Audit of Agreement Between the Sheriff of Broward County and ANF Group, Inc.

Office of the County Auditor

Audit Report

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County Auditor
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Audit Conducted by:
Hoar Program Management, LLC

Report No. 25-04
October 31, 2024

Broward County Board of County Commissioners
Mark D. Bogen • Lamar P. Fisher • Beam Furr • Steve Geller • Robert McKinzie • Nan H. Rich • Hazelle P. Rogers • Tim Ryan • Michael Udine
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OFFICE OF THE COUNTY AUDITOR
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October 31, 2024

Honorable Mayor and Board of County Commissioners,

Based on the unique and complex nature of construction project agreements and invoicing practices, we engaged the services of an experienced and specialized third party auditor, Hoar Program Management, LLC (HPM) to conduct an audit of the Agreement Between the Sheriff of Broward County and the ANF Group, Inc. for the Design and Construction of the Broward Sheriff's Office Training Center. The objectives of the audit were to verify that the contract sum was not overstated and that the costs were reimbursable per the terms of the contract.

HPM has identified a potential overstatement of the contract Guaranteed Maximum Price (GMP) in the amount of $836,977 and potential cost exceptions totaling $1,453,027 (including the overstated GMP amounts paid as of the end of the audit period). The details of HPM's findings are contained in their report, attached herein as Appendix A. We concur with HPM's assessment, and as applicable, recommend recovery of all identified amounts. It is important to note that this audit is not a final assessment of all amounts payable, as project work remains ongoing, and additional cost reviews and end of project reconciliations will occur.

My Office has also conducted an additional but separate audit of this project, entitled, "Audit of Broward Sheriff's Office Training Center Project," resulting in the issuance of an interim audit report (Report No. 24-20) on June 12, 2024, and the final report (Report No. 24-23) issued on August 7, 2024. The objectives of this audit were to determine: if the project funding is adequate to meet anticipated project costs; overall administrative compliance with the Memorandum of Understanding (MOU) executed between Broward County and the Broward Sheriff's Office regarding this project; and, if Broward County and Broward Sheriff's Office processes and controls were complaint with the MOU and good business practices. Please refer to this report for additional information.

We appreciate the cooperation and assistance provided by the Broward Sheriff's Office, County Administration and Construction Management Division throughout the review process.

Respectfully submitted,



Bob Melton,
County Auditor

cc: Monica Cepero, County Administrator
Andrew Meyers, County Attorney
Dr. Kimm Campbell, Deputy County Administrator
Michael Ruiz, Assistant County Administrator
Kevin Kelleher, Assistant County Administrator
Trevor Fisher, Director, Public Works Department
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TABLE OF CONTENTS

INTRODUCTION 1

Scope and Methodology 1

Overall Conclusion 2

Background 2

SUMMARY OF IDENTIFIED ISSUES 4

1. Subcontractor Change Orders Were Overstated in GMP Change Orders and Have Been Overbilled to the Project by $679,252 5
2. Insurance Costs are Overstated by $157,725 in GMP Change Orders and Have Currently Been Overbilled to the Project by $115,407. 8
3. Design Builder Inappropriately Billed BSO $658,368 for Ineligible Subcontractor Default Insurance. 9

ADDITIONAL COMMENTS 12

4. Design Builder Costs to Deliver the Project are Currently in Excess of the GMP. 12
5. County is Not named as a Third-Party Beneficiary to the Agreement. 12

APPENDIX A 14

APPENDIX B 35

APPENDIX C 45

MANAGEMENT'S RESPONSE 49

INTRODUCTION

Scope and Methodology

The Office of the County Auditor conducts audits of Broward County's (County) entities, programs, activities, and contractors to provide the Board of County Commissioners, Broward County's residents, County management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

Based on the unique and complex nature of construction project agreements and invoicing practices, we engaged the services of an experienced and specialized third party auditor, Hoar Program Management, LLC (HPM) to conduct an audit of the Agreement Between the Sheriff of Broward County and the ANF Group, Inc. for the Design and Construction of the Broward Sheriff's Office Training Center (Agreement). The objectives of the audit were:

1. To verify that the contract sum was not overstated.
2. To verify that the costs were reimbursable per the terms of the contract.

To accomplish these objectives, as the County's representative, HPM was authorized, through point persons at the County and the Broward Sheriff's Office (BSO) to review all contract records and perform interviews. HPM reviewed ANF Group, Inc.'s (ANF) (Design Builder) billing files, contract files, related change order documentation, correspondence and job cost records. HPM's audit period covers all expenses from contract inception through February 29, 2024 (Pay Application No. 42) and executed Change Orders Nos. 1 through 65. HPM's final audit report is provided as Appendix A to this report.

My Office has also conducted an additional but separate audit of this project, entitled, "Audit of Broward Sheriff's Office Training Center Project," resulting in the issuance of an interim audit report (Report No. 24-20) on June 12, 2024, and the final report (Report No. 24-23) issued on August 7, 2024. The objectives of this audit were to determine: if the project funding is adequate to meet anticipated project costs; overall administrative compliance with the Memorandum of Understanding (MOU) executed between Broward County and the Broward Sheriff's Office regarding this project; and, if Broward County and Broward Sheriff's Office processes and controls were complaint with the MOU and good business practices. Please refer to this report for additional information.

Overall Conclusion

HPM has identified a potential overstatement of the contract Guaranteed Maximum Price (GMP) in the amount of $836,977 and potential cost exceptions totaling $1,453,027 (including the overstated GMP amounts paid as of the end of the audit period). The details of HPM's findings are contained in their report, attached herein as Appendix A. We concur with HPM's assessment, and as applicable, recommend recovery of all identified amounts.

It is important to note that this audit is not a final assessment of all amounts payable, as project work remains ongoing, and additional cost reviews and end of project reconciliations will occur. Accordingly, repayment of the amounts identified in this Report should not be implied to limit the County's or BSO's ability to continue its efforts to identify additional or future overstated amounts or pursue recovery of any other amounts due based upon the agreement between the parties.

Background

On December 10, 2019, Broward County executed a Memorandum of Understanding (MOU) with the Broward Sheriff's Office, entitled "Memorandum of Understanding Between Broward County and the Sheriff of Broward County Relating to the Design and Construction of the Broward Sheriff's Office Training Center." The MOU memorializes the terms and conditions of the County's funding of the design and construction of a new training center for BSO (Project). The MOU provided that "The Sheriff shall be fully responsible for Project management and will enter into all contracts relating to the Project…." Upon completion, the Project would be a County-owned facility, for use by BSO.



On February 18, 2021, BSO entered into an agreement with ANF Group, Inc. (ANF) (Design-Builder) for the Design and Construction of the Broward Sheriff's Office Training Center (Agreement). The contract established a Guaranteed Maximum Price (GMP) of $49,650,464, inclusive of direct construction costs, general job expenses, certain allowances and the Design Builder's fee. As of February 29, 2024, a total of 65 change orders have been executed between BSO and the

Design Builder. These change orders are both additive and deductive in nature, with a net value $6,128,055, increasing the GMP to its current value of $55,778,519. HPM provides a breakdown of the contract value and the Design Builder's project costs in their report (see Appendix A, page 1).

Per the terms of the MOU, initial project funding provided by the County to BSO was $33,182,126. However, through subsequent budget transfers, the County has transferred to BSO an additional $22.3 million, for a total of $55.5 million specific to the Agreement and not including additional direct payments made by BSO.

SUMMARY OF IDENTIFIED ISSUES

Within this section of the Report, for each area of concern identified by HPM, we have provided a summary of the core issues. Corrective action recommendations are included as applicable. For reference, HPM's report is provided in Appendix A; the Design-Builder's responses to HPM's report are attached in Appendix B; and HPM's responses are in Appendix C. In their response, HPM states, "reviewing ANF's response does not change HPM's position on the original audit issues."

HPM identifies two types of disallowed costs in their report (see Appendix A, page 2), 'Potential GMP [Guaranteed Maximum Price] Adjustments' and 'Potential Cost Exceptions.' Potential 'GMP Adjustments' are amounts by which the GMP was incorrectly increased, or in more general terms, amounts by which the original GMP was increased due to change orders, but the amounts in the change orders were an overrepresentation of costs necessary and/or allowable by contract to execute the change in work. The second type of disallowed costs, Potential 'Cost Exceptions,' identifies costs that should not have been charged to the Project. Potential Cost Exceptions, as presented in HPM's Report, includes items in the GMP Adjustments amount that are currently overpayments, as the excess costs in the change orders should not have invoiced. Potential Cost Exceptions also includes other unallowable elements that were invoiced as part of the original contract value.

Figure 1 summarizes these amounts, which are explained in more detail in HPM's report (Appendix A). HPM identified two potential GMP adjustments which resulted in excess increases to the GMP of $836,977 via change orders for additional subcontractor work. HPM identified $1,453,027 in potential cost exceptions (overpayments) related to costs invoiced to BSO by the Design Builder in the following areas: subcontractors' change order amounts as noted in the GMP Adjustments section (up to the amount currently invoiced for insurance) plus amounts invoiced by the Design Builder for subcontractor default insurance which did not meet BSO requirements. HPM recognizes in their report that the Design Builder's actual project costs are currently in excess of the GMP amount (i.e. costs incurred by the Design Builder exceed what they can bill). However, it is the position of our Office that all identified amounts paid for excessive charges to the project should be recovered.

Figure 1 – Total Potential GMP Adjustments and Cost Exceptions Identified by HPM

Issue	Amount
Potential GMP Adjustments	
Overstated Subcontractor Change Orders	$679,252
Overstated Insurance	$157,725
Total GMP Adjustments	**$836,977**
Potential Cost Exceptions	
Overstated Subcontractor Change Orders	$679,252
Overstated Insurance*	$115,407
Subcontractor Default Insurance Criteria Not Met	$658,368
Total Cost Exceptions	**$1,453,027**

Source: Office of the County Auditor representation of information in HPM Report.

**This amount is lower than the GMP Adjustment Amount of $157,725 as the full amount noted in change orders has not yet been invoiced.*

1. Subcontractor Change Orders Were Overstated in GMP Change Orders and Have Been Overbilled to the Project by $679,252.

As identified in the HPM Report (Appendix A, pages 3-7), HPM reviewed change orders for subcontractor work and identified change orders for two subcontractors, where excessive labor costs and unallowable markup percentages were applied, resulting in overbillings as well as an overstatement of the increased GMP amount. As shown in Figure 2, these amounts, inclusive of various mark-ups, total $679,252. Within their report, HPM provides various contract citations regarding allowable change order costs and markup, as well as detailed narrative and calculations which support their position that these amounts are overstatements.

Figure 2 – Overstated Change Order Amounts Identified by HPM

Issue	Amount
Subcontractor 1 Hourly Wage Overstatement	$537,709
Subcontractor 1 Unallowed SDI	$40,089
Subcontractor 2 Fee Overstatement	$56,500
Subcontractor 2 Unallowed Bond	$1,742
Sub Total	**$636,040**
[Design Builder] Fee (5.0%)	$31,802
Insurance (.869%)	$11,411
Total Overstated Change Orders	**$679,252**

Source: Office of the County Auditor representation of information in HPM Report.

For Change Orders related to the first subcontractor, HPM identified multiple issues. First, Subcontractor 1 presented a 'loaded' hourly wage, inclusive of benefits for its electrical labor as $95 per hour. HPM considered the $95 hourly rate in the context of Section 7.3.4 the Agreement, which states, "costs shall be in amounts no higher than those prevailing in the locality of the Project."

As detailed in their report, HPM considered the Broward County prevailing wage, in the contract and most recent State of Florida publication; 'Zip Recruiter' webpage information regarding journeyman wages for Fort Lauderdale; and actual salary rates reported by other electrical contractors in other audits completed for work in Broward County. Using the highest salary rate from these sources, and adjusting for increases, fringe benefits and taxes paid by the employers, HPM estimates that the hourly labor costs, inclusive of benefits and employer paid taxes, included in the change orders should be no more than $61 per hour. Based on HPM's analysis, Subcontractor 1's misrepresentation of its labor costs resulted in an overstatement of labor costs across multiple change orders. HPM questioned the Design Builder about these costs, and the Design Builder indicated that they investigated these costs, which they present as in accordance with the prevailing wage rates. No actual labor cost information was provided to HPM during their audit.

