



# CITY OF ATLANTA

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**TO:** Honorable Mayor, City Council President, and members of the City Council

**FROM:** Leslie Ward, City Auditor 

**DATE:** June 20, 2016

**SUBJECT:** Audit: Renew Atlanta Bond Program—Contract Language

The purpose of this memo is to communicate the results our performance audit of the Renew Atlanta Bond Program's contract language. Contract language should promote accountability and reduce risk to the city. We undertook this audit to ensure that Renew Atlanta construction contracts meet the requirements of city code and industry best practices. Contract language has ongoing effects throughout the lifetime of the contract - in some cases the entire duration of the Renew Atlanta program. Our objective was to answer the following question:

- Do Renew Atlanta Bond Program construction contracts contain language appropriate to protect the city and promote effective performance in delivery of services?

While our review and recommendations are limited to the Renew Atlanta program, our recommendations are also applicable to construction contract language used by other city departments.

## Background

The city identified a more than \$1 billion backlog of transportation and facility projects as of January 2015. To begin to address this backlog, the city held a vote to authorize bonds to fund about a quarter of the work. Citizens voted in favor of the \$250 million Renew Atlanta Infrastructure Bond on March 17, 2015. Transportation projects, including bridge and sidewalk repair and reconstruction, account for \$184.1 million of the \$250 million. Facility projects, such as renovation and repair of municipal facilities and recreation centers, account for \$65.9

million of bond funds. The city intends to use the \$250 million to attract state and federal grants and other funding sources to help address the remaining backlog.

The projects are split into citywide projects and into local projects for council districts. Citywide projects total nearly \$182.6 million; local projects account for the remaining \$67.4 million, with approximately \$5.6 million planned for each council district. Renew Atlanta broke ground on its first project in late July 2015.

**Exhibit 1: Renew Atlanta Program Funding Breakdown (\$ millions)**

	Citywide Projects	Local Projects	Total
Transportation	134.5	49.6	184.1
Facility	48.1	17.8	65.9
<b>Total</b>	<b>182.6</b>	<b>67.4</b>	<b>250.0</b>

Source: 15-R-3527 and Oracle Financials (Oct. 2015)

City Council passed 15-R-3343, which requires the City Auditor to establish a capital project and construction audit function to monitor the Renew Atlanta Infrastructure Bond program over its five-year lifespan, issuing reports at six month intervals. This report focusing on contract terms is our first in the series. Subsequent reports will focus on areas such as program controls, contractor practices, projected and actual schedules and costs, and alignment with program goals.

**Methodology**

We conducted this audit in accordance with generally accepted government auditing standards. Our audit methods included:

- determining contract language requirements of city code
- identifying contract language recommended by the Construction Audit & Cost Control Institute, Inc.
- reviewing contracts for three Renew Atlanta projects to assess whether required and recommended provisions were included
- reviewing the city’s standard contract templates for four contract delivery types to assess whether required and recommended provisions were included

We identified 19 contract language requirements in city code and 75 best practices for construction contract language from construction audit literature. We reviewed three executed contracts against these criteria: one design-build contract executed in 2016, one annual contract executed in 2015, and one annual contract originally executed in 2013 to which the city twice added Renew Atlanta funds in 2015. We also reviewed the city’s template contract language for design-build contracts, annual contracts, traditional lump sum contracts, and small traditional contracts under a million dollars. It is important to note that these templates are not complete contracts and would undergo modification before execution.

Generally accepted government auditing standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings

and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### Renew Atlanta Contracts Meet Many Language Requirements of City Code, But Not All

No contract or template that we reviewed contained all provisions required by city code. The four contract templates we reviewed met an average of 14 out of 19 language requirements of city code. The three executed contracts reviewed met an average of 14 out of 19 requirements (see Exhibit 2). Appendix A on pages 8-9 contains detailed information about the 19 contract language requirements we reviewed. These requirements cover business ethics expectations, right of audit, equal opportunity, and other stipulations.

