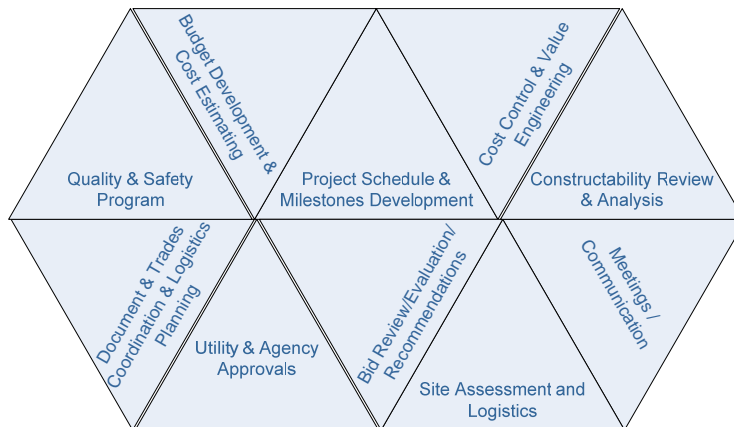


# Internal Audit Report

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



### Audit of Pre-construction Services



The district did not always receive the deliverables stipulated in the Construction Manager At-Risk Agreement (CMAA) or did not receive them in a timely fashion. Moreover, the terms of the CMAA and management's expectations relative to the location and identification of utilities are misaligned.

January 2012

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**THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA**

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Dr. Dorothy Bendross-Mindingall  
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Mr. Alberto M. Carvalho  
Superintendent of Schools

Mr. Jose F. Montes de Oca, CPA  
Chief Auditor  
Office of Management and Compliance Audits

**Contributors to This Report:**

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Supervised and Reviewed by:  
Mr. Trevor L. Williams, CPA





# Miami-Dade County Public Schools

*giving our students the world*

**Superintendent of Schools**  
Alberto M. Carvalho

**Chief Auditor**  
Jose F. Montes de Oca, CPA

**Miami-Dade County School Board**

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January 27, 2012

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:

In accordance with the approved Audit Plan for the 2010-11 Fiscal Year, we have performed an audit of pre-construction services purchased by M-DCPS between March 2003 and June 2007 for selected construction projects completed during the period beginning on January 1, 2008 and ended on December 31, 2010. The objectives of the audit were to determine the contracted firms' compliance with stipulated contract terms and to evaluate the quality of service received by the district for pre-construction services.

Our audit concluded that the district did not always receive the deliverables stipulated in the Construction Manager At-Risk Agreement (CMAA) or did not receive them in a timely fashion. In some instances, having received the requisite pre-construction services would have mitigated or avoided some of the incremental costs associated with contingency and change order items. Our review of the CMAA and analysis of contingency and change order items disclosed that a misalignment between the terms of the CMAA and management's expectations exists relative to the location and identification of utilities. The timing of identifying conflicts that impact the project as evidenced by the use of contingency for items that are known or should have been known prior to bidding and award raises questions about the quality of pre-construction services received and the proper use of contingency as prescribed in the CMAA. Additionally, this analysis demonstrated that management utilized the allowance for contingency to fund changes to the approved scope of work.

We have discussed our findings and recommendations with management. We would like to thank management for the cooperation and courtesies extended to our staff during the audit.

Sincerely,

José F. Montes de Oca, CPA, Chief Auditor

Office of Management and Compliance Audits

*Office of Management & Compliance Audits*

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## TABLE OF CONTENTS

	<b>Page Number</b>
<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>INTERNAL CONTROLS .....</b>	<b>2</b>
<b>BACKGROUND .....</b>	<b>3</b>
<b>PARTIAL ORGANIZATIONAL CHART.....</b>	<b>4</b>
<b>OBJECTIVES, SCOPE, AND METHODOLOGY .....</b>	<b>6</b>
<b>FINDINGS AND RECOMMENDATIONS</b>	
<b>1. Monitor Receipt of All Deliverables of Pre-construction Services .....</b>	<b>7</b>
<b>2. Terms of the CMAA Delineating the CM’s Responsibility for Identifying and Verifying the Existence of All Utilities Appear to Be Inconsistent with the Owner’s Expectations .....</b>	<b>11</b>
<b>3. Consider Revising Contract Terms to Assign Greater Accountability to CM .....</b>	<b>16</b>
<b>4. Post-Award Changes to Project Scope Are Being Funded Through Project Contingency Allowance .....</b>	<b>17</b>
<b>APPENDIX A – Breakdown of Contingency Allowance by Sampled Project .....</b>	<b>19</b>
<b>MANAGEMENT’S RESPONSE.....</b>	<b>24</b>

## **EXECUTIVE SUMMARY**

The pre-construction services are procured from Construction Managers (CM's) that are commissioned by the School Board. Their contracts are administered and monitored by the district's Office of Capital Improvement Projects (OCIP). Our audit focuses on the pre-construction services procured between March 2003 and June 2007 for construction projects that were substantially completed during the period beginning on January 1, 2008 and ended on December 31, 2010 and the related effects from those services.

Our audit concluded that the district did not always receive the deliverables stipulated in the CMAA or did not receive them in a timely fashion. In some instances, having received the requisite pre-construction services would have mitigated or avoided some of the incremental costs associated with contingency and change order items. Our review of the CMAA and analysis of contingency and change order items disclosed that a misalignment between the terms of the CMAA and management's expectations exists relative to the location and identification of utilities. The timing of identifying conflicts that impact the project as evidenced by the use of contingency for items that are known or should have been known prior to bidding and award raises questions about the quality of pre-construction services received and the proper use of contingency as prescribed in the CMAA. Additionally, this analysis demonstrated that management utilized the allowance for contingency to fund changes to the approved scope of work.

While many deliverables are very specific, there are some that need to be explicitly defined as well as include the district's expectations relative to their execution. Additionally, the current CMAA stipulates no monetary consequences for noncompliance with stipulated deliverables. Emphasis in this area by the CM and the owner (project manager) may reduce the quantity and costs associated with contingency and change order items that are associated with pre-construction services.

Based on our observations, we developed four (4) findings and made seven (7) recommendations. The detailed findings and recommendations start on page seven (7) of this report and provide additional information that is integral to understanding the substance and context of the conditions noted above. There were other matters, which came to our attention during our audit, which were deemed non-reportable because they were immaterial and inconsequential. These were nevertheless discussed with management for their information and follow-up.

## INTERNAL CONTROLS

Our overall evaluation of internal controls for the procurement of pre-construction services is summarized in the table below.

<b>INTERNAL CONTROLS RATING</b>			
<b>CRITERIA</b>	<b>SATISFACTORY</b>	<b>NEEDS IMPROVEMENT</b>	<b>INADEQUATE</b>
<b>Process Controls</b>		X	
<b>Policy &amp; Procedures Compliance</b>		X	
<b>Effect</b>		X	
<b>Information Risk</b>	X		
<b>External Risk</b>	X		

<b>INTERNAL CONTROLS LEGEND</b>			
<b>CRITERIA</b>	<b>SATISFACTORY</b>	<b>NEEDS IMPROVEMENT</b>	<b>INADEQUATE</b>
<b>Process Controls</b>	Effective	Opportunities exist to improve effectiveness.	Do not exist or are not reliable.
<b>Policy &amp; Procedures Compliance</b>	In compliance	Non-Compliance Issues exist.	Non-compliance issues are pervasive, significant, or have severe consequences.
<b>Effect</b>	Not likely to impact operations or program outcomes.	Impact on outcomes contained.	Negative impact on outcomes.
<b>Information Risk</b>	Information systems are reliable.	Data systems are mostly accurate but can be improved.	Systems produce incomplete or inaccurate data which may cause inappropriate financial and operational decisions.
<b>External Risk</b>	None or low.	Potential for damage.	Severe risk of damage.

## BACKGROUND

Section 1013.45(1) Florida Statutes allows a school district to contract with a construction management entity “for the construction of new facilities, or for additions, remodeling, renovation, maintenance, or repairs to existing facilities...” The Statute also allows the use of the Construction Management at-Risk (CM at-Risk) delivery method for these construction projects. This delivery method brings the design professional (A/E) and the construction manager together to achieve significant constructability input during the design phase.

