

REPORT

**COLUMBIA BUILDING AND SITE PROJECT
COST AND PROJECT MANAGEMENT**

Summary of Findings

We were engaged to:

- Review the report of City Auditor LaVonne Griffin-Valade on the Columbia Building issued October 2014;
- Conduct an investigation;
- Determine whether there is evidence that laws, rules, and ethical guidelines were violated; and
- Provide an analysis of the project management decisions so as to facilitate the development of future “best practices.”

We found no evidence that funds were misappropriated, misdirected or mishandled (with the sole exception of the pass-through payment to the designer discussed in more detail below). We also found no evidence that caused us to question the motivations of the BES staff. While there is considerable legitimate debate about BES decisions and judgment calls and whether the right choices were made, we saw evidence that the BES staff tried to make the best choices for the city and the ratepayers and we were impressed with their skill level.

Our review, however, identified practices and decisions that contributed to the controversy and which we believe should be evaluated by the city in its ongoing discussions about best practices in managing capital projects of this magnitude. Those are:

- The apparent circumvention of a Commissioner’s directive through a pass-through payment.
- Working with a large capital budget without a project budget.
- Using “design-first” project management.
- Attitude towards procurement requirements.
- Insufficient oversight of discretionary choices.
- Permitting a possible conflict of interest to exist.

Our review is detailed below.

Introduction and Background

The Office of the City Auditor was asked to conduct an audit of the BES Columbia Building due to concern about appropriate levels of project oversight; the audit concludes that city managers were remiss in not providing appropriate levels of vigilance, transparency and stewardship. The audit describes why the building project was necessary in the first place, that the cost was \$11.5 million (three times the early budget estimates provided to City Council), and that BES expanded the scope, made discretionary design choices, and provided ineffective oversight of the design phase. The report summarizes:

A recently completed Bureau of Environmental Services (BES) project to design and build an office building and make other improvements at the City’s

wastewater treatment plant cost ratepayers \$11.5 million – more than three times the \$3.2 million budgeted in 2010. We conducted this audit to determine why costs for the office building project increased, and to recommend improvements aimed at preventing future capital project overruns of this magnitude.

We found that two main factors caused the costs for this office building project to increase dramatically above initial estimates. First, design choices and additions to the scope made after City Council gave the go-ahead were more costly to design and construct than originally planned. Second, weaknesses in oversight during the design stage resulted in additional costs. In addition, a philosophy of striving to be a model of sustainability at the City and BES turned the project into an educational “showcase” of values. This resulted in a more elaborate, architecturally unique and complex project than originally conceived in the capital budgeting process and agreed to by Council.

We recommend specific ways for BES to improve design choices and design oversight and control. While these recommendations address issues we observed on this project, City Council should consider adapting them to capital project design management citywide.

Our task was not to repeat the audit, which was thoroughly done, but rather to consider its implications. We reviewed project documents and spoke with a number of BES employees, and also reviewed the Auditor’s working papers. Dean Marriott was represented by counsel and all communications with him were through or in the presence of counsel. This report and conclusion of our work was slightly delayed by time necessarily spent by his attorneys reviewing source documents. Mr. Marriott had announced his resignation from the City before we were able to meet with him, and we received follow up communication from his attorneys expressing his views on the project as well. A copy of that communication has been provided to the City.

We conducted in-person interviews with key BES staff in addition to Mr. Marriott, including Susan Aldrich, Blair Bean, Steve Behrnt, Megan Callahan, James Hagerman, Megan Hanson, Scott Gibson, and William Ryan. We also attempted to speak with James Bowen, presently employed at Skylab, but he declined. We did, however, speak with key staff of Skylab in the presence of Skylab’s counsel. Additionally, we met with Kelly Edwards, a principal with Scott | Edwards Architecture, who had attended a pre-proposal meeting on the project.

We believe that the Bureau’s history in managing capital projects is relevant information. We were advised that during the most recent three fiscal years, BES has completed one hundred other capital improvement projects which, on average, have exceeded budgets by less than 2%. Some of these have been relatively modest (cost under \$2,000). Only four of these projects exceeded \$10,000,000. The Columbia Building was the only office building project;¹ however, BES projects have from time to time included buildings such as pump stations. BES follows Bureau protocols for its project management.

