

**OFFICE OF INSPECTOR GENERAL  
PALM BEACH COUNTY**

John A. Carey  
Inspector General

Inspector General  
Accredited

*“Enhancing Public Trust in Government”*

# **Contract Oversight Report**

## **CA-2019-0021**

### **City of Belle Glade Torry Island Observation Tower Contract Management Review**

## **March 28, 2019**

**Insight – Oversight – Foresight**



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## CONTRACT OVERSIGHT REPORT CA-2019-0021

DATE ISSUED: MARCH 28, 2019



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### CITY OF BELLE GLADE TORRY ISLAND OBSERVATION TOWER CONTRACT MANAGEMENT REVIEW

#### WHAT WE DID

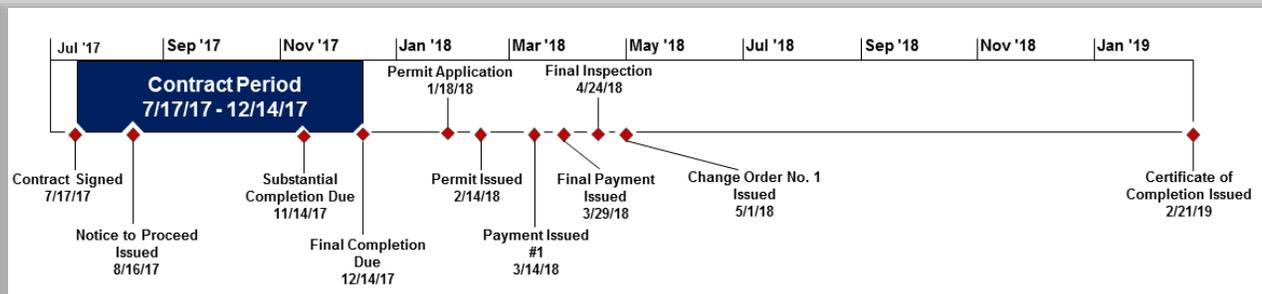
The Office of the Inspector General (OIG) conducted a Contract Management Review of the City of Belle Glade's (City) Torry Island Observation Tower contract. The procurement of this contract was solicited in accordance with the City's



Purchasing Code. The City Commission approved the award of the contract for the construction and installation of the Torry Island Observation Tower to T&S Construction, Inc. (Contractor) on July 17, 2017.

The OIG contract management review focused on review of the approved contract, purchase order(s), change order(s), invoices/payment applications, and the grant agreements that funded the purchase and installation of the observation tower. Based on our analysis, the intent of the review is to determine compliance with contract specifications, verification of contract deliverables, and to make recommendations and suggestions to help improve the City's contract management system.

#### TIMELINE OF CONTRACT ACTIVITIES



## WHAT WE FOUND

### FINDING (1):

We found several instances in which contract requirements were not met.

### OIG Review

The contract to furnish and install the Torry Island Observation Tower was signed July 17, 2017. The Contractor and City agreed that Work shall be completed as specified within the Contract.

We found several contract requirements were not met.

#### ARTICLE 2 – ENGINEER

The OWNER's Engineer is Craig A. Smith Associates, Inc. ("CAS") who is hereinafter called ENGINEER and Jim Orth, P.E., who is to act as OWNER's representative from CAS, shall assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

\* \* \* \*

#### ARTICLE 5 – PAYMENT PROCEDURES

**5.1** CONTRACTOR shall submit Applications for Payment in accordance with the Schedule of Values established in the Contract.

Applications for Payment will be processed by ENGINEER as provided in the Schedule of Values...

CAS did not assume all duties and responsibilities or exercise the rights and authority assigned to the Engineer, as provided under Article 2 of the contract. Additionally, Jim Orth did not act as the Owner's representative for the project. Moreover, a Schedule of Values was not attached to the contract, as stated in section 5.1, and the Contractor did not submit, and the Engineer did not process payment as required by that section.

