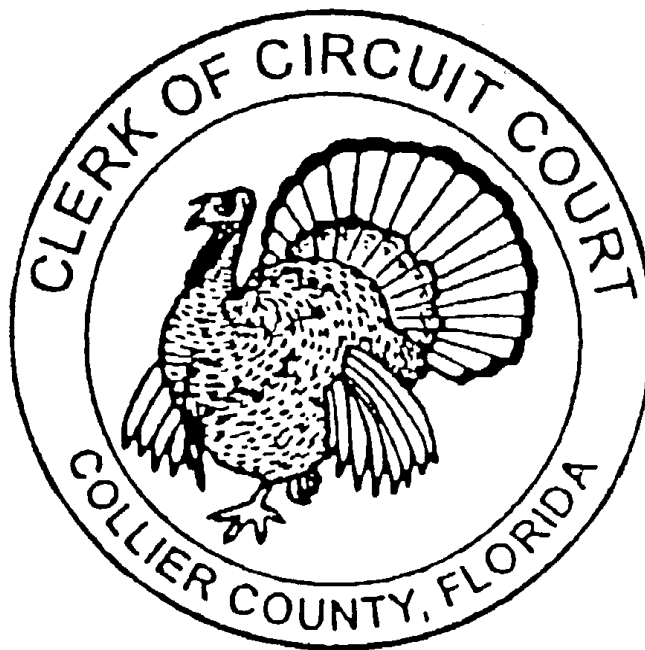


**Collier County Clerk of the Circuit Court
Internal Audit Department**

Audit Report 2002 - 3

Kraft Construction – North Naples Library



County of Collier
CLERK OF THE CIRCUIT COURT

COLLIER COUNTY COURTHOUSE
3301 TAMAMIAMI TRAIL EAST
P.O. BOX 423044
NAPLES, FLORIDA 34101-3044

Dwight E. Brock
Clerk of Courts

Clerk of Courts
Accountant
Auditor
Custodian of County Funds

December 19, 2002

Honorable James Coletta, Chairman
and Members of the Board of County Commissioners
3301 Tamiami Trail East
Naples, Florida 34112

Re: Audit of Collier County Kraft Construction of North Naples Library
(Report No. 2002-3)

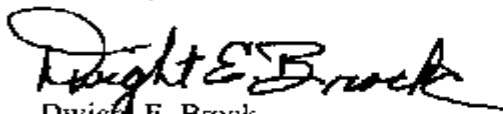
Chairman:

The enclosed report discusses the findings and recommendations of the above captioned audit performed by the Internal Audit Department. We thank the Facilities Management Department and Kraft Construction Inc., for their cooperation in the performance of this audit.

If you have any questions about this report, please feel free to contact the auditor, Ilonka Washburn, at 774-8412.

We will begin discussing these matters with Kraft Construction immediately and would ask you to direct your staff to assist us in recovering the funds owed the taxpayers.

Sincerely,



Dwight E. Brock
Clerk of the Circuit Court

DEB/sb


Enclosure

c: James V. Mudd, County Manager
Kraft Construction

Phone- (239) 732-2646
Website- www.clerk.collier.fl.us

Fax- (239) 775-2755
Email- collierclerk@clerk.collier.fl.us

Memo

To: The Honorable Dwight E. Brock, Clerk
From:  Patrick Blaney, CFE, CPA
Date: December 17, 2002
Re: Audit of Kraft Construction – North Naples Library

Please find attached our audit report on the construction of the North Naples Library. This report includes the Facilities Management Department's responses to our findings & recommendations, as well as an opinion that Facilities Management requested from the County Attorney.

Internal Audit gratefully acknowledges the cooperation and assistance of Facilities Management and other Board of County Commissioners employees.

If you have any questions about this report, kindly contact Lonka Washburn or me.

Audit Report 2002 - 3

Kraft Construction – North Naples Library

Audit Report of Kraft Construction North Naples Library

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Kraft Construction – North Naples Library

Background Information

Audit Purpose, Objectives, & Scope

The purpose of this audit was to review the Kraft Construction Company, Inc. (Kraft), contract for the North Naples Library. The specific objectives were to determine if Kraft is entitled to \$56,545.42 requested by change order number 19, to confirm the associated Labor Burden and related costs, and to verify various line items in the Job Cost Detail Report. The scope of this audit initially was to determine Kraft's contractual right to payment for change order number 19, but was expanded to include all financial aspects of the North Naples Library contract.