Additionally, HPM noted that when presenting its costs to complete the change order work, Subcontractor 1 used labor hour installation estimates based on the National Electrical Contractors Association (NECA) "Manual of Labor Units," using the 'very difficult' category of work. Subcontractor 1 also applied additional markup percentages to their estimated labor costs for foreman, clean up, safety and material handling expenses; however, as noted by HPM, the NECA model, in using the 'very difficult' category, considers safety and material handling to have already been included in the labor estimate. As a result, these markups are considered duplicative and a further overstatement of costs. HPM states they did not assess if the application of 'very difficult' category was appropriate for the specific work.

HPM also found that Subcontractor 1 added a 1.5% charge for Subcontractor Default Insurance (SDI) coverage, which is not a subcontractor cost, and is considered by HPM as an additional unallowable mark up within the change order.

For Change Orders related to Subcontractor 2, HPM identifies two concerns. Subcontractor 2 included a total of 20% mark up on the change order costs. Section 7.3.7.1 of the Agreement states, "In no event shall the aggregate of all Subcontractors overhead and profit exceed fifteen percent (15%) of the net change(s) to the Subcontractors' cost of work." Additionally,

Subcontractor 2 charged mark-up for bonds on three change orders, which HPM states is not an additional reimbursable cost for a subcontractor.

HPM calculated the total overstated GMP amount of $679,252 based on the amounts for each of the identified issues, plus additional mark-ups applied by the Design Builder for their fee and insurance (see Figure 2 and Appendix A, page 7).

In their response, the Design Builder (Appendix B) presents that these change orders were negotiated amounts, and the above analyses of subcontractor costs are not applicable. In their rebuttal response (Appendix C), HPM notes that the Design-Builder's response does not change their position and reiterates that during the course of the audit, no additional supporting information or evidence to support the potential validity of the identified areas of overpayment was provided to them.

Further, it is important to note Section 20.11 of the Agreement, Truth in Negotiation Certificate (TIN), requires accurate representations of costs, and should amounts be identified which increased the contract costs due to inaccurate information, compensation should be reduced accordingly. Language is as follows:

> "Design/Build Firm's compensation under this Contract is based upon representations supplied to Sheriff by Design/Build Firm, and Design/Build Firm certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Design/Build Firm's compensation are accurate, complete and current at the time of contracting. Sheriff shall be entitled to recover any damages it incurs to the extent any such representation is untrue."

This requirement would extend to the accurate representation by the Design Builder of all costs in proposed change orders, including labor costs and estimates of labor efforts, application of mark up for additional labor related costs, adherence to contract, and presentation of only billable elements. It appears that each of the overstated cost issues identified by HPM were not accurate representations to BSO as additional costs of completing change order work.

We recommend management:

A. Work with BSO to require the Design Builder to provide Subcontractor 1's actual labor costs to determine if the presentation of $95/hour for 'Electrician' labor classification was a reasonable basis for presentation of change order costs. If such labor costs are not supported, Management should work with BSO to recover the $679,252 (or other amount as applicable) in overstated and overbilled change order costs paid to the Design Builder

and consider issuance of a deductive change order to memorialize the reduction of the overstated amount in the approved GMP.

B. Ensure that project management for future capital projects includes appropriate review of proposed change order costs, including verification of salary costs, calculation methodologies and accuracy and appropriateness of applied markup expenses.

2. Insurance Costs are Overstated by $157,725 in GMP Change Orders and Have Currently Been Overbilled to the Project by $115,407.

As identified in HPM's Report (Appendix A, pages 8-9 and pages 13-14), proportional increases to insurance costs have been overrepresented in change orders by $157,725. Of this amount, $115,407 has been invoiced and paid to the Design Builder by BSO as of March 31, 2024, Pay Application No. 42R.

As shown in HPM's report, the original Agreement, Section 5.1.2.c established an allowable combined charge of $890,541 for Builder's Risk Insurance, General Liability Insurance, Performance and Payment Bond, which was enumerated in Exhibit G. Per the Agreement, this amount was payable in full with the submission of the Design Builder's first progress payment.

As detailed in the 'Potential GMP Adjustments' section of their report (Appendix A, pages 8-9), HPM considered the initial established insurance billable value of $890,541 and divided it by the original GMP value of $49,650,464 and calculated 1.794% as the effective rate of for insurance costs for the Project. HPM applied this same percentage rate to the adjusted project value of $70,793,753, which represents the increased GMP value after various change orders ($55,778,519), plus the credited value of direct purchase materials ($15,015,234), as these materials are still required to be insured by the Design Builder. Based on HPM's calculations, the present maximum 'allowable' cost of insurance is $1,269,771 (through Pay Application 42R, for costs through February 29, 2024). However, the GMP currently includes an insurance value of $1,427,496, resulting an overstated GMP amount of $157,725.

As discussed by HPM in the 'Details of Potential Cost Exceptions' portion of their report (Appendix A, pages 13-14) as of Pay Application 42R, the project value basis for insurance calculation is $66,225,482, resulting in an overpayment to date amount of $115,407 of the $157,725 overstated GMP amount.

As stated to HPM during the audit, and as noted by the Design-Builder in multiple sections of their Response (Appendix B), the Design Builder anticipates a reconciliation of insurance costs at the conclusion of the project. In their response (Appendix C) HPM stands by their position that

increases to insurance costs should reflect the same proportional cost of 1.794% as established in the beginning of the agreement.

While the Design-Builder's response essentially acknowledges the existence of overcharges, potential overstatements of actual cost should not have been included in change orders or submitted for reimbursement via pay applications. Further, reconciliation processes or corrections to invoicing do not need to wait until the end of a project but should occur as soon as such overbillings are realized.

We recommend management work with BSO to:

A. Take immediate action to secure the recovery of $115,409 overpaid by BSO for insurance costs through March 31, 2024, as identified by HPM.

B. Calculate and recover any additional recovery amounts potentially due to BSO for any continued insurance overcharges after Pay Application 42R, as well as ensuring all remaining project invoices are submitted with correct insurance charges.

C. Consider execution of a deductive change order in the full amount of the overstated change, $157,725.

3. Design Builder Inappropriately Billed BSO $658,368 for Ineligible Subcontractor Default Insurance.

As identified in the HPM Report (Appendix A, pages 10-13), the Design Builder inappropriately charged BSO $658,368 for Subcontractor Default Insurance (SDI), which did not meet requirements for naming both BSO and County as additional insureds on the policy. It is noted that the Agreement does not include any provisions or line-item considerations for SDI insurance; however, it appears this was a change later agreed to in concept by BSO and the Design Builder.

During the audit, the Design Builder represented to HPM that the value of obtaining SDI was deducted from subcontractor trades at the 'industry-wide standard' rate of 1.5% and the resultant value, $616,472 was to be invoiced by ANF to BSO for costs relating to obtaining the SDI coverage instead. This change was originally submitted to BSO by the Design Builder via Pay Application 10, which contained adjustments to the project schedule of values (removing amounts from subcontractor trades and creating a new line for SDI amounts) for a zero net change to the overall GMP. According to emails obtained by HPM, BSO indicated to the Design Builder on April 5, 2022 (see copy of email in Appendix A, page 18), that this change could move forward, with submission of the following three requirements: 1) confirmation that the insurance as documented in the Pay Application was for the entire project; 2) BSO and Broward County to

be added as additional insured on the policy, and 3) that a no cost/no time change order is submitted to document the change in the schedule of values.

Based upon HPM's review, the invoiced amount of $616,472 is not eligible for payment, as the Design Builder failed to have BSO and Broward County named as additional insured. This is an important requirement established by BSO, which would have provided protection for both BSO and County should a subcontractor default. HPM reviewed the SDI policy obtained by the Design Builder from Lloyd's and Aspen UK, Ltd and, as noted in HPM's report, the policy endorsement only includes BSO as a 'Scheduled Entity' and specifically notes "upon legal default and termination of the Insured for Insolvency only, we will indemnify the Scheduled Entity below for any Loss covered by the Policy." This limited endorsement does not provide adequate protection to BSO. Further, Broward County does not appear to be listed at all on the policy. This endorsement also does not meet the general insurance requirements of Article 8 of the contract. While Article 8 of the Agreement does not specifically discuss SDI insurance, it is clear in requiring all other forms of insurance to name BSO and County as "additional insureds" and this was a conditional requirement stated to the Design Builder by BSO.

BSO approved Change Order No. 4. for "$0" on April 27, 2022. As shown in Figure 3, the Change Order itself provides no detail. It does not properly identify: the calculation of the 1.5% deduction to subcontractor's costs; the final amount deducted from subcontractor's costs; the amount of the Design Builder's proposed cost of obtaining the SDI policy(ies) re-added to the total cost; or the deduction and/or addition any applicable mark-ups to such costs.

Figure 3- Change Order No. 4 does not show details of transactional changes.

DESCRIPTION	AMOUNT
APPROVED COR#5 - Subcontractor Default Insurance	$0.00
	$0.00
Change Order Total:	**$0.00**

Source: Excerpt from Executed Change Order No.4.

Although the policies obtained by the Design Builder do not meet BSO's stated 'additional insured' requirements and are not eligible for payment, as part of their review, HPM also considered the actual costs of the two policies obtained by the Design Builder. HPM determined the total premiums paid by the Design Builder were $586,420. When questioned about this discrepancy, ANF stated to HPM that these expenses are reconciled at the end of the project.

HPM also notes that one of the Design Builder's SDI policies was obtained from National Risk Management Insurance, which provided for deductible reimbursement insurance and excess liability coverage. This entity is identified by HPM as a 'captive insurance company,' that is owned and controlled by its insureds, and typically pays rebates to its owners (the construction firms) based on underwriting profits. Accordingly, even if the cost of the Design Builder's insurance expenses were allowable, it is likely that the Design Builder would get 'rebates' or other monies back based on premiums paid, which would, in turn, be due back to BSO upon receipt, per Section 7.3.4.4(b) of the Agreement, regarding Change Orders, which states, "Premiums paid as part of Design/Build Firm's cost shall be net of trade discounts, volume discounts and other adjustments."

In their response to HPM's audit, the Design Builder (Appendix B) presents the position that the above requirements were not specified in the contract and the requested endorsements were not possible. In their response (Appendix C), HPM notes that if the 'Additional Insured Endorsement,' a predicated condition of the change to SDI coverage was not achieved, the Design Builder, at a minimum, was required to disclose same to BSO, as part of their compliance with Section 20.11, Truth in Negotiation Certificate. HPM further notes that the 1.5% of costs reallocated within the project budget for SDI is a rate in excess of their experience regarding 'industry standards'; that the insurances obtained were not approved by the Contract Administrator; and portions of the insurance was obtained through a captive insurance company.

We concur with HPM's assessment that the payment of $658,368 to the Design Builder for SDI insurance ($616,472, plus mark-ups) is not allowable based on the policies' failure to meet the general requirements of the Agreement, as well as the specific requirements of BSO.

We recommend management:

A. Direct BSO to immediately recover, through budget adjustments or other means, amounts paid to the Design Builder for ineligible SDI insurance.

B. Ensure that project management for future capital projects includes appropriate oversight and monitoring of risk and compliance, including review and approval of all contractually required insurances, and memorializing such changes in properly detailed change orders or contract amendments, as applicable.

ADDITIONAL COMMENTS

This section of the Report provides additional information identified by my Office relating to the project and the Design Build Agreement.

4. Design Builder Costs to Deliver the Project are Currently in Excess of the GMP.

As noted in HPM's report (Appendix A, pages 1 and 15), the Design Builder's total costs to deliver the Project (inclusive of current expenditures and subcontract obligations) are currently in excess of the adjusted Guaranteed Maximum Price (GMP), indicating that the Design Builder may be in a loss position at conclusion of the Project. Based on HPM's calculations, this loss position continues after the recommended reductions to the GMP and the disallowance of all amounts identified as cost exceptions by HPM.

