



PERFORMANCE AUDIT REPORT

**CITY OF BALTIMORE
RECREATION AND PARKS**

**AUDIT OF
RADECKE PARK TOILET FACILITY
CONTRACT RP 15826
AND
PLAYGROUND IMPROVEMENTS
CONTRACT RP 17801**

For Fiscal Years Ended June 30, 2018 and 2017

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CITY OF BALTIMORE

JOAN M. PRATT, CPA
Comptroller



DEPARTMENT OF AUDITS AUDREY ASKEW, CPA

City Auditor
100 Holliday Street
Room 321, City Hall
Baltimore, MD 21202
Telephone: 410-396-4783
Telefax: 410-545-3961

Honorable Joan M. Pratt, Comptroller
and Other Members of the
Board of Estimates
City of Baltimore, Maryland

Executive Summary

We have conducted a performance audit of two lump sum contracts administered by the Department of Recreation and Parks for fiscal years ended June 30, 2018 and 2017. The purpose of our audit was to examine the process of documenting, approving and payment to contractors for construction projects. In addition, the objective of our examination was to obtain reasonable assurance about whether controls are in place to assure that construction contracts administered by Recreation and Parks are in compliance with contract specifications and requirements established in the contracts and agreed upon by the City and the Contractors.

Based on the work performed, we determined that Recreation and Parks is not adequately managing or maintaining records of essential project documents. We noted several discrepancies in our review and our recommendations are included in the Findings Section of this report.

We appreciate the cooperation and assistance provided by the staff members of Recreation and Parks while conducting this audit. Their knowledge and assistance were instrumental to the completion of this audit.

A handwritten signature in black ink, appearing to read "Audrey Askew".

Audrey Askew
City Auditor

August 13, 2018

Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Background Information
Fiscal Years Ended June 30, 2018 and 2017

The Department of Recreation and Parks is the primary provider of fun filled life changing cultural and physical activities to the citizens of the City of Baltimore. The Bureau of Recreation provides a wide range of activities in its sports facilities and 43 community centers. The Bureau of Capital Development and Planning is responsible for planning, developing, directing and implementing the Capital Improvement Plan for the agency. In Recreation and Parks, the Capital Improvement Plan (CIP) is a detailed six (6) year plan of the agency's efforts to improve its physical infrastructure and consequently the creation of opportunities for recreation and park activities in the City of Baltimore. The infrastructure in Recreation and Parks includes recreation centers, parking lots, trails, parks and playground among others.

Funding for the Capital Improvement Program for Recreation and Parks comes through the City's budget process. The Board of Estimates is responsible for awarding contracts and supervising purchases by the City. For contracts in the amount of \$50,000 or more, the Board uses a formal process which requires advertisements and has a deadline for submission. All contracts are in accordance with the City of Baltimore Specifications (Green Book).

Contractors can bid and accept either a "unit price" contract or a "lump sum" contract. For unit price contracts the price per unit is multiplied by the estimated quantity for each item to tabulate the total estimated price for these items. This total price is added to the "lump sum" price items in the bid to arrive at a bid total for comparison of bid and award of contract. If accepting a lump sum contract, the contractor accepts a "lump sum" price for each of the "lump sum" items in the Bid. "Lump sum" prices constitute full payment of all work called for under these items.

For FY 2018 and 2017, Recreation and Parks administered two lump sum contracts:

1. RP 15826: Radecke Park Toilet Facility
 - Awarded to DSM Properties, LLC
 - Award Amount: \$240,250.00
2. RP 17801: Playground Improvements
 - Awarded to Allied Properties
 - Award Amount: \$719,200.00

Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Audit Scope, Objectives and Methodology
Fiscal Years Ended June 30, 2018 and 2017

We have conducted a performance audit of the Department of Recreation and Parks “Lump Sum” construction contracts for Radecke Park Toilet Facility (RP 15826) and Playground Improvements (RP 17801) to determine if these contracts were administered by Recreation and Parks in accordance with the contract agreements and the Department of Public Works Specifications Manual (commonly known as the “Green Book”).

Our audit was conducted in accordance with generally accepted *Government Auditing Standards* related to performance audits, issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

To accomplish our objectives, we interviewed personnel in Recreation and Parks Capital Development section to obtain an understanding of the policies and procedures used to ensure that the contracts are performed in accordance with the Contract Documents and in accordance with the Green Book. We reviewed the contract documents and tested the records to determine if they adequately complied with the contract agreements and specifications and supported costs billed by the contractors.