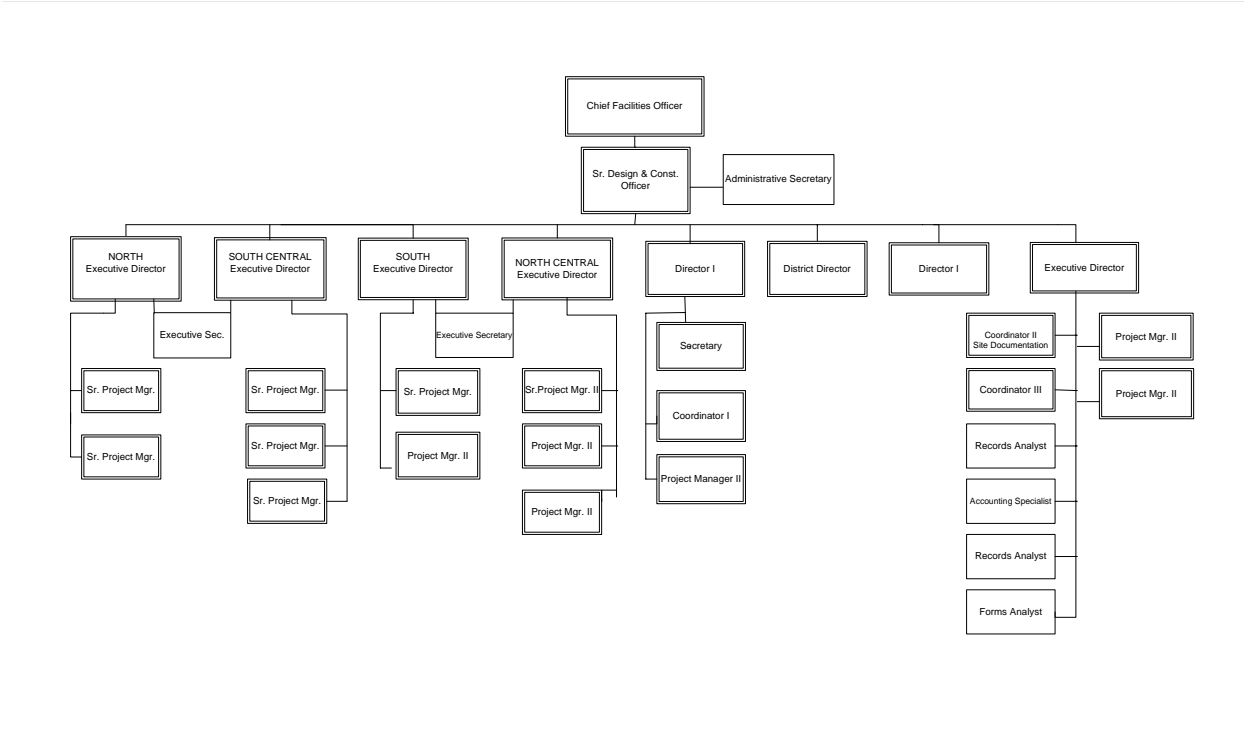
The district’s procuring of pre-construction services (PS) is handled by the A/E Selections and Negotiations Department. This department manages the process that includes preparing the request for quote (RFQ), selecting, negotiating and preparing the Board agenda item to commission the construction manager (CM), and executing the CM contract, which includes the pre-construction services. This department also ensures the CM and its employees possess the appropriate certification and licenses to perform the contracted services. Normally, the CM is hired to perform both the pre-construction and construction services. Thereafter, the Office of Capital Improvement Projects (OCIP) manages the performance of the PS contract.

According to OCIP’s staff, since 2007, OCIP has solely used the CM contracts to manage PS. Currently, OCIP has a draft procedure manual that was not utilized during the timeframe of this audit. The CM contract enumerates the responsibilities of the CM as well as lists the deliverables they are expected to provide the district. A CM will typically provide three essential pre-construction services: (1) constructability reviews (includes clarity and consistency of drawings), (2) project schedules (in form of bar charts and/or Primavera schedules), and (3) cost estimates at each design phase. Additionally, the CM will usually provide other services including the coordination of all project communication and documentation, the “clarification and qualifications document”, and the identification and verification of all underground utilities, etc.

Typically, PS fees at M-DCPS represent approximately 0.4% of a project’s GMP. Aggregate PS fees contracted by M-DCPS during the period under review totaled approximately \$1,690,000. The total PS fees for the four construction projects we sampled were approximately \$859,000. The value and effects from the service tend to be multiples of its cost.

# PARTIAL ORGANIZATIONAL CHART

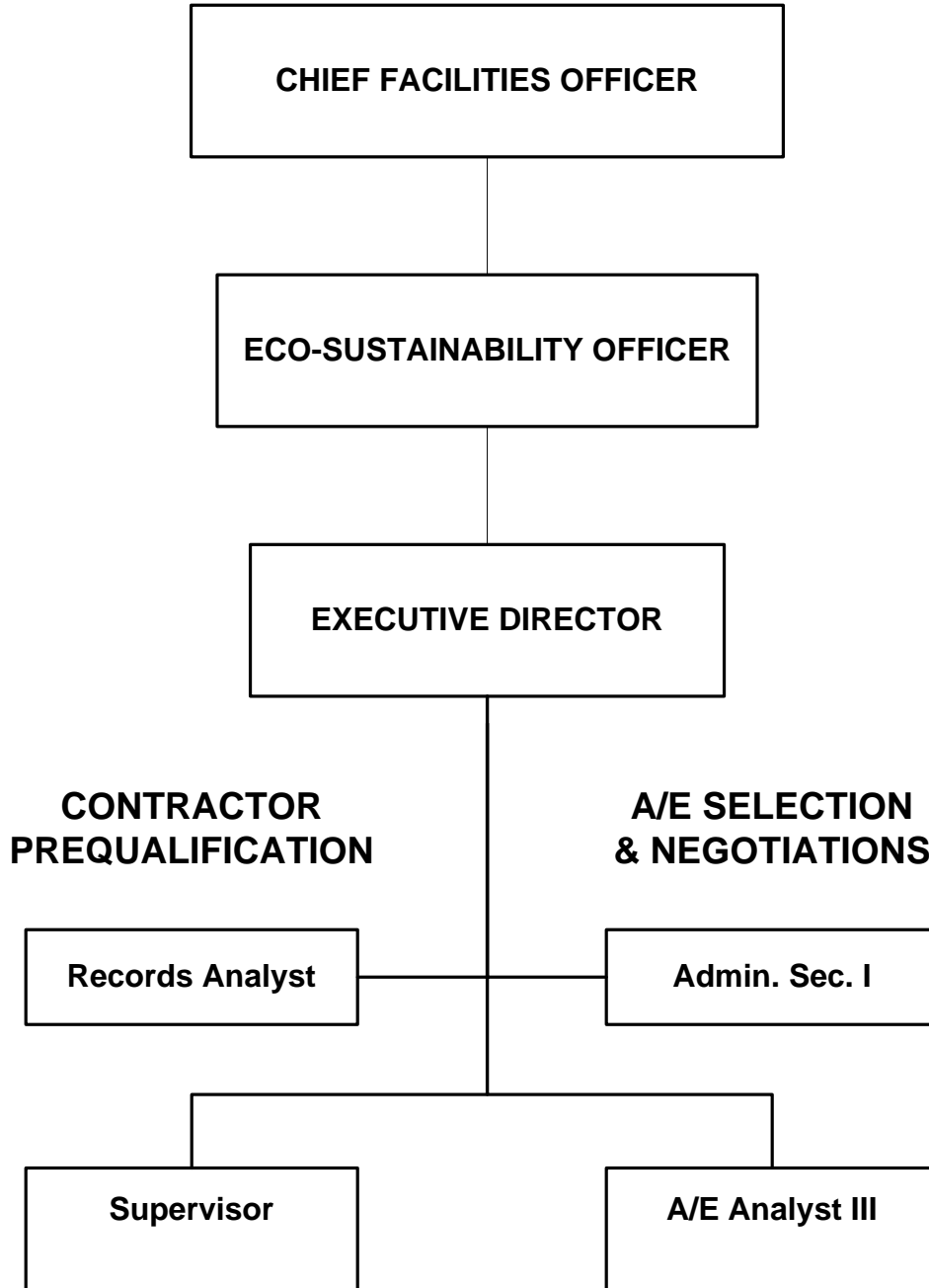
## Office of Capital Improvement Projects as of August 29, 2011:





**PARTIAL ORGANIZATIONAL CHART**

**A/E Selection and Negotiations Department as of August 30, 2011:**



## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the Audit Plan for the 2010-11 Fiscal Year, we performed an audit of the pre-construction services purchased by M-DCPS between March 2003 and June 2007 for selected construction projects. The objectives of the audit were to determine the contracted firms' compliance with stipulated contract terms and to evaluate the quality of services received by the district for pre-construction services. The scope of our audit consisted of construction projects that were substantially completed during the period beginning on January 1, 2008 and ended on December 31, 2010.