This is important information that BSO and County should be aware of in any final reconciliations of the project's final payment applications, and/or when reviewing any potential additional change order requests or claims that may be submitted by the Design Builder. Unless such claims are for reasons specified by and submitted in accordance with the requirements of Article 7 of the Agreement, any Design Builder costs in excess of the adjusted GMP are the responsibility of the Design Builder.

5. County is Not named as a Third-Party Beneficiary to the Agreement.

The Agreement between BSO and the Design Builder fails to name County as a third-party beneficiary to the Agreement, as required by the MOU. This is a significant concern, as the County is clearly an intended beneficiary of the project, as the County has provided over $55 million in funding for this facility and will be the owner of the buildings.

The MOU between County and BSO specifically states in Section 2.2:

> "… the Sheriff shall be fully responsible for Project management and will enter into all contracts relating to the project, with the County being an express third-party beneficiary thereof, unless the County, in writing executed by the County Administrator, elects otherwise."

However, Section 20.16 of the Agreement, states,

> "Neither Design-Build Firm nor Sheriff intends to directly or substantially benefit a third party by this Contract. The Parties agree that there are no third-party beneficiaries to this Contract (other than Design/Build Architect/Engineer to the extent this Contract expressly states any rights of remedies)."

Neither County Administration nor BSO provided our Office with any evidence indicating the County Administrator elected not to have such third-party designations in any agreements relating to this project. BSO has represented to our Office that they used the design build form agreement attached as an exhibit to the MOU, which contained the excerpted Section 20.16 language above. However, proper due diligence on the part of BSO would have included updating this language in compliance with the MOU, or at a minimum, seeking confirmation of intent with County Administration. Similarly, County should have ensured BSO included such language in the Agreement with the Design Builder. Report No. 24-23, Opportunity for Improvement No. 8, provides additional information regarding issues in the review and approval of the Design Build Agreement.

This oversight is significant in relation to the findings of this report, which includes elements for recovery of funding provided to BSO by the County. The absence of required language may not adequately protect the County's rights or remedies typically available to third party beneficiaries.

We recommend management retain full authority and oversight for future construction of County-owned capital assets.

APPENDIX A

Broward Sheriff's Office

Training Center

Final Construction Audit

ANF Group, Inc.

HPM, LLC

Vinson Chapman
Scott Jaye
Allan Meyers

July 2024

Audit & Contract Services

Broward County Sheriff's Office – Training Center
Final Construction Audit – ANF Group

Table of Contents

	Page Number
Contract Status and Background Information	1
Audit Scope and Objectives	2
Summary of Potential GMP Adjustments	2
Summary of Potential Cost Exceptions	2
Detail of Potential GMP Adjustments	3
Detail of Potential Cost Exceptions	10
Post Audit Contract Status	15
Appendix A: Pomeroy Subcontract Change Orders	16
Appendix B: SDI Approval Email	18

Broward County Sheriff's Office – Training Center
Final Construction Audit – ANF Group

Contract Status and Background Information

Broward Sheriff's Office (Project Manager) chose ANF Group, Inc. (ANF, Design/Build Firm) as the Design/Build Firm for the new Training Center in Ft. Lauderdale, FL. The parties executed a Design/Build Agreement with a Guaranteed Maximum Price (GMP) establishing contract terms signed February 18, 2021. The contract terms included:

- A fixed fee of $1,603,469 payable monthly in proportion to the percentage of the Work accomplished (§5.1.1).
- Fixed General Conditions, Design Services, insurance, and bond costs of $5,759,524. General Conditions were payable on a straight-line basis; Design Services on a percent complete basis; insurance and bond costs were payable in full with the first progress payment (§5.1.2, Exhibit G).
- Reduction in direct costs of construction do not cause a reduction to the fee or General Conditions costs (§5.1.3).

The status of ANF's records ***before*** any potential cost exceptions as of the most current billing provided for the audit, Payment Application No. 42 dated March 31, 2024, and costs through February 29, 2024:

Executed Design/Build GMP Contract signed February 18, 2021	$49,650,464
Change Orders (1-65)	6,128,055
Current Contract Value	$55,778,519
Job Cost Detail – February 29, 2024	$47,909,893
Less:	
Job Cost Insurance and Bonds	(1,935,749)
Water Leak Incident	(467,227)
Add:	
Billed Fixed General Conditions	2,134,082
Billed Fixed Design Services	3,663,874
Add Bonds/Insurances:	
Billed GLI	568,546
Billed SDI	616,484
Billed Builder's Risk Insurance	401,120
Billed CCIP	295,131
Billed Bonds	387,384
Subtotal	2,268,665
Adjusted Job Cost	53,573,538
Allowed Fee[1]	2,625,442
Adjusted Job Cost & Fee	$56,198,980
Subcontract Commitments Not in Job Cost Detail	1,941,243
Adjusted Job Cost, Fee & Subcontract Commitments not in Job Cost	$58,140,223
Costs in Excess of Current GMP	$(2,361,704)

[1] ANF has reduced certain line items in its payment application schedule of values, substantially its fee, to keep their billed amount within the GMP value. The "Allowed Fee" was calculated from the fixed amount plus the 5% allowed for the net change in fee from the change orders through #65 ($1,603,469+$1,021,973). This represented a more complete cost picture as of the audit date.

Broward County Sheriff's Office – Training Center
Final Construction Audit – ANF Group

Audit Scope and Objectives

The scope of our audit included the review of the Design/Build Firm's billing files, contract files, related change order documentation, correspondence, and job cost records to:

1. Verify that the contract sum was not overstated.
2. Verify that costs were reimbursable per the terms of the contract.

Summary of Potential GMP Adjustments

The potential GMP adjustments listed below would be the basis for reducing the executed contract value.

1.	Overstated Subcontractor Change Order Charges	$ 679,252
2.	Overstated Insurance	$ 157,725
	Total	$ 836,977

Summary of Potential Cost Exceptions

The potential cost exceptions listed below would be the basis for reducing the amount billed to the Owner to date.

1.	Overstated Subcontractor Change Order Charges	$ 679,252
2.	Subcontractors Default Insurance (SDI) Criteria Not Met	658,368
3.	Overstated Insurance	115,407
	Total	$ 1,453,027

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Final Construction Audit – ANF Group

Detail of Potential GMP Adjustments

1. Overstated Subcontractor Change Order Charges

Review of the Owner Change Orders and supporting subcontract documentation showed two subcontractors, Pomeroy Electric, Inc. (Pomeroy) and Tropic Mechanical Contractors (Tropic) change order costs exceeded contractual terms.

The following contractual terms apply:

Article 7 – Changes in the Work or Terms of Contract Documents

§7.3.3 The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

§7.3.3.3 On the basis of the "cost of work," determined as provided in Sections 7.3.4 and 7.3.5, plus a fee for overhead and profit that is determined as provided in Section 7.3.6.

a) Whenever the cost of any work is to be determined under "cost of work," Design/Build Firm will submit in a form acceptable to Contract Administrator an itemized cost breakdown together with supporting data.

§7.3.4 The term "cost of work" means the sum of all direct costs necessarily incurred and paid by Design/Build Firm in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by Sheriff and Design/Build Firm as identified in Exhibit C, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Section 7.3.5.

§7.3.4.1 Payroll costs for employees in the direct employ of Design/Build Firm in the performance of the Work described in the Change Order under schedules of job classifications agreed upon by Sheriff and Design/Build Firm. Payroll costs for employees not employed full time on the Work covered by the Change Order shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, benefits, bonuses, sick leave, and vacation and holiday pay application thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing the Work after regular working hours, on Sunday or legal holidays, shall be included in the above to the extent authorized by Sheriff.

§7.3.4 The term "cost of the work" shall not include any of the following:

§7.3.5.4 Cost of premiums for all insurance whether or not Design/Build Firm is required by this Contract to procure and maintain the same, except for additional insurance required because of changes in the Work.

§7.3.5.5 Other overhead or general expense costs of any kind.

§7.3.7 If a subcontract is on the basis of cost of the work plus a fee, the Subcontractor's fee for overhead and profit shall be determined as follows:

§7.3.7.1 In no event shall the aggregate of all Subcontractors' overhead and profit exceed fifteen percent (15%) of the net change(s) to the Subcontractors' cost of the work. If a Subcontractor is owned by an affiliate of, or managed by, Design/Build Firm, or work is to be "self-performed" by Design/Build Firm, no overhead and profit will be allowed on that cost. If there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all the Subcontractors' including any tiered Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed fifteen percent (15%) of the aggregate net change to the Subcontractors' cost of the work.

§20.11 Truth-In-Negotiation Certificate. Design/Build Firm's compensation under this Contract is based upon representations supplied to Sheriff by Design/Build Firm, and Design/Build Firm certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Design/Build Firm's compensation are accurate, complete, and current at the time of contracting. Sheriff shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

Pomeroy – Pomeroy's change orders exceeded allowable costs in two areas, 1) labor cost of $95 per hour appeared "higher than those prevailing in the locality of the Project" (thereby effectively adding OH & P markup in excess of the maximum allowable by contract)," and 2) Pomeroy applied a 1.5% unallowable charge for SDI.

1) The Pomeroy subcontract required minimum wage compliance (Attachment B) with the State of Florida, Broward County prevailing wage, which the subcontract showed an electrician rate of $32.63 per hour and a fringe of $12.23 per hour. Additionally, The Zip Recruiter website showed an hourly wage, excluding fringe, of $34.95 for a journeyman electrician in Fort Lauderdale was in the 75th percentile, noting wages above that were outliers.

   The most current publication for State of Florida prevailing wages showed electrician at $35.40 per hour with a fringe rate of $12.98. Using that as the base amount, HPM estimated a reasonable hourly wage rate to be $51.92 per hour based upon this and the corroborating Zip Recruiter evidence:

Hourly Wage	$35.40
Fringe	12.98
Taxes (10% of hourly wage)	3.54
	$51.92

   HPM was also provided information from another recent Broward County project that showed a substantial electrical subcontractor had a supported, average hourly base wage of $41.50 per hour. Using that hourly base wage yielded a higher estimate of $61.00 per hour as the fully burdened rate:

Hourly Wage	$41.50
Allowable Rate Increase (5%)	$2.07
Adjusted Hourly Wage	43.57
Fringe (30%)	13.07
Taxes (10% of hourly wage)	4.36
	$61.00

To be conservative, the $61.00 burdened hourly rate was used in HPM's calculation of burdened, estimated hourly labor costs.

There were 24 subcontract change orders (SCO) for Pomeroy. The analysis excluded two SCOs applicable to the "Water Leak Incident," for which ANF represented did not bill the Project and HPM excluded from the Job Cost Detail. And SCO 8, details had to be estimated as a portion of the work was performed by other subcontractors. ANF showed a total adjustment of $536,774 to Pomeroy's original SCO of $1,663,298 for a net amount applicable to SCO 8 of $1,126,524. *See Appendix A for SCO details.*

After those adjustments to the total SCOs, Pomeroy's change orders included additions to journeyman labor costs of $1,017,974 on 10,715.51 hours (10,715.51 x $95 = $1,017,974). Also included in the SCOs were the following estimates for additional costs based on the journeyman totals:

Foreman	15.0%
Clean Up	4.0%
Safety	3.5%
Material Handling	3.0%

Analysis of the total applicable change orders showed these percentage guidelines were not consistently followed. As such, the actual calculated percentages (of total labor) for these additional costs included in the SCOs were:

Foreman	11.4%
Clean Up	3.05%
Safety	2.67%
Material Handling	2.28%

Recalculating the labor based on HPM's estimated burdened hourly cost showed labor costs to be $653,646 (10,715.51 x 61.00). Additional costs for foreman and clean-up were applied at the actual percentages from Pomeroy's original SCOs.

