

**Miami-Dade County Public Schools
Office of Management and Compliance Audits**



**Follow-up Review of McGladrey LLP Rapid
Assessment of M-DCPS Capital Construction
Activity**

January 2014

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

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Superintendent of Schools

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January 23, 2014

The Honorable Chair and Members of The School Board of Miami-Dade County, Florida
Members of the School Board Audit and Budget Advisory Committee
Mr. Alberto M. Carvalho, Superintendent of Schools

Ladies and Gentlemen:

Pursuant to the request of the Audit and Budget Advisory Committee (ABAC), the Office of Management and Compliance Audits (OMCA) has completed a follow-up review on the findings and recommendations presented by McGladrey LLP in their "Rapid Assessment" report on the District's capital construction activity. Our observations and conclusion, which have been discussed with management, are contained herein for your consideration.

Sincerely,

José F. Montes de Oca, CPA, Chief Auditor

Office of Management and Compliance Audits

EXECUTIVE SUMMARY

The Miami-Dade County School Board's Audit and Budget Advisory Committee (ABAC) requested that we follow up on certain questions raised during the discussion of a Rapid Assessment report on the district's capital construction contractual use of the Construction Management at Risk (CM at-Risk) project delivery method, prepared and presented by McGladrey LLP (McGladrey). At question was whether M-DCPS could revise its construction contract, removing noted inconsistencies, thereby enabling it to apply a modified approach to the execution of its CM at-Risk commissioned construction projects.

Our follow-up concludes that the CM at-Risk with a guaranteed maximum price (GMP) project delivery method is in place at some other Florida school districts in a manner that contractually enable those school districts to achieve potential cost savings as recommended by the McGladrey and previously by the Office of Management and Compliance Audits. Therefore, management should consider adopting the recommendations.

BACKGROUND

M-DCPS began using the CM at-Risk project delivery method in the mid-1990s. At present, the School uses two standard contracts to procure CM at-Risk services – a Project Specific contract, typically used for larger projects and a Miscellaneous CM At-Risk contract, typically used for smaller projects.

ISSUE FOLLOWED UP

At the last ABAC meeting on December 3, 2013, McGladrey provided the ABAC a report on its Rapid Assessment review, completed in junction with the performance of their annual audit of the district's comprehensive annual financial report (CAFR), of two construction projects completed at the district. McGladrey's core finding stated that the district's Office of School Facilities is accounting for its CM at-Risk contract as a lump sum or firm fixed price contract, which is inconsistent with the best practice "cost plus fee" approach employed in the industry for this type of contract. As a result, there were limitations to the pay application process and contractual right to audit clause.

McGladrey recommended that the Office of School Facilities consider reevaluating its current contract delivery methodology for CM at-Risk contract to conform to the best practice utilized throughout the industry.