We performed the following procedures to satisfy the audit objectives:

- Interviewed district staff.
- Reviewed district operating policies and procedures, and applicable Florida Statutes.
- Obtained an understanding of how pre-construction services are procured and important provisions in the CM Agreement.
- Recalculated, on a sample basis, subcontractors' price quotations.
- Examined the CM's district-issued contractor prequalification certificate.
- Performed various other audit procedures as deemed necessary.

We conducted this performance audit in accordance with generally accepted Government Auditing Standards issued by the Comptroller General of the United States of America. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions, based on our audit objectives. This audit included an assessment of applicable internal controls and compliance with the requirements of policies, procedures, laws, regulations and rules to satisfy our audit objectives.

## FINDINGS AND RECOMMENDATIONS

### 1. MONITOR RECEIPT OF ALL DELIVERABLES OF PRE-CONSTRUCTION SERVICES

According to OCIP's management, the Construction Manager At-Risk Agreement (CMAA) provides deliverables delineating all the expectations and responsibilities of the CM to the district, with respect to pre-construction and construction services. In performing our audit, we read the entire CMAA, with added emphasis placed on Section 6 – Pre-construction Services, to obtain an understanding of CM's duties and responsibilities. We also interviewed OCIP's staff to obtain their understanding of the terms of the agreement relative to pre-construction services purchased.

To determine CM's compliance with contract provisions, we selected four construction projects that were substantially completed during the audit period. For these projects, we performed an analysis of significant deliverables stated in the CMAA. Our analysis disclosed:

- ◆ *A CM's Subcontractor Prequalification Plan as specified in CMAA was not presented for audit for any of the four construction projects.*

Section 6.5.1 of the CMAA states: "The CM shall prepare a Subcontractor's Prequalification Plan in compliance with the M-DCPS M/WBE requirements currently determined by the Board." A copy of the Plan could not be located among the project documents to evidence that it was either completed or submitted. In other words, the district is requiring the CM to prepare the Plan, even though the Plan is not required to be submitted to the district. Determining whether the CM delivered its contracted service becomes nearly impossible absent the CM's submission of the Plan for OCIP staff review. At a minimum, OCIP's staff should ensure that the CM in fact prepares this Plan.

- ◆ *The Memorandum of Changes (MOC) document was not presented for audit for any of the four construction projects.*

The Definitions Section of the CMAA defines MOC as "...a written summary of the CM's recommended modifications to the Drawings and Specifications relating to the Project..." Section 6.4.8 of the CMAA states: "The CM shall submit to the owner the CM's Memorandum of Changes in sufficient time and as scheduled so it may be reviewed against the contract document and any corrections, modifications, additions, or changes be incorporated prior to commencing the Bid and Award Phase. The term MOC shall mean a

*written summary of the CM's recommended modifications to the Drawings and Specifications relating to the Project, based on an evaluation of the Project requirements, on and off-site development, survey requirements and project requirements and a review of the design documents and the Drawings and Specifications, and the Contract Documents. The CM shall identify any recommendations not incorporated into the documents..."*

According to OCIP's management, they define MOC as "all pre-construction recommendations made by the CM in fulfilling the CM's duties with regard to the contract documents." Management's expectations regarding the MOC include the "pre-construction RFIs, meeting minutes, correspondence, and clarifications and qualifications," as opposed to a single specific summary document as stipulated in the CMAA. Management provided to the auditors a copy of the Qualifications and Clarifications (Q&C) document, which they claim satisfies receipt of this deliverable. Management's definition and expectations of the MOC cannot be inferred from the CMAA and would suggest that the CM did not provide this contract deliverable. Subsequent to our fieldwork, management has stated they intend to revise the CMAA to remove this clause.

- ◆ *For all four construction projects, the CM did not prepare and deliver the CM at-risk schedule by the contract-specified due date.*

For all four construction projects, the CM did not prepare and deliver the CM at-risk schedule by the contract-specified due date. Section 6.7.3 of the CMAA requires that, "within 10 days of the agreement's effective date, the CM shall present to the owner a schedule for CM's duties, deliverables, and requirements showing the start and completion of design phase activities to be performed by the CM." Upon our request for proof of satisfaction of this deliverable, we received an undated time schedule. There were no transmittal letter or timestamp attached to this document. OCIP management stated that the Primavera electronic scheduling system has been used to manage and update project schedules by district staff. Management also stated that the schedule was created with input prepared in collaboration with the CM and that the schedule can be printed at any time, but will only identify the date printed. This suggests that OCIP staff, rather than the CM creates the schedule. Subsequent to our fieldwork, management has stated they intend to revise the CMAA to modify this clause and increase flexibility to manage these schedules.

- ◆ *For one of the construction projects, the CM and A/E failed to meet in a timely manner to review the Architect's schedule.*

The Board approved the CMAA on March 12, 2003. Section 6.3.2 of the CMAA stipulates that after execution of CMAA, the CM shall immediately meet with the architect and the Board's representative to review the most

current Exhibit A of the Architect's schedule. The first and only meeting documented for this purpose occurred on July 16, 2003, some 126 days later. Subsequent to our fieldwork, management has stated they intend to revise the CMAA to modify this clause and increase flexibility to manage these schedules.

- ◆ *For one of the construction projects selected, a key provision of the CMAA may have been nullified by an appended written disclaimer by the CM.*

We noted a statement in the Qualification and Clarifications (Q&C) document indicating that all unforeseen and undocumented underground lines are not covered by the GMP. This statement appears to contradict a key provision in the CMAA and release the CM of his/her duties as delineated in Section 6.4.2 of the CMAA, which states: *“The CM shall, during this phase, be responsible for the proper identification and location of all utilities, services, and other underground facilities which may impact the Project.”* OCIP management’s acceptance of the amendment to the CMAA appears to release the CM from being held responsible for not exercising due diligence identifying the location of all utilities and potentially increasing the project cost.

## **RECOMMENDATIONS**

- 1.1 Develop procedures to closely monitor the CM’s compliance with all stipulated deliverables.**

**Responsible Department: OCIP**

**Management Response:** *OSF [The Office of Schools Facilities] has revised the CMAA in accordance with its standard practice to provide for authorizing CM payments during the pre-construction only after all required deliverables have been received at each Design Phase (i.e. Phase I, Phase II and Phase III or Phase II/III, as applicable), at bidding and GMP submittal and negotiation Phase.*

- 1.2 Review the CMAA and ensure that terminology that is ambiguous is clearly defined. If necessary, also explicitly include the district’s expectations for any of these deliverables.**

**Responsible Department: OCIP**

**Management Response:** *As indicated above, OSF has already revised CMAA to clarify its expectations regarding the Schedule for CM Duties and Deliverables, and Schedule Review Meeting with A/E. The CMAA has also been revised to eliminate the*

*Memorandum of Changes and to make it clear that the CM is not required to submit its subcontractor prequalification plan for review and approval by the District.*

- 1.3 Compare statements in the Q&C documents and the CMAA to ensure that no statements made in the Q&C document nullify the CM's contract-defined duties and responsibilities or negate the receipt of deliverables to which the district is entitled.**

**Responsible Department: OCIP**

**Management Response:** *Since this project was negotiated in 2005, extensive improvements in the manner in which CM projects are negotiated and awarded have taken place, which includes ensuring that no statements are made in Q&C documents that reduce any of the CM's contractual obligations.*

## **2. TERMS OF THE CMAA DELINEATING THE CM'S RESPONSIBILITY FOR IDENTIFYING AND VERIFYING THE EXISTENCE OF ALL UTILITIES APPEAR TO BE INCONSISTENT WITH THE OWNER'S EXPECTATIONS**

Contained in the CMAA are various terms addressing the CM's duties and responsibilities during the pre-construction phase. Two of the principal objectives of this phase are to reduce project timeline, through phased design and construction; and to identify and resolve potential conflicts, through various pre-construction services. The contract-required reviews the CM is obligated to perform are intended to satisfy these objectives. Achieving these two objectives will effectively eliminate or reduce change orders, claims and adjustments.

We reviewed the CMAA and performed a detailed analysis of 36 contingency adjustments, valued at approximately \$3,156,000, judgmentally selected from the 180 contingency adjustments, valued at \$4,869,000 (see Appendix A for a breakdown of adjustments by category and among projects) that were approved for the four construction projects.