The Pomeroy labor installation estimates conformed to the "NECA Manual of Labor Units" using the "very difficult[2]" category, which includes a component for material handling and, implicitly, a component for safety in the journeyman labor hour estimate. As such, the inclusion of these two items in their estimate is a duplication of costs and have been excluded in HPM's recalculated estimate of costs below; this estimate yielded an overstatement of cost of $537,709 before ANF mark-ups:

[2] The NECA Manual of Labor Units estimates installation hours in three categories – normal, difficult, and very difficult. The "very difficult" category is acceptable when conditions associated with the installation of an item will permit substantially less than the maximum productivity of the electricians on a typical project. The hours allowed by the "very difficult" category are about 50% greater than the "normal" category.

	Original	Recalculated	Overstated
Labor	$1,017,974	653,646	$ 364,328
Foreman (11.4%)	116,299	74,516	41,783
Clean Up (3.05%)	31,013	19,936	11,077
Safety	27,137	-	27,137
Material Handling	23,248	-	23,248
	$1,215,671	748,098	$ 467,573
Fee (15%)			70,136
			$ 537,709

2) Pomeroy applied a 1.5% mark-up to the total charge on the SCO for subcontractor default insurance (SDI), which is not a reimbursable charge for a subcontractor. SDI was obtained by the Design/Build Firm, ANF. It is not necessary for SDI to be obtained by any entity other than the Design/Build Firm. The impact is an overstatement of the GMP and Cost of $40,089, before ANF mark-ups. *See Appendix A.*

HPM asked ANF about both of these issues; specific questions asked in an email dated April 18, 2024, and ANF's subsequent responses were:

- Pomeroy Electric included a mark-up of $24,580.75 for SDI in OCO27 (p. 159) and, after inspecting an additional 4 Pomeroy SCOs, it appears they include a mark-up of 1.5% for SDI on all change orders. Explain why that would be a valid mark-up. "SDI was agreed upon with ownership in lieu of subcontractor bonds, and this is the applicable mark up for SDI."
- Pomeroy Electric, OCO 27, priced every position at $95 per hour – electrician, foreman, safety, clean-up, material handling and BIM operator. Which of these are included in the 15% fee and does one labor rate make sense? "In accordance Pomeroy electric the $95 per hour pertains to the prevailing wage rates they were subjected to and does not distinguish between their employees (all subjected to the same wage rate)."
- Did ANF investigate the $95 per hour for Pomeroy labor to ensure it was reasonably accurate? "Yes"

Their answers failed to address why Pomeroy used a labor cost estimate in excess of its actual cost and why they, as a subcontractor, charged for SDI.

Tropic – Three of Tropic's SCOs included a sub-subcontractor, United Sheet Metal, which included a 10% mark-up (MU) on their cost. Tropic also marked up the cost 10%, which was contrary to the total percentage overhead and profit limit (OHP) of 15% as stated in §7.3.7.1 of the Contract. Allowing Tropic a 5% mark-up on the United Sheet Metal sub-subcontract amounts showed an overstatement of the GMP and cost of $56,500, before ANF mark-ups:

SCO	Sub-subcontractor	Cost	10% MU	Total	Tropic 10% MU	Tropic 5% MU	Overstated
10	United Sheet Metal	$ 857,198	$ 85,720	$ 942,918	$ 94,292	$ 47,146	$ 47,146
10	United Sheet Metal	16,111	1,611	17,722	1,772	886	886
12	United Sheet Metal	68,154	6,815	74,969	7,497	3,748	3,748
12	United Sheet Metal	56,744	5,674	62,418	6,242	3,121	3,121
12	United Sheet Metal	7,718	772	8,490	849	425	425
14	United Sheet Metal	21,356	2,136	23,492	2,349	1,175	1,175
		$ 1,027,281	$ 102,728	$ 1,130,009	$ 113,001	$ 56,500	$ 56,500

The specific question posed to ANF Management regarding Tropic and their subsequent response was:

- Tropic Mechanical took a 10% mark-up on their SCO10; a material provider, United Sheetmetal, also took a 10% mark-up. Contract §7.3.7.1 limits the aggregate overhead and profit for all subcontractors to 15%. Did ANF inspect change orders to ensure the total mark-ups were compliant with the Contract? "ANF reviews all change orders prior to submission. As per Tropic Mechanical, although United Sheetmetal is a tiered subcontractor trade, the sheet metal and insulation subs are major providers in their own right and entitled to their normal markup."

ANF's response failed to address the question of why the combined mark up for the tiered work was greater than the maximum allowed by contract.

Additionally, Tropic included a mark-up on three SCOs (12, 13 and 14) for a bond, which is not an allowable cost as the Design/Build Firm obtained an SDI policy for the project and Tropic was excluded from providing a bond. The impact is an overstatement of the GMP and cost of $1,742.

Including the ANF mark-ups to the subcontractor overstatements of GMP showed a total overstatement of $679,252:

Pomeroy Hourly Wage Overstatement	$ 537,709
Pomeroy Unallowed SDI	40,089
Tropic Fee Overstatement	56,500
Topic Unallowed Bond	1,742
	636,040
Fee (5.0%)	31,802
Ins. (1.794%)	11,411
Total Overstatement	$ 679,252

2. Overstated Insurance

Per the contract (Article 5.1.2.c),

> *"Insurance and Bond Costs in the amount of Eight Hundred Ninety Thousand, Five Hundred Forty-One Dollars **($890,541.00)** as set forth as items titled Builder's Risk Insurance, General Liability Insurance and ANF's Performance and Payment Bond as enumerated on Exhibit G which shall be payable in full and included within Design/Build Firm's first progress payment."*

Exhibit G (initial GMP) breaks down the insurance amounts as follows:

General Liability Value (Exhibit G)	$	401,329
Bond Value (Exhibit G)	$	273,449
Builder's Risk Value (Exhibit G)	$	215,763
Total	$	890,541

Based on the initial GMP of $49,650,464, the effective rate for the lump sum insurance above is **1.794%** ($890,541/ $49,650,464).

Currently, as of 4/11/2024 (OCO 65), the basis for the insurance calculation is $70,793,753. This amount includes credits for DPO through OCO 65 ($15,015,234) plus the current GMP value through Owner change order 65 ($55,778,519). ANF agreed there would be an insurance reconciliation similar to HPM's below at project end. Based on the current billing, the Owner is due a reconciliation credit of 157,725 per the following calculation:

Initial GMP	$ 49,650,464
Changes (01-65) as of 04/11/24	$ 6,128,055
Current GMP	$ 55,778,519
DPO Credits in OCOs (01-65)	$ 15,015,234
GMP + DPOs (Includes insurance)	$ 70,793,753
Fixed Insurance per Article 5.1.2/ Exhibit G	$ 890,541
Fixed Insurance as a % of Initial GMP	1.794%
General Liability Value (Exhibit G)	$ 401,329
Bond Value (Exhibit G)	$ 273,449
Builder's Risk Value (Exhibit G)	$ 215,763
Total	$ 890,541
GMP + DPOs (Includes insurance)	$ 70,793,753
Fixed Insurance as a % of Contract Value	1.794%
GMP Insurance @ 1.794	$ 1,269,771
Initial Insurance in GMP	$ 890,541
Insurance Included in Changes (01-65)	$ 536,955
Current Insurance in GMP	$ 1,427,496
GMP Insurance Overstated	$ 157,725

Broward County Sheriff's Office – Training Center
Final Construction Audit – ANF Group

Detail of Potential Cost Exceptions

1. Overstated Subcontractor Change Order Charges

   Review of the Owner Change Orders and supporting subcontract documentation showed two subcontractors, Pomeroy Electric, Inc. (Pomeroy) and Tropic Mechanical Contractors (Tropic) change order costs exceeded contractual terms. The GMP Adjustment is also a Potential Cost Exception as the subcontractors billed those amounts. Please refer to the Potential GMP Adjustment Observation 1 for details.

   Including the ANF mark-ups to the subcontractor overstatements of cost showed a total overstatement of $679,252:

Pomeroy Hourly Wage Overstatement	$ 537,709
Pomeroy Unallowed SDI	40,089
Tropic Fee Overstatement	56,500
Topic Unallowed Bond	1,742
	636,040
Fee (5.0%)	31,802
Ins. (1.794%)	11,411
Total Overstatement	$ 679,252

2. Subcontractor Default Insurance (SDI) Criteria Not Met

   SDI was not included in the initial contract, but appeared first in Payment Application 10, dated January 31, 2022, as an invoice from ANF supported by an invoice from their broker, NHG Specialty, LLC, dated December 16, 2021. When asked why the SDI was not included in the original contract, the response was, "Both CCIP/Insurance and SDI were always part of the original contract value and included in the trade figures. They did not come about at a later date, it is simply a multi-step/multi-month process to enroll the subs and gather the appropriate credits." HPM's additional inquiry regarding SDI received the following response from ANF Management, "…as funds were to be taken from the subcontractor trade values, and the rate agreed upon was 1.5% of these subcontractor trade values, which is an industry-wide standard[3]." Based on the Contract Direct Costs included in the initial GMP, the SDI recalculated is 1.5% of initial direct costs:

[3] Based on our experience, there is no such item as an "industry-wide standard" for SDI; contractors will usually charge an amount the Owner is willing to pay. Typically, the actual cost for SDI is about .4% of the enrolled subcontractors total subcontract value. Also based on our experience, there is an added amount of about .2% to allow for deductible and processing costs.

Initial Contract Direct Costs	$41,098,140
ANF Represented % - 1.5%	$ 616,472
Difference	12
Billed SDI	$ 616,484

ANF provided evidence of two policies related to SDI:

Lloyd's and Aspen UK Ltd Premium	$115,396
NRMI (Captive Insurance Co) Premium	471,024
Total Premiums	$586,420

When asked about the difference in the ANF billed premium and the premium invoices, ANF Management responded, "…pardon my quick response but the difference is related to approved change orders that include markup for insurances. These are reconciled and there is a "true-up" at the end of the project with the carriers."

The Lloyd's and Aspen policy was effective December 16, 2021; this policy had a limit for each loss of $15 million, an aggregate limit of $30 million and a self-insured retention of $1,250,000. An additional endorsement, signed April 19, 2022, was delivered that provided the Sheriff of Broward County as a Scheduled Entity; the policy further noted BCSO can only make a claim, "upon legal default and termination of the Insured for Insolvency only, we will indemnify the Scheduled Entity below for any Loss covered by the Policy." This is a substantial limitation of BCSO's rights under this policy.

The other SDI policy was from National Risk Management Insurance, Inc. (NMRI), A Delaware captive insurance company, effective January 1, 2022. A "captive insurer" is generally defined as an insurance company that is wholly owned and controlled by its insureds; its primary purpose is to insure the risks of its owners, and its insureds, benefit from the captive insurer's underwriting profits. Typically, there are rebates to the owners of the captive insurer based on a percentage of the premiums and underwriting profits. This policy provided subcontractor default deductible reimbursement insurance and subcontractor default excess liability coverage.

Additionally, there is no evidence that insurance obtained through the "captive" was approved by the Contract Administrator as required by §7.3.4.4(b).

Per the contract, Article 7 – Changes in the Work or Terms of Contract Documents:

§7.1.1 "Any changes to this Agreement must be contained in a written document, executed by the Parties hereto, with the same formality and of equal dignity before the initiation of any Work reflecting such change. This section does not prohibit the issuance of Change Orders executed only by Sheriff as hereinafter provided."

§7.3.3 "The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

§7.3.3.3 On the basis of the "cost of work," determined as provided in Sections 7.3.4 and 7.3.5, plus a fee for overhead and profit that is determined as provided in Section 7.3.6.

§7.3.4 The term "cost of work" means the sum of all direct costs necessarily incurred and paid by

Design/Build Firm in the proper performance of the Work described in the Change Order. Except as otherwise may be agreed to in writing by Sheriff and Design/Build Firm as identified in Exhibit C, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Section 7.3.5.

§7.3.4.4(b) Premiums (net) on bonds and insurance, including subcontractor bonds, if any, that Design/Build Firm is obligated to secure and maintain under the terms of the Contract Documents and such other insurance and bonds as may be required, subject to the written approval of Contract Administrator. Premiums paid as part of Design/Build Firm's cost shall be net of trade discounts, volume discounts, dividends, and other adjustments. All insurance and bonds shall be provided by companies acceptable to Sheriff. Self-insurance by Design/Build Firm or insurance through any affiliates of Design/Build Firm shall not be permitted without Contract Administrator's prior written approval. Sheriff's approval shall not be required on Subcontractor bonds, and premiums thereof shall be considered a Cost of the Work."