Audit Methodology & Procedures

This audit was performed in accordance with generally accepted government auditing standards. The Internal Audit Department interviewed the appropriate Finance Department staff responsible for processing Kraft billings, the Senior Project Manager overseeing the project, and key Kraft personnel. The auditor reviewed the financial aspects of the North Naples Library construction contract, change orders, and payments. Additionally, all related billings and change orders were examined for accuracy and compliance with the contract documents.

Background

Collier County's Capital Improvement Program (CIP) includes growth-necessitated projects scheduled in the five year Capital Improvement Element (CIE) of the County's Growth Management plan as well as capital improvements not found in the CIE. The CIP reflects all capital improvements that have been included in the current year's adopted budget. CIP projects include county roads, parks, museum improvements, storm water management improvements, airport facilities, and water and sewer utility infrastructure required by the community. Impact fees fund growth-related library, parks, and EMS projects. Disbursement funding is through the General Fund millage dedicated to the construction of capital projects.

Guaranteed Maximum Price (GMP) contracts were initiated several years ago. A GMP contract establishes a price ceiling that the contractor cannot exceed. The owner pays the contractor based on a schedule of cost breakdowns for work actually performed. The final cost of construction is then based on actual incurred costs. Should actual costs incurred exceed the contracted amount, the owner is not liable for any overage.

Unlike its private contractors, Collier County is not required to pay sales tax. The County's purchase of construction materials directly from the supplier avoids taxes otherwise payable by the contractor, and ultimately,

the taxpayers. This process foregoes the taxes that a nongovernmental agency would be required to pay thereby lowering project costs.

The North Naples Library construction contract began as a GMP contract with a fixed management fee of 5%, but was modified to allow Collier County to purchase materials directly. This contract became the County's first direct material purchase contract executed with a construction contractor. Subsequent to initial negotiations, the County determined that it could obtain further savings by entering into direct material purchase contracts with subcontractors, and adjusting the previously agreed-upon contract through change orders to reflect the decreased contract amount.

Kraft Construction – North Naples Library

Findings & Recommendations

Change Order 19 Requesting \$ 56,545.42

Change Order 19 contrary to contract specifications (Exhibit A)

After Kraft Construction Company, Inc. (Kraft), completed the North Naples Library, it submitted Change Order 19 requesting \$56,545.42. This represented the sum of unused balances in 13 Collier County direct material purchase orders. Kraft based its request on the notion that all unused funds in the County's direct material purchase orders belong to the contractor. Kraft further rationalized its request by stating that it was common practice to give unused funds to the contractor upon contract completion, as unused funds often represent "honest mistakes made during the bid process." However, contract terms clearly stated that the County was only liable to pay for materials actually used, not merely anticipated. Common practice does not justify the detrimental results that deviating from contractual terms would have on County taxpayers.

Recommendations:

- Section 5 A 3b – Cost of Materials and Equipment Incorporated into the Completed Construction of the contract states: "Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's 'option, shall be sold by Construction Manager; amounts realized, if any, from such sales, shall be credited to the Owner as a deduction from the Cost of the Work". Based on this contractual statement Change Order 19 is without any merit and no consideration should be given to any implied obligation due from Collier County. County management must only approve payments conforming to contractual terms. Collier County should not pay for Change Order 19, as it requests funds in excess of actual costs and returns nothing in exchange.

Facilities Management's Response:

Facilities will secure an opinion from the County Attorney's office.

The following Memorandum is the opinion of Thomas C. Palmer, Assistant County Attorney.

This memorandum is in reply to the attached Request for Legal Services. You have asked essentially: Does the County Attorney agree with the Auditor's conclusion stated in the subject Audit at Section 2, page 5, entitled "Change Order 19 contrary to contract specifications (Exhibit A)".

REPLY: The answer to your question is "yes." In my opinion, the answer to your inquiry is controlled by the agreement at page 4, in the section entitled "3. Cost of Materials and Equipment Incorporated into the Completed

Construction” and at page 5, in the section entitled “4. Costs of other materials and equipment, temporary facilities and related items.”