FOLLOW-UP RESULTS

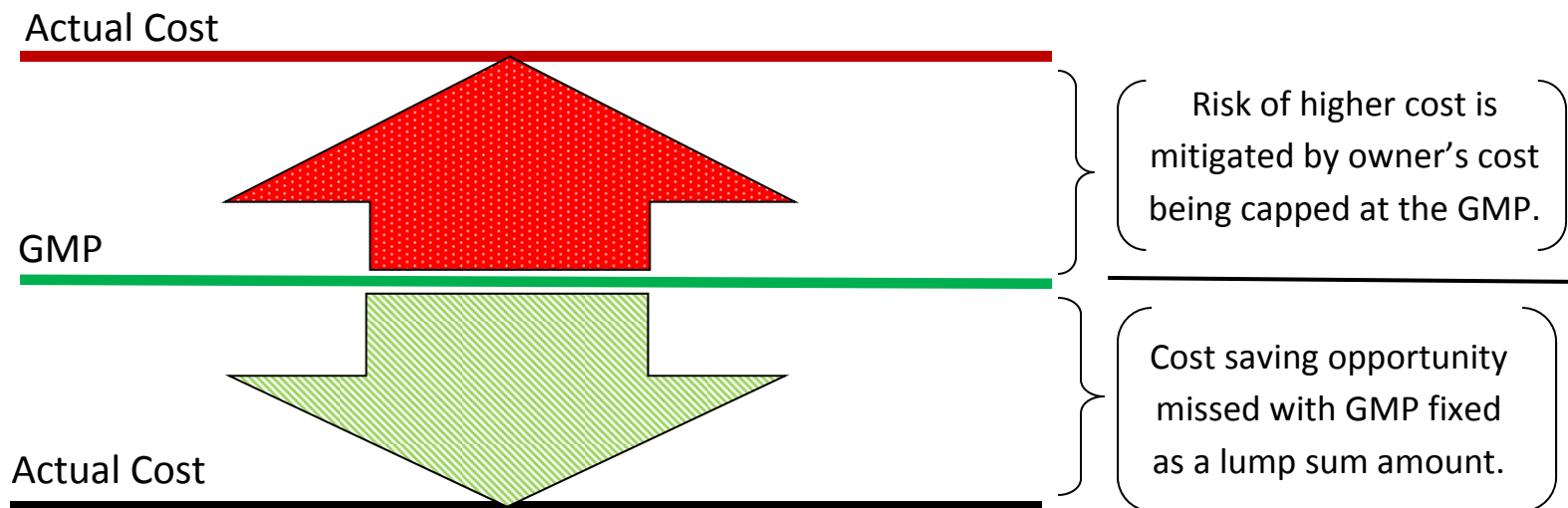
In performing a follow-up review of McGladrey's findings, we reviewed the standard M-DCPS Project Specific CM at-Risk and Miscellaneous CM at-Risk contracts, and concur with McGladrey's finding that the manner in which the GMP is developed pursuant to M-DCPS standard CM at-Risk fixes the contract price as a lump sum amount. Moreover, our review of past internal audit reports published by OMCA similarly reported that the manner in which M-DCPS applies the CM at-Risk project delivery method (i.e., as a hard bid / lump sum / firm fixed price) is inconsistent with the inherent principles of the CM at-Risk project delivery method.¹

Our review further confirmed that the CM at-Risk with a GMP project delivery method is sanctioned by Florida Statutes and Florida Department of Education's *State Requirements for Educational Facilities*. Moreover, we found that this project delivery method is in place at some other Florida school districts in a manner that contractually enable those school districts to achieve potential cost savings resulting from the difference between the actual cost of the work (including the construction manager's (CM) fee) and the GMP.

¹ INTERNAL AUDIT REPORT REVIEW OF CONSTRUCTION DELIVERY METHODS, APRIL 2003, presented to the Audit Committee May 6, 2003 and *Internal Audit Report Award and Administration of Construction Projects*, September 2008, presented to the Audit Committee September 9, 2008.

NOTABLE FEATURES OF CM AT-RISK WITH A GMP AND BUYOUT RECONCILIATION

A key feature of the CM at-Risk contracting method is the inclusion of a GMP, which establishes the maximum cost the CM will charge (the ceiling) for delivering the project. If the actual final cost of construction exceeds the GMP, the owner's costs are capped at the GMP; whereas, if the actual final cost of construction is less than the GMP, then the difference is recognized as buyout savings, which the owner may retain 100% or share with the CM. Through its CM at-Risk Agreements, the Office of School Facilities fixes the negotiated GMP as a lump sum amount; and therefore, does not recognize any buyout savings.



RECOMMENDATION

Our review of two other large Florida school district's construction contract for CM at-Risk services noted that, rather than fixing the GMP as a lump sum amount, those contracts establish the GMP as the contract's maximum price, whereby the owner agrees to pay the CM the actual cost of all subcontracts, supply contracts, direct labor and supervision costs, and direct job costs, plus the construction management fee or the GMP, whichever is less when the work is completed.

The Office of School Facilities, in collaboration with the School Board Attorney should consider revising its standard construction contracts for CM at-Risk services, including the "GMP Amendment," to bring it into comportment with best practice utilized in the industry. Rather than fixing the negotiated GMP or contract price as a lump sum amount, the GMP should be structured in a manner that enables the Districts to achieve potential cost savings resulting from the difference between the actual cost of the work (including the CM's fee) and the GMP, as is custom in the industry. The contract should specifically limit payments to the CM to the lesser of the actual cost of the work or the GMP.

INTERNAL REVIEW REPORT

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