§20.11 Truth-In-Negotiation Certificate. Design/Build Firm's compensation under this Contract is based upon representations supplied to Sheriff by Design/Build Firm, and Design/Build Firm certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Design/Build Firm's compensation are accurate, complete, and current at the time of contracting. Sheriff shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

Subsequently, Owner Change Order (OCO) 4, dated April 13, 2022, was approved by the BCSO with three criteria documented in an email *(see Appendix B*), at least two of which appear to have not been met. There is no verbiage in the change order that indicated a rate of 1.5% was agreed upon. The three criteria were:

1) Confirmation that the insurance documented on the app is for the entire project.
2) Legal has requested that BSO and Broward County be added as additional insured on the policy.
3) BSO needs a no cost/no time CO to document the change on the SOV as seen on the continuation sheet.

Criteria 2 was not met as the endorsement provided by ANF was a scheduled entity endorsement that only becomes effective if ANF is insolvent – BSO and Broward County are not additional insured on the policy.

HPM was not able to confirm there is no cost to the SDI policy per Criteria 3. ANF represented the cost was to come from a reduction in the subcontractor's costs. The SDI charge in the GMP was recorded as a "Budget Adjustment." When asked to provide evidence to support entries in the Budget Adjustment Schedule, ANF Management responded, "…there are no supporting "documents" for budget adjustments, just the notes to keep track of the reasons they were required."

While the Budget Adjustments do net to zero in total regarding the GMP value, there is a billed charge of $616,484, which HPM has deemed non-reimbursable as all of the OCO #4 required criteria for approval have not been met. The impact is an overstatement of cost of $656,315, including ANF mark-ups:

SDI Charge	$	616,484
Fee (5.0%)		30,824
Ins. (1.794%)		11,060
Total SDI Overstatement	$	658,368

3. Overstated Insurance

Per the contract (Article 5.1.2.c),

> *"Insurance and Bond Costs in the amount of Eight Hundred Ninety Thousand, Five Hundred Forty-One Dollars **($890,541.00)** as set forth as items titled Builder's Risk Insurance, General Liability Insurance and ANF's Performance and Payment Bond as enumerated on Exhibit G which shall be payable in full and included within Design/Build Firm's first progress payment."*

Exhibit G (initial GMP) breaks down the insurance amounts as follows:

General Liability Value (Exhibit G)	$	401,329
Bond Value (Exhibit G)	$	273,449
Builder's Risk Value (Exhibit G)	$	215,763
Total	$	890,541

Based on the initial GMP of $49,650,464, the effective rate for the lump sum insurance above is **1.794%** ($890,541/ $49,650,464).

Currently, as of 03/31/2024 (APP 42R), the basis for the insurance calculation is $66,225,482. This amount includes credits for DPO through APP 42R ($14,855,422) plus the current GMP value through Owner change order 53 ($54,370,060). ANF agreed there would be an insurance reconciliation similar to HPM's below at project end. Based on the current billing, the Owner is due a reconciliation credit of 115,407 per the following calculation:

Initial GMP	$ 49,650,464
Fixed Insurance per Article 5.1.2/ Exhibit G	$ 890,541
Fixed Insurance as a % of Contract Value	1.794%
General Liability Value (Exhibit G)	$ 401,329
Bond Value (Exhibit G)	$ 273,449
Builder's Risk Value (Exhibit G)	$ 215,763
Total	$ 890,541
Current Ins. Basis (03/31/24)* (OCO 53) (APP 42R)	$ 69,225,482
Fixed Insurance as a % of Contract Value	1.794%
Current Billable Insurance @ 1.794%	$ 1,241,643
Current Billed Insurance (APP 42R - 03/31/24) (OCO 53)	$ 1,357,050
Insurance to be Reconciled/ Credited as of 03/31/24	$ 115,407
*Ins. Basis includes DPO (Insurance calculated on credits)	
*$54,370,060 + $14,855,422 = $69,225,482	

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Final Construction Audit – ANF Group

Post Audit Adjustment Contract Status

The contract status as of Payment Application 42, and costs incurred and billed through February 29, 2024, *after* audit adjustments is as follows:

Current GMP	$55,778,519
Less: 1. Overstated Subcontractor Change Orders	$ 679,252
Less: 2. Overstated Insurance	$ 157,725
Adjusted GMP *After Audit*	$54,941,542
Adjusted Job Cost, Fee & Unbilled Subcontracts	$58,140,223
Less Cost Exceptions:	
1. Overstated Subcontractor Change Orders	679,252
2. Overstated SDI Insurance	658,368
3. Overstated GLI Insurance	115,407
Adjusted Job Cost & Fee *After Audit*	$56,687,196
Remaining GMP Subcontract Amount *After Audit*	$ (1,745,654)

APPENDIX A: POMEROY SUBCONTRACT CHANGE ORDERS

The below table provides details of the Pomeroy Subcontract Change Orders.

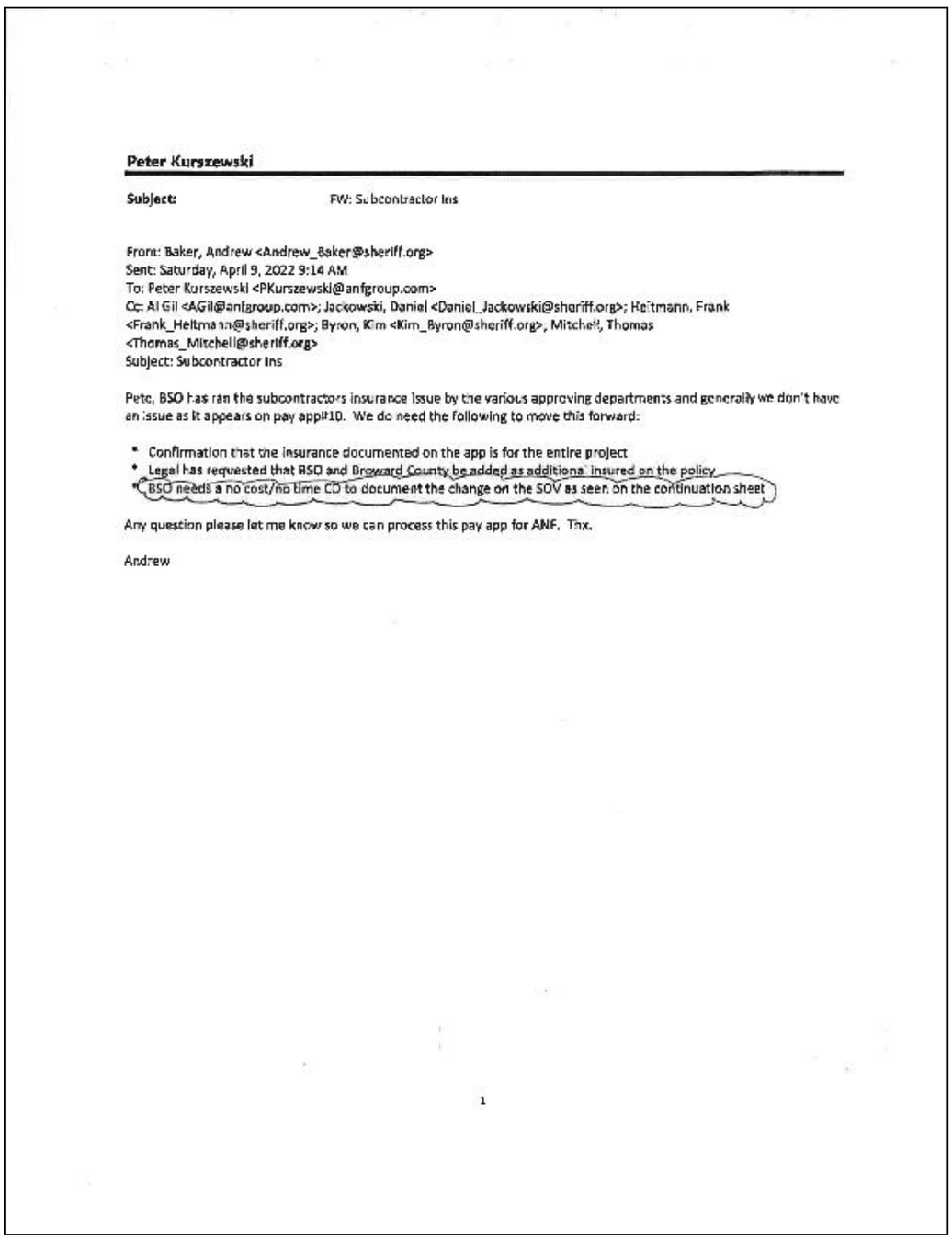
SCO	Amount	Description	Matls	Labor	Hrs	Rate	Foreman	Safety	Cleanup	Matl Hand	BIM	Subtotal	Full MU	SDI	Total	Adj	Final
1	$ (97,842)	DPO	$ (97,842)									$ (97,842)			$ (97,842)		$ (97,842)
2	$ (240,439)	DPO	$ (240,439)									$ (240,439)			$ (240,439)		$ (240,439)
3	$ (9,964)	CCIP Deduct	$ (9,964)									$ (9,964)			$ (9,964)		$ (9,964)
4	$ 75,972	Delta Charging Stations	$ 75,972									$ 75,972			$ 75,972		$ 75,972
5	$ 34,580	Duct Bank Repairs	$ 9,414	$ 29,165	307.0	$ 95						$ 38,579			$ 38,579	$ (3,999)	$ 34,580
6	$ 22,520	Changes to Breakers	$ 22,518									$ 22,518			$ 22,518	$ 2	$ 22,520
7	$ (674,236)	DPO	$ (674,236)									$ (674,236)			$ (674,236)		$ (674,236)
8	$ 1,126,524	Electrical	$ 572,798	$ 307,110	3,232.8		$ 46,067	$ 10,749	$ 12,284	$ 9,213	$ 6,000	$ 964,221	$ 144,633	$ 17,670	$ 1,126,524	$ -	$ 1,126,524
9	$ 25,985	Lighting Control Chnges	$ 3,079	$ 2,414	25.4	$ 95	$ 362	$ 84	$ 97	$ 72	$ 286	$ 6,394	$ 959	$ 110	$ 7,463	$ 2	$ 7,465
			$ 5,689	$ 7,410	78.0	$ 95	$ 1,111	$ 260	$ 296	$ 223	$ 878	$ 15,867	$ 2,380	$ 274	$ 18,521	$ (1)	$ 18,520
10	$ (69,410)	4th Flr Low Volt Deduct	$ (69,410)									$ (69,410)			$ (69,410)		$ (69,410)
11	$ 21,175	Fire Alarm Add	$ 11,664	$ 5,187	54.6	$ 95	$ 519	$ 120	$ 139	$ 103	$ 410	$ 18,142	$ 2,721	$ 313	$ 21,176	$ (1)	$ 21,175
12	$ (19,005)	DPO	$ (19,005)									$ (19,005)			$ (19,005)		$ (19,005)
13	$ 955,265	Revisions	$ 215,402	$ 215,916	2,272.8	$ 95	$ 21,592	$ 5,038	$ 5,758	$ 4,318	$ 17,046	$ 485,070	$ 72,761	$ 8,367	$ 566,198	$ (3)	$ 566,195
			$ 18,418	$ 127,243	1,339.4	$ 95	$ 12,725	$ 2,969	$ 3,393	$ 2,545	$ 900	$ 168,193	$ 25,229	$ 2,901	$ 196,323	$ 2	$ 196,325
			$ 8,296	$ 40,111	422.2	$ 95	$ 4,011	$ 935	$ 1,070	$ 802	$ 3,166	$ 58,391	$ 8,759	$ 1,007	$ 68,156	$ (1)	$ 68,155
			$ 37,466	$ 59,629	627.7	$ 95	$ 3,873	$ 903	$ 1,033	$ 774	$ 3,058	$ 106,736	$ 16,010	$ 1,841	$ 124,587	$ 3	$ 124,590
14	$ 84,915	Unforeseen FPL Chg	$ 33,261	$ 32,234	339.3	$ 95	$ 4,265	$ 996	$ 1,137	$ 853	$ -	$ 72,746	$ 10,912	$ 1,255	$ 84,913	$ 2	$ 84,915
15	$ 116,415	Fire Alarm Chg	$ 37,438	$ 51,741	544.6	$ 95	$ 6,209	$ 1,449	$ 1,656	$ 1,241		$ 99,734	$ 14,960	$ 1,720	$ 116,415	$ -	$ 116,415
16	$ 2,845	Lobby Desk	$ 274	$ 1,849	19.5	$ 95	$ 185	$ 43	$ 49	$ 37		$ 2,437	$ 366	$ 42	$ 2,844	$ 1	$ 2,845
17	$ 16,300	Gun Range PA	$ 906	$ 11,161	117.5	$ 95	$ 1,116	$ 260	$ 297	$ 223		$ 13,963	$ 2,094	$ 241	$ 16,298	$ 2	$ 16,300
18	$ 14,755	Parking Lot	$ 3,950	$ 8,693	91.5	$ 95						$ 12,643	$ 1,896	$ 218	$ 14,757	$ (2)	$ 14,755
19	$ 28,150	Gear Testing	$ 19,000									$ 19,000	$ 2,850	$ 328	$ 22,178	$ 2	$ 22,180
			$ 5,115									$ 5,115	$ 767	$ 88	$ 5,970	$ -	$ 5,970
21	$ 55,115	Electrical	$ 17,926	$ 25,418	267.6	$ 95	$ 2,542	$ 593	$ 677	$ 508	$ 2,007	$ 49,671	$ 7,451	$ 856	$ 57,978	$ 2	57,980
			$ (591)	$ (1,490)	(15.7)	$ 95	$ (149)	$ (35)	$ (40)	$ (30)	$ (118)	$ (2,453)	$ (368)	$ (42)	$ (2,862)	$ (3)	(2,865)