Although the City was not required by law or policy to have a schedule of values, the parties clearly agreed that one would be attached to the contract. The inclusion of a schedule of values would have clearly defined what was to be delivered and when, as well as the cost associated with each deliverable.

The Project Manager for this project was the City's Finance Director. He stated that engineering services from CAS were not utilized at any point during the duration of the contract. When asked why the contract identified the Engineer as the City's representative and why the contract required that Applications for Payment be processed by the Engineer, the Project Manager responded as follows:

We used a boilerplate agreement/contract that is used for ITBs where there is a schedule of values that the Engineer will monitor. This was a RFP for a lump sum price for the tower installation and a lump sum for the

foundation so there was no schedule of values. We should have deleted this section of the agreement/contract and substituted language that corresponded with how the RFP was advertised and the proposer submitted with lump sums.

A National State Auditors Association Best Practices Document states, in its article Best Practices in Contracting for Construction Services:

Contracts for the purchase of services must be formal, written documents. Contracts should (1) protect the interests of the agency, (2) identify the responsibilities of the parties to the contract, (3) define what is to be delivered, and (4) document the mutual agreement, the substance, and parameters of what was agreed upon. Specifically, the contract should...Provide for specific measurable deliverables and reporting requirements, including costs and due dates for construction phases.<sup>1</sup>

The City should review its standard boilerplate contract language and make any needed revisions prior to approval and execution of the contract in order to ensure that the Contract sets forth the intent of the parties. This is necessary to protect the City against contract disputes regarding performance and to ensure deliverables are met.

The Contract further provided:

### **Article 3 – CONTRACT TIMES**

**3.1** Work will be substantially completed within 90 days from the date of Notice to Proceed, and shall be finally complete within 120 days from the date of the Notice to Proceed.

The City sent the Contractor the notice to proceed via email on August 16, 2017. The notice to proceed stated, “this project shall be substantially completed within 90 days from today, being November 14, 2017, with final completion within 120 days, being December 14, 2017.”

Contract terms were not met regarding the contract times. The foundation of the observation tower and the installation of the tower occurred after the contract’s December 14, 2017 expiration date. The contract was not amended nor was a change order issued to extend the time for completion.

The building permit was not issued until February 14, 2018, and the final inspection was dated April 24, 2018. Therefore, services specified in the contract were completed outside the contract times specified in section 3.1.

Extending the contract when services are not complete prior to contract expiration is a best practice that minimizes exposure to contractual risk. All schedules of deliverables should be detailed and finalized, incorporating specific dates

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<sup>1</sup> National State Auditors Association, Best Practices in Contracting for Construction for Construction Services, [https://www.nasact.org/files/News\\_and\\_Publications/White\\_Papers\\_Reports/NSAA%20Best%20Practices%20Documents/2005\\_Construction\\_Services.pdf](https://www.nasact.org/files/News_and_Publications/White_Papers_Reports/NSAA%20Best%20Practices%20Documents/2005_Construction_Services.pdf), 2005, Contract Provisions section.

based upon the actual contract award date.<sup>2</sup>

#### **Article 4 – CONTRACT PRICE**

**4.1** ...The amount of ONE HUNDRED SEVENTY FOUR THOUSAND TWENTY FIVE DOLLARS (\$174,025.00), which is based on the prices(s) in the Schedule of Values.

On May 1, 2018, the City issued change order no. 1 after the December 17, 2017 end of the contract, and after the April 24, 2018, final inspection pass pending ADA compliance. The purpose of the change order was to reduce the scope of work, by removing the following line item from the contract, “includes 100 amp electric service panel, receptacle and one LED light fixture.” The change order did not reflect a change in contract price.

