

Port of Seattle

Project:

International Arrivals Facility Project Seattle-Tacoma International Airport

Final Construction Audit
Audit Report 2022-17

Clark Construction Group, LLC

HPM, LLC

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Audit & Contract Services

International Arrivals Facility Project Final Audit – Clark Construction

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Background Information and Contract Status

The Port of Seattle (Owner, Port), selected Clark Construction Group, LLC (Clark) as the Design-Build Contractor (Design-Builder) for the International Arrivals Facility project at the Seattle-Tacoma International Airport in Seattle, Washington. The initial Design-Build construction contract was a Not-to-Exceed agreement, which was settled and amended, with the “project reset” effective September 26, 2018. The Owner and Clark executed a new construction Cost of Work with a Guaranteed Maximum Price (GMP) Design-Build Agreement. The GMP amount totaled \$773,945,385 with a fixed Design-Builder Fee of \$29,923,795. Other contract terms include:

- Previously executed project Change Orders 3, 6, 17 and 19 remain in effect,
- GMP Amendment Section 8.2 stipulates items including claims occurring prior to the date of the amendment, additional staffing, general requirements, delay, impact, and acceleration are considered “resolved disputed issues” which have been closed. *Items not listed, and determined to be subject to audit, are Project allowance and contingency funds.*
- Per the Contract Assumptions & Clarifications A.14, the General Conditions include:
 - Not-to-Exceed labor and travel charges of \$49,100,000 through project completion,
 - Lump Sum of \$11,900,000 for non-labor/travel/living/relocation charges.
- Salaried and administrative general conditions labor will be paid at actual base wage times a 1.887 labor burden multiplier.

The contract status per Clark’s records, as of Payment Application No. 92 and reflecting Clark costs recorded through August 31, 2022, before any potential observations is as follows:

Description	GMP Amendment to Design-Build Contract	Executed Change Order Nos. 43, 45 - 66	Audited GMP ¹	Actual Billed by Clark per PA 92 ²	From Clark Cost Report Plus Contractual Multipliers ³
Design	54,476,416	-	54,476,416	51,150,532	54,909,539
General Conditions/General Requirements	77,276,480	-	77,276,480	81,301,660	158,078,910
COVID + FLOOD		3,145,266	3,145,266		
Direct Cost of Work	492,450,094	(1,637,271)	490,812,823	596,558,457	558,625,169
Allowances	108,449,861	7,024,943	115,474,804	1,615,298	-
Insurances and Bonds	11,368,739	100,119	11,468,858	11,206,237	10,592,209
Fee	29,923,795	322,846	30,246,641	29,994,637	37,319,040
TOTAL	\$ 773,945,385	\$ 8,955,903	\$ 782,901,288	\$ 771,826,821	\$ 819,524,867

¹ Total Audited GMP reconciles to the Contract Sum to Date and Scheduled Value Total on Payment Application No. 92.

² Actual Billed by Clark reconciles to the Total Completed & Stored to Date which was *approved for payment and paid in full by the Port on September 6, 2022.*

³ Contractual Multipliers include contractually defined percentage-based charges, such as Fee.

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Audit Scope and Objectives

The scope of our audit included the review of the Design-Builder’s payment applications, contract files, correspondence, and job cost records to:

1. Verify the GMP amount is not overstated from what Clark has billed per their cost and billing records,
2. Verify costs are reimbursable per the terms of the executed contract documents, and
3. Validate any fixed costs are billed in accordance with the contract terms.

Audit Limitations

Contract Article 9.2 states,

“The Design-Builder acknowledges that this Contract is to be administered on an “open book” arrangement relative to Costs of the Work. The Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of six (6) years after Final Acceptance, the Port and the Port’s accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, the Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work...”

Clark did provide most of the requested data; however, Clark did not answer the audit questions and provide additional data that was determined to be insufficient. Additionally, Clark had not completed the change order reconciliation. As such, the audit scope was limited based on the following:

1. The auditors were notified that a claim had been filed by Clark. As such, Clark stated there are costs recorded in separate job numbers (such as a separate Covid project) that were stated to be part of the claim and were not provided for review.
2. There are change orders that have not been reconciled to date. Per Clark, the accounting is not complete and has not been provided to the Port construction management team or audit personnel. As such, the charges and contractual reimbursement terms have not been reviewed.
3. Clark provided subcontract change orders issued and executed with their subcontractors; however, many of the change orders provided for the audit and to the Port as support for the Written Authorizations (WAs) did not contain adequate and/or legible detail. It was unclear how Clark evaluated requested increases in labor, materials, etc. without detailed information such as labor position, hours, labor rates,

material quantities, unit pricing, etc. Either Clark did not fully release all the supporting data or Clark did not request the appropriate information from their subcontractors.

4. WA #489 dated November 18, 2020, added \$310,329 on a lump sum basis to Valley Electric for the 2018 enacted Washington state sick time law and 2019 Paid Family Medical Leave requirements. The documentation Clark gathered and provided to support this WA did not adequately substantiate the claimed charges, nor did the data provide the calculation showing how Valley Electric was owed further monies.

Please also refer to report Observation No. 4 for the duplicate charges processed and paid.