¹ Budget to actuals for FY 12-14 completed projects, supplied by Jim Blackwood.

DISCUSSION

Need for a permanent structure.

In our view, there is little reason to debate whether a permanent structure was a needed improvement, and BES employees we spoke to were unanimous in describing that as a legitimate business need. Employees had been working in aging trailers that had long outlived their useful lives. They were described as moldy and leaking² and there were safety concerns related to the decking. There were questions related to the number of employees to be housed at the site, but in our view an appropriate decision had been made to locate engineering staff working at the plant at that location. At a minimum this beneficially affected the efficiency of their work. The trailers had been intended to be temporary in any event. It is our view that BES properly considered the alternatives (replacement with newer trailers, relocating the employees, building a permanent structure) and made a reasoned decision that a permanent structure would be the best of the choices.

There were certain minimum requirements for the building set by the city. The city has a Green Building Policy, BCP-ENB-9.01, which requires the city to incorporate green building practices into the design, construction, remodeling and operation of city-owned facilities and requires that all new, occupied city-owned facilities register and certify for LEED gold level and have an ecoroof covering at least 70% of the roof. Responsibility for incorporating the policy is imposed on each bureau. Here, the Bureau also sought community involvement and incorporated features desired by the community.

Preliminary and “optimal confidence” cost estimates.

Initial project cost was based on a very preliminary per-employee calculation. That initial early estimate followed the project and colored the public perception of the project cost. In our view, any analysis of the project should make clear that the initial preliminary estimate was just that. The analysis should focus on how the project developed over time.

The project shows as “opened” on February 15, 2010. City Ordinance No. 185171 authorizes the construction of a plant support facility at an estimated cost of \$5,400,000, at an “Optimal Confidence” level. We agree with the many BES staff who told us that the initial preliminary estimate was not a valid benchmark. The \$5,400,000 figure is, however, a proper benchmark.

In a summary which Mr. Marriott prepared for the auditors (dated May 13, 2014), he summarized the project cost as follows:

- Original construction budget for building and improvements on the surrounding five acres - \$6.7 million.

- Final construction - \$7.7 million (including construction process change orders).

² CC-1,4-2.

- Building cost - \$5.5 million (\$366/sq ft “using guidance from the American Institute of Architects”).³
- Site work and improvements - \$2.2 million.
- Additional costs raised the total to \$11.4 for entire project (this would be an additional \$3.7 million): relocation of staff, engineering, design, permitting, land use review and approval, inspections, equipment, furniture.⁴

A summary provided by BES⁵ states that the construction contract initially went to bid at \$5,400,000, with four bids received. Approximately 3-1/2 months later, the city executed a contract (Contract No. 30002705) with Skanska for \$6,695,000. The change orders increased the cost to \$7.7 million or by 15% and included excavation, utility work, pond and parking lot work, access control, foundation for public art, fall protection for ecoroof, and smaller changes to design. BES identified that the change orders were for necessary improvements that would be more cost effective under this contract.

BES prepares annual reports on its capital projects. For fiscal year 2012-13 the published report⁶ listed the building project at a revised budget of \$4,000,000 with expenditures through 7/23/2013 of \$7,585,877.

The city has two systems from which costs can be gathered. One, in use internally at BES, tracks hard costs. The city, separately, has its own accounting system which adds additional soft costs (debt load, interest, and so on). Those will necessarily differ.

Audit source documentation identifies the reasons for the increases in the cost of the project and how they were handled during the project; these include the costs of the building itself as well as additional work that was added to the overall project to address “campus” issues.