The Project Manager stated that originally the electric service panel was to power a camera at the top of the tower to be used to meet ADA requirements. The City decided to power the camera with solar power and contracted with a different firm to complete this portion of the work. In lieu of reducing the price to reflect the reduced scope of work, the City and Contractor agreed that the Contractor would complete additional landscaping and other services instead of completing the electrical work. Neither, the dollar value of this work nor the specific work to be completed was documented in the change order number 1 referenced in the memo dated May 1, 2018. It is imperative that the City ensures that its written agreements and change

orders accurately reflect the terms of the agreement of the parties. This is necessary to protect the City against contract disputes regarding performance and to ensure deliverables are met.

#### **FINDING (2):**

Final payment was issued to the Contractor prior to documented approval of final inspection and acceptance of completed work.

#### **OIG Review**

The contract specified that the final payment would be made upon completion and acceptance of the work.

**5.2 FINAL PAYMENT.**  
Upon final completion and acceptance of the Work, and settlement of all claims, OWNER shall pay the remainder of the Contract Price as recommended by the Engineer.

According to section 5.2, the City agreed to issue the Final Payment once the following conditions were met:

1. recommendation by the Engineer acceptance of work
2. final inspection
3. settlement of all claims

The City issued two payments to the Contractor for a grand total amount of \$174,025. Exhibit A includes copies of the payment applications approved by the City’s Director of Finance and City Manager for payment. The first payment was issued on March 14, 2018 in the amount of \$126,120.00. The final

<sup>2</sup> Elisabeth Wright and William Davison, Contract Administration in the Public Sector, Second Edition (NIGP: The Institute for Public Procurement, Revised 2011) p.59.

payment was issued on March 29, 2018, in the amount of \$47,905.00.

The City made final payment to the Contractor without a recommendation of the Engineer and prior to the issuance of the certificate of completion evidencing acceptance of work and settlement of claims. The project was inspected on April 24, 2018 and the Certification of Completion was issued on February 21, 2019.

contractual recourse to require the Contractor to make corrections.

*Willie*

Date: 4-24-18  
 Address: 5000 Torrey Island Rd  
 Permit #: 18-17510  
 Contact: Dan  
 Phone: 561-261-9739

Type Inspection:

T-Power Poie	Deck/Sheath Nailing	
Piles/Piers	Roof Dry-in/Flashing	
Grade Beam	Connectors Only	
Footer	Frame Only	
Slab	Frame All	
Rough Plumb	Above Ceiling	
Rough Elec.	Stucco Lathe	
Mono Slab	Insulation	
Lintel/Tie Beam	Drywall Screw/Nail	
Pre-Power	M/H Tie/Blocking	
Gas Pressure	Sewer Tap	
Final		
Other:		
Notes:		

*PASS PER ADA*  
*Building Final*  
*NEED PERMIT TO*

Figure 1: April 24, 2018 Inspection of Tower Document

The City did not comply with section 5.2 of the contract requirements and paid the total amount of the contract prior to final acceptance of the work. This put the City at risk because problems with the project could have been found at final inspection and the City would not have had any

CERTIFICATE OF COMPLETION

CITY OF BELLE GLADE  
 PLANNING & BUILDING DEPARTMENT  
 110 DR. MARTIN LUTHER KING JR. BLVD WEST  
 BELLE GLADE, FL 33430

ISSUE DATE: 02-21-2019  
 PARCEL NUMBER: 04-36-43-35-00-000-1050  
 PROPERTY ADDRESS: 5000 Torrey Island Road, Belle Glade FL 33430  
 PROPERTY ZONING: A  
 OCCUPANCY TYPE: Utility  
 SCOPE OF PERMIT/ WORK: Construct 25' High Observation Tower and Foundation

THIS DOCUMENT HEREBY CERTIFIES THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE SCOPE OF WORK REFERENCED ABOVE, AND PERMITTED UNDER PERMIT NUMBER 2018-1751 AND LOCATED IN THE CITY OF BELLE GLADE, FLORIDA, WAS INSPECTED UNDER MY SUPERVISION AND FOUND TO BE IN COMPLIANCE, OR WAS INSPECTED AND CERTIFIED BY A FLORIDA REGISTERED ARCHITECT/ENGINEER OR APPROPRIATELY LICENSED PRIVATE PROVIDER, TO COMPLY, WITH ALL APPLICABLE CODE REQUIREMENTS OF THE STATE OF FLORIDA, PALM BEACH COUNTY AND THE CITY OF BELLE GLADE AS OF THE DATE OF APPLICATION.