Our audit findings and recommendations, as well as Recreation and Parks’ responses, are detailed in the Findings and Recommendations section of this report, which follows.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

**Construction of Radecke Park Toilet Facility (Contract RP 15826)
FY 2017**

Finding #1 – Supporting Documentation for Billings

Condition:

Recreation and Parks was unable to provide invoices or other acceptable documentation as proof of expenses incurred by the contractor DSM Properties, LLC for each of its billings for the Radecke Park Toilet Facility Contract (RP 15826).

Criteria:

According to the City Green Book, Section 01 29 76(H), Progress Payment Procedures, “Where a lump sum contract is involved, the Contractor shall submit, for the Engineer’s approval, a schedule of payment outlining quantities, items values, etc., to be used in the calculation of monthly estimates.” This section also states “Costs incurred by the Contractor, as specified, may be included for payment in full on the first monthly voucher, provided such payment has been approved as outlined above, and provided that receipted invoices, or other acceptable documentation is presented for the Engineer’s record as proof of expense incurred.” In addition, according to Recreation and Parks’ Project Manager, approval of contract billings was based on the percentage of work completed as reported and reviewed by Recreation and Parks’ Project Inspectors.

Cause:

Recreation and Parks Management did not require the Contractor to submit proof of expenses incurred. In addition, Recreation and Parks did not have Project Inspectors’ reports to support percentage of work completed (billings/payments).

Effect:

Without adequate documentation to support costs billed and percentage of work completed, there is no assurance that the contract was performed in accordance with the contract agreement and specifications. In addition, costs incurred in the contract cannot be validated.

Recommendation:

We recommend Recreation and Parks maintain records that support costs billed in the monthly billing estimates submitted by contractors. Such support should include invoices, project inspectors’ reports, evidence of project manager’s approvals, and any other documentation that supports the contractor’s compliance with the contract costs and specifications.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #1 – Supporting Documentation for Billings (Continued)

Recreation and Parks' Response:

The Resident Inspector for this job did not routinely keep Inspector Daily Reports (IDR). Pay estimates and percentage completion was discussed and agreed upon by all parties at bi-weekly progress meetings. The inspector for this job and their supervisor are no longer employed with the city. The agency has re-established the policy of keeping IDR's since March 6, 2018 and will continue to do so going forward.

Finding #2 – Waterproofing Membrane

Condition:

DSM Properties, LLC did not apply the bituminous waterproofing membrane at the Radecke Park Toilet Facility as required by the contract. The approved change order for a different block design did not specify excluding application of the bituminous waterproofing membrane.

Criteria:

Per the City of Baltimore Specifications (Green Book), Section 01 11 13.02, the approved plan shall be performed in strict accordance with the Specifications and other Contract Documents. No deviation from the plans or Specifications should occur unless approved in advance by the Engineer and authorized in writing. Per Contract RP 15826 guidelines and summary of work section 07 11 50-1, DSM Properties, LLC was contracted to install at masonry cavity walls, cold-applied, emulsified-asphalt waterproofing membrane for the Construction of Radecke Park Toilet Facility located at 5602 Radecke Avenue Baltimore, MD.

Cause:

DSM Properties, LLC stated the bituminous waterproofing membrane was a part of the original project specifications (which required a smaller double block design). However, the original design was modified and approved by the project manager. The revised design required larger single blocks design and omitted waterproofing. The costs of the original double block and waterproofing was credited back to Baltimore City.

Effect:

DSM Properties, LLC failed to comply with the project specifications that required bituminous waterproofing membrane be applied to the masonry cavity walls. This resulted in the failure to construct the toilet facility as required by the contract agreement and specifications.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #2 – Waterproofing Membrane (Continued)

Recommendation:

We recommend Recreation and Parks’ change orders include all necessary and appropriate documentation to support revisions to the contract.

Recreation and Parks’ Response:

The block application was changed from a double block wall design to a single block wall application as approved by the design engineer to simplify installation and reduce lead time on materials. It was determined that the waterproofing application was not necessary after this change and no new application detail was provided to the contractor. The agency received a credit for work not performed.