In our view there was insufficient clarity whether the \$5,400,000 figure was to be the building alone, or was to be the building with all site improvements. Ordinance No. 185171 suggests that the cost estimate was intended to be inclusive of site improvements. The Ordinance's findings state in pertinent part that “constructing a new facility has been determined to be a long term cost effective solution **and the project provides site improvements beneficial to site function, site security, pedestrian safety, sustainable site design, and enhanced staff and public open space.**” (emphasis supplied). We consider this to be an important consideration for future projects. During our discussions with BES staff, we were told that the view of the Columbia Building and related projects did not exemplify cost overruns so much as it resulted from an increase in project scope, with the additional cost attributed to the increased scope more so than

³ In a May 16, 2014 memorandum to Beth Woodward, Mariott identifies the enclosed work and visitor area at 11,490 square feet and the outdoor covered area as 4690 square feet. His calculations added half of the exterior covered areas to the covered areas (per AIA guidance) as well as 1177 sq ft of mechanical mezzanines (attics with equipment) providing a total by his calculation of 15012 square feet

⁴ A separate BES document identifies “other project costs” at \$0.8 million, furniture and equipment at \$0.4 million, but adds other categories to account for the \$3.7 million including \$1.4 million for Skylab project design

⁵ May 2, 2014 email from Sara Gardner to Beth Woodward.

⁶ Posted at the BES website, @ p. 9.

the building itself. However, a reading of Ordinance No. 185171 does not fully support that view, describing as it does a “project” that would address the site improvements. This observation should not be taken as a suggestion that the site improvements were unnecessary; rather it is intended to point out that given the way the project was proposed it is not surprising to us that there has been widespread public perception that the \$5,400,000 estimate was intended to be for the entire project, not just for the building.

Impact of community involvement.

Some of the cost of the project resulted from features identified during community involvement meetings, which appear to have been limited to individual focus groups. Community involvement is desirable and is a normal and customary process and BES has a “Good Neighbor” policy. A community meeting room was added to the design. Several BES employees advised us that they believed that the benefits from the building design could not be determined until the building had been in operation for some time. We believe the same is true of the value of the community room. It is not clear to us just how much this feature added to the building cost but it is likely a meaningful amount since it included not just the square footage of the space itself but the need to configure building security differently. Mr. Marriott’s position statement agrees that eliminating the community room would have saved “a substantial amount of money.” It is also not clear to us whether this feature should have been considered necessary or desirable. BES employees might use the meeting space in the future, but we did not hear that there was a pressing need for such a large meeting space. In our view, future projects would benefit from a more critical review of whether to include community-proposed features than appears to have occurred here.

Mr. Marriott’s position letter advises that although there were individual focus groups, the general public was not engaged prior to the approval of the design; he suggests more robust public involvement. We are in partial support of this suggestion. The City does considerable work with limited resources, and adding an involved process for its usual and customary work might strain City resources. We do recommend, however, that projects that are plainly a departure from usual and customary work should be preceded by more public involvement than occurred here. In the case of the Columbia Building, the design is innovative and unusual, and the project has resulted in a firestorm of criticism which may or may not be merited. A broader vetting would likely have been beneficial.

Design selection and complexity.

The selection of the design brought inherent complexity to the building project, and increased the cost as well as the difficulty of construction; one bidder backed out of the project because it believed it could not honor its bid. There is, we believe, agreement amongst virtually all BES staff members that BES could have built a utilitarian structure. The design selection was not a requirement but rather a conscious choice by BES. Mr. Marriott’s position statement to us agrees that BES could have built a cheaper structure but at the cost of functionality and a loss of the value of the aesthetic design. We also heard from BES staff that the design selection was desirable because Portland lacks so-called statement or iconic buildings, and because the design builds in new ways of collaborative working, the benefits of which are yet to be seen. In our

view these are proper considerations for larger city-wide public discussion, but here we saw evidence that BES was caught up in the excitement of the design phase, the “story-telling” that such a building might present, the aesthetics of the design in this industrial neighborhood, the kinds of designs in other similar locations in other communities, and the fact that it will be a “100 year building” rather than something less. We believe those appropriate considerations should really have been discussed in a larger body than just BES (much the same way the City’s green building policy was). Instead, what occurred was basically the selection of an exciting design as an early step in the building process. Having a clear idea and a firm budget before selecting a design would have helped constrain the cost of this project.

Additionally, it does not appear that much input from BES Construction Services was sought in the selection of the design, with construction services admittedly not getting to pick what they have to build. In our view, those staffers would likely have valuable input, and consulting them in the selection process might have identified some of the issues that would later be costly such as managing the conflict that developed between the designer and contractor which required increased management time on the part of BES staff.

Increase in project scope.