5. Clark recorded job costs, which when added to the lump sum and percentage-based charges exceed the total GMP contract value to date. Given the magnitude of the overage at the time the data was provided, there would not be material cost exceptions to offset the overage. ***However, the contractual reimbursement terms and other contract limitations would be applicable to any actual total costs incurred that may be used as part of Clark's claim calculations. In the event the GMP is adjusted upward by a significant value, these limitations would need to be revisited.***
6. Clark started the project using JD Edwards ("JDE") as their cost tracking software but then migrated to SAP toward the end of the project. Clark provided both the SAP cost report and JDE cost report; however, it was not clear how the JDE values tied to the SAP report. The audit team requested, but did not receive, the SAP migration detail based on the costs recorded in JD Edwards transferred into SAP.

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Summary of Potential GMP Adjustment

The below listed potential GMP adjustments are the basis for reducing the GMP value.

1. Overstated Subcontractor Labor and Labor Burden Rate Charges	\$ 4,554,000
2. Allowance Reconciliation	2,273,738
3. Unlocated Subcontractor Credits Due	307,135
4. Port Allowance Usage for Claimed Valley Electric Sick & PFML	329,947
5. Written Authorization and Clark Issue Amounts Not in Alignment	272,605
6. Questioned Contingency Transfer and Usage	220,547
7. Unsupported Allowance and Contingency Usages	129,799
Total Potential GMP Adjustments	\$ 8,087,771

Please note Observation No. 1 has a range of \$4,544,000 to \$9,244,000. To be conservative, the audit is reporting the low end of the exception range; however, if the high end the Potential GMP Adjustments is utilized, the total would be \$12,777,771.

Improvement Recommendations

- Design Builder (DB) or Contractor should review and vet all subcontractor labor rates to ensure contract compliance (Contract Attachment 3, Section 1) prior to approving any change orders, or submission of any change orders to the Port. This should entail providing sufficient and legible support for the Port to review.
- Revision of the Port labor rate sheet(s) to account for all federal/state/local tax limitations. The report takes no exception to the union base wages or union fringes. The audit findings are related only to subcontractor-controlled components of labor burden such as payroll taxes and insurances. When these items are not correctly vetted by the DB or contractor (Clark), they are likely to become known profit centers for the subcontractors. For example, the Federal Unemployment Tax Act (FUTA) is \$42 annually per employee. Reducing trade/union hours from 2,080 full time to 1,300 +/- would adequately allow for turnover, time off, etc.
- The Port should be proactive in communicating with the Contractors and subcontractors to relay the Port’s supporting documentation requirements for requested contract changes, including allowance and contingency usages.
- The Port did not have Project subcontracts or subcontractor change orders (SCOs) on file. Review of the Sea-Tac IAF Validation Period Subcontracting Plan dated January 26, 2016, Section 1.1.C.3.e states,

“Clark shall select subcontractors on the basis of the best value to the Project based on the pre-established best value criteria for each scope of work. If in Clark’s determination, the subcontractors who proposes the best value did not propose the

lowest price, Clark shall: (i) Provide a written justification for the selection of the Subcontractor; and (ii) Obtain the Port's written approval prior to entering into the Subcontract."

Further, Section 1.2, Subcontract Procurement Process discusses Clark and the Port working together and communicating throughout the subcontracting process. While the Subcontracting Plan does not implicitly provide a requirement that Clark provide subcontracts or SCO data to the Port, it does allude to the sharing of data. It is a best practice for Owner's to have subcontracts and SCOs on file.

- Performance of a readiness assessment to align project documentation controls and Port/contract requirements with Design Builder or Contractor prior to beginning a project. This is an opportunity to mitigate several observations noted in this report, along with other potential issues impacting contract values and project costs. *See Appendix A for an example of the scope of a readiness assessment.*

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Detail of Potential GMP Adjustments

1. Overstated Subcontractor Labor and Labor Burden Rates

The audit team requested the Clark subcontract documents as part of the audit. After review of the provided files, it was found that subcontracts and corresponding SCOs did not include stipulated labor rates as part of the agreements. As such, it was noted actual costs incurred for labor charges would be contractually reimbursable per Contract Attachment 3. However, review of the subcontracts, SCOs, and the corresponding Port WA documents showed the subcontractors utilized labor rates appearing to exceed the actual costs the subcontractor believes they will, or would have, incurred.

Using the Clark submitted files, the audit selected 5 of the 91 subcontracts for review with combined SCOs equaling \$107,602,804. This represents 38% of the total SCOs for the entire project. The audit further refined this review to SCOs equaling \$48,514,560, which was 41% of the changes related to the contingency and allowances. During our review, it was noted the change order detail *provided for the audit was not always sufficient for Clark to adequately review the costs being requested*. Of the \$48,514,560, only \$6,403,814 (or 13% of sampled SCOs) included adequate detail reflecting rates and quantities for the change request labor, material, equipment, and other charges. At the time of the audit review, the path to tracing Clark documents through Port Written Authorizations was not clearly defined which created a limitation for the ability to expand the audit sample. Subsequent discussions have resulted in additional information leading to a more concise way to trace costs through. As such, the audit sample could be expanded to further refine the results. Based on the current findings and computations, an expanded audit sample is unlikely to have a material effect on the noted observations.

During the audit, the audit team utilized the detail that was available to:

- (a) calculate the percentage of subcontract change orders related to labor, and
- (b) to determine any rate variances between the rates charged and estimated actual costs incurred.