### ***Results –***

Based on our review of the CMAA, analysis of the sampled contingency adjustments, and subsequent discussions with management and legal counsel, two principal areas of concern came to our attention: (1) whether the CMAA, especially Article 6.4.2 is written in a manner that clearly delineates the true expectation of management with respect to the locating and identifying all underground utilities and (2) the timing at which utility conflicts are being identified and/or addressed, which raises questions about the extent to which the services delineated in Section 6.4.2 of the CMAA (*prima fascia*) is being executed.

### **Issue No. 1**

According to the CMAA:

*Article 6.4.2 – Responsibility, states, “The CM...shall be fully responsible for the coordination of the drawings and the coordination of those drawings with the written specifications. This includes but is not limited to the CM's review of the construction documents in coordination with the various drawings and specifications themselves, with the existing buildings and sites to ensure proper coordination and constructability and lack of conflict, and to minimize unforeseen conditions. The CM shall, during this phase, be responsible for the proper identification and location of all utilities, services, and other underground facilities which may impact the*

*project. The CM agrees specifically that no Change Orders shall be requested or considered by the Board for reasons involving conflicts in the document, questions of clarity with regard to the documents, incompatibility or conflicts between the documents and the existing conditions, utilities, and unforeseen underground conditions.”*

Article 6.4.7 – Design Services, states, *“In the performance of its design phase requirements, while the CM is not the Architect of Record and is not the Project Architect nor Design Builder for the project, the CM shall be prepared to employ such professional design services as may be required for the fulfillment of its obligations under this Agreement.”*

According to Facilities management, they only require that the CM perform “due diligence” or a standard of care, which includes a review of as-built drawing and site survey, and making a site observation. On the other hand, the terms of the CMAA specifically requires the CM to properly identify and locate all utilities and other underground facilities, which infer a greater standard of care than Facilities management asserts it requires. Legal counsels have suggested that the construction of Article 6.4.2 of the CMAA is poor and requires revision. We are in agreement with counsel’s assessment.

- ◆ We noted e-mail correspondence dated January 10, 2008, which references discussion of the CM encountering “another underground utility that was damaged in the process of...installing the underground main water line.” During those conversations, the CM also states that M-DCPS had yet to contact an independent company to locate any existing underground utilities and that it was brought to MDCPS’ attention again. Discussion with Management revealed a separate pull-out project for the water main relocation was approved by the School Board on September 20, 2007, and utilized the same CM Agreement as the main project. There were no additional pre-construction services in this pull-out project’s scope of work. Per OCIP, the pull-out GMP and scope-of-work is part of the overall project’s GMP and scope-of-work. The CM requesting M-DCPS to contract an independent company to locate any existing underground utilities suggests that the responsibility and delivery of this service as delineated in the CMAA was shifted from the CM to M-DCPS.

### Issue No. 2

As required by the CMAA, the CM, during the pre-construction phase, has a responsibility to identify and notify the owner of conflicts that may impact the project. Potential conflicts may include above and below ground utilities. Constructability reviews as required by the CMAA is one means of identifying such conflicts. The



*Constructability Review Best Practices Guide*<sup>1</sup> published by the American Association of State Highway and Transportation Officials (AASHTO) provides guidance, including sample checklists from respondent state agencies (including Florida DOT) to their 1999 survey. Verification of site conditions, including subsoil conditions and location of underground utilities and conflicts in connecting to existing utilities are common considerations during constructability review.

- ◆ Our detailed analysis of the contingency adjustments in our sample disclosed that four approved contingency items were for work involving conflicts with underground utilities that were not located and identified during pre-construction. The cost for these four contingency items was approximately \$119,000.
  
- ◆ In addition to the four contingency adjustments above, other instances of conflicts involving utilities were observed, which were paid for through the contingency fund rather than being identified during pre-construction and included in the “identified cost items” in the GMP at the project’s bidding and award phase. The following are specific examples of the items in question, along with their causes as described by OCIP in the adjustment change document.
  - \$17,372 for the cost of relocation of existing fire hydrants in the way of new construction. This relocation was performed by MD-WASA and classified as a State/Local/City Requirement.
  
  - \$11,392 for the cost of FPL furnishing and installing underground conduit wire and accessories to relocate existing main ductback to facilitate the construction of the new facility classified as a Utility requirement.
  
  - \$61,968 for the AT&T costs to relocate the overhead telephone lines that conflict with the new facility classified as a Contractor Request.
  
  - \$6,500 for the cost of an FPL deposit required before they could proceed with the design and relocation of numerous overhead electrical lines that conflicted with the project classified as a Utility requirement.

Through discussions, Facilities staff has indicated that those items classified as State/Local/City or Utility Requirement are requirements that are typically known to management prior to bidding and award, but are not itemized in the GMP due to uncertainty regarding the exact cost to perform the work. We believe all known requirements should be identified and included in the

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<sup>1</sup> AASHTO Subcommittee on Construction, *Constructability Review Best Practices Guide*, August 2000, <http://construction.transportation.org/Documents/AASHTOConstructabilityFinal.pdf>

GMP cost elements at the time of bidding and award rather than processed through the contingency fund. According to Article I of the CMAA, the contingency shall be used for two purposes: (a) first for work required, which was unforeseeable by the CM and the owner at the time of execution of the GMP Agreement, notwithstanding the CM's exercise of due diligence in connection therewith and (b) second, to return the residual amount to the owner. (*Emphasis added.*)

## RECOMMENDATION

- 2.1 Review and modify the CMAA's terms to assure that they delineate the service level expected by management. Once modified, failure to provide the stated deliverables should result in CM absorbing all costs related to not fully providing the services, as stipulated in the CMAA.**

**Responsible Department: OCIP**

**Management Response:** *The Office of Schools Facilities has indicated that the terms of the CMAA with respect to locating and identifying underground utilities are clear and unambiguous to the parties and participants involved in the project (i.e. OSF staff, A/E, CM and Legal Counsel) and as cited in the legal opinions. Nevertheless, OSF has revised the CMAA as recommended by OMCA with respect to the expectations of the CM's responsibilities for properly identifying and locating underground utilities based on the legal opinions cited. OSF has in the past and will continue to hold the CM responsible for absorbing the costs of items for which the CM failed to perform its due diligence during pre-construction as stated in the contract.*

- 2.2 Include all known requirements necessary to complete the established scope of work for the project as identified "line cost" items in the GMP at the time of developing the GMP. We further recommend that the use of contingency be consistent with its contract-specified purposes.**

**Responsible Department: OCIP**

**Management Response:** *OSF ensures that the CM properly identifies and locates all underground and above ground utilities as required in the CMAA based on the CM's due diligence during pre-construction (i.e. as-built drawings and site observations) in accordance with the contract for all work to be performed by the CM which is to be included in the GMP. All four the items cited, were direct reimbursements to the utility companies performing the work for which no costs could have been mitigated or eliminated. The suggestion made at the meeting to provide an allowance in the GMP to cover the cost of these items would not be appropriate as the utility companies are not the CM's subcontractors and such costs would not be included in the GMP as part of the CM's scope of work.*

**Auditors' Comment:** We appreciate the Office of Schools Facilities providing a response to our recommendation. We understand that while the utility companies are not the CM's subcontractors and their costs to perform work on the project are reimbursed costs, through the CM's and OSF's past experience and knowledge, the need for these services and their cost range are known prior to establishing a GMP. Moreover, the CM is charged with coordinating the involvement of the utility companies' efforts in the project and has been reimbursed by the District for amounts paid to the utility companies for the benefit of the District. As such, including a reimbursable cost component in the GMP for these known services would only enhance transparency concerning the expected known cost of the project.

### **3. CONSIDER REVISING CONTRACT TERMS TO ASSIGN GREATER ACCOUNTABILITY TO CM**

Article 6.8.2 of the CMAA allows for the CM to be paid pre-construction fees, monthly, in a proportional amount, calculated by dividing the applicable portion of pre-construction fees by the number of months stipulated for each pre-construction phase. The pre-construction phase runs from Programming through the submission of the GMP and includes various identified submission and deliverables. Moreover, we did not find evidence through our review of the CMAA to indicate that the CM is held accountable for late or non-submission of contract-required deliverables.

Enhanced contract management and cost control practices would dictate that payment of fees for pre-construction services be tied to the satisfaction of specific deliverables rather than to duration of time. Those practices would also dictate that accountability, that is, the failure to timely satisfy contract deliverables, is plainly delineated in the contracting document.