Appendix A (continued)

SCO	Amount	Description	Matls	Labor	Hrs	Rate	Foreman	Safety	Cleanup	Matl Hand	BIM	Subtotal	Full MU	SDI	Total	Adj	Final
22	$ 185,740	CO Errors/Omissions	$ 2,234	$ 1,877	19.8	$ 95	$ 188	$ 44	$ 51	$ 38		$ 4,432	$ 665	$ 76	$ 5,173	$ 2	5,175
			$ 11,897	$ 4,440	46.7	$ 95	$ 666	$ 156	$ 178	$ 133	$ 525	$ 17,995	$ 2,699	$ 310	$ 21,005	$ -	21,005
			$ 540	$ 324	3.4	$ 95	$ 32	$ 8	$ 8	$ -	$ 7	$ 919	$ 138	$ 16	$ 1,073	$ (3)	1,070
			$ 3,066									$ 3,066	$ 460	$ 53	$ 3,579	$ 1	3,580
			$ 3,185	$ (251)	(2.6)	$ 95	$ (38)	$ (9)	$ (10)	$ (7)		$ 2,870	$ 431	$ 49	$ 3,350	$ -	3,350
			$ 1,470	$ 10,172	107.1	$ 95	$ 1,017	$ 237	$ 272	$ 203		$ 13,371	$ 2,006	$ 231	$ 15,607	$ (2)	15,605
			$ 4,791	$ 13,680	144.0	$ 95	$ 1,368	$ 319	$ 365	$ 273		$ 20,796	$ 3,119	$ 359	$ 24,274	$ 1	24,275
			$ 837	$ 190	2.0	$ 95	$ 28	$ 7	$ 8	$ 5		$ 1,075	$ 161	$ 19	$ 1,255	$ -	1,255
			$ 2,355	$ 9,011	94.9	$ 95	$ 901	$ 210	$ 240	$ 180		$ 12,897	$ 1,935	$ 222	$ 15,053	$ 2	15,055
			$ 2,833	$ 9,978	105.0	$ 95	$ 997	$ 233	$ 266	$ 200		$ 14,507	$ 2,176	$ 250	$ 16,933	$ 2	$ 16,935
			$ 1,861	$ 1,793	18.9	$ 95	$ 269	$ 63	$ 71	$ 54		$ 4,111	$ 617	$ 71	$ 4,798	$ 2	$ 4,800
			$ 339	$ 2,907	30.6	$ 95	$ 436	$ 102	$ 116	$ 87		$ 3,987	$ 598	$ 69	$ 4,654	$ 1	$ 4,655
			$ 2,348	$ 10,141	106.8	$ 95	$ 1,521	$ 355	$ 406	$ 304		$ 15,075	$ 2,261	$ 260	$ 17,597	$ (2)	$ 17,595
			$ 11,820	$ 21,927	230.8	$ 95	$ 3,289	$ 768	$ 877	$ 657		$ 39,338	$ 5,901	$ 678	$ 45,917	$ (2)	$ 45,915
			$ 118	$ 1,118	11.8	$ 95	$ 168	$ 39	$ 44	$ 34		$ 1,521	$ 228	$ 26	$ 1,775	$ -	$ 1,775
			$ 980	$ 1,744	18.4	$ 95	$ 261	$ 61	$ 69	$ 52		$ 3,167	$ 475	$ 55	$ 3,697	$ (2)	$ 3,695
24	$ 10,545	Electrical	$ 589	$ 1,667	17.6	$ 95	$ 250	$ 58	$ 67	$ 50		$ 2,681	$ 402	$ 46	$ 3,129	$ 1	$ 3,130
			$ 2,006	$ 3,465	36.5	$ 95	$ 519	$ 122	$ 139	$ 103		$ 6,354	$ 953	$ 110	$ 7,417	$ (2)	$ 7,415
	$ 1,665,905		$ 40,368	$ 1,017,974	10,715.5		$ 116,299	$ 27,137	$ 31,013	$ 23,248	$ 34,165	$ 1,290,204	$ 339,605	$ 40,089	$ 1,669,898	$ (3,993)	$ 1,665,905
							11.4%	2.67%	3.05%	2.28%							

APPENDIX B: SDI APPROVAL EMAIL

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Peter Kurszewski

Subject: FW: Subcontractor Ins

From: Baker, Andrew <Andrew_Baker@sheriff.org>
Sent: Saturday, April 9, 2022 9:14 AM
To: Peter Kurszewski <PKurszewski@anfgroup.com>
Cc: Al Gil <AGil@anfgroup.com>; Jackowski, Daniel <Daniel_Jackowski@sheriff.org>; Heitmann, Frank <Frank_Heitmann@sheriff.org>; Byron, Kim <Kim_Byron@sheriff.org>; Mitchell, Thomas <Thomas_Mitchell@sheriff.org>
Subject: Subcontractor Ins

Pete, BSO has ran the subcontractors insurance issue by the various approving departments and generally we don't have an issue as it appears on pay app#10. We do need the following to move this forward:

- Confirmation that the insurance documented on the app is for the entire project
- Legal has requested that BSO and Broward County be added as additional insured on the policy
- BSO needs a no cost/no time CO to document the change on the SOV as seen on the continuation sheet

Any question please let me know so we can process this pay app for ANF. Thx.

Andrew

1

APPENDIX B

ANF GROUP, INC.
CONSTRUCTION • DEVELOPMENT

People You Trust
OFFICE: 954.693.9900 • FAX: 954.693.9901
www.anfgroup.com

August 5, 2024

BROWARD COUNTY SHERIFF'S OFFICE – TRAINING CENTER
RESPONSE TO FINAL CONSTRUCTION AUDIT REPORT PREPARED BY HPM, LLC

On July 25, 2024, ANF was provided with a copy of the draft of the Broward County Sheriff's Office- Training Center Final Construction Audit – ANF Group prepared by HPM, LLC on behalf of and pursuant to the direction of Broward County. The audit report reflected HPM's review of the above referenced ongoing project through work performed as of February 29, 2024. This draft report was the subject of discussion at the BSO-County Auditor Exit Interview held on July 26, 2024. The purpose of the interview was to address any questions or concerns the Broward County Sheriff's Office ("BSO") and/or ANF Group, Inc. ("ANF") may have in relation to the subject audit report. BSO and ANF raised concerns with Broward County given the fact that they were each provided less than one (1) business day to review the auditor's report it would like to be given the opportunity to provide a response to HPM's findings after having sufficient time to review and address the information HPM had been compiling for six months. With regard to that, Broward County informed BSO and ANF that while the County was not soliciting any form of response from either BSO or ANF and its intention is to have HPM issue the subject report without considering any form of response, it would still accept any comments BSO or ANF wished to make and requested that said comments be provided on or before August 5, 2024 (within five (5) business days). On August 2, 2024, Broward County provided BSO and ANF with an updated HPM Audit Report. BSO and ANF have endeavored to analyze the latest report and provide the following responses.

Pursuant to its report, the purpose of HPM's audit was to provide an analysis of the GMP as well as the project costs in its attempt to:

1. Verify that the Contract Sum (GMP) was not overstated.
2. Verify that costs were reimbursable per the terms of the Contract.

In accordance with the above, ANF provides the following clarifications and corrections to HPM's findings in the order set forth in the audit.

DETAIL OF POTENTIAL GMP ADJUSTMENTS

1. **Subcontractor Change Order Charges.**

HPM has asserted that based on its review of the project documentation, its opinion is that there are two subcontractors, Pomeroy Electric, Inc. (Pomerory) and Tropic Mechanical Contractors (Tropic) change order costs exceeded contractual terms.

HPM's analysis is based on the certain selected contractual terms it identified in its audit. While HPM's representations of these identified contractual provisions are correct, HPM has failed to verify and analyze the contractual terms as a whole. For instance, when identifying the applicable contractual terms pertaining to Changes in the Work, HPM referred to Article 7 – Section 7.3.3 which provides that "The value of any Work covered by a Change Order or any claim for an increase or decrease in the Contract Price **shall be determined in *one* of the following ways**:"

In HPM's attempt to verify how the value of any work covered by a Change Order is determined, HPM's analysis of the contract skipped over the first two potential ways to determine the value of a change order and went directly to Subsection 7.3.3.3 which set forth the basis of determining the value by way of the "cost of work" method. If the "cost of work" method was indeed the manner in which the Change Order values were determined on this project, then HPM's extensive analysis into hourly rates and prevailing wages may have been applicable to some extent. However, that is not how the value of any Change Order work was determined on this Project.

On the Project, the value of all Work covered by Change Orders, including the Pomeroy change orders identified in the audit report, was determined utilizing Subsection 7.3.3.2 of the Contract which provides as follows:

> *7.3.3.2 By mutual acceptance of a GMP that Design/Build Firm and Sheriff acknowledge contains a component for overhead and profit.*
>
> *a) Whenever a change in the Work is to be based on a mutual acceptance of a GMP, whether the amount is an addition, credit, or no change-in cost, Design/Build Firm shall submit an initial cost estimate acceptable to Contract Administrator.*
>
> *b) Breakdown shall list the quantities and unit prices for materials, labor, equipment and other items of cost.*
>
> *c) Whenever a change involves Design/Build Firm and one or more Subcontractors and the change is an increase in the Contract Price, overhead and profit percentage for Design/Build Firm and each Subcontractor shall be itemized separately.*

As noted in all change orders, the value of the work was identified as a mutually agreed upon sum ("mutual acceptance of a GMP") with the quantities and unit prices listed as required. In other words, the value of each change order was the result of negotiated, mutually agreed upon sums for the work at issue and not as a cost plus form of change order.

POMEROY

1) Contrary to HPM's analysis, the method utilized to determine the value of the contract was not based on the "cost of work" method and thus HPM's analysis or attempt to

determine whether the labor costs "appeared" higher than those prevailing in the locality of the Project was not proper or applicable to any change orders at hand. Based on the foregoing, the portion of HPM's audit report analyzing Pomeroy's labor costs should be stricken and the alleged overstatement of cost in the amount of $537,709 before ANF mark-ups should be credited back to overall Contract Sum (GMP amount).

