



2013

Orange County Public Schools  
Facilities and Construction  
Contracting Audit

# **Internal Audit Report**

## **Facilities and Construction Contracting Department**

**December 20, 2013**



**Table of Contents**

**Facilities and Construction Contracting Department**

**December 20, 2013**

	<b>Page Number</b>
<b>BACKGROUND .....</b>	<b>1</b>
<b>OBJECTIVES, SCOPE AND METHODOLOGY .....</b>	<b>1 - 2</b>
<b>FINDINGS AND RECOMMENDATIONS .....</b>	<b>3 - 5</b>

# **FACILITIES AND CONSTRUCTION CONTRACTING DEPARTMENT**

## **BACKGROUND**

In February, 2011 Plante Moran CRESA, LLC reported the results of its review of processes and operations of the district's Facilities Construction and related departments involved in construction activities. The areas of focus included new construction and major renovation projects. The report contained several findings and recommendations related to the Facilities and Construction Contracting Department.

The Facilities and Construction Contracting Department is a division of the district's Procurement Department. It handles bidding and contracting for construction projects. Its director takes the lead in the CCNA process and in subsequent fee negotiations.

## **OBJECTIVES, SCOPE AND METHODOLOGY**

### **OBJECTIVES:**

The audit objectives included an evaluation of effectiveness, efficiency, and internal controls to assist the department in attaining its goals and achieving compliance with applicable laws and regulations as well as district policies. Management was also consulted about departmental concerns. Consideration was given to circumstances which may prevent the achievement of goals.

### **SCOPE:**

The scope of the audit was designed to ensure that the objectives of the engagement would be met, considering the reliability and validity of information obtained from systems, records and staff. The audit addressed contracts that were active in the 2012-2013 fiscal year and also included procedures to determine the status of findings and recommendations from the 2011 Plante Moran CRESA audit of 2011.

**METHODOLOGY:**

Our audit was conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* of the Institute of Internal Auditors and included such procedures as deemed necessary to accomplish audit objective. Internal Auditing is an independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. We are required to note any material deficiencies in accordance with Florida Statutes, School Board Policy and sound business practices. We also offer suggestions to improve controls or operational efficiency and effectiveness.

## **FINDINGS AND RECOMMENDATIONS**

### **Contract Terms and Conditions**

The 2011 Plante Moran CRESA Facilities Audit stated that the district has strong contracts but recommended modifications to the terms of the A/E and CM contracts that would make the contracts stronger. Specific recommendations are as follows:

In the Architectural Contract –

- Article 4 – Add language making the architect responsible for costs incurred by the owner due to delays caused by the Architect;
- Article 6 – The owner should have full and exclusive rights and ownership of all instruments of service (documents);
- Schedule A – Include a detailed description of design phase deliverables enumerating what information must be included in the drawings and specifications at Schematic Design (SD), Design Development (DD) and Construction Documents (CD); and,
- Schedule A 7 – Bidding commencing prior to the construction drawings being 100% complete.

In the Construction Contract –

- Section 5.A.5.f-h – Delete these provisions as they are not to the owner's advantage;
- Section 7.B – Reduce the time to fully complete the work from 120 days to 60 days;
- Section 7.C – Increase the amount of liquidated damages from \$1,000/day to provide a stronger motivation for the Contractor to meet deadlines;
- Section 8 – Add language to ensure the Contractor's estimates are within an acceptable range;
- Section 11 – Add language that the Contractor is responsible for all costs to accelerate the schedule, if it is required to meet Contract Time;
- Section 24 – Include a 2 year warranty period, which would restart for each warranty claim for that item only; and,
- Section 26 – Make clear that contingency money cannot be used for repairing or replacing defective work.

Although revised drafts of these contracts have been prepared, these recommendations have not been implemented as of the date of this audit. Nor has management provided an analysis of the recommendations that would explain why they have not been

implemented.

We have additional recommendations regarding the contract documents. We believe that the contract would be strengthened if the terms stated that all extraordinary payments, i.e. bonuses, were excluded from Section 5.A.1.a. Labor Costs.