### **RECOMMENDATIONS**

- 3.1 Consider revising the terms of the CMAA to tie payment of fees for pre-construction services to the receipt of specified deliverables. In applying the revised contract terms, payment to CM for specifically identified pre-construction services should be withheld until those services are received. Additionally, in cases where additional cost is incurred or a specifically identified pre-construction service provided is rendered useless due to its late delivery, payment to the CM for that service should be adjusted for the additional cost or delay.**

**Responsible Department: OCIP**

**Management Response:** *The Office of Schools Facilities has indicated that it has revised the CMAA to provide for payment of the CM during pre-construction only after all required deliverables have been received at each Design Phase (i.e. Phase I, Phase II and Phase III or Phase II/III, as applicable) and the Bidding, GMP Submittal and Negotiation phases.*

#### **4. POST-AWARD CHANGES TO PROJECT SCOPE ARE BEING FUNDED THROUGH PROJECT CONTINGENCY ALLOWANCE**

When the School Board awards a Guaranteed Maximum Price (GMP) contract for CM At-Risk, both the cost and scope of work are agreed-upon by the district and the CM. Included in the GMP is an owner contingency amount, which is approved for owner-directed changes and unforeseen conditions arising during construction. Although not a function of pre-construction services provided, certain trends were identified that significantly impact projects cost.

For the four projects selected, changes to the scope of work included in the approved GMP represented approximately \$2,427,000 or 50% of the \$4,869,000 aggregate contingency amount (see Appendix A for a breakdown of adjustments by category and among projects). Although scope changes are allowable costs for project contingency use, and are approved by the district's Technical Review Committee (TRC), our analysis disclosed a trend of inordinate amounts of scope changes that were funded through contingencies. Management appears to be using most of the project's contingency to fund changes to the project scope. Owner's contingency included in the GMP is typically 3% to 5% of the project's construction budget.

In a well-defined project scope and GMP, all cost disciplines are competitively bid during the GMP negotiation phase. When changes to the scope of work are funded through owner's contingency instead of negotiated during the GMP negotiation phase, two cost controls are bypassed: (1) the changes and their attendant costs are not specifically approved by the School Board; and (2) project costs that are substantial in amount are not subjected to the same competitive bidding process applied to the other costs elements specifically identified in the awarded GMP. Moreover, the CM is typically paid a fee of 15% on the first \$10,000 and 10% on the balance of the cost of the change for processing the changes. In addition, based on the number and types of contingency adjustments observed, it is apparent these items are in effect change orders.

#### **RECOMMENDATION**

**4.1 To enhance project cost control, Management should refrain from increasing the project scope through use of the contingency fund at the level identified in our analysis of contingency usage. Controls in this area could be enhanced if contingency adjustments for scope changes over a specified amount are forwarded in a report to the School Board for information and confirmation purposes.**

**Responsible Department: OCIP**

**Management Response:** *The Office of Schools Facilities has indicated that it has properly utilized the contingency for items categorized as scope changes.*

**Auditors' Comment:** We are aware that the School Board approves the GMP, which include a lump-sum amount of owner's contingency and that amount could be used to fund work required, which was unforeseeable by the CM and the owner at the time of execution of the GMP Agreement; however, we stand by our recommendation that the School Board should be informed when using contingency to fund scope changes over a specific threshold.

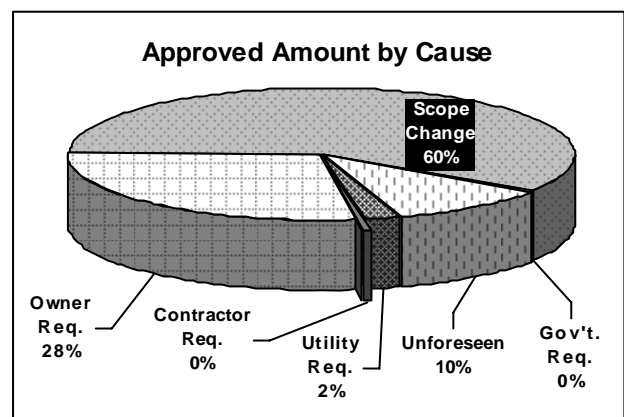
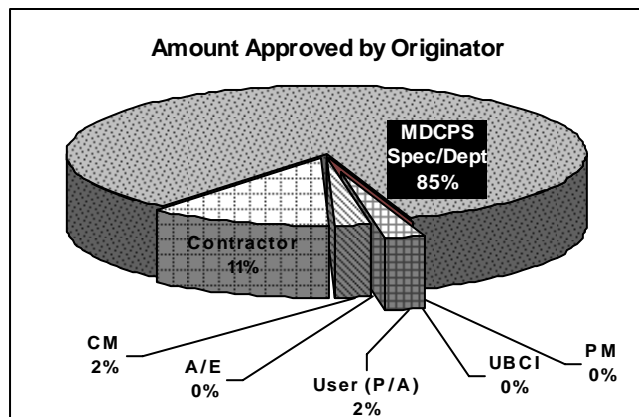
## APPENDIX A – Breakdown of Contingency Allowance by Sampled Project

The following charts depict summaries of the total adjustments to contingency and further broken down for each of the projects sampled.

	Total	Percent
Architectural Error	\$ 98,011	2.01%
Architectural Omission	226,089	4.64%
Civil Engineering Error	6,439	0.13%
Civil Engineering Omission	75,047	1.54%
Contractor Request	69,522	1.43%
Electrical Engineering Error	119,082	2.45%
Electrical Engineering Omission	209,066	4.29%
Fastrack/Coord. Omission	49,432	1.02%
Mechanical Engineering Error	57,007	1.17%
Mechanical Engineering Omission	195,019	4.01%
Owner Request	196,113	4.03%
Scope Change	2,426,973	49.85%
State/Local/City Requirement	466,773	9.59%
Structural Engineering Error	71,496	1.47%
Structural Engineering Omission	22,240	0.46%
Unforeseen Conditions	480,413	9.87%
Utility Requirement	100,150	2.06%
	<u>\$4,868,872</u>	<u>100.00%</u>

<b>G. Holmes Braddock Senior High – Project #00140800</b>	
<b>GMP (including \$649,047 contingency) - \$13,500,000</b>	
<b>Pre-construction services fees - \$140,920</b>	
Approved Amount by Originator	Approved Amount by Cause

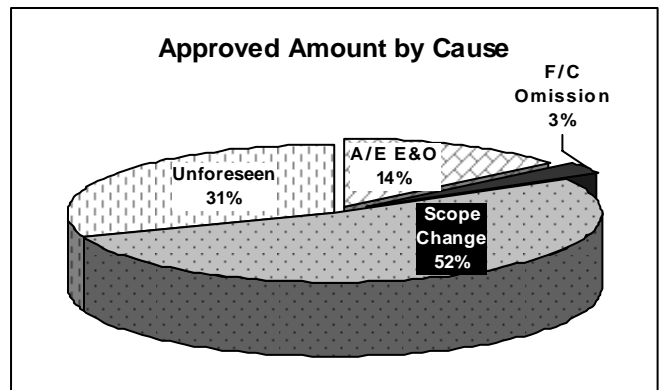
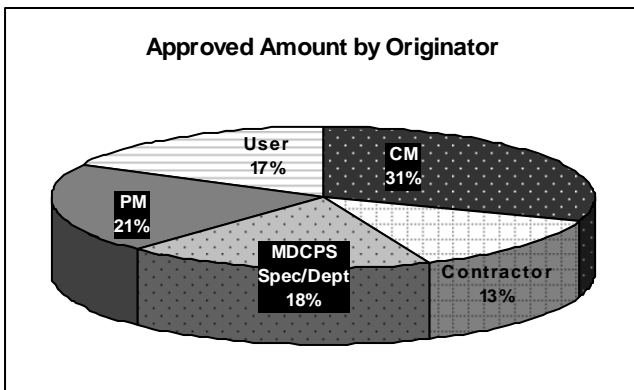
	A/E	\$ -		Contractor Request	\$ 2,322
	Construction Manager	12,019		Owner Request	140,683
	Contractor	56,882		Scope Change	301,845
	MDCPS Specialists/Depts.	429,840		State/Local/City Requirement	2,216
	Project Manager	-		Unforeseen Conditions	52,344
	UCBI	-		Utility Requirement	11,392
	User (Principal/Admin)	12,061			\$510,802
		\$510,802			