The labor rate data provided to the Port by the subcontractor, including union rate sheets, Washington SUCA (SUTA) rates, Labor & Industry (L&I) rates, and information obtained from certified payroll reporting was used to calculate actual costs. In addition, the audit team added payroll taxes based on the net rate and statutory limits, state mandated sick leave, and other reimbursable charges, if any, as requested by the subcontractors provided the charges complied with the contract terms. Contract Attachment 3, Limitations on Certain Subcontractor Costs & Materials, Supplies, and Equipment Costs, allows the listed reimbursable costs provided there are not stipulated subcontract labor rates. The subcontracts reviewed did not include stipulated labor rates, as such the Section 1 charge limitations would apply, including

actual wages earned, fringe benefits noted in applicable collective bargaining agreements, plus “benefits paid on account of such labor by the Subcontractor pursuant to the:

- a. Federal Insurance Compensation Act (FICA);
- b. Federal Unemployment Tax Act (FUTA); and
- c. State Unemployment Compensation Act (SUCA).
- d. Only bona fide employee fringe benefits that accrue to the direct benefit of the employee (such as pension and annuity, health and welfare, vacation apprenticeship, and training funds) shall be included in the calculated of the weighted wage rate. Other fringe benefits that are not a direct benefit of the employee (such as union promotion funds) shall be paid as part of the markups allowed on the work.”

In instances where salaried and administrative labor rates were included in change orders and charged to the Project, including Apollo and Valley Electric, the audit team utilized published local wages compiled by reputable hiring sites using both market hiring salaries and salary data obtained through market surveys for Seattle area firms ranging in size. The sites used included salary.com, Glassdoor, Indeed, ZipRecruiter, and PayScale.com. Using the median, or average, published base wage by position, the following were added:

- 1) Payroll taxes subject to statutory limitations,
- 2) Required sick leave
- 3) PFML
- 4) L&I charges
- 5) Other Paid Time Off for holiday and vacation hours, and
- 6) An average labor burden for employee benefits including medical insurance and 401k matching of 12.5%.

All positions were researched based on use of the appropriate year when historical data could be obtained and specific to construction.

Based on the sampled SCOs inclusive of adequate labor detail, the average labor costs to change order costs was 49.7%. There were an additional 5 subcontracts where labor could be clearly separated, which further refined this value to 47.8%. Note that this represents the average labor ratio per subcontractor. Comparing the recalculated labor rates to the subcontractor rates charged in the Clark subcontract change orders and in the Port WA support, the audit team noted the average overstatement of subcontract labor rates, including non-union administrative and salaried employee rate exceptions, totaled 11.2%. Clark and the subcontractor’s billing of rates which exceed actual costs incurred would inflate the subcontract profit exceeding the Port contract overhead and profit limitations. This practice is also not compliant with the subcontract labor charge limitations in the prime contract Section 5.1.2 which states:

“Except to the extent subject and paid according to Section 5.1.1, payments made by the Design-Builder to lower tier Subcontractors and Design Consultants for performance of portions of the Work...Unless otherwise specifically agreed, payments to Subcontractors shall generally respect the limitations set forth on Attachment 3.”

The following table shows a summary of these findings as well as an extrapolation for the selected subcontractors for the changes that did not have sufficient data to review.

Subcontractor	FROM ISSUE LOG (ASSIGNED TO SCO FOR ALLOWANCE OR CONT)	Total SCOs Reviewed	Sample Size	Labor Value in SCO	Labor %	Finding from Detailed SCOs	Error%	Extrapolated Findings
APOLLO MECHANICAL CONTRACTORS	4,087,168	41.88%	2,496,920	61%	530,807	21.258%	736,618	4,087,168
CECCANTI, INC.	431,908	5.32%	152,508	35%	8,306	5.446%	147,936	431,908
CONCO	170,402	9.88%	75,218	44%	1,405	1.868%	12,817	170,402
CROWN CORR INC.	985,313	23.46%	439,134	45%	43,804	9.975%	142,915	985,313
VALLEY ELECTRIC CO OF MT VERNON INC	1,092,942	4.42%	527,242	48%	90,052	17.080%	1,945,581	1,092,942
TOTAL¹	\$ 6,767,733	16.99%	\$ 3,691,022	46.67%	\$ 674,374	11.13%	\$ 2,985,868	\$ 6,767,733

¹ The Sample Size, Labor, and Error percentages are the average of the individually listed percentages.

The results of this analysis was \$674,374 in findings directly found on SCOs and an additional \$2,985,868 in findings with the premise that these errors propagate to all the selected subcontractor's changes related to Allowances and Contingencies. The following table shows how this finding can be further applied to the entire population of the SCOs related to allowances and contingencies.

Description	Value of SCOs	Finding
Findings from sampled SCOs with Detail	\$ 6,767,733	\$ 674,374
Extrapolated Findings for the sample subs	41,746,827	2,985,868
Application of the findings to the remaining SCOs (47.8% labor and 11.2% error rate)	69,522,330	3,583,897
TOTAL	\$ 118,036,890	\$ 7,244,140

However, this does not account for all the potential data fluctuations. As such, the auditors compiled a range of the potential labor overcharges *billed to both Clark and the Port*, included in the subcontract change orders. *This type of range analysis is intended to recognize and quantify major variables that impact the finding rather than simply apply the finding unilaterally to all unsampled changes.* The sampled changes show 47% of the changes to be labor cost which is within the expected range for the industry. The audit range analysis contemplates variability in the ratio of labor costs to the total changes as it can have a significant effect. Additionally, the analysis also contemplates that the error rate will have fluctuations between subcontractors.