We also recommend that consideration be given to updating construction contracts by addendum or some other document to reflect all milestones established for or by the contractor so that there is a vehicle for the monetary assessment for damages by owner when substantial completion or other required milestones are not achieved.

### **Procedures Manual**

The department's Procedural Manual needs to be updated. The manual is in draft form and should be completed to reflect new processes and procedures and address any changes that may have occurred since it was drafted.

There is no written procedure that clearly defines the roles and responsibilities for all functional participants in the contract process. Without a clearly defined process, the authority limit, an issue where employees and even contractors may act as purchasing agents without the proper authority and/or qualifications, may put the department at risk. It would be beneficial for the department to set the limits of authority for the Planning and Design team as well as the Construction Team of employees and consultants.

### **Continuing Professional Education and Professional Certifications**

The contract administrative team has only one member with a professional certification. Although the department's administrators are members of a professional purchasing associate, there is no program of continuing professional education/training for team members. A program of continuing professional training would strengthen the team and bring their skills current with other professionals who administer and negotiate multi-million dollar contracts. The current scope of school contracts ranges from \$11.5 million to \$72.7 million dollars.

### **Reduce Paper Files**

There are numerous paper files in the department. It would be advantageous to convert these files into electronic documents on a dedicated network drive. This would result in a more economical and user friendly system.

### **Customer Satisfaction**

The department has not conducted a formal customer satisfaction survey to determine

customer service needs and identify opportunities to improve customer benefits and assistance. The results of a customer satisfaction survey could strengthen contract management and supplier performance, increase customer satisfaction levels and improve department credibility and predictability. A focus on customer service would also be consistent with the Superintendent's goals.

#### **General Conditions Labor Verification**

The verification process for salaries and benefits within the General Conditions category is not reliable. The contractor is asked to submit payroll data but it is not supported by federal or state payroll reports. The department should consider changing from the lump sum designation for this cost category. In so doing, the department would not have to verify salaries up front and the external auditors could verify this amount when the construction close-out audit is performed.

We would like to thank the staff of Facilities and Construction Contracting for their cooperation and assistance during the audit.

Alva Johnson, Auditor

**Management response to Audit Report  
Facilities & Construction Contracting**

<b>ISSUES NOTED</b>	<b>AREA</b>	<b>MANAGEMENT RESPONSE</b>
<p>In the Architectural Contract –</p> <ul style="list-style-type: none"> <li>• Article 4 – Add language making the architect responsible for costs incurred by the owner due to delays caused by the Architect;</li>   <li>• Article 6 – The owner should have full and exclusive rights and ownership of all instruments of service (documents);</li>   <li>• Schedule A – Include a detailed description of design phase deliverables enumerating what information must be included in the drawings and specifications at Schematic Design (SD), Design Development (DD) and Construction Documents (CD); and,</li>   <li>• Schedule A 7 – Bidding commencing prior to the construction drawings being 100% complete.</li> </ul>	<p>Facilities &amp; Construction Contracting</p>	<ul style="list-style-type: none"> <li>• Per the rights of the agreement the district could pursue any applicable claims when it has been determined that the actions of the architect have resulted in additional cost to the district.</li>   <li>• The agreement dictates under section 6 allowable limits per law without negating any applicable copyright laws under the ownership of the documents by the owner. We will continue to track any legislative changes that could provide more rights to owners.</li>   <li>• The agreement provides a framework of the deliverables by the architect. A more detailed description and listing of the different tasks to be completed for these deliverables is included in the district design guidelines. Per the requirements of the agreement the architect is to complete these tasks in accordance with design guidelines and educational specifications.</li>   <li>• Currently the district initiates the bidding process with receipt of 100% complete drawings by the architect. Any review comments and/or updates to the documents are incorporated into the bidding process thru an addendum. The drawings are finalized with the assistance and/or supervision of the previously selected construction management firm and district personnel. As stipulated by the Florida Statutes, no construction contract is executed before having Phase III approval by the School Board. Florida Statutes do not preclude for the bidding process to be initiated prior to having Phase III approval by our School Board. The agreement was recently reviewed by our legal counsel and</li> </ul>