Audits’ Response to Recreation and Parks’ Response:

Audits’ finding remains as reported. Recreation and Parks failed to provide certification that the design change to a single block wall included waterproofing during fabrication and that no additional application of waterproofing was necessary.

Finding #3 – Contract Period

Condition:

DSM Properties, LLC exceeded the consecutive calendar days (CCD) for completion of the contract by 222 days. According to the contractor’s notice to proceed, the contract period was 120 CCDs effective January 23, 2017 with a completion date of May 23, 2017. The contract was billed through December 31, 2017.

DSM Properties’ Billing #	DSM Properties’ Billing Date	DSM Properties’ Billing Period	Consecutive Calendar Days (CCD’s)	
1	3/31/2017	1/23 – 3/31/17	67	
2	4/28/2017	4/1 – 4/28/17	28	
3	7/3/2017	4/29 – 7/31/17	66	
4	12/31/2017	7/4 – 12/31/17	<u>181</u>	
			342	Actual CCD’s to complete contract
			<u>120</u>	Less: CCDs per Contract
			222	CCDs in excess of Contract
			<u>\$200</u>	Liquidated damages per day fee
			<u>\$44,400</u>	Total Liquidated Damages

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #3 – Contract Period (Continued)

Criteria:

In accordance with the Green Book Section 00 73 82 (Contract Time For Completion Of The Work), “The Contractor shall complete the work in the number of calendar days indicated in the Bid Book and Contract Documents, if subsequently amended by Change Order, or shall be considered in default under the terms of the Contract. If the contractor is so considered in default, then Contractor and its Surety shall then be required to pay the City an amount/sum equal to the daily amount of liquidated damages as specified in the Contract multiplied by the number of days the Work remained incomplete past the approved Contract completion date. Additionally, Contract RP 15826 Section 00300, the Bid of Proposal specifies the completion time is 120 consecutive days and the Liquidated Damages is \$200 per consecutive calendar day.

Cause:

Extension of time and/or a waiver of liquated damages was not approved for the contract.

Effect:

DSM Properties, LLC owes the City of Baltimore \$44,400 in total liquated damages.

Recommendation:

We recommend DSM Properties, LLC pay the City an amount/sum equal to the daily amount of liquidated damages as specified in the Contract multiplied by the 222 days the work extended beyond the contracted ending date of May 23, 2017.

Recreation and Parks’ Response:

There were 40 foul weather days documented for this project between January and June of 2017. The original substantial completion date was 6/1/2017 and the final punch-list was completed on 1/19/18. An informal time extension to December 31, 2017 was issued by Jim Fendryk after emergency repairs to a neighboring water main not associated with this project led to the need for PCO #1. This change order had an extremely long delivery time, scheduling issues and a continuously changing final punch-list from the Inspector. Please see the attached documentation. As result, it is the agency’s opinion that the job exceeded the contract deadline by 0 days and therefore DSM Properties owes the city \$0.00. The agency recognizes that accurate documentation of foul weather days and formally issued contract extensions are necessary with current a future projects. This process was also established with the IDR’s in March of this year.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #3 – Contract Period (Continued)

Audits’ Response to Recreation and Parks’ Response:

According to Contract RP 15826 the progress schedule for the work to be done specifies that an “Allowance in the schedule shall be made for normal interruptions to operations due to repairs and maintenance of equipment and delays which are likely to be encountered due to weather conditions and otherwise unforeseen factors. The schedule shall demonstrate that the Contractor will complete the work within the time specified and the Contractor shall give evidence of his ability to carry out the work in accordance with the schedule.”

Department of Audits was not provided the actual records from Recreation and Parks to support the extension of the deadline. The documented 40 foul weather days presented by Recreation and Parks were calendar printouts from Iowa State University of daily rainfall measurements. Audits does not consider this to be sufficient support for the extension of the contract period.

Finding #4 – Certified Payroll

Condition:

Recreation and Parks did not maintain completed copies of the weekly certified payroll documents as required in the Green Book.