Nothing in this agreement states or implies that Collier County (the “Owner”) agreed to pay to the Contractor the cost savings with regard to materials or equipment to be incorporated into the project. The County did agree to pay a “reasonable allowance for waste and spoilage” with regard to those items, but all such unused materials must be “handed over” to the County and, if sold (at the County’s option), the monies realized from such sales are to be credited to the County. The Auditor is correct that: Unused funds in the direct material purchase orders do not belong to the contractor. Those funds belong to the County. (See Exhibit C)

Bid process tainted

Actual bids not reviewed by Facilities Management

The bid list provided to Facilities Management by Kraft is not all-inclusive and does not contain actual bids received, including bid specifications and backup, and therefore does not allow for intensive review. Exhibit B Supplemental Terms and Conditions G.5.C.4.4 states: *“The Construction Manager shall open and review all sealed bids and enter into subcontracts with those lowest responsive bidders, previously determined to be qualified by the Construction Manager and Owner.”* Analyzing the bids that led to contracts did not always reveal

the basis for contracts awarded. By not taking an active approach in the bid process, Facilities Management permitted Kraft to receive late bids from preferred vendors, as in the case of David Barron Land Development (DBLD). DBLD submitted its bid in November rather than July. When Kraft personnel were asked about this exception they explained that the previously selected lowest bidder had backed out of its bid. About that time DBLD contacted Kraft's Chief Executive Officer (CEO) for permission to submit a late bid. Kraft's Vice President of Estimating stated that the ultimate decision would always rest with the CEO of Kraft. It becomes apparent that the bid process is treated as business given to preferred subcontractors rather than to the lowest most responsive bidder, as stated in the contract.

Recommendations:

- Facilities Management should review actual bids received along with an accompanying analysis describing the history, if any, and work quality of bidders, as well as any other comments affecting award decisions.
- Facilities Management should actively monitor the bid process and participate throughout the award process to protect Collier County's interests.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Subcontracts unpaid

Three subcontractors have payment balances (Exhibit A)

Comparison of subcontracts with corresponding invoices/payments determined that many files did not account for final invoices from subcontractors. After requesting proof of payment from Kraft, all but three subcontractors had been paid. If subcontractors are not paid for any reason the money owed should be refunded to the County as it represents excess gains to Kraft Construction Company, Inc.

Mardale of America carried a balance of **\$1,062.64** even though Kraft issued check #36659 on 5/14/02. Mardale has not picked up the check, and correspondence to ensure Mardale's awareness of existence of the check could not be found.

Kraft did not issue to **MM Systems Corporation** a final check for **\$833.86**, hence, payment was not made.

Naples Lumber and Supply Co. Inc. showed the subtraction of a change order dated 6/18/01 in the amount of **(\$534.00)** when the balance carried at the time was zero.

Recommendations:

- Kraft should pay all subcontractors timely, notify them of any checks awaiting pickup, and document these actions appropriately.
- Collier County should receive either the remaining \$1,896.50 or proof that Kraft had in fact paid all subcontractors' outstanding balances.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Questionable Expenses

Expenses not provided for in the contract (see Exhibit B)

This construction contract compelled Collier County to reimburse Kraft Construction Company, Inc., for Cost of the Work defined in the contract. The County compensated Kraft for nonreimbursable overhead and profit by paying a Construction Management Fee of five percent (5%). This audit uncovered numerous expenses reimbursed to Kraft that were contrary to contract specifications. County management's inability to hold Kraft to contract terms resulted in questionable expenses of \$113,884.71

1. Labor Costs

Exhibit I of the Contract titled *Construction Manager's Staffing Schedule* provides the Project Descriptions (i.e., job titles) and hourly and weekly rates. However, merely listing staffing rates in Exhibit I does not expressly include those personnel in the reimbursable Costs of the Work. Rather, Exhibit I is simply to be viewed as a cap for possible costs.

Project Executive

Kraft billed the County for Project Executive costs of \$13,000.00 plus \$7,150.00 Labor Burden for its Chief Executive Officer. Extensive review of all invoice records, including timesheets, could not verify this cost, nor did the contract provide support for this reimbursement.

Project Secretaries

The contract provides for reimbursement of personnel stationed at the job site with the owner's written agreement. While the hours charged could be verified, the job site could not. The contract, however, expressly states that administrative personnel have to be stationed at the job site. Project Secretaries were billed to this contract in the amount of \$23,456.44, plus Labor Burden of \$12,901.04, but were stationed at the Kraft building on South Horseshoe Drive. Therefore, these expenses are overhead to Kraft, and not reimbursable.