The analysis results shows a potential error range from \$4,554,000 to \$9,244,000. The following tables show how this value was determined.

The below table contemplates the variations within the extrapolated data for the subcontractors sampled. It contemplates a range of labor ratios and findings:

Analysis contemplating variance for sample subcontractor value of \$42,746,827		% Finding of Labor for Sampled Subcontractors					
		9.5%	10.0%	10.5%	11.0%	11.5%	12.0%
% Labor of SCO for Sample Subcontractors	45.0%	1,690	1,880	2,065	2,255	2,440	2,630
	47.5%	1,785	1,985	2,180	2,380	2,580	2,775
	50.0%	1,880	2,085	2,295	2,505	2,715	2,920
	52.5%	1,975	2,190	2,410	2,630	2,850	3,070
	55.0%	2,065	2,295	2,525	2,755	2,985	3,215

The next table contemplates the variations within the extrapolated data for the subcontractors that were not sampled. Note that the ranges are greater due to less information being known for the subcontractors that were not sampled.

Analysis contemplating variance for non-sample subcontractor value of \$69,522,330		% Finding of Labor for Non-Sampled Subcontractors					
		9%	10%	11%	12%	13%	14%
% Labor of SCO for Non-Sample Subcontractors	35.0%	2,190	2,435	2,675	2,920	3,165	3,405
	40.0%	2,505	2,780	3,060	3,335	3,615	3,895
	45.0%	2,815	3,130	3,440	3,755	4,065	4,380
	50.0%	3,130	3,475	3,825	4,170	4,520	4,865
	55.0%	3,440	3,825	4,205	4,590	4,970	5,355

This final table combines the two tables with the known findings of \$674,374 to provide a range of findings which contemplates realistic variances between subcontractors.

Combined Analysis of the above two tables with the addition of the \$674,374 of findings		% Finding of Labor for Non-Sampled Subcontractors					
		Low					High
% Labor of SCO for Non-Sample Subcontractors	Low	4,554	4,989	5,414	5,849	6,279	6,709
		4,964	5,439	5,914	6,389	6,869	7,344
		5,369	5,889	6,409	6,934	7,454	7,974
		5,779	6,339	6,909	7,474	8,044	8,609
	High	6,179	6,794	7,404	8,019	8,629	9,244

¹ The area in yellow shows the calculated exception without accounting for any variances (\$6,767,733).

Please also refer to the Audit Limitations on report pages 2 and 3.

2. Allowance Reconciliation

During audit fieldwork, the audit team reconciled the project allowance and contingency funds to the executed GMP Amendment amounts, the GMP Amendment terms and conditions set forth in Sections 8.2 and 8.3, and added funds and usage as documented through Payment

Application 92. The Port’s Written Authorization documents were also used to validate amounts approved by the Port as referenced in the below table and the payment application. As of the date of the audit, the Clark billings to the Port through Payment Application 92 showed savings in the Port Allowance, Design Builder (DB) Allowance, and Contingency funds. In speaking with the Port Construction Management team, it was noted Clark has stated they plan to bill against the unused risk contingency funds with payment *subject to* the Port’s authorization. Remaining risk contingency funds totaled \$2,096,710 through July 2022. The remaining allowance funds for the Port Allowance and the DB Allowance were also reconciled to the Payment Application 92 showing remaining Port Allowances of \$2,296,648 and DB Allowance funds totaling \$377,460.

Description	Port Allowance	DB Allowance	Risk Contingency
GMP Amendment No. 1 Totals	\$ 42,800,947	\$ 15,127,500	\$ 50,521,414
Other Additions:			
Clark Issue 810024, <i>Reconciled to Port EWA-2: Alternate Trans.</i>	5,000	-	-
Clark Issue 820437, NCR 12 - Port Credit - Coring AOA Panels	2,800	-	-
Clark Issue 820246, <i>Reconciled to Port WA-334 & SS-VE-057</i>	43,876	-	-
Clark Issue 820322, <i>Reconciled to Port WA-313</i>	113,050	-	-
Clark Issue 820324, SSAT_Removal S10 Hardstand Scope <i>Reconciled to PA #92 Contract Change Orders sheet, Port Allow.</i>	1,272,320	-	-
Clark Issue 820359, IAF_Increased Port Allowance <i>Reconciled to PA #92 Contract Change Orders sheet, Port Allow.</i>	5,390,324	-	-
Clark Issue 841030, CO-054 SC_Credit Pipe Abandonment Pod C - <i>Reconciled to PA #92 Contract Change Orders sheet, Port Allow.</i>	9,781	-	-
Clark Issue 840752, IAF_ISEC Area 3 & 4 Shop Drawings	-	412	-
Clark Issue 841114, WPI Parapet Insulation Deduct	-	69,364	-
OCO Nos. 50, 56, & 57 - Taxilane Closures - <i>Reconciled to PA #92 Contract Change Orders sheet CCO #50, CCO #56, CCO #57</i>	78,277	-	-
Total GMP Allowance Funds Identified Through Pay App #92	\$ 49,716,375	\$ 15,197,276	\$ 50,521,414
Usage Through Payment Application #92:			
GC, GR, Design Usage	\$ (2,109,085)	\$ (1,550,800)	\$ (4,887,369)
Subcontract Cost Usage	(45,180,208)	(13,269,016)	(43,537,335)
Insurance, Bond, Fee Usage ¹	(130,434)	-	-
Tracked Usage Through PA #92	\$(47,419,727)	\$(14,819,816)	\$(48,424,704)
Unused Funds as approved through Pay App #92	\$ 2,296,648	\$ 377,460	\$ 2,096,710