BES views the initial cost estimate as relating to the building, whereas the increase over the estimate was largely related to substantial site improvements. BES reports⁷ that the “project scope grew with better understanding of site needs and desire to make the buildings as multifunctional as possible.”

The expansion of the scope greatly increased the originally contemplated cost but identified many areas which were concerns that would have to be addressed at some point or necessary repairs. Every proposal showed an opportunity to reconfigure the site for better use. Those included the entry road, security, and additional changes to a multi-acre facility. We did not find any of these to be unnecessary.

The road, which had previously been built had been initially used to bring concrete onto site for the digester project, was in bad condition and repair was needed. It made sense to do the repairs at the same time as the building project because staff were housed elsewhere. Reconfiguring the entrance was a necessary safety move which offered protection to pedestrian traffic within the plant; previously traffic entered the site on normal business by driving into the middle of the facility where employee traffic led to unnecessary hazards. The pond lining was leaking and repairs were needed. Although safety considerations added to the project cost, we did not find them to be unnecessary add-ons. The campus is large and safety considerations are not trivial. BES has two elemental chlorine tanks on the property; these are explosive. The site houses a fueling station used by police. In addition to the possibility of intruders, before the included spur road was built, employees had to drive down railroad tracks to access a portion of the site.

We heard a number of complaints about the City’s procurement process. The perceived inefficiencies and delays inherent in procurement were cited to us as reasons for expanding the scope of the project rather than bidding the site work as a separate project. In hindsight, doing so

⁷ CIP Annual Report, fiscal 2012-13 at p. 25.

might have been a benefit to BES for this project since it would have led to a greater public understanding of where the funds were being spent. We are concerned, however, about the widespread belief that procurement processes are an impediment to efficient capital project work.

Impact of undifferentiated budget.

City Council receives a five year budget from BES, Council approves the budget on one year increments leaving BES free to modify but also to shift money around in the budget year approved. Accountability is for the bottom line. That means that BES has a large capital budget without a project budget; the large undifferentiated budget allows the Bureau to move projects and expenses around and, in this case, permitted the site improvements to be “added” to the building project. The Bureau budgeting process is a rolling five year plan, with annual approved budgets. BES is not, however, constrained by its own work plan and has substantial autonomy to move projects around. The fact that the BES has an undifferentiated budget without specific project budgets in some ways permitted it to make the decision to add the site improvements which were largely responsible for what is viewed as the “overruns” in cost. That raises the question whether this process needs to be changed.

Our review does not persuade us that what happened with this project compels a different form of Bureau budgeting. Undoubtedly future capital projects will have to be shifted for emergency purposes and there is inevitable tension between allowing the Bureau to make decisions on the one hand, or requiring a Commissioner or City Council to make them on the other hand. It appears that the undifferentiated budget has functioned well over a number of years, with this project as more of an outlier. What appears to us to be the more compelling need is the transparency referenced by the Auditor. Here, a more precise description of the project, coupled with more precise reporting of the changes to the project scope would have contributed to a greater public understanding of where ratepayer funds were being spent.

Pass-through design payments

The design and construction required ongoing design work from Skylab so that the design cost substantially exceeded the amount budgeted for design. BES continued to request, permit or authorize design work as needed. Although it was evident that the funds approved for design work would be insufficient to fund Skylab’s ongoing services, BES believed that it was essential for Skylab to remain involved and work closely with general contractor Skanska, particularly to resolve issues with the curtain wall. Hiring a different entity to address these issues would have been more expensive than continuing with Skylab, and not having completed design work could have led to the interruption or suspension of construction.

At the time of the fourth amendment, Commissioner Saltzman directed that BES not bring him any more amendments. That statement, in our view, was a way of instructing that there be no additional design costs on the building, and that was the way the statement was understood by BES staff (who viewed it as an “edict”). Mr. Marriott, who had a long working relationship with the Commissioner Saltzman, explained to us he did not believe the intent of this statement was to

forbid additional design costs. In any event, however, it presented a concern about whether to, and how to, complete the building.