2) HPM has identified a 1.5% mark-up to the total charge on Pomeroy's change orders for Subcontractor Default Insurance (SDI). HPM further asserts that said costs should not be included in the Pomeroy Change Order as "SDI was obtained by the Design/Build Firm, ANF. It is not necessary for SDI to be obtained by any entity other than the Design/Build Firm." While ANF agrees with HPM that ANF is the party that obtained the SDI, it disagrees that said costs are not a reimbursable charge. At the end of the day it appears that there is a fundamental misunderstanding on how these SDI costs are being allocated which the below will hopefully clear up.

   In response to HPM's request for ANF to explain why the 1.5% mark-up is valid on the Pomeroy Change Orders, ANF correctly informed HPM that the parties mutually agreed to utilize SDI in lieu of subcontractor bonds and that the 1.5% was the agreed upon applicable mark-up for same. Pursuant to Subsection 7.3.4.4(b) of the Contract, premiums for bonds and insurance, ***including subcontractor bonds*** are reimbursable. Given that the SDI was implemented in lieu of subcontractor bonds, these costs should be included in all subcontractor change orders. Now, while said amounts are included in the Subcontractor change orders, upon completion of the project and reconciliation (as is done with other insurance and bond costs) there will be a final budget adjustment in which the 1.5% SDI costs will be allocated to ANF (taken out of the subcontract sums, including Pomeroy's) as ANF was the entity that obtained the SDI policy. Based on the foregoing, HPM's alleged overstatement of cost in the amount of $40,089 before ANF mark-ups pertaining to the Pomeroy SDI costs should be credited back to overall Contract Sum (GMP amount).

<u>TROPIC</u>

HPM's audit has focused on certain mark-ups that have been applied to a few of Tropic's SCOs. HPM alleges that these mark-up percentages were incorrect and contrary to the language in the Contract. The basis of HPM's opinion relies on Section 7.3.7.1 of the Contract, however, HPM application of this section is incorrect. First, as noted above all change orders entered on this project were entered by mutual agreement of the parties on the change in contract sum, including all applicable mark-ups. Moreover, HPM has failed to recognize the contractual

provisions in Section 7.3.7 which sets forth the parameters wherein subsection 7.3.7.1 would apply. In order for Subsection 7.3.7.1 to apply it must satisfy the parameters set forth in Section 7.3.7 and Section 7.3.7 provides the following:

7.3.7 ***If a subcontract is on the basis of cost of the work plus a fee****, the Subcontractor's fee for overhead and profit shall be determined as follows:*

> *7.3.7.1 In no event shall the aggregate of all Subcontractors' overhead and profit exceed fifteen percent (15%) of the net change(s) to the Subcontractors' cost of the work. If a Subcontractor is owned by an affiliate of, or managed by, Design/Build Firm, or work is to be "self-performed" by Design/Build Firm, no overhead and profit will be allowed on that cost. If there is more than one level of Subcontractor, such as second and third tier Subcontractors, the sum of all the Subcontractors' including any tiered Subcontractors' percentage markups for overhead and profit shall not in the aggregate exceed fifteen percent (15%) of the aggregate net change to the Subcontractors' cost of the work.*

Based on the foregoing, the mark-ups set forth in Subsection 7.3.7.1 only apply when a subcontract is on the basis of cost of the work plus a fee. In the case of Tropic (as with all of ANF's subcontractors) the subcontract is based on a lump sum number (not a cost of work plus a fee). Accordingly, the parameters for mark-ups set forth in Subsection 7.3.7.1 do not apply and thus HPM's alleged overstatement of cost in the amount $56,500 before ANF mark-ups is incorrect and should therefore be credited back to the overall Contract Sum (GMP amount).
Furthermore, HPM referenced certain mark-ups for bond costs included in a few of Tropics SCOs amounting to $1,742. Similar to the SDI costs included in Pomeroy's SCOs, Tropic's charges for bond will be reallocated upon the final project allocation to cover the applicable SDI costs expended by ANF. Therefore, these charges should also be removed from HPM calculation of claimed overstated amounts.
In light of the above, HPM's determination of their being a Overstatement of GMP in the amount of $679,252 is incorrect and the aforementioned amount should continue to included as part of the Contract Sum (GMP amount).

2. Insurance Costs

In its updated August 2, 2024 report, HPM raised a new claim that the Insurance and Bond Costs are overstated and the Owner should be due $157,725 after reconciliation of the insurance costs. HPM's determination was the result of HPM unilateral decision to assign an effective rate for the lump sum insurance of 1.794%. Firstly, HPM's calculation lumped the three line items for General Liability, Bond Value and Builder's Risk Value all together. However, these costs should not be lumped together given the fact that while general liability insurance and bond costs are usually based on contract value, builder's risk insurance costs are based on both contract value as well

as time of completion for the work. Secondly, HPM's calculation of an effective rate utilized the full GMP value (including the Contractor Fee and Insurance costs themselves) as the denominator thus double counting the insurance costs which in turn lowered the effective rate HPM sought to determine.

Notwithstanding all the above, HPM's determination and utilization of an effective rate for insurance costs is not the contractual manner in which to calculate insurance costs on this Project. As discussed in detail above, Subsection 7.3.2 provides that when dealing with Change Orders the value of all Work covered by said change order can be determined by mutual acceptance of the parties. This is how all change order values have been determined on this Project.

Moreover, as ANF has mentioned, BSO and ANF have agreed that an insurance reconciliation will be done at the end of the project. However, contrary to HPM's assertions, said reconciliation would not be similar to HPM's as HPM's reconciliation is not correct. Instead, ANF anticipates performing a reconciliation to determine the total premiums paid on the Project and adjusting same at the conclusion of the project. ANF and BSO will continue to work together to have the proper reconciliation performed at the end of the project.

Based on the foregoing, HPM's calculation in determining a reconciliation credit is incorrect and the $157,725 should be credited back to the Contract Price (GMP).

DETAIL OF POTENTIAL COST EXCEPTIONS

1. Subcontractor Change Order Charges

HPM's audit has referenced the subcontractor costs for Pomeroy and Tropic identified earlier in audit report as a Potential GMP Adjustment and reasserted said costs claiming them to a Potential Cost Exception. For the reasons set forth above, HPM's classification of the subject Pomeroy and Tropic costs as Potential Cost Exceptions are incorrect and contrary to the contract documents. Accordingly, the applicable alleged cost exception of $679,252 shall be removed and credited back to ANF's costs for the project.

2. Subcontractor Default Insurance (SDI)

The next item identified by HPM as a potential cost exception pertains to the Subcontractor Default Insurance (SDI) policies issued to cover this Project. As all parties are well aware, SDI policies were agreed to be implemented in lieu of Subcontractor Bonds which pursuant to the contract documents are valid reimbursable costs for the Project. Given the parties to implement SDI policies on the project, CO4 was executed as a "Zero Cost" change order confirming the implantation of the SDI. The term "Zero Cost" refers to the fact that there was no increase in the Contract Sum (GMP) (i.e. no additional costs) given the fact that the amounts contained in each

subcontractor trade numbers were to undergo a budget adjustment wherein certain sums were to be taken from the trade costs sums to cover the costs of SDI. Attached as Exhibit "A", please find a copy of a condensed version of Budget Adjustment #3 wherein the budget adjustment pertaining to the SDI costs are shown.

The subject of SDI takes up a significant portion of HPM's report. However, upon ANF and BSO questioning HPM and Broward County as to the purpose of all the background information and unsolicited opinions on SDI given by HPM and how these matters had any relation to the purpose of the audit or clarified why HPM believed the SDI costs should be considered a cost exception, Broward County, during the July 26th Exit Interview, clarified that the sole issue that HPM relies on for the cost exception pertains to HPM belief that the SDI change order was subjected to a formal three point criteria and that said criteria was not met because the SDI policies do not contain an additional insured endorsement.

ANF provides the following two points which rebut HPM's opinion:

1. The three-point criteria referenced by HPM is not a contractual document and does not legally set forth any obligation or requirement on either of the parties. Thus this criteria should not be relied upon by HPM in its current analysis. Notwithstanding the forgoing, as noted in the email relied upon HPM, the BSO clearly stated that it was in agreement with the implementation of SDI and that the three items listed were needed to "move this forward". As substantiated by the execution and implementation of Change Order 4, the implementation of the SDI policies was set to "move forward" and therefore set forth clear evidence that the three items requested by BSO were met.
2. As informed by Broward County, HPM's reason for taking exception to the SDI costs is because there were no additional insured endorsements on the SDI policies. However, HPM's reasoning is improper and misinformed because it is not possible for any of the SDI policies provided to have an additional insured endorsement. The only form of endorsement able to be provided under an SDI policy is that of a scheduled entity which is what was we have in this case. This is analogous to requiring an additional insured endorsement on a bond. It is simply not possible as the correct mechanism on bonds is to provide Dual Obligee endorsement. In this case the correct mechanism for SDI policies is to provide the endorsement as a scheduled entity. As noted by HPM, this was provided and thus there should be no exception being made by HPM.

There is no dispute or question as to whether there were SDI policies in place providing protection to the Project. There is also no question to the fact that the SDI policies were implemented in lieu of subcontractor bonds. Finally, there can be no dispute that subcontractor bonds and related insurance (i.e. SDI) are reimbursable costs in accordance with the contract documents. Based on the foregoing, HPM's exception to the SDI costs are

improper and the classification of an overstatement of cost of $656,315 shall be removed and said costs credited to ANF accordingly.

3. Insurance Costs

For the final item identified as a Potential Cost Exception, HPM's audit references its calculation of an effective rate for insurance costs identified earlier in audit report as a Potential GMP Adjustment and reasserted said costs claiming them to a Potential Cost Exception. For the reasons set forth above, HPM's determination of an effective rate for insurance costs in order to calculate an alleged reconciliation credit and classify same as Potential Cost Exceptions are incorrect and contrary to the contract documents. Accordingly, the applicable alleged cost exception of $115,407 shall be removed and credited back to ANF's costs for the project.

CONCLUSION

For all the reasons set forth above, the purported overstatement and cost exceptions identified and raised by HPM are incorrect and inconsistent with the provisions set forth in the Contract. Accordingly, the assertions and representations made by HPM must be corrected to be consistent with the contract documents. Based on the foregoing, ANF respectfully requests that HPM's audit report be revised accordingly and set forth an overall result as provided below. In the event that any report is disseminated to the public by HPM and/or Broward County that does not follow the contract documents (similar to the one that is currently written) the reputational harm to ANF, which ANF has worked over 43 years to establish, will be insurmountable and may result in certain liabilities owed by HPM and Broward County to ANF for causing such harm and distributing incorrect information.

ANF Group, Inc.
BSO – Training Center
Final Construction Audit

Post Audit Adjustment Contract Status – per Contract

The contract status as of Payment Application 42, and costs incurred and billed through February 29, 2024, after corrected adjustments is as follows:

Current GMP	$	55,778,519
Less: 1. Overstated Subcontractor Change Orders	$	-
Less: 2. Overstated Insurance	$	-
Adjusted GMP After Audit	$	55,778,519
Adjusted Job Cost, Fee, & Unbilled Subcontracts	$	58,140,223
Less Cost Exceptions:		
1. Overstated Subcontractor Change Orders	$	-
2. Overstated SDI Insurance	$	-
3. Overstated GLI Insurance	$	-
Adjusted Job Cost & Fee After Audit	$	58,140,223
Remaining GMP Subcontract Amount After Audit*	$	(2,361,704)

*Amount indicated is as of the February 29, 2024 date and will be need to be reconciled upon 100% of the project.

