

FI (9) Work Step

Conduct appropriate investigative steps to determine:⁴¹²

- If contract retentions were released (paid) earlier than project completion. (A)
- If a change order was processed as a settlement to a contractor. (B)

Results of Testing

(A) Work Step: Conduct appropriate investigative steps to determine if contract retentions were released (paid) earlier than project completion.

Related Allegation

VCA (14) - Contract retention was released (paid) earlier than in the past (Gompers/Greenwood Project).

Results of Work Performed**District Policy**

Subsection “Payments and Contractors” of the District’s Administrative Regulation 3314, *Payments for Goods and Services*, states “the District shall withhold at least five percent of the contract price until the final completion and acceptance of the project. However, any time after 50 percent of the work has been completed, the Board may make any of the remaining progress payments in full for actual work completed if the Board finds that satisfactory progress is being made.” Standard industry practice for construction contracts allows payment withholdings (retentions) to: 1) be deposited in an escrow account with a financial institution at the time progress payments are made or 2) be accumulated and held by the contracting party (the District). The retention method used by the District is determined and specified in each contract executed with contractors. Retentions to the contractor are released/paid upon completion of a project when: 1) the District formally notifies the financial institution by sending an authorization to release funds from the escrow account to the contractor or 2) the District issues payment directly to the contractor.

Sample Selection

VLS tested, on a sample basis, retention release payments to: 1) assess whether payments were made in accordance with the District's retention payment policy and 2) assess the claim that retention was released to a particular contractor prior to standard District policy/practice.

⁴¹² The letter included in parentheses after each item in bullets provides reference to the applicable section in the “Results of Testing.”

Population data identifying retentions withheld or paid was not available.⁴¹³ Therefore, from a disbursement ledger of bond fund activity provided by District staff,⁴¹⁴ a judgmental sample was selected based on the following key criteria:⁴¹⁵

- 1) The disbursements were for the Gompers/Greenwood project.
- 2) For contracts that extended beyond a fiscal period, disbursements were selected from each fiscal period.
- 3) Selected expenditures in the 6XXX object codes were selected where construction project activity subject to progress payments (and retentions) is recorded. For each contract selected, multiple disbursements pertaining to that contract were selected, especially disbursements that appeared to be smaller in amount when compared to other disbursements identified for the same contract.⁴¹⁶
- 4) Specifically requested from the District a summary of retention releases associated with the disbursements selected (if the disbursements themselves were not retention releases).
- 5) To compare retention release practices across projects, disbursements were also selected for projects other than Gompers/Greenwood using the criteria elements 2, 3, and 4 above.

Analysis

In total, 11 projects were selected for testing of retention payments, which included the Gompers/Greenwood project. For these projects, a total of 42 transactions (disbursements) were tested to recalculate retention withholding percentages and to verify that payments were progress payments and not retention payments prior to project completion. The District provided the disbursement documents for each of the 42 transactions selected for testing.⁴¹⁷

⁴¹³ Based on discussion with District staff, a report that contains a listing of retention related payments only cannot be generated from the financial systems used by the District.

⁴¹⁴ The data provided by the District covered the 2008/09 fiscal year through the 2014/15 fiscal year. The Gompers/Greenwood project data began in the 2010/11 fiscal period.

⁴¹⁵ The criteria included here is not all inclusive of the judgmental decisions made when selecting the testing sample. The information presented here is meant to highlight key factors used for sample selection.

⁴¹⁶ This is based on the theory that the smaller payments would represent the retention payments, rather than a progress payment, made by the District on the contract.

⁴¹⁷ The disbursement documents included a copy of the warrant issued, the payment approval documents, the progress payment/invoice documentation, and additional documents to support the disbursement.

For contracts that required the District to deposit retention payments to an escrow account, the District provided a copy of the warrant issued to the financial institution for the corresponding progress payment selected for testing; this was recalculated and compared to the progress payment documentation to verify that the amount paid to the financial institution agreed to the retention recalculation for each transaction selected. For contracts that required the District to withhold the retention, the District warrant detail included the gross amount due for the progress payment and the amount of retention that was being withheld from the progress payment. This amount was recalculated to verify correct retention withholdings for each transaction selected.

In addition to verifying that the appropriate retention was withheld or paid to financial institutions with each progress payment, a review of total retention amounts paid to financial institutions or paid to contractors for each of the 11 projects was performed. The District financial system tracks invoice payments made for each project, including retention payments. Therefore, the District provided a listing of all the invoices paid for each project. For contracts in which the District simply withheld the retention payments, the total retention payments were compared to the final contract amount to verify that the total retention percentage was in accordance with District Policy. For projects whose retention was deposited into an escrow account, the District also provided all retention release notifications submitted to the financial institutions. The retention release notification amounts were added and the total was compared to the final contract amount to verify that the retention percentage was in agreement with retention payments made to the financial institution.⁴¹⁸

Results

For three of the 11 projects tested, partial retention releases occurred prior to completion of the project; however, the retention releases were a result of a change in the percentage of retention withholding from 10% to 5% for these projects.⁴¹⁹ The change in retention did not affect the District's compliance with the minimum 5% withholding required by the administrative regulation. Of the three projects with partial retention releases occurring prior to project completion, one was for the Gompers/Greenwood project; the other two retention releases were for the Pinole Middle School Soccer Field and Pinole Valley High School playfield and parking projects.⁴²⁰ Therefore, no discrepancies with District policy were found when comparing retention withholdings and releases for the Gompers/Greenwood project and other projects.

⁴¹⁸ There were instances where multiple retention releases were made for one project. This was due to a change in retention percentage. Refer to the first paragraph of the "Results" section for additional information.

⁴¹⁹ All transactions tested had a 10% retention withholding each time a progress payment was made.