¹ During review of the Port provided Pay App #92 Excel billing file, it was noted the Revised Contract Totals in cell P:117 were not correctly footing causing a variance of \$130,434 when using the sum function of columns L-R. There was not a Completed & Stored difference; however, the Port will be unable to reconcile to the Port Allowance total shown in the Excel file provided.

3. Unlocated Subcontractor Credits

The audit team reviewed all subcontractor credits in Clark’s records provided to determine if there were any credits that should have either reduced the GMP or credits issued to the port Allowances. The audit team was not able to locate or verify the reason for some of the budgeted subcontractor credits. It appears the below-listed credit amounts would either reduce the GMP, or the unused funds would be transferred into the Port Allowances. The audit team requested, but did not receive, additional supporting documentation from Clark totaling \$307,135 *excluding Clark’s fee and other percentage-based charges* as follows:

Issue No.	Description	Company	Code	Budget
830543	Rock Splitting at Water Feature	BrightView Landscape Development	76000	(27,216.00)
841227	BG 064 - B/C Metal Lab Casework	Burke Gibson, LLC	54000	(72,520.00)
841296	BG 036.1 - Credit for Heavy Duty Metal Shelving	Burke Gibson, LLC	54000	(10,560.00)
841365	FK 137 - Credit for RF-1 in 3403A	Fryer-Knowles Inc.	24000	(1,425.00)
841515	BG 052 - IAF 5305B Cashiers Office Changes RFI C-4013	Burke Gibson, LLC	54000	(834.00)
841682	FK 146 - Cork infill	Fryer-Knowles Inc.	24000	(2,008.00)
841710	Credit from unbilled items...	Krueger Sheet Metal	94000	(168,954.00)
849122	IRIS Exposure	Iris Window Coverings	54000	(5,418.00)
820246	SS-VE-057 - ACS Scope Reduction and Camera Adds	Valley Electric	14000	(26,474.00)
820417	VE-483 -- IAF L33 @ South Loading Dock on Existing Structure	Valley Electric	4000	(7,108.00)
Subtotal Unlocated Subcontractor Credits				(307,135.00)

4. Port Allowance Usage for Valley Electric Claimed Unpaid Sick & PFML

Valley Electric submitted a request for additional funds on October 30, 2020, stating they had not been compensated for the Washington state mandated sick leave and Paid Family Medical Leave (PFML). Beginning January 1, 2018, employers were required to pay 2.5% of the straight time base wage to employees for every hour worked, including premium hours. Effective January 1, 2019, the employers were required to contribute to the PFML fund. Valley Electric stated they had not been compensated for these charges and in combination were due \$310,329. Adding the Clark mark-ups resulted in a total request to the Port through WA #489 and Valley Electric subcontract change order #56 in the amount of \$329,947.

Clark submitted documentation supporting the WA documents on file, including the Port Written Authorization Findings of Fact, included a Valley Electric 2016 and 2017 labor hours report, by person; however, the backup files reviewed did not include any 2018 or 2019 hours worked. In addition to Valley Electric and Clark not providing applicable payroll data which would have been available in 2020, it did not appear Clark or other reviewing parties considered the rates utilized and previously approved in executed Clark Subcontract Change Orders and/or previously approved WAs. Review of these change orders, which have been billed in full and paid through Clark Payment Application No. 92, showed the 2018 and 2019 Port issued labor rates were utilized and were inclusive of the mandated sick time and PFML rate components in the applicable years. This was consistent with the Port Construction

Management team statements they reconciled Written Authorization (WA) requests to the Port wage documents. Review of the Port provided labor rates for Valley Electric showed 2018, 2019 and 2020 labor rates were inclusive of the applicable Sick Leave and PFML as follows:

- Labor Rates 2018 – Valley Electric were submitted May 29, 2018. *The rates include Sick Leave of 2.5% on the base wages.* For example, the General Foreman reflects \$1.54 per hour, Foreman \$1.41 per hour, Journeyman \$1.25 per hour, and all Apprentice positions.
- Submitted by Valley Electric for 2019 Labor Rates file was noted to be submitted on May 31, 2019. Review of the rates shows the Sick Leave of 2.5%, and a SUTA PFML line-item charging for the PFMLA effective January 1, 2019. This was verified on the rate sheet for all listed positions.
- Labor Rates 2020 – Valley file was noted to be submitted on June 1, 2020. All listed rates included both Sick Leave and PFML.

Based on this information and the additional reconciliations performed, the Port Allowance charge of \$329,947 duplicates rate components already paid to Valley Electric through the fully billed change orders issued in 2018, 2019, and 2020. Charges for previously approved WA 270 inclusive of Port labor rates with the sick leave and PFML charges and WA 489, plus reconciliation to Clark's SCO logs were reconciled to Clark's Payment Application No. 92 showing the charges had been previously billed to the Port in full, and provided to the Port. Other WAs reviewed, including WA 415, WA 447, and WA 462, reconciled to the Port 2020 Valley Electric rates.

