a) contractor compliance with contract requirements, b) compliance with Customer's business ethics policies, and c) compliance with provisions for pricing change orders, invoices or claims submitted by the contractor or his payees.
3. Contractor shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by incurring the requirements hereof in a written contract agreement between Contractor and payee. Such requirements to include flow-down right of audit provisions in contracts with payees will also apply to Subcontractors and Sub-Subcontractors, material suppliers, etc. Contractor will cooperate fully and will cancel Related Parties and all of Contractor's subcontractors (including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Customer from time to time whenever requested in an expeditious manner any and all such information, materials and data.
4. Customer's authorized representative or designee shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

5. If an audit inspection or examination in accordance with this Article, discloses overpricing or overcharges (of any nature) by the contractor to the Customer in excess of one-half of one percent (.5%) of the total contract billings the reasonable actual cost of the Customer's audit shall be reimbursed to the Customer by the Contractor. Any adjustments and/or payments, which must be made as a result of any, such audit or inspection of the contractor's invoices and/or records, shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Customer's findings to Contractor.

EXHIBIT B: Change Orders, Extra Work and Claims

1. **The contract language contained in this Article will supplement and take precedence over all other change order pricing contract provisions in the contract documents provided by either the Customer, General Contractor (Contractor) and/or Architect/Engineer.** It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by the General Contractor (Contractor), Prime Contractors, Trade Contractors or Subcontractors (Subcontractor), and all other lower tier Contractors (Sub-Subcontractors) working on the Project. In the event of a conflict between the language in this Article and the other contract documents used for the project, the change order pricing and contract provisions in this Article shall govern.
2. **The Contractor agrees that it will incorporate the provisions of this Article into all agreements with lower tier Contractors, Subcontractors, etc.** It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts, specifically including lump sum or fixed price contracts, unit price contracts, and/or cost plus contracts with or without a guaranteed maximum. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus change order proposals.
3. **The term change order shall include Extra Work and Claims** unless specifically excluded or further described.
4. **Whenever change order proposals to adjust the contract price become necessary, the Customer will have the right to select the method of pricing to be used by the contractor in accordance with the pricing provisions found in this Article.** The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus change order proposal as defined in the following provisions:
 - a. **Lump Sum Change Order Proposals** - The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format *satisfactory* to Customer. The Customer will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item by drawing as applicable).
 - b. **Labor:** Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the agreed

- c. upon Markup Percentages as outlined in paragraph 8 of this Article.
 - d. **Labor Burden** - Labor burden allowable in change orders shall be defined as employer's net *actual* cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employers for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.
 - e. **Material:** Estimated material change order costs shall reflect the contractors reasonably anticipated net actual cost for the *purchase* of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to trade discounts, free material credits, and/or volume rebates. Cash discounts available on material purchased for change order work shall be credited to Customer if the Contractor is provided Customer funds in time for Contractor to take advantage of any such cash discounts. Price quotations from material suppliers must be itemized by each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.
 - f. **Equipment:** Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$1,000). For contractor owned equipment, the "bare" equipment rental rates allowed *to be used* for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor-owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
5. **The allowance for combined overhead and profit included in total cost to Customer shall be based on following schedule:**
- a. For Contractor, for Work performed by Contractor's own forces, 10 percent of the cost.
 - b. For Contractor, for Work performed by Contractor's Subcontractor, 10 percent of the amount due Subcontractor.
 - c. For each Subcontractor or Sub-subcontractor involved, for Work performed by Subcontractor's or Sub-subcontractor's own forces, 10 percent of cost.
 - d. For each Subcontractor, for Work performed by Subcontractor's Sub-subcontractors, 10 percent of amount due Sub-subcontractor.
 - e. Cost to which overhead and profit is to be applied shall be determined in accordance with paragraph 4 of this Exhibit.

- f. In order to facilitate checking of quotations for extras or credits, proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontracts. Labor and materials shall be itemized in manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a charge over five hundred dollars (\$500) be approved without such itemization.
- g. When computing change orders with deductions, overhead and profit will be deleted from deductions.

**** Note: The percent used above are for example purposes only, the County may substitute whatever rate they deem appropriate.**

- 6. **As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the contractor's profit and all indirect costs associated with the change order work.** Items intended to be covered by the Markup Percentage Fee include, but are not limited to; home office expenses, branch office and field office overhead expense of any kind, project management, superintendents, general foremen; estimating, engineering, coordination, expediting, purchasing, detailing; legal, accounting, data processing or other administrative expenses, shop drawings, permits, comprehensive general liability insurance, auto insurance and umbrella insurance, pick-up truck costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual value of \$1,000 or less.
- 7. **The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders.** In the case of a deductive change order, after the net credit is computed by applying the sliding scale percentages as outlined, an adjustment will be made to the computed credit by multiplying the credit amount by a factor of .975 to arrive at a final credit amount to be issued to the Customer. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net additive or deductive amount.
- 8. **In no event will any lump sum or percentage amounts for "contingency" be allowed** to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to accomplish the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.
- 9. **The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days** of the Customer's request, unless the Customer extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Customer, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Customer may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued.