Criteria:

In accordance with section 00 73 43 of The Green Book, Section D. Payroll and Basic Records, “The Contractor and each of its Subcontractors shall maintain payroll and basic records relating thereto during the course of the Work and shall preserve them for a period of three (3) years thereafter for all laborers, mechanics and apprentices working directly upon the site of the Work. The Contractor shall submit (2) complete copies of its weekly project payroll and the weekly project payroll of each of its Subcontractors, consecutively numbered, not later than fourteen (14) days from the end of their respective payroll periods, one (1) copy to be sent to the Contracting agency, the other to the wage commission of Baltimore City, where the same will be available for public inspection during regular business hours.” Per section G. Enforcement, “It shall be the responsibility of the contracting agency to promptly examine all weekly project payrolls submitted by Contractors of this subtitle and the regulations promulgated in pursuance thereof and to report any irregularities to the wage commission.”

Cause:

Recreation and Parks was not able to provide copies of the certified payroll documents as evidence of their examination of the payrolls as required by the contract.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #4 – Certified Payroll (Continued)

Effect:

Contractors could have been paid below the minimum wage which would have resulted in a penalty paid to the City.

Recommendation:

We recommend Recreation and Parks maintain and review records of all weekly certified payroll as required for each of its general contractors and subcontractors in order to ensure rates are not paid less than the minimum wage.

Recreation and Parks' Response:

Understood. The agency will maintain completed copies of the weekly certified payroll documents as required in the Green Book.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

**Playground Improvements (Contract RP 17801)
FY 2018**

Finding #5 – Supporting Documentation for Billings

Condition:

Recreation and Parks was unable to provide invoices or other acceptable documentation as proof of expenses incurred by the contractor Allied Contractors, Inc. for each of its billings for the Playground Improvement Contract (RP 17801).

Criteria:

According to the City Green Book, Section 01 29 76(H), Progress Payment Procedures, “Where a lump sum contract is involved, the Contractor shall submit, for the Engineer’s approval, a schedule of payment outlining quantities, items values, etc., to be used in the calculation of monthly estimates.” This section also states “Costs incurred by the Contractor, as specified, may be included for payment in full on the first monthly voucher, provided such payment has been approved as outlined above, and provided that receipted invoices, or other acceptable documentation is presented for the Engineer’s record as proof of expense incurred.” In addition, according to Recreation and Parks’ Project Manager, approval of contract billings was based on the percentage of work completed as reported and reviewed by Recreation and Parks’ Project Inspectors.

Cause:

Recreation and Parks Management did not require the Contractor to submit proof of expenses incurred. In addition, Recreation and Parks did not have Project Inspectors’ reports to support percentage of work completed (billings/payments).

Effect:

Without adequate documentation to support costs billed and percentage of work completed, there is no assurance that the contract was performed in accordance with the contract agreement and specifications. In addition, costs incurred in the contact cannot be validated.

Recommendation:

We recommend Recreation and Parks maintain records that support costs billed in the monthly billing estimates submitted by contractors. Such support should include invoices, project inspectors’ reports, evidence of project manager’s approvals, and any other documentation that supports the contractor’s compliance with the contract costs and specifications.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #5 – Supporting Documentation for Billings (Continued)

Recreation and Parks’ Response:

The Resident Inspector for this job did not routinely keep Inspector Daily Reports (IDR). Pay estimates and percentage completion was discussed and agreed upon by all parties at bi-weekly progress meetings. The inspector for this job and their supervisor are no longer employed with the city. The agency has re-established the policy of keeping IDR’s since March 6, 2018 and will continue to do so going forward.

Finding #6 – Contract Period

Condition:

Allied Contractors, Inc. exceeded the consecutive calendar days (CCD) for completion of the contract by 63 days. According to the contractor’s notice to proceed, the contract period was 180 CCDs effective July 27, 2017 with a completion date of January 27, 2018. The contract was billed through March 31, 2018.

Allied Billing #	Allied Billing Date	Allied Billing Period	Consecutive Calendar Days (CCD’s)	
1	9/1/2017	8/1 – 8/31/17	31	
2	10/2/2017	9/1 – 9/30/17	30	
3	11/1/2017	10/1 – 10/31/17	31	
4	12/6/2017	11/1 – 11/30/17	30	
5	1/8/2018	12/1 – 12/31/17	31	
6	3/8/2018	1/1 – 2/28/18	59	
7	4/18/2018	3/1 – 3/31/18	31	
			243	Actual CCD’s to complete contract
			180	Less: CCDs per Contract
			63	CCDs in excess of Contract
			\$200	Liquidated damages per day fee
			<u>\$12,600</u>	Total Liquidated Damages