⁴²⁰ The contractors associated with these projects were Lathrop Construction (Gompers/Greenwood), Roebbelen Contracting (Pinole Middle School), and Maggiora & Ghilotto (Pinole Valley High School).

Calculation of retentions for each transaction tested was identified as accurate and in compliance with the minimum requirements as indicated in District policy. For projects whose retention was deposited into an escrow account, check payments made to the financial institution were made timely when compared to corresponding payments made to contractors. In addition, final retention payments were made to contractors and final retention release authorizations were sent to financial institutions after projects were completed.⁴²¹ Retention payments/release amounts, in total for each of the contracts tested, were for the appropriate retention percentage of final contract costs.

Conclusion

Based on the results of samples tested, instances of partial retention release were in compliance with District policy. These instances of partial retention release were not limited to one specific contractor or project.

(B) Work Step: Conduct appropriate investigative steps to determine if a change order was processed as a settlement to a contractor.

Related Allegation

COA (5) - A change order was processed as a settlement to a contractor; therefore, the amount paid to the contractor is not captured as change orders (Greenwood project).

Results of Work Performed

From the disbursement detail provided by the District, VLS selected transactions identifying “settlement” (or a portion of the word thereof) in any part of the transaction record.⁴²² For fiscal years 2010/11 through 2014/15, only four such transactions were identified.⁴²³ Three of those transactions were related to final settlement payments to West Bay Builders, Inc. for work performed on the Helms Middle School project and the bleachers project at Richmond High School. The fourth transaction was a payment to CF Contracting, Inc. for a settlement related to Kennedy High School projects. Although the nature of this payment to CF Contracting was related to disputes over change orders, there was a settlement agreement reached between the District and the contractor; therefore, the payment was appropriately recorded as a settlement. The settlement agreement indicated that the settlement funds were the final payment to CF Contracting for the projects.

⁴²¹ VLS identified when projects were complete using the Notice of Completion document date.

⁴²² All vendor disbursements were included as VLS did not have a list of the vendors/contractors that specifically worked on the Gompers/Greenwood project.

⁴²³ The Gompers/Greenwood project began in the 2010/11 fiscal year.

The District provided documentation for 94 change orders for the Gompers/Greenwood project. VLS reviewed the Proposed Change Order Summaries attached to these change orders and identified instances where settlements were reached related to disputed proposed change order requests. Table 60 provides a listing of these change orders.⁴²⁴

Table 60: Settlements for Disputed Change Orders Identified for Gompers/Greenwood Project⁴²⁵

Change Order (CO) Number	CO Date	CO Amount	Number of Proposed Change Orders (PCO) Included	Project Name	Change as Described on CO or PCO Summary
00061	12/22/2014	\$ 80,461	1	Gompers New CHS & LPS Rich School	There is a fundamental disagreement over the scope of work in the base contract documents. The settlement provides appropriate credit to offset the cost of the new design.
00073	5/15/2015	32,000	16	Sylvester Greenwood Academy & LPS	Global settlement of rejected, disputed and outstanding fire sprinkler change requests. Fire Sprinkler Dispute Resolution Meet and Confer Held 4/23/2015.
00074	5/20/2015	93,107	7	Sylvester Greenwood Academy & LPS	Site Winterization 2012/13 includes pad A repair, pads B & C treatment, and foundation rat slabs. Lathrop withdraws \$98,867 of disputed change order requests.
00085	9/15/2015	121,396	9	Sylvester Greenwood Academy & LPS	Final settlement of all millwork rejected, disputed and outstanding change order requests.
00088	10/12/2015	75,000	1	Sylvester Greenwood Academy & LPS	Graving and Paving Final Settlement.
00092	11/19/2015	79,985	11	Sylvester Greenwood Academy & LPS	Final settlement for all work and change related to Best Sheet Metal submitted or not. Final settlement includes all Lathrop costs related to the sheet metal work.

⁴²⁴ For this section, VLS did not perform a detailed review of these documents for reasonableness or to determine if proper change order approval processes occurred. The purpose of this review was to determine if settlement payments were made. Refer to FI (10) Section for more detailed information regarding investigative steps for change orders.

⁴²⁵ Items included are only those that identify settlements for multiple proposed change orders and not a resolution on discussions pertaining to only one proposed change order.

Change Order (CO) Number	CO Date	CO Amount	Number of Proposed Change Orders (PCO) Included	Project Name	Change as Described on CO or PCO Summary
00096	12/24/2015	75,000	25	Sylvester Greenwood Academy & LPS	Dispute Resolution of all remaining rejected and disputed change order requests. There are no other change requests remaining.

The settlements for dispute of change orders identified above were processed and tracked through the normal change order process and therefore appeared on the District change order report provided to VLS.

A Phase I interview conducted on 11/18/2015 with Lisa LeBlanc, Associate Superintendent of Operations and Bond Program, indicated that the contractor on the Gompers/Greenwood project was disputing an issue; therefore, the District did go to the Board and to mediation to move toward a settlement. However, Ms. LeBlanc indicated that during the process, the District discovered that there were outstanding change orders associated with the project. At that point, the settlement process was stopped. On 1/20/2016, a Notice of Completion for the project was executed and presented to the Board, and the Board ratified an action to accept a final settlement between the District and the contractor related to various proposed change orders. The final settlement was executed on 2/5/2016 and paid on 3/15/2016. This final settlement was included on the change orders report provided to VLS.

Conclusion

Based on results of testing, disbursements identified as settlements were verified to be settlement funds paid to contractors as final project payments. Change orders for the Gompers/Greenwood project included settlements over disputed proposed change orders; however, these settlement payments were processed and tracked as change orders.

Recommendations

There are no recommendations as a result of the work performed.

Response by District

Not Applicable