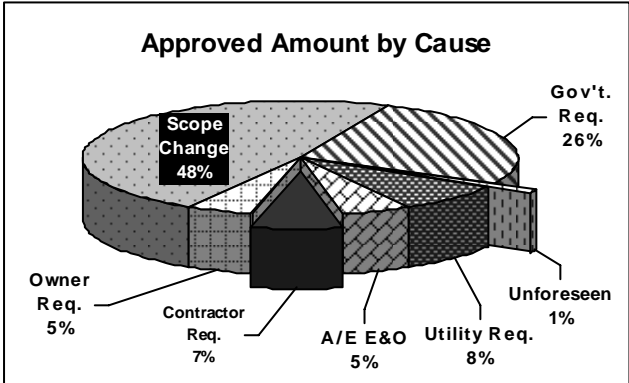
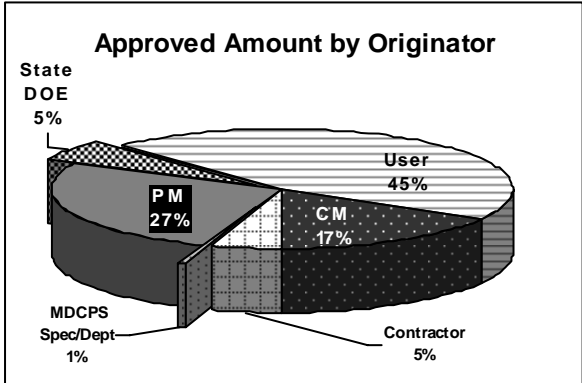
<b>Spanish Lakes Elementary – Project #A0820</b>	
<b>GMP (including \$128,243 contingency) - \$4,531,270</b>	
<b>Pre-construction services fees - \$127,500</b>	
Approved Amount by Originator	Approved Amount by Cause

A/E	\$ -	Architectural Error	\$ 18,706
Construction Manager	163,550	Architectural Omission	10,142
Contractor	69,528	Electrical Engineering Omission	11,999
MDCPS Specialists/Depts.	98,337	Fastrack/Coord. Omission	14,007
Project Manager	112,000	Mechanical Engineering Omission	33,380
UCBI	-	Scope Change	281,798
User (Principal/Admin)	90,167	Unforeseen Conditions	163,550
	<u>\$533,582</u>		<u>\$533,582</u>



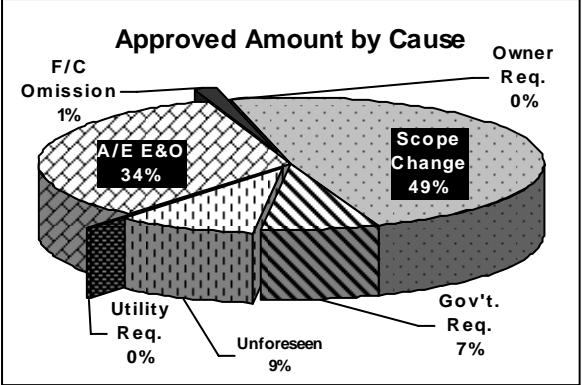
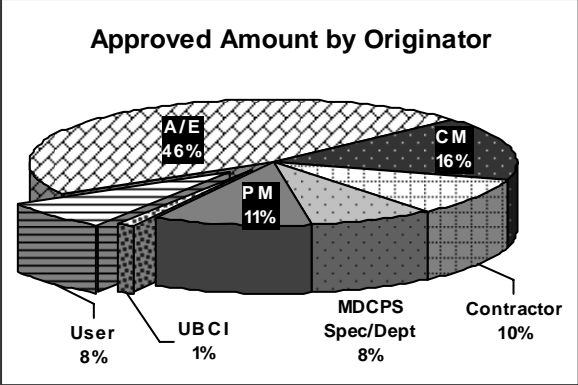
<b>State School YYY-1 – Project #00254700</b>	
<b>GMP (including \$1,700,000 contingency) - \$35,209,242</b>	
<b>Pre-construction services fees - \$260,957</b>	
Approved Amount by Originator	Approved Amount by Cause

	A/E	\$ 49,600		Architectural Error	\$ 1,400
	Construction Manager	149,688		Contractor Request	67,200
	Contractor	44,933		Owner Request	48,539
	MDCPS Specialists/Depts.	5,448		Scope Change	474,375
	Project Manager	241,540		State/Local/City Requirement	256,190
	State DOE	84,431		Structural Engineering Error	49,600
	User (Principal/Admin)	412,542		Unforeseen Conditions	9,730
		\$988,182		Utility Requirement	81,148
					\$988,182



<b>Miami Jackson Senior High – Project #A-0799CM</b>	
<b>GMP (including \$2,990,000 contingency) - \$57,975,282</b>	
<b>Pre-construction services fees - \$329,500</b>	
Approved Amount by Originator	Approved Amount by Cause

	A/E	\$1,318,877	Architectural Error	\$ 77,905
	Construction Manager	464,036	Architectural Omission	215,948
	Contractor	272,091	Civil Engineering Error	6,439
	MDCPS Specialists/Depts.	237,129	Civil Engineering Omission	75,047
	Project Manager	298,957	Electrical Engineering Error	119,082
	UCBI	28,776	Electrical Engineering Omission	197,067
	User (Principal/Admin)	216,440	Fastrack/Coord. Omission	35,425
		\$2,836,306	Mechanical Engineering Error	57,007
			Mechanical Engineering Omission	161,639
			Owner Request	6,891
			Scope Change	1,368,955
			State/Local/City Requirement	208,366
			Structural Engineering Error	21,896
			Structural Engineering Omission	22,240
			Unforeseen Conditions	254,789
			Utility Requirement	7,610
				\$2,836,306



**MANAGEMENT'S RESPONSE**  
**[With Auditors' Comment added]**

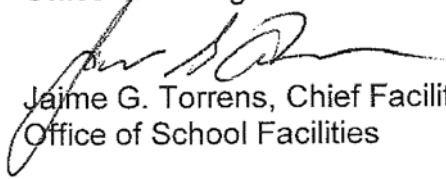
MANAGEMENT AND  
COMPLIANCE AUDITS

**MEMORANDUM**

2012 JAN 27 PM 12: 04

January 27, 2012

TO: Mr. Jose Montes de Oca, Chief Auditor  
Office of Management and Compliance Audits

FROM:   
Jaime G. Torrens, Chief Facilities Officer  
Office of School Facilities

**SUBJECT: MANAGEMENT RESPONSE TO AUDIT OF PRE-CONSTRUCTION SERVICES**

As requested, please find the attached responses to the final draft of the above subject audit report received by our office on January 24, 2012. Please let me know if you require additional information.

JGT:diam  
M175

Attachment

cc: Mr. Alberto M. Carvalho  
Mr. Nicolas Betancourt  
Mr. Trevor Williams  
Mr. Laurence White

**MANAGEMENT RESPONSE TO OFFICE OF MANAGEMENT AND  
COMPLIANCE AUDITS' REPORT DATED 1/24/2012  
AUDIT OF PRE-CONSTRUCTION SERVICES**

**January 26, 2012**

The Office of School Facilities (OSF) has carefully reviewed the Office of Management and Compliance Audits' (OMCA) report dated January 24, 2012 and various concerns are expressed below. During the audit process and information exchange, many items originally presented by OMCA were clarified and resolved, however, the current report still contains several items that are not actual findings, but rather are recommendations, opinions or items for which clarifying legal opinions were previously provided.

OSF has again included herein the supporting legal opinions and has expanded on those opinions based on subsequent input from legal counsel. To further clarify and reinforce the validity of its previous responses, OSF staff conducted joint meetings with representatives from OMCA, the School Board Attorney's office and the District's outside legal counsel, Mr. Oscar Soto, Board Certified Construction Attorney. Furthermore, had the CM foreseen items defined as unforeseeable, the only impact would have been a corresponding direct increase to the GMP amount at the time of award and not the elimination or mitigation of overall project costs.

As such, implementation of OMCA's contract interpretation would place the District at significant risk of claims and litigation.

**COVER MEMORANDUM AND EXECUTIVE SUMMARY:**

The following documents do not accurately convey the findings and recommendations stated in the body of the report as follows:

- **2<sup>nd</sup> sentence of the 2<sup>nd</sup> paragraph** - OMCA provided no analysis supporting its assertion that the incremental costs of contingency adjustments could have been mitigated or eliminated or that the CM did not perform its pre-construction services properly. See detailed response under Finding No. 2.
- **4<sup>th</sup> sentence of the 2<sup>nd</sup> paragraph** - All 4 of the contingency adjustment items cited were direct reimbursements to the utility companies performing the work for which no costs could have been reduced or eliminated. See detailed response under Finding No. 2.

- **Last sentence of the 2<sup>nd</sup> paragraph** – None of the contingency adjustment items cited by OMCA were cardinal changes to the scope of work approved by the School Board. See detailed response under Finding No. 4.