Criteria:

In accordance with the Green Book Section 00 73 82 (Contract Time For Completion Of The Work), “The Contractor shall complete the work in the number of calendar days indicated in the Bid Book and Contract Documents, if subsequently amended by Change Order, or shall be considered in default under the terms of the Contract. If the contractor is so considered in default, then Contractor and its Surety shall then be required to pay the City an amount/sum equal to the daily amount of liquidated damages as specified in the Contract multiplied by the number of days the Work remained incomplete past the approved Contract completion date.” Additionally, Contract RP 17801 Section 00300, the Bid of Proposal specifies the completion time is 180 consecutive days and the Liquidated Damages is \$200 per consecutive calendar day.

Cause:

Extension of time and/or a waiver of liquidated damages was not approved for the contract.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #6 – Contract Period (Continued)

Effect:

Allied Contractors, Inc. owes the City of Baltimore \$12,600 in total liquidated damages.

Recommendation:

We recommend Allied Contractors, Inc. pay the City an amount/sum equal to the daily amount of liquidated damages as specified in the Contract multiplied by the 63 days the work extended beyond the contracted ending date of January 27, 2018.

Recreation and Parks' Response:

There were 66 foul weather days documented for this project. Please see the attached documentation. An informal time extension to April 6, 2018 was issued by Jim Fendryk. As result, it is the agency's opinion that the job exceeded the contract deadline by 0 days and therefore Allied Contractors owes the city \$0.00. The agency recognizes that accurate documentation of foul weather days and formally issued contract extensions are necessary with current a future projects. This process was also established with the IDR's in March of this year.

Audits' Response to Recreation and Parks' Response:

According to Contract RP 17801 the progress schedule for the work to be done specifies that an "Allowance in the schedule shall be made for normal interruptions to operations due to repairs and maintenance of equipment and delays which are likely to be encountered due to weather conditions and otherwise unforeseen factors. The schedule shall demonstrate that the Contractor will complete the work within the time specified and the Contractor shall give evidence of his ability to carry out the work in accordance with the schedule."

Department of Audits was not provided the actual records from Recreation and Parks to support the extension of the deadline. The documented 66 foul weather days presented by Recreation and Parks were calendar printouts from Iowa State University of daily rainfall measurements. Audits does not consider this to be sufficient support for the extension of the contract period.

**Department of Recreation and Parks
Contracts RP 15826 and RP 17801
Findings and Recommendations
Fiscal Years Ended June 30, 2018 and 2017**

Finding #7 – Certified Payroll

Condition:

Recreation and Parks did not maintain completed copies of the weekly certified payroll documents as required in the Green Book.

Criteria:

In accordance with section 00 73 43 of The Green Book, Section D. Payroll and Basic Records, “The Contractor and each of its Subcontractors shall maintain payroll and basic records relating thereto during the course of the Work and shall preserve them for a period of three (3) years thereafter for all laborers, mechanics and apprentices working directly upon the site of the Work. The Contractor shall submit (2) complete copies of its weekly project payroll and the weekly project payroll of each of its Subcontractors, consecutively numbered, not later than fourteen (14) days from the end of their respective payroll periods, one (1) copy to be sent to the Contracting agency, the other to the wage commission of Baltimore City, where the same will be available for public inspection during regular business hours.” Per section G. Enforcement, “It shall be the responsibility of the contracting agency to promptly examine all weekly project payrolls submitted by Contractors of this subtitle and the regulations promulgated in pursuance thereof and to report any irregularities to the wage commission.”

Cause:

Recreation and Parks was not able to provide copies of the certified payroll documents as evidence of their examination of the payrolls as required by the contract.

Effect:

Contractors could have been paid below the minimum wage which would have resulted in a penalty paid to the City.

Recommendation:

We recommend Recreation and Parks maintain and review records of all weekly certified payroll for each of its general contractors and subcontractors in order to ensure rates are not paid less than the minimum wage.

Recreation and Parks’ Response:

Though not originally submitted to Audits during data collection, the agency has since located all pay estimates and certified payrolls for this contract. These documents are available for review at 2600 Madison Avenue.

Audits’ Response to Recreation and Parks Response:

Audits reviewed the certified payroll documents subsequently provided by Recreation and Parks and found the records remained incomplete.