**Management response to Audit Report  
Facilities & Construction Contracting**

		no modifications were recommended involving this language.
<p>In the Construction Contract –</p> <ul style="list-style-type: none"> <li>• Section 5.A.5.f-h – Delete these provisions as they are not to the owner’s advantage;</li>   <li>• Section 7.B – Reduce the time to fully complete the work from 120 days to 60 days;</li>   <li>• Section 7.C – Increase the amount of liquidated damages from \$1,000/day to provide a stronger motivation for the Contractor to meet deadlines;</li> </ul>	Facilities & Construction Contracting	<ul style="list-style-type: none"> <li>• During a recent review of the agreement by our legal counsel team, it was determined that these terms are general in nature and normal business practices.</li>   <li>• Multiple tasks take place during the close out phase of the project. Depending on the nature of the project many of those tasks cannot be initiated prior to substantial completion date. Until recently the district utilized an OCIP program which required additional efforts during this phase. These different tasks allotted 120 days for completion. As we move forward with the closeout of the initial projects without the usage of OCIP, we will reevaluate the current timelines. This will allow for the district to look for opportunities with the endorsement of the Facilities Department to implement the recommended reduction. The new revisions to the agreement include the assessment of liquidated damages to the Construction Management firm when they fail to achieve final completion on the stipulated date.</li>   <li>• Since it was difficult for the district to accurately assess the amount of damages caused by the failure of a Construction Management firm to achieve substantial completion as the actual amount could vary based on the specifics of the project and experienced delay. Given that this amount does not represent a penalty, it was determined that \$1,000.00 per day was an acceptable solution. We will continue to track its sufficiency and benchmark against other governmental entities. In addition we will look</li> </ul>

**Management response to Audit Report  
Facilities & Construction Contracting**

<ul style="list-style-type: none"> <li>• Section 8 – Add language to ensure the Contractor’s estimates are within an acceptable range;</li>   <li>• Section 11 – Add language that the Contractor is responsible for all costs to accelerate the schedule, if it is required to meet Contract Time;</li>   <li>• Section 24 – Include a 2 year warranty period, which would restart for each warranty claim for that item only; and,</li>   <li>• Section 26 – Make clear that contingency money cannot be used for repairing or replacing defective work.</li> </ul>		<p>into the feasibility of creating a liquidated damages matrix that corresponds to each type of occurrence.</p> <ul style="list-style-type: none"> <li>• Current district capabilities will allow for the inclusion of the recommended language on our Construction Management firm Agreement.</li>   <li>• The terms of the agreement do provide the rights to owner to accelerate the schedule whether or not the construction contractor is behind schedule. If the Construction Management firm believes that the acceleration will increase the cost of performance, they will be required to submit a claim for increase pursuant to General Terms and Conditions of the agreement.</li>   <li>• Our review of the warranty specifications made it evident that it is already required for certain major components and systems in the construction project to have a warranty period longer than one year. Therefore, the extension of the warranty period will not affect all elements. The determination of which is the appropriate warranty coverage was verified during the revisions of the design guidelines by Facilities Services.</li>   <li>• Per the terms of the agreement the Construction Management firm is not to be reimbursed for costs associated with re-work or repairs caused by their negligence. We will conduct revisions to the current contingency guidelines to include a detail exclusion of any cost associated with repairs or replacement of defective work due to negligence of the CM, its Staff, or its Subcontractors.</li> </ul>
<p>We believe that the contract would be strengthened if the terms stated that all extraordinary payments, i.e. bonuses,</p>	<p>Facilities &amp; Construction Contracting</p>	<p>We have included a specific exclusion for these items under the cost to not be reimbursed in the agreement.</p>