### **INTERNAL CONTROLS RATINGS:**

- **Effect** – There was no impact on operations or program outcomes.

### **FINDING NO. 1:**

- **CM's Subcontractor Prequalification Plan** – As stated in in OMCA's report the CM's Prequalification Plan is not required to be submitted. Therefore, it is not considered by OSF to be deliverable. The risk is and must fully remain the CM's for prequalification of its subcontractors as previously indicated by OSF.

*[Auditors' Comment: From a contracting perspective, all requirements laid upon the CM through the contract are "deliverables." They are the services, documents, tasks or items the CM has a responsibility to provide under the contract. As such, the requirement the CMAA lays upon the CM to prepare a Subcontractor's Prequalification Plan is a contract deliverable.]*

- **Memorandum of Changes** – OSF staff enforces the approved and executed GMP and considers that the Memorandum of Changes, which precedes the GMP qualifications and clarifications, poses liability risks as it does not address all necessary considerations and may be in conflict with the terms and conditions of GMP. As such, the Memorandum of Changes has been removed from the newly revised CMAA. Notwithstanding, there was no cost implication or reduced level of effort with regard to the pre-construction services provided by the CM.
- **Schedule for CM Duties and Deliverables** – Article 6.7.3 of the CMAA has been modified to provide OSF the flexibility to manage and prioritize project pre-construction schedules as needed.
- **Schedule Review Meeting with A/E** – Article 6.3.2 of the CMAA has been modified to provide OSF the flexibility to manage and prioritize project pre-construction schedules as needed.
- **Note in Qualifications for Miami Jackson Senior High** – Since this project was negotiated in 2005, extensive improvements in the manner in which CM projects are negotiated and awarded have taken place, which includes ensuring that no statements are made in the Q&C documents that reduce any of the CM's contractual obligations.

**RECOMMENDATION 1.1** - OSF has revised the CMAA in accordance with its standard practice to provide for authorizing CM payments during the pre-construction only after

all required deliverables have been received at each Design Phase (i.e. Phase I, Phase II and Phase III or Phase II/III, as applicable), at bidding and GMP submittal and negotiation Phase.

**RECOMMENDATION 1.2** – As indicated above, OSF has already revised CMAA to clarify its expectations regarding the Schedule for CM Duties and Deliverables, and Schedule Review Meeting with A/E. The CMAA has also been revised to eliminate the Memorandum of Changes and to make it clear that the CM is not required to submit its subcontractor prequalification plan for review and approval by the District.

**RECOMMENDATION 1.3** - Since this project was negotiated in 2005, extensive improvements in the manner in which CM projects are negotiated and awarded have taken place, which includes ensuring that no statements are made in Q&C documents that reduce any of the CM's contractual obligations.

## **FINDING NO. 2:**

The position of OSF is that all pre-construction services required of the CM were performed as required in the contract and that no costs of change orders or contingency adjustments could have been mitigated or eliminated. This position is supported by opinions provided by legal counsel as further explained below.

*[Auditors' Comment: Input from legal counsel was sought respecting the issues raised in our audit Finding 2. That input yielded opinions from the consulting attorneys that neither the position of OSF nor OMCA was incorrect.]*

Appendix A shows the full value of all contingency adjustments that resulted from a variety of causes and are not limited to just those having to do with above ground and underground conditions. These adjustments were associated with four projects totaling approximately \$131,000,000 of construction value.

## **ISSUE NO. 1:**

The interpretation of OMCA of Article 6.4.2 of the CMAA contract for unforeseen underground utilities, is not what the contract intended nor a legally defensible position. Implementation of that article as a greater standard of care, would place the at significant risk of claims and litigation.

In reference to Section 6.4.2 of the CMAA contract, particularly with regard to unforeseen underground conditions, OSF enforces this clause in a reasonable fashion which is consistent with industry standard and legal counsel pursuant to the response previously provided to OMCA as indicated below:

*“Typically a CM is furnished as built drawings depicting the existence of underground utilities or other below ground elements pertaining to the project.”*

*The CM in turn is required to undertake site visits to confirm visually the information. Utilities, etc. will typically manifest themselves above ground where they intersect w/ buildings, clean outs, culverts or the like. Absent specific contractual language [such as required use of GPR or forensic excavations] and additional fee, a CM does not guarantee that what is depicted on the as-builts is indicative of what is actually below ground. Case law around the country is uniform: CM is required to use best efforts coupled with actual site visits to confirm that there are no patent defects or inconsistencies in the as-builts as compared to existing site conditions.*

*See generally, Ace Construction v. US, 70 Fed. Cl. 253 (Fed Ct. Cl. 2006) (differing site conditions clause did not bar action where reasonable site investigations would not have revealed existence of deficient topographical plans/elevations and reliance was reasonable); and, Ohio appellate Court held that a differing site conditions clause does not bar change order claim for differing subsoil condition where substrata information could not be verified or refuted by site visit. Smoot v Ohio Dept of Admin. Ser., 736 NE2nd 69 (Ohio Ct of Appeals 2000)."*

*Brian A Williams, Esq., Board Attorney's Office and Oscar E. Soto, Esq., Board Certified Construction Attorney, The Soto Law Group, P.A.*

In reference to Section 6.4.7 of the CMAA contract, OSF enforces this clause in a reasonable fashion which is consistent with, industry standard and legal counsel pursuant to the response previously provided to OMCA as indicated below:

*"Most CM at Risk contracts require the CM, during pre-construction services, to review the design documents for the following purposes:*

- 1. Constructability;*
- 2. Sufficiency for intended purpose;*
- 3. Budget;*
- 4. Value engineering;*
- 5. Coordination of drawings;*

*The historical purpose of such action is to bring a builders perspective to the pre-construction process. Absent specific contractual language assigning design liability to the CM for Architect/Engineer errors and omissions, a CM is not typically liable for design errors and omissions. [ See Atlantic National Bank v. Modular Age, Inc., 363 So. 2d 1152 (Fla. 1st DCA 1978) (Holding that a contractor and surety were not liable for breach of contract to the owner for failing to build a facility in compliance with building code/designs.), See Also Martin K. Eby Constr. Co. v. Jacksonville Transp. Auth., 436 F. Supp. 2d 1276, 1308 (M.D. Fla. 2005) (Restating Spearin Doctrine and holding, "In exchange for the right to direct specifically how a project shall be performed, the [owner] warrants that its directions are not defective."*



*The A-E team and the peer review professionals, if any, are the parties primarily liable for design deficiencies. See Atlantic National Bank v. Modular Age, Inc., 363 So. 2d 1152 (Fla. 1st DCA 1978).*

*Obligating the CM to review and coordinate the design documents [typically for a fee significantly less than the A-E fee] only requires the CM to use its best efforts [reasonableness standard] within its particular skill set i.e. a "contractor" for the purpose of identifying patent defects in the plans."*

*Brian A Williams, Esq., Board Attorneys Office and Oscar E. Soto, Esq., Board Certified Construction Attorney, The Soto Law Group, P.A.*

OMCA relies primarily on one clause of the contract (Article 6.4.2) with regard to the CM's responsibilities during pre-construction, which is read out of context and without a full reading of the relevant provisions of the contract. As such, OMCA infers that Facilities Management is imputing an interpretation or meaning regarding the CM's proper identification and location of all underground utilities that is not specifically contained in the language of the contract (i.e. due diligence and a standard of care). On the contrary, there is another clause contained in the contract directly relevant and on point with regard to the CM's contractual responsibilities (including the proper identification and location of all underground utilities) and the Contingency's applicability thereto. In addition to Article 6.4.2, the definition for "Contingency", as contained in Article I of the very same agreement states the following:

**"Contingency.** The term Contingency shall mean a line item contingency amount contained in the Schedule of Values for the Project, which contingency amount, if accepted by the BOARD, shall be included within the Project GMP pursuant to the GMP Amendment for the Project, and, subject to the prior agreement of the BOARD, the Contingency shall be used as the source of funds for costs reasonably and necessarily incurred and paid by the CM, which costs shall be at rates not higher than the standard paid in the locality of the Work, as follows: (a) first, in connection with the proper performance of Work required hereunder which Work was unforeseeable by the CM and the BOARD at the time of execution of the GMP Amendment pertaining thereto, notwithstanding the CM's exercise of **due diligence (emphasis added)** in connection therewith (b) second, to the extent that any portion of the Contingency remains unallocated or the date of Final Completion and after the issuance of final payment for the Project, such remaining portion of the Contingency shall accrue to the benefit of the BOARD. The Contingency amount, if any, shall be set forth in the GMP Amendment for the Project, on its face and within the Schedule of Values attached thereto."