*Deborah Nutter*  
 BUILDING OFFICIAL, Deborah Nutter

THIS CERTIFICATE IS NOT VALID WITHOUT AN AUTHORIZED SIGNATURE

Figure 2: February 21, 2019 Certificate of Completion

**WHAT WE RECOMMEND**

We recommend that the City implement written policies and procedures for contract management that include ensuring that contract and/or project managers adhere to the contract requirements.

Additionally, we suggest that the City consider the development of a contract administration plan for professional services contracts. A well designed Contract Administration Plan (CAP) serves as an effective tool with which to

frame the activities<sup>3</sup> that must take place during contract administration.<sup>4</sup> The contract manager would use the CAP as a reference tool in managing the contract.

### RESPONSE FROM MANAGEMENT

On March 25, 2019, the City Manager provided a response to the Report (Exhibit B) which states in part:

Your comments and recommendations are appreciated. Due to limited staff and resources, the City contracts for both Engineering and Building Inspection services. In addition, most City staff are covering several functions to get the job done. Obviously, this is not ideal but what we have to live with. However due to your recommendations, the City Attorney will be asked to review all of our contract documents again along with reviewing our processes and procedures to make sure everything is up to date. The City is not in the position now to fully implement a Contract Administration Plan but agrees with the intent and will review and update contract procedures along with improving the documentation process.

### OFFICE OF INSPECTOR GENERAL RESPONSE

In the City's response, they did not concur with either of our findings. The letter stated, "The Engineer was active in this project so that the statement that engineering services from CAS were not utilized at any point during the duration of the contract is not accurate."

In our report, we stated that CAS did not assume all duties and responsibilities or exercise the rights and authority assigned to the Engineer, as provided under Article 2 of the contract. During interviews, we were told that the Engineer was heavily involved in the early phase of developing the RFP and that CAS services were not rendered during the course of the contract as required by articles 2 and 5 of the contract.

The City's letter stated that, "The original contract allowed for 120 days for completion so the contractor did perform within the allowable timeframe." However, the contract specified that the contract times were from the date of Notice to Proceed, not the date the permit was issued. Therefore, the work was completed more than 120 days from the date of issuance of the Notice to Proceed, and this contract should have been amended to extend the contract times.

The City's letter stated, "The City issued final payment with confirmation from the Building Department that construction of the tower was complete." However, the City provided no written documentation that the Building Department issued final inspection prior to the final payment being issued on March 29, 2018.

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<sup>3</sup> Activities such as, but not limited to payment, monitoring of progress, inspection and acceptance, quality assurance, monitoring and surveillance, modifications, negotiations, and contract closeout.

<sup>4</sup> Elisabeth Wright and William Davison, Contract Administration in the Public Sector, Second Edition (NIGP: The Institute for Public Procurement, Revised 2011) p.10.

This office appreciates the timely response by the City, and the City's intent to implement our recommendation to the best of its current ability. As part of our contract oversight review follow-up process, we will ask the City to provide a brief description of actions taken to ensure the City Attorney reviews contract documents and updated processes and procedures.

### ACKNOWLEDGEMENT

The Inspector General's Contract Oversight staff would like to extend our appreciation to the City of Belle Glade for the cooperation and courtesies extended to us during the contract oversight process.