Per the Port's records, Clark was paid in full for Payment Application 92 on September 6, 2022. ***Therefore, the Port has been overbilled and paid Clark by \$329,297.***

5. Questioned Contingency Transfer and Usage

Clark's Issue No. 809003 was noted to be for a "2018 Contingency Reallocation" in the amount of \$220,547. Issue No. 809003 further noted this expenditure was for "Furniture Not Reimbursed by Owner" with a corresponding draw down in the Clark Risk Contingency fund totaling \$220,547, which reconciles to the Clark job cost detail entries totaling \$220,547 for furniture costs recorded in August, October, and December 2017 and March 2018. Based on the documentation on file, it was not clear where the transfer into the Contingency funds came from, or what the funds were spent on; however, the Port provided all the office trailer furniture and partitions. It was the auditor's understanding was any additional costs were to come out of Clark's fee as the charges are not reimbursable.

It also appears through Payment Application No. 76 billing costs through April 2021, these charges had been billed in full by Clark to the Port, and reimbursed by the Port. The reasoning for this is based on a reconciliation performed between the billed charges and Clark's job cost detail, showing Clark had billed subcontractor costs, consultant costs, and Clark validation charges exceeded recorded costs in the amount of \$2,180,408. A portion of these charges are likely due to cost entry timing variances; however, it is likely the \$220,547 was also included as these charges were not earmarked in the Clark job cost entry as non-reimbursable.

6. Unsupported Allowance and Contingency Usages

Clark included potential charges in the allowance and contingency logs that the audit team could not trace back to executed subcontract change orders. If subcontract change orders were not issued for the charges, Clark should provide cost details to support the costs incurred. The identified unsupported subcontract change orders and charges total \$129,799 without Clark fee or other percentage-based charges, of which \$114,528 was billed and paid through Payment Application 92, as follows:

Issue No.	Description	Code		BUDGET	Billed Pay App #92
841891	Jan 2021 Floor Cleaning L5000 and L3000 - Ausclean Part of WA #538	044000	LS	\$ 10,093	GRs Item 121
841904	Side mounted HLLs - Safeguard Industries costs to correct \$6k plus Apex Weld of \$2,145, noted \$6k back charge.	054000	LS	6,000	Not on back charge list.
820103	WA379 - Scaffolding, PCI	005900	LS	56,025	GRs Item 120
820135	Queen City Original Contract	094400	LS	20,000	GRs Item 109
820355	Apollo 0125 - Re-TAB AH02 - Funding Source WA #502	010000	ALLOW	(3,627)	Line 206
820382	Elevator Operator – Funding for WA #555 Kone	002000	ALLOW	(12,057)	Line 219
830174	Cost of Work CCI Back Charge – Crown Corr	000200	MP	1,570	Item 336
830573	WA555 Kone Art Import Fee		ALLOW	11,340	Kone Item 219
Unknown	Credit for WA257 Reconciliation MVT for Terrazzo Grazzini		ALLOW	21,475	Items 100-108.5
800025	MZT – Macro Z Tech WA #01		ALLOW	4,681	Item 221
810041	MZT – Macro Z Tech WA #30		ALLOW	2,264	Item 222
Unknown	WA197 Crown Corr Does Not Reconcile to Clark SL147 Billed net of WA #66 \$3,269 and WA #197 (\$2,764) = \$505		ALLOW	2,764	Item 331
	Subtotal Unlocated Subcontractor Credits – Billed to Port			\$ 120,528	
820391	Aero Bridge 59 Replace A11 PLB Computer and use at A3 WA #553	054000	LS	16,708	SOV Item 107 * Not billed *
820440	VE-290 - Casework Modifications – FUNDING Valley Electric WA #569 in SOV Pay App #94	010000	ALLOW	(5,061)	Not billed
820267	ISEC 125A - Recouping Costs (Port Allowance). WA #555	010000	ALLOW	(2,376)	SOV Item 479 * not billed *
	Subtotal Unlocated Subcontractor Credits - Unbilled			\$ 9,271	
	Total Unlocated Subcontractor Credits			\$ 129,799	

7. Written Authorization & Clark Issue Amounts Not in Alignment

Comparison of the Clark Issues Logs to the Port Written Authorizations, WA detail and project to date billings showed there were items that did not align, and/or were not adequately supported. The audit team requested, but did not receive, Clark responses to the following potential duplication of scope or allowance refund totaling \$25,044 as follows:

- Clark Issue 820205 shows a change for Krueger for the IAF Emergency Generator at a value of \$29,375, which reconciles to Port WA #302. This has been billed and paid in full based on review of Payment Application 92 and the corresponding Krueger line item 123 detail. Based on the approved WA 413 totaling \$25,044 it appears Krueger has overbilled and been overpaid by \$4,331.
- Clark has no other recorded usages for similar charges; however, the Port’s WA 413 shows a potentially duplicate scope of work with a value of \$25,044, which had not been billed

through Payment Application 92. If the Port pays this line-item in addition to the payment of WA 413 noted above, Krueger would then have been paid $\$25,044 + \$29,375 = \$54,419$. Considering that the Port's WA indicates they believe the value should only be $\$25,044$, then Krueger would be overbilled by $\$29,375$

International Arrivals Facility Project

Final Audit – Clark Construction

Other Audit Observations

1. Liquidated Damages

As of the report date, the Port had not issued substantial or physical completion for the contract milestones. Since the substantial completion date has not yet been determined, the audit team calculated the liquidated damage assessment through November 30, 2022; however, it should be noted this observation will need to be recalculated once substantial completion and physical completion documents have been issued by the Port. During the audit, the Port’s Construction Management team advised the audit team they are tracking the outstanding items necessary for Substantial Completion.