**Exhibit 2: Renew Atlanta Contracts and Contract Language Requirements of City Code**

	Contract Templates					Executed Contracts		
	Total	Annual	Design Build	Traditional	Small	Design Build 2016	Annual 2015	Annual 2013
<b>Business Ethics</b>	2	1	1	2	1	1	1	2
<b>Right of Audit</b>	2	1	0	1	0	1	1	1
<b>Equal Opportunity</b>	1	0	0	1	0	0	0	1
<b>Other</b>	14	*14	*12	*12	*10	*12	12	10
<b>Total</b>	19	16	13	16	11	14	14	14

\*Met count includes requirements that were not applicable

Source: Auditors' analysis

Some contracts and templates are missing required language on business ethics; all are missing one or both right of audit provisions. These provisions communicate the business ethics expectations the city holds for its contractors and ensure the city's right to audit its contractors for compliance with the terms of the contract. Key provisions missing from some or all contracts and templates include access to subcontractor records (2-605) and a prohibition of contingent fees (2-1485).

Contracts are missing provisions regarding equal employment opportunity and a variety of other topics. Code requires several clauses enumerating specific rights and responsibilities of parties to contracts. Requirements unmet in some or all templates and contracts included the following:

- inclusion of the equal opportunity employment clause (2-1200, 2-1414)
- provision that cost of change orders to the city exclude any cost increased due to inaccurate, incomplete, or not current pricing data submitted by contractor (2-1201)
- the city's right to drawings, specifications, operating manuals, or similar work products developed and paid for under contract (2-1295)
- right of the city to order suspension of work or to terminate contract for default or convenience (2-1291)
- acknowledgement that contract or changes to contract may require legislative authorization (2-1291)

## Renew Atlanta Contract Provisions Allow Unnecessary Risk

The contracts and templates that we reviewed contained some provisions consistent with recommended language regarding business ethics, right of audit, and change orders, but were less comprehensive. The biggest gaps were in right to audit and change order provisions. The city's right of audit provisions were more limited in terms of records and time period covered. The city's contracts emphasize negotiation in change orders, at which point the city's negotiating position is much weaker than before execution of a contract. Best practice calls for a stronger enumeration of owner's rights.

The contract templates, on average, contained clauses which approached or met 15 of 75 language recommendations of best practice. An average of 7 of these 15 completely satisfied recommendations; the remainder matched the intent of best practice but could be strengthened. On average, the executed contracts came close to or satisfied 20 of the 75 recommendations. An average of approximately 16 completely met requirements. The annual contract from 2013 met or nearly met 33 out of 75 recommendations (see Exhibit 3).

Appendix B on pages 10-22 contains detailed information about the 75 contract language best practices we reviewed. The sections of that appendix cover business ethics expectations, right of audit, general change order provisions, pricing of lump sum change order proposals, pricing of unit price change order proposals, and pricing of cost plus change order proposals.

**Exhibit 3: Renew Atlanta Contracts and Contract Language Best Practices**

	Contract Templates					Executed Contracts		
	Total	Annual	Design Build	Traditional	Small	Design Build 2016	Annual 2015	Annual 2013
<b>Business Ethics</b>	10	5	5	1	5	5	5	5
<b>Right of Audit</b>	16	3	1	4	1	4	3	3
<b>Change Orders</b>	49	2	5	17	9	7	2	25
<b>Total</b>	75	10	11	22	15	16	10	33

Source: Auditors' analysis

**Renew Atlanta contract language for business ethics contains elements of best practice, but could be strengthened.** Ethics language in a contract serves to deter improper behavior during pricing, negotiation, and other business dealings. As required by city code, all contracts and contract templates contain clauses prohibiting kickbacks and bribery. All but one of the reviewed documents require the ethics provisions to be included in subcontracts, include the ethics hotline number, and require contractor to report ethics violations immediately to the city. However, other aspects of best practice for contract language addressing business ethics expectations are missing from all contracts and templates:

- general requirements to maintain business ethics and avoid any impropriety or conflict of interest that might impact best interests of the city
- general requirement to prevent any action or condition in conflict with best interests of the city
- prohibition of accepting discounts from subcontractors on one contract in exchange for allowing higher bids on another contract

- clause requiring the contractor to provide upon request a management representation letter stating that no ethics violations have occurred
- requirement for contractor employees to sign acknowledgement of business ethics expectations

The city's right to audit does not have attributes recommended for construction audit best practice. The ability to audit allows the owner to reduce program costs while enhancing effectiveness. It also provides a tone of oversight that can result in limiting cost overruns and billing errors. Best practice recommends that the city have the right to access records for all contracts and of all types. Recommended contract language contains this general right, but also contains an extensive list of records of various types and subject matters explicitly available for audit access. Records should be maintained by the contractor for a period of three years or more after the term of the contract is complete. Additionally, these provisions should be included in all major subcontracts. Two of the four contract templates, and all three of the executed contracts, have generally applicable right of audit clauses, which do include an explicit, albeit less extensive, list of record types. In the other two contract templates right of audit is only granted for change order work. Also, in some cases, the contractor is only required to maintain records for two years. In none of the contracts or templates are the provisions for right of audit complete, explicit, or strong enough to meet all the recommendations of best practice. Key provisions either missing or not sufficient include:

- inclusion of right of audit provisions in major subcontracts
- extensive list of record types to which access is explicitly granted
- various record subject matters to which access is explicitly granted (e.g. any records necessary to evaluate and verify compliance with approved plans and specifications, business ethics expectations, pricing of change orders, etc.)
- requirement to maintain records for at least three years after conclusion of contract
- requirement for reasonable access to contractor facilities and personnel

Language of Renew Atlanta contracts inclines toward negotiation at the expense of owner's rights and explicit pricing provisions. Change orders address project scope changes which can include labor, schedule, and materials. Change orders carry inherent risk. Contracts should include cost estimation and billing procedure requirements. The contract should require detailed documentation to support changes in quantities and prices of labor, materials, and services. The owner is subject to additional risk in any negotiation that takes place after contract execution. Change order contract language should mitigate risk to the city while promoting accountability and achieving goals of the infrastructure bond.

Best practice calls for explicit provisions detailing the pricing and administration of change order proposals. The owner should have the ability to choose the method of pricing that is most advantageous - lump sum, unit price, or cost plus fee. The 2013 contract contains language that clearly communicates this right; none of the other contracts or templates does. Instead they speak to negotiations between the city and contractors in order to determine the method of pricing. Lump sum and cost-plus pricing are similar in that they require detailed, itemized cost and pricing data for change order proposals. To this end, best practice requires

that contracts enumerate which costs are allowable and which are included in profit or fee. The 2013 contract contains the most elements of specific language with respect to allowable change order costs. The traditional lump sum template, and, to a lesser extent, the small traditional template, also contain allowable cost clauses. However, these clauses do not apply to all change orders - they only apply absent agreement on the terms of a change order. Contractors should also be required to include all change order provisions in subcontracts; none of the templates or contracts contains this language.

We recommend that Renew Atlanta work with the departments of procurement and law to strengthen contract language to meet the requirements of city code. The group should also work to further align contract language with best practices with regard to business ethics expectations, the city's right to audit, and change orders.

The Renew Atlanta response is attached as Appendix C. The program's general manager agrees in part with both recommendations. The response to the first recommendation states that 2 of 9 provisions required by city code but missing from some templates have been added, and that the other 7 missing provisions are covered by other language. On the second recommendation, the response states that the best practices for business ethics expectations, right to audit, and change orders that we found to be missing from some documents are covered by other language.

If you have questions you may call Amanda Noble at 404/330-6750, or you may reach me at 404/330-6804. We appreciate staff's courtesy and cooperation throughout the audit.

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## Recommendations

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1. We recommend that the General Manager of Renew Atlanta work with the departments of procurement and law to strengthen contract language for Renew Atlanta construction projects to meet the requirements of city code.
2. We recommend that the General Manager of Renew Atlanta work with the departments of procurement and law to further align language in Renew Atlanta construction contracts with best practices regarding business ethics expectations, the city's right to audit, and change orders.

**Appendix A: Contract Language Requirements of City Code and Renew Atlanta Contracts**

Contract Requirement (Code Section)	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design-Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
✓ Completely Met	* Partially Met						
Business Ethics Expectations							
Gratuities and Kickbacks (2-1484)	✓	✓	✓	✓	✓	✓	✓
Contingent Fees (2-1485)			✓				✓
Right of Audit							
Access to all records needed to verify compliance with terms of contract (2-605)	✓		✓		✓	✓	✓
Access to all records of all subcontractors needed to verify compliance with terms of contract (2-605)							
Equal Opportunity							
Equal Employment Opportunity clause as in sec. 2-1414 (2-1200, 2-1414)			✓				✓
Other							
Price to city, including profit or fee, excludes cost increased because of inaccurate, incomplete, or not current cost or pricing data furnished by contractor (2-1201)	N/A		*				
Multi-term contracts require a clause stating that when funds are not appropriated for a subsequent contract period , the contract shall be canceled (2-1205)	✓	N/A	N/A	N/A	N/A	✓	
Clause for ensuring payment of all subcontractors, materialmen, suppliers, and similar firms or persons involved in the city contract before final payment of contractor by the city or with funds from final payment (2-1211)	✓	✓	✓	✓	✓	✓	✓