Project Manager

Kraft included the Vice President of Estimating in its project management costs of \$11,757.96 plus \$6,466.88 Labor Burden. Project management in its definition is the cost of personnel stationed at the job site responsible for supervision of the construction. The Vice President of Estimating is neither a Project Manager nor stationed at the job site. Time spent on any bid process and ensuing contractual obligation is a cost of doing business, and therefore nonreimbursable overhead.

Recommendations:

- Contract Section 5 *Cost of the Work*, A.1. Labor Costs, does not provide for the reimbursement of Chief Executive Officers to supervise the construction site per occasional visits, nor does the contract provide for reimbursing the costs of employees stationed at Kraft's office. The contract further specifies *Costs to be Reimbursed* as:
 - b. *Wages or salaries of the Construction Manager's supervisory and administrative personnel who are stationed at the Project site with the Owner's written agreement.*
 - c. *Wages or salaries of the Construction Manager's supervisory and administrative personnel engaged at factories, workshops or on the road in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with the Owner's written agreement as in "b" above.*
- Under these provisions the **Project Executive** as well as the **Secretaries** costs are not included in the contract, and Collier County should therefore not have reimbursed Kraft for them. While the secretaries' times could be

verified, they were not, as limited in the contract, stationed at the North Naples Library construction site; rather the secretaries were stationed at the Construction Manager's principal office, and were therefore not considered part of reimbursable costs. The salary of the **Vice President of Estimating** provided at a weekly rate of \$1,600.00 should not be billed to the County, as it is not reimbursable under the contract. While the estimating and evaluation of bids is important, it is not part of managing the construction project. Timesheets verified the hours spent on this project, however the contract does not support the County's payment of this expense.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

2. Other Costs

Vehicle Allowance

Kraft offers its supervisors the option of using a company truck or receiving an allowance for using their personal vehicles. When supervisors elect the vehicle allowance, Kraft apportions the allowance to the job depending on the time spent on each site. Kraft purchased rather than leased the trucks provided to supervisors, qualifying these trucks as overhead. Allowances are based on annually adjusted rates determined by Kraft's previous Chief Financial Officer. The present rate for vehicle allowance attributed to the North Naples Library job is \$475.00 weekly, up from \$400.00 in the year 2000. The total cost charged to this contract is \$9,727.55 in perks providing Kraft's supervisors the choice of driving a company vehicle or payment of \$475.00 a week.

Recommendations:

- Section 5 *Cost of the Work* B.1. *Cost Not To Be Reimbursed* states that the Cost of Work shall not include:
 1. *Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project site.*

The Contract further specifies Section 5 *Cost of the Work*, A.1.d, Labor Cost:

d. Cost paid or incurred by Construction Manager for taxes, insurance, contributions, assessments and benefits required by law and collective bargaining agreements and, for personnel not covered by such agreements, customary benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of Work under subsections a through c, above but in any event excluding bonuses and other similar extraordinary benefits. See Exhibit I for Labor Burden Rates.

- Vehicle allowance is a benefit Kraft provided to their supervisors, not a cost of construction, and should be treated as such. Given the above provisions, vehicle allowances would at best be covered by the 55% Labor Burden stated in the contract. The \$9,727.55 charged to vehicle allowance cannot be accepted as actual cost, and should be reimbursed to Collier County.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Office Equipment and supplies

Kraft purchases all of its office equipment and supplies, and charges the cost to the job on which they are used. The charge is based on historical depreciation over the estimated life span of the equipment. Kraft charged \$2,485.00 to office equipment and supplies for a copier and fax machine located at the North Naples Library construction site.