BES staff told us, and we believe it is correct, that completing the building would require the City to pay additional design costs. The City was not in a position to hire a different designer since that would involve considerable re-work on the design and ultimately cost much more. If the Commissioner's statement was intended as an "edict" BES staff worried that it was a bad decision. We could not identify any additional effort to clarify with Commissioner Saltzman what the statement meant and we saw no additional effort to explain the Bureau's concerns. We could not identify a proper avenue to address this dilemma. What we saw, however, was that BES permitted Skylab to continue the design work. Mr. Marriott reported he had heard that Skylab was invested in the project and doing work for which it would not be paid, but it also appears that BES staff considered it to be professionally "embarrassing" that Skylab was not being paid.

Ultimately the resolution was to do a final wrap-up negotiation which resulted in Skylab being paid a negotiated amount for design by way of a pass-through, with payment to Skylab from Skanska and a reimbursement to Skanska from the construction budget.

BES analyzed that Skanska was contractually responsible for a part of the additional design costs related to the curtain wall, and reached an agreement with Skanska in October 2013 that resulted in a payment to Skylab by Skanska of \$34,222.00. Mr. Bean negotiated the agreement as the best deal the city could reach with Skanska. That payment left a sizeable sum still owing to Skylab for design services.⁸ Skylab had agreed it would accept \$95,581.06 as final design compensation. With Skanska's payment of its agreed-upon share, that left \$61,359.00 still owing to Skylab. We did not find any evidence to suggest that the design work was not performed and we did not find any evidence to suggest that the design work was unnecessary. The charges are reflected in invoices and change orders. BES had, however, incurred the expense without authority. Specifically it had permitted design work to proceed when the design budget was exhausted and ultimately arranged for payment from the construction budget by means of a pass-through. Skanska paid Skylab the additional amounts as a "vendor invoice" and was reimbursed by the city through a change order.⁹ Mr. Bean, who was not the decisionmaker, summarized as a recap:

We received management approval to disperse [sic] the design services costs in question into other change orders that were currently drafted and contained design services by Skylab associated with them during the period of time we were notified they were providing services without payment.¹⁰

⁸ The total amount owing to Skylab at the time of these negotiations is not entirely clear. Blair Bean memorialized in a memorandum to Mark Hutchinson that Skylab was owed an additional \$114,656 at the time it agreed to accept a lower amount from the City. However the same memorandum notes that in August 2013 the total amount owed to Skylab for additional design services was \$137,821.

⁹ The work is memorialized in Change Orders Nos. 34, 35, 54, 73, 78, 80, 81, 82 and 84. Change Order 85 reflects the negotiated agreement.

¹⁰ We spoke to Bean who said the payment was authorized by "a manager" but that he did not know who the manager was.

If the Commissioner Saltzman had intended that there be no further design payments (which is our understanding), then BES believed that it had the authority to do what it considered the “right thing” to ensure payment to Skylab in a way that appears to be subterfuge. We would point out that although given the options at this time proceeding to fund additional design costs may have been the reasonable option, in city government that is a decision that should not have been made after the fact within and by a bureau. We also would acknowledge the possibility for a contrary interpretation of the Commissioner's direction – though we would note that a contrary interpretation would not, in our view, have required that the payment to Skylab be made by the pass-through. It could have been made directly. At a minimum, this method of paying Skylab appears improper and has had a negative impact on the general public’s view of how this project and its expenses were handled. We agree with the Auditor’s comments about the need for greater transparency and recommend that future projects reinforce the idea that the public should never have to work so hard to trace where the money went. In spite of having working papers available and speaking to witnesses, we found it difficult to trace the decision-making for the final true-up payment, and Mr. Marriott advised us that he was aware that loose ends had been tied up but was not specifically advised of how that had occurred, except that he “understood” normal practices had been followed.

We also recommend that there be at least some discussion about how to address problems such as this where an apparent directive by a responsible official appears to conflict with a Bureau’s statement that there is a legitimate need.

Additionally, BES did not request reimbursement for errors in design from Skylab (although it may be that these errors and their related costs washed out in the negotiations that led up to change order 85). This was a conscious choice motivated by a desire to keep the project moving forward and finding solutions, rather than initiate adversarial discussions or create the need for meetings. We believe that it would be appropriate to determine whether a staff level is the appropriate level to make choices such as this.

Conflict of interest.