In the case of an unacceptable Contractor proposal, the Customer may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Customer shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

10. **In the event the Contractor has been required to furnish performance and/or payment bonds** as part of the base contract price, a final contract change order will be processed to account for the contractor's net increase or decrease in bond premium costs associated with change orders to Contractor's base contract price. Contract adjustments related to any such increased or decreased costs of related to insurance and/or bond coverage will not be subject to any Contractor markup for overhead and profit.
11. **Unit Price Change Order Proposals** - As an alternative to Lump Sum Change Order Proposals, the Customer or the Construction Manager acting with the approval of the Customer may choose the option to use Contract Unit Prices. The Contractor will submit within seven (7) days after receipt of the Customer's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.
12. **Contract Unit Prices** will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.
13. **Cost Plus Change Order Proposals** - As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Customer may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment without any charge for administration, clerical expense, general supervision or superintendence of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant (fabrication), plus the approved markup percentage fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as above. Customer and contractor may agree in advance in writing on a maximum price for this work and Customer shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Customer for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.

14. **Accurate Change Order Pricing Information:** Contractor agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data, which is accurate, complete, current and in accordance with the terms of the contract with respect to pricing of change orders.
15. **Right to Verify Change Order Pricing Information:** Contractor agrees that any designated Customer's representative will have the right to examine the contractor's records to verify the accuracy and appropriateness of the pricing data used to price change proposals. Even after a Change Order Proposal has been approved, Contractor agrees that if the Customer later determines the cost and pricing data submitted was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders; then an appropriate contract price reduction will be made.
16. **Requirements for Detailed Change Order Pricing Information:** Contractor agrees to provide and require all subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this Article. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.
17. The Contractor is required to notify the Customer within seven (7) calendar days subsequent to an event that may lead to a claim by the Contractor or Subcontractor of any tier. The claim is to be perfected and the Customer provided a full accounting for all costs associated with the claim within thirty (30) calendar days, unless the Contractor requests in writing and the Customer agrees to a specific extension of this time. The reason for the extension is to be made known to the Customer in the written request. Any claims that are not promptly and accurately reported in keeping with this article will not be entertained. The Customer has the right to verify amounts claimed in the same manner as described in paragraphs 15 and 16 of this article.

Attorney Disclaimer: This document contains suggested contract language that could have significant legal consequences. We recommend that you consult with your attorney prior to incorporating any concepts/language listed herein as part of your standard construction contract documents.

EXHIBIT C: Instructions for Labor Rate Exhibit

Milwaukee County

Labor Rate Exhibit 1

THIS EXAMPLE USES MILWAUKEE IRONWORKERS UNION INFORMATION

SUBCONTRACTOR LABOR RATE CALCULATION

Subcontractor Name: XYZ Contractors

Rate Applicability Period: From: June 2005 To: June 2006	Occupation: Ironworkers		
	Straight Time	Overtime	Double Time
Base Wage (\$ Per Hour)	27.12	40.68	54.24
Taxable Benefits (Vacation -As applicable)			
Subtotal Taxable Wages & Benefits	27.12	40.68	54.24
Union Benefits (if applicable)			
Pension	3.81	3.81	3.81
Health & Welfare	8.12	8.12	8.12
Industry Fund	0.11	0.11	0.11
Training Fund			
Unemployment Fund			
Apprenticeship Training Fund			
Supplemental Fund			
Annuity Fund			
Legal Fund			
Health Safety Fund			
Supplemental Employment			
Scholarship			
Other Benefits (List Below)			
1. Savings / IU Pension	3.50	3.50	3.50
2 Skill JATC	0.60	0.60	0.60
3 Other funds	0.02	0.02	0.02
Total Union Benefits	16.16	16.16	16.16
Subtotal Base Rate + Fringes	43.28	56.84	70.40
Insurance:			
Workers Compensation (_____ %)	6.00	6.00	6.00
Liability Insurance (_____ %)	1.00	1.00	1.00
Payroll Taxes:			
State Unemployment	1.03	1.03	1.03
Fed Unemployment	0.03	0.03	0.03
F.I.C.A.	2.07	3.11	4.15
Total Tax & Insurance	10.13	11.17	12.21
Cost Per Hour	53.41	68.01	82.61
Overhead (_____ % Used)			
Profit (_____ %)			
Hourly Charge should be	53.41	68.01	82.61

XYZ CONTRACTOR RATES PER CHANGE ORDER

84.00

Markup percent

57%

Instructions for Completing the Labor Rate Exhibit:

List the occupation and the period the rates are valid at the top of the form. Use copies of this form for each labor classification.

Occupations – are to include superintendent, foreman, journeyman, apprentices, etc. Include one labor exhibit for each labor classifications. If the contractor is affiliated with a union, then wage components and worker classifications are to be in accordance with prevailing union labor agreements. **Note: Subcontractor is to attach a copy of the Union Wage Rate and Fringe Benefit provisions to this Exhibit.**

Rates are to be developed as itemized below:

Base Wage shall be the actual wage rate paid to the labor classifications per the union or mutual agreement.

Vacation Allowance shall be the hourly rate per the union or mutual agreement.

Insurance – indicate the percent of the total taxable hourly wage. Provide a copy of the rate sheets from the worker compensation and general liability policies.

Taxes - use 7.65% of the Total Taxable Wages for FICA. Federal Unemployment Tax equals the annual tax of \$56 divided by 2,080 hours or 3 cents per hour. State Unemployment Tax equals the contractor's state tax rate multiplied by the state taxable wage limit divided by 2080 hours.

Attorney Disclaimer: This document contains suggested contract language that could have significant legal consequences. We recommend that you consult with your attorney prior to incorporating any concepts/language listed herein as part of your standard construction contract documents.