Recommendations:

- The contract specifies in Exhibit B *Supplemental Terms and Conditions*, F.G.B.6: *The Construction Manager shall arrange for all job-site facilities as required, whereby the method of acquiring such job-site facility shall be evaluated based on cost over the life of the project. Should the Construction Manager wish to supply job-site facilities from his own equipment pool he shall first evaluate buy vs. lease. If leasing is found to be the least expensive approach, than he may lease such job-site equipment from his own equipment pool at a price not greater than the lowest of three (3) lease proposals obtained. (See Exhibit N for a list of Kraft's Rental Rates) All job-site facilities purchased, which may become the property of the Owner at the conclusion of the project, the Construction Manager shall maintain ownership responsibilities of such facilities until the Project conclusion. Reimbursement for cost of equipment will be made at the conclusion of the documented purchase price. At that time, the Construction Manager shall provide the Owner with a complete inventory for each unit of equipment. The inventory shall describe the equipment and identify the purchase price, serial number, model number and condition.*
- Given the above contract specifications, the fact that Kraft already owned the job-site facilities and did not purchase them solely for construction of the North Naples Library, as well as the lack of two other proposals indicating that Kraft's rates were the lowest achievable it appears that the artificially created rental costs are not part of actual costs per the contract, and should be reimbursed to Collier County.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Warranty

A warranty is included in the original bid provision as well as the actual contract. The bid provision shows warranty at a cost of \$12,000.00, however the contract states that implied warranties are at no extra cost to Collier County. Kraft documented expenses of \$8,239.00 attached to the accumulated warranty account incurred up to 9/4/02. Kraft charged Collier County \$12,000.00 with the provision that the difference would be used in time. The line items listed as warranty costs included cell phone bills, personnel services, Barany Schmitt Summers, and dining at Frascati's Restaurant. These charges do not look relevant to warranty costs related to the construction of the North Naples Library.

Recommendations:

- Exhibit A *General Terms and Conditions* section 22.1 of the contract states that: *If within two (2) years after final completion, any Work is found to be defective or not in conformance with the Contract Documents Construction Manager shall correct it promptly after receipt of written notice from Owner. Construction Manager shall also be responsible for and pay for replacement or repair of adjacent materials or Work, which may be damaged as a result of such replacement or repair. These warranties are in addition to those implied warranties to which Owner is entitled as a matter of law. Construction Manager shall conduct, jointly with Owner and Design Professional a warranty inspection one (1) year after the date of final completion.*
- The \$12,000.00 charged to the North Naples Construction Contract is contrary to the above contract section stating that a two-year warranty period is expressly included in the contract. Therefore, the \$12,000.00 does not represent a true cost to the contract and should be reimbursed to Collier County.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Reinspection Fees

Kraft Construction Company, Inc., charged the contract \$1,325.00 for reinspection fees incurred by the Project Manager. Collier County paid original inspection fees in one lump sum as prescribed in the contract. The contract does not, however, permit payment for defective and or nonconforming work, which is a cause directly attributable to reinspection fees.

Recommendations:

- The contract expressly states in Exhibit A General Terms and Conditions, section 24 that: *Work not conforming to the requirements of the Contract Documents shall be deemed defective Work...Construction Manager shall bear all direct, indirect and consequential costs of such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.*
- Reinspections are a direct result of defective and or nonconforming work. They do not represent a cost of construction, and should be paid by Kraft under the premise that if the work had been completed as specified, then reinspections would be unnecessary. Therefore, Collier County should not accept the \$1,325.00 as an actual construction cost, but instead Kraft should reimburse this amount to Collier County.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

3. Material Costs

As becomes apparent from the spreadsheet, numerous line items fail to meet the criteria for reimbursement. For example, **camcorder tapes, truck battery, truck service, new tires, and car washes** qualify at best as overhead. The vehicle related costs should also be considered as included in the previously addressed vehicle allowance.

Kraft charged a **Performance Bond** from a previously completed Collier County contract to the Naples Library. Kraft should have charged this expense to its appropriate contract, rather than dilute the Naples Library contract.

In two instances Kraft purchased supplies from Rinker, and applied the prompt payment discount to Collier County as provided for in the contract. Then Kraft debited the discount back to the County under the premise that the discount belonged to Kraft, and did not extend to Collier County.

The **construction fence** erected at the site is a temporary facility installed to protect the site and any additions from trespassers. Construction fences are erected prior to construction, and removed after completion of the project. The fence was damaged and Kraft charged its cost along with its subsequent repair and relocation cost of \$4,922.54 to Collier County. The damage and subsequent repair of the construction fence could have been prevented with prudent care, therefore any associated costs are attributable to the Construction Manager, subcontractors or anyone directly or indirectly employed by them.