The contract with Skylab included a standard conflict of interest provision restricting Skylab from hiring certain City staff. BES elected to permit Mr. Bowen to take a position with Skylab. In doing so, BES did not confer with the City Attorney, and no waiver was confirmed in writing. Mr. Bowen was a temporary, limited purpose employee of the city. He was assigned responsibilities on the building project, including as a proposal evaluator, and then served as project manager on the design side.¹¹ Mr. Bowen disclosed his discussions with Skylab to BES management, who arranged for him to have no signing authority once he was working for Skylab, at a time that he was also working for the City. For its part, Skylab confirms that it took care to ensure that Mr. Bowen was assigned projects different from the Columbia Building.

It does not appear to us that either Mr. Bowen or Skylab behaved improperly with respect to his employment. We were not made aware of any decision that Mr. Bowen made regarding the construction or any funding decisions. At issue, however, is how BES managed the contract provision and Mr. Bowen’s dual employment once a waiver was provided and the concern of a

¹¹ CC-1,15-2.

possibility of a conflict of interest. There is at least one email communication directing that he is to be “involved in the decision making process” for the city during a period of time that Ms. Aldrich would be absent, and the apparent subject matter of the email was the need to ensure that Skylab received its delayed design payments. See Aldrich email to Bean, September 25, 2013. We believe that BES should not have handled Mr. Bowen’s request in this manner. Certainly the contract clause was to protect the City and could therefore be waived by the City, but in our view such a waiver should have been discussed with the City Attorney, confirmed in writing, and should not have been followed by a suggestion that the employee would be placed in a decision-making loop during a time he held dual employment.

Summary of Recommendations

1. At the outset of capital projects, the Bureau should prepare and submit to the Commissioner in charge of the Bureau both a preliminary initial project anticipated cost and a detailed description of the anticipated final scope of the project. In addition, the Bureau should provide the controlling entity with its best estimate of possible viable additions necessary or desired additions to that scope immediately upon determining their viability.
2. The Bureau should provide to the Commissioner in charge of the Bureau a detailed report of all requested additions to the scope of a project prior to undertaking the implementation of the additions. It is recommended that those requested or necessary additions to the scope be put into a separate memorandum to the Commissioner which clearly is designated as a “Scope Enlargement” request.
3. The Bureau should present both a clear statement of the scope of the project and a firm budget estimate based on the scope of the project before proceeding with the selection of a design.
4. The Council, or at a minimum the Commissioner in charge of the Bureau, should engage in a detailed and critical review of community proposed features, including the estimated cost, expected impact on the community, availability of similar features elsewhere in the Bureau or City, and the relationship between the proposed feature and the initial designated scope of the project.
5. In situations where projects are a departure from the usual and customary work of the Bureau, the project should be preceded by an enhanced effort to obtain public involvement.
6. BES Construction Services should be consulted about and involved with the determination of the scope of a project, selection of a design, and construction management.
7. A clear set of communication guidelines between the BES Director and the Commissioner in charge of the Bureau should be established. In particular, a communication format should be adopted designed to highlight significant changes in the

scope of a project, budgetary requirements of a project, and cumulative cost of the changes or anticipated changes to the project to that date and anticipated in the future. A complete transparency in reporting to the Commissioner should be a requirement at every stage of the project.

8. The procurement processes should be examined to ensure that they are adequately protecting the City and at the same time allowing for the efficient and cost effective completion of projects.
9. The transparency points referenced by the City Auditor at several points in the City Auditor's Report should be adopted and implemented immediately. The understanding of the project scope and the project requirements will be enhanced for the Commissioner in charge of the Bureau, the City Council, and the greater public.
10. The Commissioner in charge of the Bureau and the senior staff of the Bureau should develop a structure that allows for the exploration of differences and conflicts regarding whether expenditures should be or can be incurred on a designated project or in the completion of items that are a part of an expanded scope. In particular, in any circumstance where there is any question or concern about a spending directive of the Commissioner in charge of the Bureau or the City Council, that expenditure should not be undertaken or incurred without a full vetting of the difference or conflict and a revised directive by the Commissioner.
11. All waivers of a conflict of interest provision in a contract should be discussed with the City Attorney, confirmed in writing, and monitored.

Respectfully submitted,

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