**Management response to Audit Report  
Facilities & Construction Contracting**

<p>were excluded from Section 5.A.1.a. Labor Costs.</p>		
<p>We also recommend that consideration be given to updating construction contracts by addendum or some other document to reflect all milestones established for or by the contractor so that there is a vehicle for the monetary assessment for damages by owner when substantial completion or other required milestones are not achieved.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>All Contracts via GMP amendment include a project schedule delineating all major milestones. Based on the recent revisions to the agreement, the district will be able to assess liquidated damages in the instance that the Construction Management firm fails to achieve either the substantial and/or final completion date. Even though there is not any associated monetary penalty in the case of any delay on the major milestones, the owner has the right to direct Construction Management firm to provide recovery schedule to bring the project on track. In addition we will look into the feasibility of creating a liquidated damages matrix that corresponds to each type of occurrence.</p>
<p>The department's Procedural Manual needs to be updated. The manual is still in draft form and should be completed to reflect new processes and procedures and address any changes that may have occurred since it was drafted.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>The manual has been completed and posted on the Procurement Services Intranet Site. The procedural manual is a living document and it will be updated on an "as needed" basis.</p>
<p>There is no written procedure that clearly defines the roles and responsibilities for all functional participants in the contractual process. Without a clearly defined process, the authority limit, an issue where employees and even contractors may act as purchasing agents without the proper authority and/or qualifications, may put the department at risk. It would be beneficial for the department to set the limits of authority for the Planning and Design team as well as the Construction Team of employees and consultants</p>	<p>Facilities &amp; Construction Contracting</p>	<p>Currently there are diverse tools that provide descriptions of high level task responsibilities of the different participants. Some of the tools are the CPSC Matrix, master schedule, and PM team manual. The Facilities &amp; Construction Contracting Department created and shared with the facilities services management team a matrix of responsibilities. Facilities &amp; Construction Contracting has initiated the partnering initiative. This initiative includes all departments involved in the acquisition process to allow for a better understanding by all team players of the process. We will continue to work to create an all inclusive document that will bring together all of these different documents with efforts to help better delineate the responsibilities more in-depth.</p>

**Management response to Audit Report  
Facilities & Construction Contracting**

<p>The contract administrative team has only one member with a professional certification. There is no program of continuing professional education/training for team members. A program of continuing professional training would greatly strengthen the team and bring their skills current with other professionals who administer and negotiate million dollar contracts. The current scope of school contracts ranges from \$11.5 million to \$72.7 million dollars.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>All administrative level team members retain an annual membership in a major professional Procurement organization and are encouraged to attend meetings. This will help create the path to getting certified. In addition our department has been recognized by NIGP and FAPPO as meeting or exceeding benchmarks and best practices in the Public Procurement Profession.</p>
<p>There are numerous paper files in the department. It would be advantageous to convert these files into electronic documents on a dedicated network drive. This would result in a more economical and user friendly system.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>We will research economical and efficient alternatives of how to scan documents in efforts to reduce the amount of paper files.</p>
<p>The department has not conducted a formal customer satisfaction survey to determine customer service needs and opportunities to improve customer benefits and assistance. The results of a customer satisfaction survey could strengthen contract management and supplier performance, increase customer satisfaction levels and improve department credibility and predictability. A focus on customer service would also be consistent with the Superintendent's goals.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>The Procurement Services Department conducted an overall survey. This survey included questions involving the services provided by the department. The results have been analyzed and are been utilized to create future department strategies.</p>
<p>The verification process for salaries and benefits within the General Conditions category is not reliable. The contractor is asked to submit payroll data but it is not supported by federal or state payroll reports. The department should consider changing from the lump sum designation for this cost category. In so doing, the department would not have to verify salaries up front and the external auditors could verify this amount when the construction close-out audit is performed.</p>	<p>Facilities &amp; Construction Contracting</p>	<p>Recent agreement revisions will stress the rights by our district and the duties by the Construction Management firm with respect to salary rates. We will continue to work with the Facilities Services department looking at alternatives to modify the lump sum methodology as this will change their current processes and procedures.</p>