*This report is available on the OIG website at: <http://www.pbcgov.com/OIG>. Please address inquiries regarding this report to the Contract Oversight Director by email at [inspector@pbcgov.org](mailto:inspector@pbcgov.org) or by telephone at (561) 233-2350.*

EXHIBIT A: PAYMENT APPLICATIONS

T&S Construction, Inc.

145 N. Main Street  
Suite 103 T&S Construction, Inc.  
Belle Glade, FL 33430

RECEIVED MAR 12 2018

March 12, 2018

Lomax Harrelle, City Manager  
City of Belle Glade  
110 Dr. Martin Luther King Jr. Blvd.  
Belle Glade, FL 33430

Re: Draw No. 1 for Torry Island Observation Tower

Please remit for work complete as follows:

<b>Contract amount</b>	<b>\$174,025.00</b>
<b>Foundation Complete</b>	<b>\$ 38,475.00</b>
<b>Tower Steel 75% of \$135,550.00 complete</b>	<b>\$101,660.00</b>
<b>Total work Complete to date</b>	<b>\$140,135.00</b>
<b>10% Retainage withheld</b>	<b>(\$14,015.00)</b>
<b><u>Total due this Draw</u></b>	<b><u>\$126,120.00</u></b>

Please do not hesitate to call me if you have any questions.

Sincerely

PAID  
38593  
3-14-18

Daniel B. Schmidt

45-4775-572-6110  
TOWER - TORRY ISLAND OBS. TOWER

*[Signature]*  
City Manager

*[Signature]*  
Director of Finance

**T&S Construction, Inc.**

145 N. Main Street  
Suite 103 T&S Construction, Inc.  
Belle Glade, FL 33430

March 22, 2018

Lomax Harrelle, City Manager  
City of Belle Glade  
110 Dr. Martin Luther King Jr. Blvd.  
Belle Glade, FL 33430

RECEIVED MAR 27 2018

**Re: Final Draw for Torry Island Observation Tower**

Please remit for work complete as follows:

<b>Contract amount</b>	<b>\$174,025.00</b>
<b>Foundation Complete</b>	<b>\$ 38,475.00</b>
<b>Tower Steel Complete</b>	<b><u>\$135,550.00</u></b>
<b>Total work Complete to date</b>	<b>\$174,025.00</b>
<b>Total amount paid to date</b>	<b>\$126,120.00</b>
<b>Total Amount due</b>	<b>\$ 47,905.00</b>

Please do not hesitate to call me if you have any questions.

Sincerely

Daniel B. Schmidt

PAID  
38715  
3-29-18

45-4775-572-6110

*Crystal*  
Director of Finance

*[Signature]*  
City Manager

## EXHIBIT B



A Municipal Corporation since  
September 11, 1945

110 Dr. Martin Luther King, Jr.  
Boulevard West  
Belle Glade, FL 33430

Tel: 561-992-1601  
Fax: 561-992-2221

[www.bellegladegov.com](http://www.bellegladegov.com)

### Commissioners

Steve B. Wilson  
Mayor

Mary Ross Wilkerson  
Vice Mayor

Michael C. Martin  
Treasurer

Johnny Burroughs, Jr.

Larry Underwood

Lomax Harrelle  
City Manager

## City of Belle Glade

### Office of the City Manager

March 26, 2019

Office of Inspector General  
John A. Carey, Inspector General  
P.O. Box 16568  
West Palm Beach, FL 33416-6568

Subject: Contract Oversight Report- CA-2019-0021, City of Belle Glade Torry Island Observation Tower

The following responses are provided in reference to your draft contract oversight report dated March 19, 2019:

#### FINDING (I)

Responses to Article 2 for Engineer and Article 5 for Payment Procedures.

This was a unique project for the City and the RFP was designed for a general contractor that could pull permits and provide sealed drawings and plans for an observation tower that was already in existence in other locations. The City will not likely ever do a similar RFP again.