Therefore, based on the full reading of the relevant provisions of the contract, OMCA's assertion that the contract infers a greater standard of care is inaccurate, as the CM is clearly limited to "**due diligence**" as specifically stated in the contract.

## **ISSUE NO. 2:**

The response provided by OSF for Issue No. 1 above is also applicable to Issue No. 2 and is included herein by reference. Validation of all contingency adjustments requires specific design and construction expertise. Consequently, all items in question were thoroughly reviewed by a peer group of construction industry professionals including the Project Architects and Engineers, OSF professional staff and appropriate District committees and were found to be in accordance with the CMAA contract.

The following responds regarding the four contingency adjustment items identified in the report:

- \$17,372 – YYY1 (TERRA) – MDWASA is a public utility which performs this work exclusively on all projects. The cost of this work is always considered a reimbursable expense and MDWASA is not a subcontractor of the CM. Therefore, the District reimbursed the CM for MDWASA’s direct costs only.
- \$11,392 - Braddock Senior – FPL is a public utility which performs this work exclusively on all projects. The cost of this work is always considered a reimbursable expense and FPL is not a subcontractor of the CM. Therefore, the District reimbursed the CM for FPL’s direct costs only.
- 61,968 – YYY1 (TERRA) – AT&T is a public utility which performs this work exclusively for all projects. This cost of this work is always considered a reimbursable expense and AT&T is not a subcontractor of the CM. Therefore, the District reimbursed the CM for AT&T’s direct costs only.
- \$6,500 – YYY1 (TERRA) - FPL is a public utility which performs these services exclusively on all projects. The cost of these services is always considered a reimbursable expense and FPL is not a subcontractor of the CM. Therefore, the District reimbursed the CM for FPL’s direct costs only.

All four contingency adjustment items cited were direct reimbursements to the utility companies performing the work for which no costs could have been mitigated or eliminated. OSF’s standard practice is either to pay the utility companies directly or reimburse them through the CM for the direct cost without markup.

As set forth under Article 6.6.1 of the CMAA, “Said Guaranteed Maximum Price (GMP) shall be the sum of the proposed subcontracts and the CM’s General Conditions (including any fee, profit, overhead and all like amounts) and the Contingency”. The suggestion made by OMCA at a meeting regarding this matter was to provide an allowance in the GMP to cover the cost of these items, however, this would not be appropriate as the utility companies are not the CM’s subcontractors and such costs would not be included in the GMP proposal as part of the CM’s scope of work.

**RECOMMENDATION 2.1** - As indicated by OSF above, the terms of the CMAA with respect to locating and identifying underground utilities are clear and unambiguous to the parties and participants involved in the project (i.e. OSF staff, A/E, CM and Legal Counsel) and as cited in the legal opinions. Nevertheless, OSF has revised the CMAA as recommended by OMCA with respect to the expectations of the CM's responsibilities for properly identifying and locating underground utilities based on the legal opinions cited. OSF has in the past and will continue to hold the CM responsible for absorbing the costs of items for which the CM failed to perform its due diligence during pre-construction as stated in the contract.

**RECOMMENDATION 2.2** - OSF ensures that the CM properly identifies and locates all underground and above ground utilities as required in the CMAA based on the CM's due diligence during pre-construction (i.e. as-built drawings and site observations) in accordance with the contract for all work to be performed by the CM which is to be included in the GMP. All four the items cited, were direct reimbursements to the utility companies performing the work for which no costs could have been mitigated or eliminated. The suggestion made at the meeting to provide an allowance in the GMP to cover the cost of these items would not be appropriate as the utility companies are not the CM's subcontractors and such costs would not be included in the GMP as part of the CM's scope of work.

### **FINDING NO. 3:**

Per the original contract, OSF has always withheld payment or terminated the CM if deliverables were not received. Therefore, this item is considered a recommendation, not a finding. OSF is in agreement with OMCA's recommendation, and it has already been implemented as indicated in OSF's previous response (see Article 6.8 of the newly revised CMAA).

**RECOMMENDATION 3.1** - As indicated above, OSF has revised the CMAA to provide for payment of the CM during pre-construction only after all required deliverables have been received at each Design Phase (i.e. Phase I, Phase II and Phase III or Phase II/III, as applicable) and the Bidding, GMP Submittal and Negotiation phases.

### **FINDING NO. 4:**

The contract Contingency is fully approved by the Board at the time of award of the GMP. OMCA, in its own report, indicates that items categorized as scope changes are allowable costs for project contingency use. Therefore, this item is considered a recommendation, not a finding. OSF utilizes the contingency funds to expedite the progress of the work and ensure that the project is delivered on schedule. OMCA did not identify any specific items categorized as scope changes that were cardinal changes to the Project Scope. All items were reviewed by the Project A/E, OSF staff

and appropriate District committees and were approved only if found to be in accordance with the CMAA contract and deemed necessary for the project.

OSF has reviewed the three contingency adjustment items cited by OMCA from one project (G. Holmes Braddock Senior) as examples of this finding. All three items were improvements to the energy management performance at the existing facility which were consistent with the intended scope of the project and resulted significant monthly savings in energy costs. The energy cost reduction strategy was the result of a value engineering effort by the Architect, Mechanical Engineer, Construction Manager, MDCPS Mechanical Engineer, MDCPS Energy Management Commissioning Agent, MDCPS Project Executive Director and MDCPS Project Manager, in consultation with MDCPS Maintenance staff. The solution implemented within the available project budget (see contingency adjustment items 2, 3 and 13) is providing a substantial recurring energy savings which is benefiting the District's Operating Budget. The capital recovery period for this investment is less than two years.

The proper use of project contingency by OSF is also demonstrated in that a total contingency credit of \$186,423 (savings) was realized on this project alone, and the School Board received a total contingency credit of \$723,274 (savings) for the four projects reviewed.

**RECOMMENDATION 4.1** - As indicated above, OSF has properly utilized the contingency for items categorized as scope changes.

# MIAMI-DADE COUNTY PUBLIC SCHOOLS ANTI-DISCRIMINATION POLICY

## *Federal and State Laws*

The School Board of Miami-Dade County, Florida adheres to a policy of nondiscrimination in employment and educational programs/activities and strives affirmatively to provide equal opportunity for all as required by:

**Title VI of the Civil Rights Act of 1964** - prohibits discrimination on the basis of race, color, religion, or national origin.

**Title VII of the Civil Rights Act of 1964 as amended** - prohibits discrimination in employment on the basis of race, color, religion, gender, or national origin.

**Title IX of the Education Amendments of 1972** - prohibits discrimination on the basis of gender.

**Age Discrimination in Employment Act of 1967 (ADEA) as amended** - prohibits discrimination on the basis of age with respect to individuals who are at least 40.

**The Equal Pay Act of 1963 as amended** - prohibits gender discrimination in payment of wages to women and men performing substantially equal work in the same establishment.

**Section 504 of the Rehabilitation Act of 1973** - prohibits discrimination against the disabled.

**Americans with Disabilities Act of 1990 (ADA)** - prohibits discrimination against individuals with disabilities in employment, public service, public accommodations and telecommunications.

**The Family and Medical Leave Act of 1993 (FMLA)** - requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to “eligible” employees for certain family and medical reasons.

**The Pregnancy Discrimination Act of 1978** - prohibits discrimination in employment on the basis of pregnancy, childbirth, or related medical conditions.

**Florida Educational Equity Act (FEEA)** - prohibits discrimination on the basis of race, gender, national origin, marital status, or handicap against a student or employee.

**Florida Civil Rights Act of 1992** - secures for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status.

**Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA)** - Prohibits discrimination against employees or applicants because of genetic information.

*Veterans are provided re-employment rights in accordance with P.L. 93-508 (Federal Law) and Section 205.07 (Florida Statutes), which stipulate categorical preferences for employment.*

### **In Addition:**

**School Board Policies 1362, 3362, 4362, and 5517** - Prohibit harassment and/or discrimination against students, employees, or applicants on the basis of sex, race, color, ethnic or national origin, religion, marital status, disability, genetic information, age, political beliefs, sexual orientation, gender, gender identification, social and family background, linguistic preference, pregnancy, and any other legally prohibited basis. Retaliation for engaging in a protected activity is also prohibited.

*Revised: (07-11)*

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**INTERNAL AUDIT REPORT**  
**Audit of Pre-construction Services**



**MIAMI-DADE COUNTY PUBLIC SCHOOLS**  
**Office of Management and Compliance Audits**  
**1450 N.E. 2<sup>nd</sup> Avenue, Room 415**  
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