Contract Requirement (Code Section)	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design-Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
City has right to plans, drawings, specifications, computer programs, technical reports, operating manuals, and similar products developed or paid for under contract (2-1295)	✓	✓	✓		✓	✓	✓
Unilateral right of city to order changes to requirements ( 2-1291)	✓	✓	✓	✓	✓	✓	✓
Unilateral right of city to order suspension or delay of provision of goods or services (2-1291)	✓	✓	✓		✓	✓	✓
Responsibilities of performance and payment with regard to variation between estimated and actual quantities of goods or services (2-1291)	✓	✓	✓	✓	✓	✓	✓
Defective Pricing (2-1291)	N/A						
Liquidated damages and service level credits (2-1291)	✓	✓	✓	✓	✓	✓	✓
Specified excuses for delay or nonperformance (2-1291)	✓	✓	✓	✓	✓	✓	✓
Termination of contract for default (2-1291)	✓	✓	✓	✓	✓	✓	✓
Termination of contract, in whole or in part, for the convenience of city (2-1291)	✓	✓	✓	✓	✓	✓	✓
Site conditions differing from those indicated in the contract or ordinarily encountered in similar situations (2-1291)	✓	✓	✓	✓	✓	✓	✓
Acknowledgement of authorization language as in 2-1291(10) (2-1291)	✓	✓		✓	✓	✓	

Source: City code and auditors' analysis

**Appendix B: Construction Contract Language Best Practices and Renew Atlanta Contracts**

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
✓ Completely Met	* Partially Met						
Business Ethics Expectations							
During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.							
Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests.							
Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.	✓	✓	✓	✓	✓	✓	✓
Contractor employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.	✓	✓		✓	✓	✓	✓
Contractor shall not receive any discounts from subcontractors on other jobs in exchange for allowing higher bids on Owner's job. Subcontractors shall not submit increased bids on the Owner's job in exchange for submitting discounted bids on other jobs.							
The telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations is: ___-___-___	✓	✓		✓	✓	✓	✓

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Contractor agrees to notify a designated Owner representative (or the Owner's Fraud Hot Line) within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.	✓	✓		✓	✓	✓	✓
Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.							
Contractor agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than \$10,000 in funds in connection with the Owner's project.	✓	✓		✓	✓	✓	✓
Contractor agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this contract.							
Right of Audit							
Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not-to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours.	✓		✓		✓	✓	✓
Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records.			✓				
The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law.	*		✓		✓	*	✓
Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Contractor's "records" shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, e-mails, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:	*		*		*	*	*
(a) Compliance with contract requirements for deliverables							
(b) Compliance with approved plans and specifications							
(c) Compliance with Owner's business ethics expectations							
(d) Compliance with contract provisions regarding the pricing of change orders		✓		✓	✓		
(e) Accuracy of contractor representations regarding the pricing of invoices							
(f) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Contractor shall require all payees receiving \$10,000 or more in connection with this contract (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.							
Owner's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.							
If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or the Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor.							
Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract																								
<p>In addition, to the normal paperwork documentation the Contractor typically furnishes to the Owner, in order to facilitate efficient use of Owner resources when reviewing and/or auditing the Contractor's billings and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):</p> <table border="1" data-bbox="96 529 968 1308"> <thead> <tr> <th data-bbox="96 529 735 565">Type of Record</th> <th data-bbox="735 529 968 565">PC Readable File Format</th> </tr> </thead> <tbody> <tr> <td data-bbox="96 565 735 597">Monthly Job Cost Detail</td> <td data-bbox="735 565 968 597">.pdf and Excel</td> </tr> <tr> <td data-bbox="96 597 735 630">Detailed job Cost History To Date</td> <td data-bbox="735 597 968 630">.pdf and Excel</td> </tr> <tr> <td data-bbox="96 630 735 695">Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)</td> <td data-bbox="735 630 968 695">.pdf and Excel</td> </tr> <tr> <td data-bbox="96 695 735 776">Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)</td> <td data-bbox="735 695 968 776">.pdf and Excel</td> </tr> <tr> <td data-bbox="96 776 735 865">Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project</td> <td data-bbox="735 776 968 865">.pdf</td> </tr> <tr> <td data-bbox="96 865 735 954">Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project</td> <td data-bbox="735 865 968 954">.pdf</td> </tr> <tr> <td data-bbox="96 954 735 987">Daily Superintendent Reports</td> <td data-bbox="735 954 968 987">.pdf</td> </tr> <tr> <td data-bbox="96 987 735 1109">Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.</td> <td data-bbox="735 987 968 1109">.pdf and Excel</td> </tr> <tr> <td data-bbox="96 1109 735 1182">Copies of Executed Subcontracts with all Subcontractors</td> <td data-bbox="735 1109 968 1182">.pdf</td> </tr> <tr> <td data-bbox="96 1182 735 1214">Copies of all executed change orders issued to Subcontractors</td> <td data-bbox="735 1182 968 1214">.pdf</td> </tr> <tr> <td data-bbox="96 1214 735 1308">Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)</td> <td data-bbox="735 1214 968 1308">.pdf</td> </tr> </tbody> </table>	Type of Record	PC Readable File Format	Monthly Job Cost Detail	.pdf and Excel	Detailed job Cost History To Date	.pdf and Excel	Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel	Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel	Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf	Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf	Daily Superintendent Reports	.pdf	Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.	.pdf and Excel	Copies of Executed Subcontracts with all Subcontractors	.pdf	Copies of all executed change orders issued to Subcontractors	.pdf	Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf							
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Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
General Change Order Provisions							
<p>Prime Contractor agrees that it will incorporate these provisions into all agreements with lower tier Contractors who will also include these provisions into agreements with all lower tier subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus fee change order proposals.</p>							*
<p>Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the contractor in accordance with these pricing provisions. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus Fee change order proposal as defined in the following provisions.</p>		*	*	*	*		✓
<p><b>Accurate Change Order Pricing Information:</b> Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders.</p>		*					*
<p>Contractor agrees that any “buy-out savings” on change orders shall accrue 100% to Owner. “Buy-out savings” are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.</p>							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
<b>Right to Verify Change Order Pricing Information:</b> Contractor, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the right to examine (copy or scan) the records of the Contractor, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims.		✓			✓		
Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made.							
Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.							
<b>Requirements for Detailed Change Order Pricing Information:</b> Contractor, subcontractor agrees to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this contract.							✓
This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work.							
The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit.							
Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.							



Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Discounts: If a Contractor enters into an agreement to pay a subcontractor before they receive payment the Owner and in return they negotiate an early payment discount, the amount of any such discount that the contractor is allowed to keep as a "cash discount earned" will be limited to one and ½ percent (1.5%) of the costs subject to discount. Any percentage of discount greater than 1 and ½ percent (1.5%) shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.							
Pricing of Lump Sum Change Order Proposals							
<b>Lump Sum Change Order Proposals:</b> The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner.		*	*	*	*		✓
The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier.							
Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)			*	*			✓
<b>Labor:</b> Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work.			*				✓
Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined in this contract.			*				✓

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages as outlined in this contract.							
<b>Labor Burden:</b> Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc.			*	*			✓
Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.							
An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.							
<b>Material:</b> Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work.			*				
Estimated material costs shall reflect cost reductions available to the Contractor due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates.							
"Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts.							
Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
<b>Equipment:</b> Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750).			*	*			✓
For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173.3 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work.			*				*
Further, for contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment.							
Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.							
<b>Maximum Markup Percentage Allowable on Self-Performed Work:</b> With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.			*		✓		
<b>Maximum Markup Percentages Allowable on Work Performed by Lower Tier Contractors:</b> With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.			*		✓		✓
<b>No Markup on Bonds and Liability Insurance Costs:</b> Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.			*				✓

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
<p><b>Direct and Indirect Costs Covered by Markup Percentages:</b> As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.</p>							*
<p><b>Deduct Change Orders and Net Deduct Changes:</b> The application of the markup percentages referenced in the preceding paragraphs will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in the preceding paragraphs so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.</p>					✓		
<p><b>Contingency:</b> In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.</p>							
<p><b>Change Order Proposal Time and Change Directives:</b> The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved.</p>				*			*

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed.		✓	✓	✓	✓		*
The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.							✓
<b>General Liability Insurance and Bonds:</b> In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the Contractor's net increase or decrease in comprehensive general liability insurance costs and/or net bond premium costs associated with change orders to Contractor's base contract price.							✓
Note: If a change order or a separate payment is made to reimburse the Contractor for the cost of a Performance and/or Payment Bond, the contractor will be required to remit any bond dividend or rebate that it will receive from the Surety after the successful completion of the project.							
Pricing of Unit Price Change Order Proposals							
<b>Unit Price Change Order Proposals:</b> As an alternative to Lump Sum Change Order Proposals, the Owner or the Contractor acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities.	✓					✓	✓
Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.							✓
The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.							