Jim Orth from Craig A. Smith & Associates Inc. (CAS) did perform duties as the Engineer for the project. Mr. Orth provided assistance with the Request for Proposals (RFP) development, performed geotechnical studies and analysis that were included in the RFP, conducted the pre-bid meeting at the Tower location that the OIG representative attended, evaluated RFP responses, coordination and scheduling with the contractor along with other Engineer duties.

The RFP was issued to obtain a lump sum price for (1) PE sealed drawings and plans for an Observation Tower and (2) PE sealed drawings and plans for the Foundation. Those were the deliverables from the RFP. There was no schedule of values identified in the RFP only a lump sum price and there would not be a schedule of values for this type of project.

Staff did use a boilerplate agreement that is used for ITBs where there is a schedule of values that is used for bidding and the Engineer monitors during the construction. Staff should have deleted those sections that discussed the schedule of values since this was a lump sum bid and instead inserted a lump sum payment schedule to match the RFP. The Engineer was active in this project so that the statement that engineering services from CAS were not utilized at any point during the duration of the contract is not accurate. And payments were made in accordance with lump sum values in the RFP.

Mr. John A. Carey, Inspector General  
March 25, 2019  
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**Response for Article 3- Contract Times**

Construction of the tower could not commence until the building permit was issued on February 14, 2018. And construction was then completed in 69 days. The original contract allowed for 120 days for completion so the contractor did perform within the allowable timeframe. Staff was aware of the ongoing issues related to issuing the permit and were monitoring the progress. Staff did not believe it was necessary to amend the contract since construction work was not allowed to commence until the permit was issued and construction was completed in the allowable time.

**Response for Article 4- Contract Price**

The original proposal from the contractor included running electric from a nearby FPL pole. This was to power a camera that would provide those requiring accommodation to view at the Activity Center in the campground. After construction of the tower was complete, it was determined that this was not a feasible option. The City instead elected to go with a solar power option and use existing wi-fi communication services in the marina area to provide a seamless operation. The change order was to delete the electrical requirement for the contractor in the amount of \$6,200. The contractor agreed to perform additional landscape and other services for this change order. This change order was issued after construction of the tower and was only intended to satisfy ADA requirements for operation of the tower.

**Recap Finding (1)- Non-Concur:**

Engineering firm CAS did perform all their required duties and responsibilities for this project as identified above. There were no schedules of values or as-builts for this project. The RFP was for sealed drawings and plans that allowed no deviations with a lump sum proposal. Staff did use a boilerplate contract not designed for this type of project. After the permit was issued the contractor completed the construction in 69 days well within the limit of 120 days. Since the Building Department issued the permit, they performed all inspections to ensure there were no deviations from the sealed plans used to issue the permit. The change order for the ADA requirement was issued after the tower construction was completed due to the issue with the electric service. The contractor and City agreed the change order was a deduct of \$6,200 and the contractor performed additional services.

Mr. John A. Carey, Inspector General  
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**FINDING (2) - Non-Concur:**

**Response for 5.2 Final Payment:**

The City issued final payment with confirmation from the Building Department that construction of the tower was complete. The City would never issue a payment without confirmation that a project was complete. The City contracts for part-time Building Inspection services. There are occasions that turnovers in personnel and other issues may delay some follow-up inspection work but the City does ensure it gets completed. Timely documentation at times continues to be a problem and the City is working hard to resolve these issues.

**Response to Recommendation:**

Your comments and recommendations are appreciated. Due to limited staff and resources, the City contracts for both Engineering and Building Inspection services. In addition, most City staff are covering several functions to get the job done. Obviously, this is not ideal but what we have to live with. However due to your recommendations, the City Attorney will be asked to review all of our contract documents again along with reviewing our processes and procedures to make sure everything is up to date. The City is not in the position now to fully implement a Contract Administration Plan but agrees with the intent and will review and update contract procedures along with improving the documentation process.

Sincerely,



Lomax Harrelle,  
City Manager