EXHIBIT "A"

ANF GROUP, INC. CONSTRUCTION • DEVELOPMENT

BUDGET ADJUSTMENT

TODAY'S DATE: 1/25/2022 JOB NAME: BSO Training Center & Parking Garage

ACCOUNTING DATE: 1/31/2022 JOB NUMBER: 1813

BUDGET ADJUSTMENT #: #3 - BA01252022 PAY APPLICATION#: #10 - Jan 2022

Item	PHASE CODE	COST CODE DESCRIPTION	To (+)	From (-)	REASON FOR ADJUSTMENT
100	1700	General Trades		($8,557.00)	To SDI - Phase Code 01715
200	02010	Surveying - Layout & As-Builts		($1,280.00)	To SDI - Phase Code 01715
300	02300	Earthwork - Utilities - Paving		($14,808.00)	To SDI - Phase Code 01715
400	02995	Landscaping and Irrigation		($2,562.00)	To SDI - Phase Code 01715
500	02455	Augercast Pile		($16,010.00)	To SDI - Phase Code 01715
600	03110	Concrete		($58,574.00)	To SDI - Phase Code 01715
700	03480	Precast Structure		($167,724.00)	To SDI - Phase Code 01715
800	05120	Structural Steel & Misc. Metals		($15,985.00)	To SDI - Phase Code 01715
900	05520	Fencing & Security Gates		($1,141.00)	To SDI - Phase Code 01715
1000	06100	Rough Carpentry		($717.00)	To SDI - Phase Code 01715
1100	06400	Architectural Woodwork		($4,514.00)	To SDI - Phase Code 01715
1200	07100	Caulking & Waterproofing		($2,765.00)	To SDI - Phase Code 01715
1300	07220	Roofing		($5,511.00)	To SDI - Phase Code 01715
1400	08205	Doors-Frames & Hardware		($11,270.00)	To SDI - Phase Code 01715
1500	08520	Aluminum Glass & Glazing		($14,645.00)	To SDI - Phase Code 01715
1600	08360	Overhead Doors		($600.00)	To SDI - Phase Code 01715
1700	09110	Framing & Drywall		($21,759.00)	To SDI - Phase Code 01715
1800	09115	Stucco & Exterior Framing		($5,090.00)	To SDI - Phase Code 01715
1900	09510	Acoustical Ceilings		($5,258.00)	To SDI - Phase Code 01715
2000	09300	Flooring Package		($9,225.00)	To SDI - Phase Code 01715
2100	09650	Terrazo		($2,629.00)	To SDI - Phase Code 01715
2200	09900	Paint & Wall Covering		($7,276.00)	To SDI - Phase Code 01715
2300	10000	Specialties		($8,585.00)	To SDI - Phase Code 01715
2400	11000	Equipment		($749.00)	To SDI - Phase Code 01715
2500	13030	Shooting Range Systems Equipment		($56,282.00)	To SDI - Phase Code 01715
2600	13080	Shooting Range Mechanical		($22,890.00)	To SDI - Phase Code 01715
2700	14200	Elevators		($7,560.00)	To SDI - Phase Code 01715
2800	15400	Plumbing		($20,555.00)	To SDI - Phase Code 01715
2900	15700	HVAC		($65,740.00)	To SDI - Phase Code 01715
3000	15300	Fire Protection		($15,112.00)	To SDI - Phase Code 01715
3100	16050	Electrical		($85,714.00)	To SDI - Phase Code 01715
3200	16400	Low Voltage System-Backbone-Phone/Data-Security-CCTV		($16,265.00)	To SDI - Phase Code 01715
3610	01715	Subcontractor's Default Insurance	$616,484.00		From GT and Trades to Fund Subguard
			$616,484.00	($616,484.00)	
		NET ADJUSTMENT:	$0.00		

Sr. Project Manager: Peter Kurszewski Date: 1/25/2022

Prepared by: Dominique Carty Date: 1/25/2022

APPENDIX C

August 7, 2024

Subject: HPM Response to ANF's Audit Comments
Project: Broward County Sheriff's Office

Reviewing ANF's response ***does not change*** HPM's position on the original audit issues. Below are some additional notes:

(1) Overstated Subcontractor Change Orders –

> 20.11 Truth-In-Negotiation Certificate. Design/Build Firm's compensation under this Contract is based upon representations supplied to Sheriff by Design/Build Firm, and Design/Build Firm certifies that the wage rates, factual unit costs, and other factual information supplied to substantiate Design/Build Firm's compensation are accurate, complete, and current at the time of contracting. Sheriff shall be entitled to recover any damages it incurs to the extent any such representation is untrue. (Design Build Contract signed by ANF on February 17, 2021).

ANF Assertions:

- Pomeroy Wage Rates – the change order amounts were mutually agreed upon, which is an allowable cost method per the Contract.
- Pomeroy SDI – the 1.5% is a reimbursable cost for subcontractor bonds; ANF intended to perform a final budget adjustment upon completion of the project.
- Tropic – The Tropic Subcontract was a lump-sum contract, therefore the provisions of §7.3.7.1 are not applicable.
- Tropic Bonds – the $1,742 included for bond costs will be "reallocated upon the final project allocation to cover the applicable SDI costs expended by ANF."

HPM Facts:

- "Mutually agreed upon" change order pricing does not remove ANF's and its subcontractor's responsibility to provide accurate pricing as prescribed by §20.11 of the Contract. Given the County's expectation of accurate pricing, ANF should have assumed the County would rely on the information provided when agreeing to the Change Order pricing provided by ANF, for its subcontractor.
- Neither ANF nor Pomeroy presented evidence to support the $95 per hour cost of labor reflected in the Pomeroy change orders while the audit report details our assumptions of base wages and payroll burden.
- ANF represented they investigated the Pomeroy $95 per hour labor rate to ensure it was reasonably accurate, but no substantiation was provided. Indeed, ANF has the responsibility per Article 21.6 to maintain payrolls for workers on the site which would include rate of pay and fringe benefits. Such records should be provided to HPM.
- Neither ANF nor Pomeroy presented evidence that SDI was provided by Pomeroy, therefore Pomeroy's estimate was inaccurate.
- ANF represented they reviewed all change orders prior to submission; there was no acknowledgement provided by ANF during HPM's inquiries they were aware of potential overcharges by Pomeroy and Tropic regarding SDI/Bond costs that

would be reconciled upon project completion, and ANF's statement that a reconciliation will take place is lacking in detail and specification.

(2) Insurance Reconciliation –

5.1.2.c General Job Expenses. Insurance and Bond Costs in the amount of Eight Hundred Ninety Thousand, Five Hundred Forty-One Dollars **($890,541.00)** as set forth as items titled Builder's Risk Insurance, General Liability Insurance and ANF's Performance and Payment Bond as enumerated on Exhibit G. The contract indicates that these 3 types of insurances are a ***lump sum***. There are ***no*** individual percentages or calculation methods defined in the contract for these insurances, only the lump sum amount above, and we found no specific entitlement for ANF to increase this value. However, HPM used "known" values in the original GMP to convert the lump sum insurance value to an effective percentage of the contract value. (Lump Sum Insurance of $890,541 divided by the Original GMP of $49,650,464 equals 1.794%). Again, the contract does not define how these 3 insurances are modified due to increases or decreases in the GMP. Our audit assumes, if the contract value (GMP) increases or decreases these 3 insurances should reflect the same increase or decrease (1.794%). Alternatively, ANF should be required to support the actual additional costs associated with these three insurance and bond types.

(3) Subcontractor Default Insurance (SDI) –
ANF Assertions:

- The "three-point criteria" required by an email is not a legally binding document.
- It is not possible for any SDI policies to have an additional insured endorsement.
- The SDI policies were implemented in lieu of subcontractor bonds to provide protection to the Project.

HPM Facts:

- None of ANF's assertions remove their responsibility as prescribed by §20.11 of the Contract.
- There is nothing in the contract that mentions SDI will be implemented in lieu of subcontractor bonds.
- The first documented introduction of SDI occurred in Payment Application 10, dated January 31, 2022, with an invoice from ANF for $616,484 dated January 1, 2022, supported by an invoice from NHG Specialty LLC (presumably their insurance broker) dated December 16, 2021, for $616,484. The invoice contains no evidence as to how the amount was determined.
- Multiplying the Initial Contract Direct Cost by 1.5% substantially equals the amount represented by the $616,484 invoice above. In an email dated April 30, 2024, responding to HPM inquiries, ANF represented, "the rate agreed upon was 1.5% of these subcontractor values, which is an industry-wide standard." ANF provided no evidence that a rate of 1.5% was agreed upon; there is no rate contained either in Change Order 4 or any invoice provided to support the cost. There is no industry-wide standard for SDI and self-insurance for the SDI deductible and co-pay amounts. Our construction audit engagements have indicated construction agreements for SDI ranging from as low as .65% to as high as 1.75%., with the average value at 1.25%. Our experience is that not only is there not an SDI industry standard at 1.5%, 1.5% does not represent the most typical Owner accepted value.

- Change Order 4 was dated April 13, 2022, and included the "three-point criteria" email as an attachment to the change order making the Owners acceptance of SDI dependent on these three stipulations being met. ANF says that their SDI carrier does not allow an "Additional Insured Endorsement." Given that the Owners acceptance was predicated on receiving this endorsement, SDI should not have been charged and ANF's responsibility per article 20.11 to provide factual information should have required ANF to inform the County that one of the stipulations for SDI acceptance, could not be met.
- One of the policies, with a represented estimated cost of $471,024, was from National Risk Management Insurance, Inc. (NRMI). This is a Delaware captive insurance company, which is or appears to be wholly owned and controlled by its insureds or related entities. ANF provided no evidence that the insurance obtained through the captive was approved by the Contract Administrator as required by the Contract, §7.3.4.4(b).

Vinson Chapman
Scott Jaye
Allan Meyers

MANAGEMENT'S RESPONSE

Michael W. Ruiz, Assistant County Administrator
115 S. Andrews Avenue, Room 409 • Fort Lauderdale, Florida 33301 • 954-357-7333 • FAX 954-357-7360

MEMORANDUM

DATE: October 24, 2024

TO: Robert Melton, County Auditor

FROM: Michael W. Ruiz, Assistant County Administrator *Michael W. Ruiz*

RE: Management Response to County Auditor's Report on the Audit of Agreement Between the Sheriff of Broward County and ANF Group, Inc.

County Administration and the Public Works Department have reviewed the County Auditor's Report on the Audit of Agreement Between the Sheriff of Broward County and ANF Group, Inc. (ANF). In summary, Management agrees with the Auditor's support of the third-party auditor's findings (Hoar Program Management, LLC) and its recommendation that Broward County work with the Broward Sheriff's Office (BSO) in an attempt to recover potentially ineligible costs and overpayments.

OFI (1.A): Labor Costs

Management concurs with the recommendation and will attempt to work with BSO to obtain actual labor costs from Subcontractor 1 in support of its change orders and to recover any overstated and overbilled costs.

OFI (2.A, 2.B, 2.C): Insurance Costs

Management concurs with the recommendation and will attempt to work with BSO to recover any overpaid insurance costs.

OFI (3.A): Subcontractor Default Insurance (SDI) Costs

Management concurs with the recommendation and will attempt to work with BSO to recover any ineligible SDI costs.

OFI 1.B, 3.B, and 5: Delegation of Authority (DOA)

As this is the parallel audit of the Training Center, focusing on the contract between BSO and ANF, it is worth reiterating management's acknowledgment of the increased budgetary authority granted to sheriffs by the state legislature after the execution of the memorandum of understanding with BSO and its resulting impact on the DOA model. In the future, where projects will be completed via the Constructing Management Division, we foresee OFI 1.B, 3.B, and 5 accounted for through County control of project management.

Comment 4: Design Builder Costs in Excess of GMP

Management acknowledges statements made in the audit regarding the estimation of the Design Builder's costs in excess of the Guaranteed Maximum Price (GMP) and will ensure that BSO is made aware and mindful of its potential impact on final reconciliation as the project comes to conclusion, so that costs are contained within appropriate parameters of the GMP.

Thank you for the opportunity to respond and provide Management's comments to the Audit. If the County Auditor modifies substantive elements of the existing draft, please provide us the opportunity to review and respond prior to issuance. If you have any questions, do not hesitate to contact me.

cc: Monica Cepero, County Administrator
Dr. Kimm Campbell, Deputy County Administrator
Kevin Kelleher, Assistant County Administrator
Trevor Fisher, Director, Public Works Department
Ariadna Musarra, Director, Construction Management, Public Works Department
Andrew J. Meyers, County Attorney
Kathie-Ann Ulett, Deputy County Auditor