Construction Contract Best Practice Provision	Annual Template	Design Build Template	Traditional Bid-Build Template	Small Traditional Template	Design Build 2016 Contract	Annual 2015 Contract	Annual 2013 Contract
Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.	✓					✓	✓
Pricing of Cost Plus Change Order Proposals							
<b>Cost Plus Change Order Proposals:</b> As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment plus the approved Markup Percentage Fee.			*	*			✓
Contractor shall perform such authorized extra work at actual cost without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant.			*				✓
The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in the subparagraphs above.			*	*			✓
Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum.							
Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.			*				✓

Source: CAACCI, Inc. and auditors' analysis

Appendix C: Management Review and Response to Audit Recommendations

Report # 16.03	Report Title: Renew Atlanta Bond Program: Contract Language	Date: Mar 2016
<b>Recommendation Responses – Renew Atlanta General Manager</b>		
<b>Rec. # 1</b>	We recommend that the General Manager of Renew Atlanta work with the departments of procurement and law to strengthen contract language for Renew Atlanta construction projects to meet the requirements of city code.	Agree in part
<p><b>Proposed Action:</b> Update contract templates to include any omitted contract clauses required by the City Code.</p> <p><b>Implementation Timeframe:</b> Complete.</p> <p><b>Comments:</b> The Renew Atlanta General Manager has met with the Department of Law and the Department of Procurement. The construction contracts reviewed for this audit are not specific to the Renew Atlanta Bond Program and are available for use by other City departments and programs. The Department of Law has updated the small construction, annual construction and design-build contract templates to include required contract clauses, pursuant to Sections 2-1485 and 2-1414. The Department of Law has verified that the contract templates include all other contract clauses required by City Code. Renew Atlanta and the Department of Law will continue to work together to identify any potential improvements to contract clauses in further compliance with City Code requirements.</p> <p><b>Responsible Person:</b> Faye DiMassimo</p>		
<b>Rec. # 2</b>	We recommend that the General Manager of Renew Atlanta work with the departments of procurement and law to further align language in Renew Atlanta construction contracts with best practices regarding business ethics expectations, the city's right to audit, and change orders.	Agree in part
<p><b>Proposed Action:</b> The Renew Atlanta General Manager will continue to work with the Department of Procurement and the Department of Law to identify and implement best practices as deemed appropriate.</p> <p><b>Implementation Timeframe:</b> Ongoing.</p> <p><b>Comments:</b> The Renew Atlanta General Manager has met with the Department of Law and the Department of Procurement. The construction contracts reviewed by the City Auditor for this audit are not specific to the Renew Atlanta Bond Program and are available for use by other City departments and programs.</p>		

The Renew Atlanta Bond Program recognizes the need to follow best practices to control costs and ensure timely completion of projects. The Renew Atlanta management team supports many of the recommendations provided in the audit and are actively working to set up program management procedures to meet these goals. Many of the best practices itemized in the report are implemented through good project management practices in conjunction with the enforcement tools provided in the contracts. Specifically, the Renew Atlanta Bond Program has developed a Program Management Manual for the purpose of defining roles and responsibilities to manage costs and schedules. Additionally, the Renew Atlanta Project Controls Board, as established in the Program Management Manual, is specifically designed to review major projects with the intent of controlling change orders, cost overruns and schedules. The Renew Atlanta Bond Program will also utilize a third party program management contractor, which will assist the program with oversight, project management and cost controls.

The Renew Atlanta Bond Program is committed to promoting the highest standards of business ethics for every project. All of the contract templates referenced in the report include strong contract terms and conditions regarding compliance with business ethics. The Renew Atlanta Bond Program management team will work actively to enforce those provisions and hold contractors accountable for any known ethics violations. The City's right to audit and change order provisions were found in all contract templates referenced in the report.

The Renew Atlanta Bond Program will continue to work with the Department of Law, the Department of Procurement, the Department of Public Works and the Office of Enterprise Asset Management to look for ways to strengthen contract terms and program controls to meet the best practices regarding change orders and other best practices itemized in the report. The Renew Atlanta bond program remains committed to ensuring all projects are implemented efficiently and timely.

**Responsible Person:** Faye DiMassimo