In addition, the cost cap for the construction fence originally included in the bid was \$5,250.00, however, the actual cost billed was \$10,046.69. This exceeded the contract cost by \$4,796.69 in this Guaranteed Maximum Price (GMP) contract.

During the painting process, the painting subcontractor removed the manufacturer's numbers from the doors, which caused the additional costs of the carpentry company's coordination of each door with finish hardware prep and existing door frame, to assure that each door was installed in its proper location. Kraft will credit Collier County the cost of **Ken Bunting Carpentry's** additional work due to the painters' removal of the door numbers.

Recommendations:

- As per contract specifications, material amounts for **camcorder tapes, truck battery, truck service, new tires, and car washes** are not an actual construction cost, and should therefore not be reimbursed. The amount of \$1,144.56 qualifies as overhead, i.e., the cost of doing business, and as such is included in the contractually obligated construction management fee of 5%.
- Collier County cannot accept the **performance bond** of \$439.00 as a cost of the North Naples Library, and it should be paid back by Kraft. Contractors may submit any acceptable expense after completion of a contract directly to Collier County for reimbursement rather than add it to an unrelated contract.
- The discount provided by **Rinker** should accrue to Collier County as stated in Section 5.C Discounts, Rebates and Refunds:

1. Cash discounts obtained on payments made by Construction Manager shall accrue to Owner if (i) before making the payment, Construction Manger included them in an application for payment and received payment therefore from the Owner or (ii) Owner has deposited funds with Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager.

As this contract provided for payment first by Collier County before payment to Kraft's subcontractors, the discount of \$3.16 is due to Collier County.

- In reference to the damaged fence, the contract expressly states in Exhibit A General Terms and Conditions section 24 that: Work not conforming to the requirements of the Contract Documents shall be deemed defective Work...Construction Manager shall bear all direct, indirect and consequential costs or such correction or removal (including, but not limited to fees and charges of engineers, architects, attorneys, and other professionals) made necessary thereby, and shall hold Owner and Design Professional harmless for same.
The fence costs of \$4,922.54 exceeding the GMP contract price are not direct contract costs. Collier County was neither liable for the fence damage, nor responsible for amounts exceeding the guaranteed maximum price, and Kraft should reimburse the County for the \$4,922.54.
- County management should verify that Kraft credits Collier County the cost of additional carpentry work due to the painters' removal of the door numbers.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Contractual Issues

The issues noted below should be reconsidered for future contracts because they do not conform to industry standards, and could again prove problematic to Collier County.

Labor Burden

Collier County accepted a Labor Burden of 55% for the North Naples Library construction contract. Market analyses recommend labor burden for management, staff, and superintendents to be 25%, which comprises most of Kraft's staff for this project. The 25% would include, among other items, the superintendent's truck. The inflated rate of labor burden increases the total cost of the contract.

Recommendations:

- For future contracts it is recommended to agree on a more realistic market rate for labor burden to ensure that the costs of public projects are minimized.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Notice of non-performance & non-payment

Addison Steel and Coastal Plumbing placed notices of non-performance and non-payment against Kraft. Both owners stated in telephone conversations that payments from Kraft for services rendered were untimely. Both owners stated that in order to make payroll and other expenses it was essential for smaller companies to receive their money in a timely fashion.

Addison Steel further claimed that Kris Jane and Associates engineering company did not provide accurate drawings, thereby increasing subcontractors' non-reimbursed costs, which triggered the notices placed against Kraft.

Recommendations:

- Collier County contractors should pay subcontractors timely, per a contractually agreed to timeframe, irrespective of the County's payments to its contractors. Public announcements of the County's unwillingness to pay its contractors timely could produce negative long-term effects. If contractors are unwilling to perform government contracts the vendor selection could limit market competition, resulting in higher costs. The responsible parties should ensure that all drawings supplied to contractors and/or subcontractors are clear and precise, without room for misinterpretation.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Risk Management

Risk Management is listed as a separate cost in the bid and the final billings. Kraft has set up its internal accounting system as a cost accounting system, which attributes each cost encountered to a project. Researching industry standards indicates that risk management, as a safety feature, is included within the general overhead category.

Recommendations:

- County management should consider negotiating an overhead that includes risk management as construction safety performance.

Facilities Management's Response:

Facilities Management's findings are consistent with that of the Clerk.