The Design-Build GMP Amendment dated September 26, 2018, included the following Contract Milestones, and associated Liquidated Damage Amounts:

	Milestone Description	Date	Liquidated Damages
1	Substantial Completion of IAF, Sterile Corridor, Gate Pods A-C, and Pedestrian Walkway (incl. cores)	05/30/20	\$10,000/Day
2	Substantial Completion of Pod D	11/10/20	\$10,000/Day
3	Physical Completion	02/08/21	\$ 800/Day

Since Clark has not yet achieved any of the above completed dates as contractually required, the current estimated liquidated damages due to the Port total \$17,168,000, however, the final amount is currently unknown.

Milestone	Days Late to 11/30/22	Amount Due to Date
1	914	\$ 9,140,000
2	750	7,500,000
3	660	528,000
Calculated LDs		\$ 17,168,000

Once Clark achieves substantial and physical completion, the Port should impose liquidated damages for unexecuted delays per the executed contract terms.

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Post Audit Adjustment Contract Status

Clark Construction’s contract status as of the date of the auditor’s review after audit adjustments is as follows:

Current Executed GMP Amount through Change Order No. 66	\$ 782,904,088
Less: Overstated Subcontractor Labor & Labor Burden Rates	(4,554,000)
Less: Allowance Reconciliation	(2,273,738)
Less: Unlocated Subcontractor Credits Due	(307,135)
Less: Port Allowance Usage for Claimed Valley Electric Sick & PFML	(329,947)
Less: Written Authorization & Clark Issue Amounts Not in Alignment	(272,605)
Less: Questioned Contingency Transfer & Usage	(220,547)
Less: Unsupported Allowance and Contingency Usages	(129,799)
<i>Subtotal GMP Amount After Audit</i>	<i>\$ 774,816,317</i>
Less: Liability Insurance Charge Reduction ¹	(58,184)
Less: Payment & Performance Bond Charge Reduction ¹	(55,774)
Less: Clark Fee Charge Reduction ¹	(312,012)
Total GMP Amount <u>After Audit</u>	\$ 774,390,348

¹ Clark’s percentage-based mark-ups were included in the Valley Electric amount of \$329,947, therefore, this amount was not subject to the liability insurance, bond, or fee charges.

Please note Observation No. 1 has a range of \$4,544,000 to \$9,244,000. To be conservative, the audit is reporting the low end of the exception range. If the high end is utilized, however, the total Potential GMP Adjustments would be \$12,777,771.

APPENDIX A – READINESS EXAMPLE SCOPE OF WORK

The following is an example of the scope of work recommended to be performed as part of a readiness assessment. It is imperative that the facilitator of such assessment is objective and neutral regarding the organization’s budget and schedule goals.

PROGRAM LEVEL (OWNER) – This is an assessment of the Owner’s (and representatives) process and planning for the upcoming project or program.

- **Contract Review:** Conduct a thorough review and analysis of the Construction Manager’s proposed contract. The contract review focus will be on the reduction of risk, potential conflicts, and increased clarity. This includes:
 - Comparison of language with industry best practices.
 - Comparison of language with the actual goals of the project.
 - Reduction of risk to the project’s schedule and budget goals.
 - Identification of conflict between the main contract, general conditions, and the Specifications Division 01 (If available)
 - Management and control of contractors and subcontractors.
 - Improved accountability from the contractors and subcontractors.
 - Definitions related to reimbursable costs, general conditions, inclusions, exclusions, etc.
 - Improved transparency and justification details for:
 - Labor Rates and Burden
 - Insurance and Surety rates
 - Subcontractor Bidding
 - Change Orders
 - Contingency use
 - Allowance use
 - Allowable general conditions
 - Review the language pertaining to bidding, tracking and the costs associated with Self-performed work.
 - Identify if the project reporting requirement are adequate and provide recommendations and examples of reporting that should be required for a project of this size and nature.
- Review the selection process of the Architect, Construction Manager, and other major entities a focus on clarity, completeness, objectivity, and alignment with the project’s budget, schedule, and quality goals. During the bidding process, HPM will perform the following:
 - Review of the comparison model or scoring system that was used to quantify the selection.
 - Review of the RFP/RFQ documents used to solicit bids.

- Comparison of RFP/RFQ requirements and qualifications to the short list of bidders.
- Comparison of the values proposed to the estimated budget for the scope of work.
- Assessment of the bid comparison (or bid tabulation) of the actual bidders.
- Assessment of any expectations and clarifications accepted for the awarded subcontractor.
- Review of diligence aspects including related parties, bonding capacity, safety ratings, and reference checking.
- Budget Analysis to validate if the current value is complete and realistic for the project. This will include reviewing the basis and assumptions for each of the following:
 - Assumptions, exclusions, and clarifications
 - Estimated values in relation to the current level of completion for the design documents.
 - Escalation
 - Contingency
 - General Conditions
 - Allowances
 - Cash Flow Analysis
 - Review of all value engineering and proposed cost saving items.
- Total Project Budget Review to validate the assumptions and basis for items outside of the construction value that will affect the risk pool. This will include the following items:
 - Contingency Analysis
 - Staff estimates.
 - Other potential cost assumptions including legal, FF&E, IT, etc.
- Review of the General Project Execution plan as understood by the Owner, Construction Firm and Architect for items including:
 - Project Reporting including trending and forecasting
 - Pay Application Process
 - Project Controls
 - Change Management
 - Quality Control and Management
 - Project Performance Analysis, Trending and Forecasting
 - Roles and Responsibility Definitions
- Review of the project scheduling including the following:

- Basis of the current schedule including critical path
- Schedule tracking strategy
- Identification of internal and external risks to the project schedule.’

CONSTRUCTOR LEVEL - This is an assessment of Constructor (CM, GC, DB, etc.). This activity is performed at the beginning of the project, preferably before the contract with the CM has been signed.

- **PAYROLL REVIEW** –Review of the Construction Manager’s project management and field staff to confirm that the labor rates are correctly calculated. The two most likely configurations that BH may agree to with the CM including fixed labor rates, actual labor costs plus a fixed burden percentage. In either case the analysis of the labor rates and burden will follow a fairly similar analysis which includes the following:
 - Review of base labor costs
 - Calculation of taxes including applicable yearly limits
 - Verification of Workers Compensation insurance (WC) rate
 - Reasonability
- **PAYROLL REVIEW** –Review of the Construction Manager’s project management and field staff to confirm that the labor rates are correctly calculated. The two most likely configurations that BH may agree to with the CM including fixed labor rates, actual labor costs plus a fixed burden percentage. In either case the analysis of the labor rates and burden will follow a similar analysis which includes the following:
 - Review of base labor costs
 - Calculation of taxes including applicable yearly limits
 - Verification of Workers Compensation insurance (WC) rate
 - Reasonability of other fringe benefits including health care and retirement
 - Review of the method that CM applies Paid Time Off (PTO)
 - Review of any items that are included in the rate. HPM will provide an opinion of reasonability and appropriateness for each item
- **LEASED EQUIPMENT**
 - Review of the contract terms for rental rate requirements including maximum limits
 - Comparison of sampling of rates with the local market or national databases
 - Review of the CM’s proposed method of tracking and reporting leased equipment use and costs
- **CHANGE MANAGEMENT** – this is intended to be an alignment of the A/E, Owner’s team, and CM team to ensure that all parties are in alignment regarding the following:
 - Required supporting documentation

- Tracking and reporting
- Calculation of multipliers including fee and insurances
- CONTINGENCY AND SHARED SAVINGS REVIEW
 - Allowable use of contingency
 - Process for requesting approval of contingency use
 - Process for calculating shared savings at the conclusion of the project
- OTHER/REVIEW OF GENERAL LEDGER This is a discussion with the CM team regarding how the general ledger will be related to the each pay application as well as the final total bill. This will include a discussion of what supporting documentation will be required for monthly pay application and for the final audit.
 - Review the insurance and surety rates to determine their basis and reasonability.
 - Alignment of the expectations of reporting
 - Review of all incentives and liquidated damages
- SUBCONTRACTS REVIEW – This stage may be done at the time of the rest of the review. However, it is often performed after the CM award and during their bidding process. Each subcontractor shall be reviewed as described below:
 - Review of the RFP/RFQ documents used to solicit bids.
 - Comparison of RFP/RFQ requirements and qualifications to the short list of bidders.
 - Comparison of the values proposed to the estimated budget for the scope of work.
 - Assessment of any expectations and clarifications accepted for the awarded contractor.
 - Review of diligence aspects including related parties, bonding capacity, safety ratings, and reference checking.
 - Review of labor rates used for change orders. This will follow a similar process to the CM labor rate review. It will also include any relevant union or prevailing wage requirements.

This activity is recommended to be performed prior to the award of each subcontractor.

APPENDIX B – PRIOR AUDITS

Port of Seattle Internal Audit- Report No. 2017-14, dated November 2, 2017

The period of this review was from July 2015 through July 2017 and was performed to assess the design, operating effectiveness of internal controls, and to assure that vendors were being paid in a timely and accurate manner.

HPM, LLC- report issue date August 10, 2018

HPM was contracted by the Port's construction management contractor, AECOM to perform an interim review of the IAF Project prior to the final GMP. The objective of the engagement was to review contract terms with the Port and Clark to ensure no misunderstandings existed with the parties; additionally, to review certain costs and processes for reasonableness, including general conditions, general requirements, and insurance. The report is available upon request. .

Port of Seattle Internal Audit- Report No. 2018-14, dated December 7, 2018

The period of this review was from July 2015 through October 2018 and was performed to assure compliance with key terms of the contract, identify potential risks that might impede timely completion of the Project, and to identify opportunities for cost savings on future projects. The audit was conducted shortly after the Commission approved the GMP. The audit report can be viewed at: [Internal Audit Reports | Port of Seattle \(portseattle.org\)](#).