Kraft Construction – North Naples Library

Conclusion

Based on the recommendations above, Kraft should reimburse \$113,884.71 to Collier County. Change order number 19 for \$56,545.42 should not be paid, as it does not represent a cost of the contract. In addition, County management should consider the time value of the monies prepaid to Kraft Construction Company, Inc., which has not been included in the above stated amount.


To preclude many of the issues in this report and to increase future savings, it is essential, given the expected growth in Collier County and growth-related costs that future contracts are written in a clear and concise manner. This contract often contradicts itself, is difficult to interpret, and does not represent the best interests of the public.

Exhibit C

MEMORANDUM

DATE: December 10, 2002

TO: Chuck Carrington, Mgr. Property Acquisition
Administrative Services, Facilities Management

FROM: Thomas C. Palmer, Assistant County Attorney 

RE: North Naples Library – Kraft Construction Contract
Audit Report #2002-3
RLS RPR 02121001

This memorandum is in reply to the attached Request for Legal Services. You have asked essentially: Does the County Attorney agree with the Auditor's conclusion stated in the subject Audit at Section 2, page 5, entitled "Change Order 19 contrary to contract specifications (Exhibit A)."

REPLY: The answer to your question is "yes." In my opinion, the answer to your inquiry is controlled by the agreement at page 4, in the section entitled "3. Cost of Materials and Equipment Incorporated into the Completed Construction" and at page 5, in the section entitled "4. Costs of other materials and equipment, temporary facilities and related items."

Nothing in the agreement states or implies that Collier County (the "Owner") agreed to pay to the Contractor the cost savings with regard to materials or equipment to be incorporated into the project. The County did agree to pay a "reasonable allowance for waste and spoilage" with regard to those items, but all such unused materials must be "handed over" to the County and, if sold (at the County's option), the monies realized from such sales are to be credited to the County. The Auditor is correct that Unused funds in the direct material purchase orders do not belong to the contractor. Those funds belong to the County.

cc: David C. Weigel, County Attorney
<http://memo/02/Carrington - Audit of Kraft Construction- Library 12-10-02>

Exhibit B

General Conditions - Questionable Expenses:

Requested By	Description	Amount	Labor Burden @ 55%	Total Cost
Job Costs				
Project Engineer	Project Engineer	\$ 2,000.00	55.150.00	\$20,150.00
Project Secretaries	Project Secretaries	25,455.44	13,901.00	35,257.18
Project Manager	Mgr. Expense - traveling	11,757.98	6,466.80	18,244.94
Other Costs				
Vehicle allowance	Vehicle allowance	9,707.55		9,707.55
Office equipment & supplies	Office equipment & supplies	2,465.18		2,465.00
Warranty	Warranty	12,600.00		12,600.00
Material Costs				
N. K. INSIDEN	TRUCK FOR DEMONSTRATION	10.19		10.58
N. K. INSIDEN	TRUCK BATTERY	78.21		78.21
Naples Dodge	TRUCK SERVICE, fuel, traction, etc.	471.54		471.54
Safety Assoc. Inc.	PERFORMANCE BOND, 60% J	454.20		454.20
Regal Truck Rental	NEW LINE, 16' x 6' x 6' (40' x 10')	400.07		1,100.07
Galaxy Car Wash	Galaxy Car Wash	44.55		44.95
Rinker Materials	Glycol in Hopper	3.14		3.16
Melroe Construction Materials	EXTRUDER & HORIZONTAL DRILLED HOLES	4,043.04		
Coller & Sons and Wire, Inc.	FRONT LOADER & INC. GOLF & PICK	578.00		4,978.54
New Building Company	CONCRETE FOR 16' x 6' x 6' REMOVING BOARD	225.00		225.00
Red Scubbing	Reinspector Cool	1,326.00		1,326.00
			Cost	\$100,665.13
			Profit 5% of cost	5,033.26
			Total Cost	\$111,812.89

Exhibit A

General Conditions - Total Expenses

Requested by:	Reimbursable Amount	Total Amount
Change Order 19		\$56,545.42
Mardale of America	\$1,062.54	
MM Systems Corporation	\$833.88	
Questionable Expenses	\$106,565.13	
	<u>Amount</u>	<u>\$108,451.53</u>
5% Profit of total Reimbursable	\$5,423.08	
Total Amount	<u>\$113,884.71</u>	
Grand Total		<u>\$170,430.13</u>