

**CALIFORNIA STATE UNIVERSITY,  
FRESNO**

**SAVE MART CENTER**

Final Report

September 26, 2005

**CONSTRUCTION PROJECT EVALUATION**  
**CALIFORNIA STATE UNIVERSITY, FRESNO**  
**SAVE MART CENTER**

September 26, 2005

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*This report and all associated analysis contained herein are based upon information made available to KPMG LLP. KPMG LLP is not responsible for incomplete or inaccurate information provided during the preparation of this report. This report only presents and summarizes factual data and does not represent an opinion or attestation to the position, approach or representation of information made by any other party involved with this evaluation.*

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# EXECUTIVE SUMMARY

## Summary of Findings

Based on our evaluation, the CSU Fresno Save Mart Center Project (“the Project”) was managed by the CSU Fresno Association, Inc. (“the Association”) consistent with Trustee policy with the exception of certain issues surrounding contract execution and administration.

The funding for the Project was a combination of revenue bonds and donations, and as such Public Contract Code did not consistently govern. However, the Association still attempted to follow Trustee policy and State University Administrative Manual (SUAM) to the extent possible.

Our observations, associated risks and recommendations are outlined below:

	<b>Observation</b>	<b>Risk</b>	<b>Recommendation</b>
1.	A significant portion of the work was performed under temporary agreements. Fees in the letters of intent were exceeded.	Performing work under a temporary agreement poses a contractual risk, especially when referenced fees are exceeded.	On future projects, CSU Fresno should ensure that the Association executes a formal and fully approved contract agreement with all vendors prior to commencing any work. The Association should produce and sign the agreements (not the Architect) and subsequent billings should not be allowed to exceed the contractual amount.  (Ownership: CSU Fresno)
2.	Invoices exceeded contractual amounts.	The project may have incurred inappropriate charges.	CSU should ensure that the Association considers recovery of possible inappropriate charges by the Architect. If the Association chooses not to pursue the charges, the reason should be documented.  (Ownership: CSU Fresno)
3.	Invoices were not tracked by its separate contractual components.	Not tracking invoices by its separate contractual components may result in unintended charges.	CSU Fresno should ensure that on future projects, invoices are tracked by its separate contractual components.  (Ownership: CSU Fresno)
4. & 5.	The definition of Cost of Work in the contract does not clearly define actual costs to be reimbursed.	CSU Fresno is exposed to potential over-billings of costs not intended to be reimbursed.	4. On future projects, CSU Fresno should ensure that the definition of cost of the work is clearly defined in the contract agreement.  (Ownership: CSU Fresno)  5. CPDC should formally roll out a stipulated set of General Conditions that apply to non-state funded project for GC/CM as well as other delivery methodologies.  (Ownership: CPDC)

EXECUTIVE SUMMARY

	<b>Observation</b>	<b>Risk</b>	<b>Recommendation</b>
6.	The General Conditions contained a modified audit clause not approved by the CSU Office of General Counsel.	The intent of the Audit clause may be compromised, if the language is altered or authored without approval.	On future projects, CSU Fresno should ensure that the Association uses the standard CSU audit clause, unaltered, as included with the current General Conditions.  (Ownership: CSU Fresno)
7.	Professional Construction Consultants was allowed to author its own contract, which is not standard practice. The executed contract contained manual alterations of the payment terms and contract duration.	CSU Fresno may be exposed to undesired contractual obligations, potential disputes and legal consequences.	On future projects, the current CPDC Professional Services Agreement or otherwise CPDC and legally approved documents should be used and manual alterations should be avoided.  (Ownership: CSU Fresno)
8.	The project documentation has not yet been filed in a meaningful way.	Necessary project reference materials may be lost or not located in a timely manner if a systemic and organized filing of project documentation does not occur.	As a final step in the close-out process, CSU Fresno should ensure that the Association completes a filing system for the project documentation.  (Ownership: CSU Fresno)

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## INTRODUCTION

### Purpose

KPMG LLP (“KPMG”) was retained by California State University’s (“CSU”) Office of the University Auditor on October 29, 2004 to perform an independent project evaluation of the Save Mart Center Project (“the Project”) at California State University, Fresno (“CSU Fresno”).

The overall objective of the construction evaluation was to assess construction management practices for the Project and to substantiate that it was managed in accordance with law and Trustee policy.

This report provides recommendations addressing potential recovery of project costs and process improvements, to the extent they were uncovered as part of our work. Recommendations are listed and numbered sequentially throughout this report.

### Scope

While the basic scope of our work matches that required by the RFP and that which KPMG has performed in years past, we also included additional tasks we believe may provide value to CSU. KPMG identified specific areas within the scope listed below that present potential for substantive loss or liability for the CSU Fresno, Save Mart Project. The various scope categories are outlined in CSU’s Request for Proposal, dated July 14, 2004 and KPMG’s Proposal, dated July 27, 2004 and contains the following sections:

- Project Background (*included for information, contains no recommendations*)
- Design Cost
- Construction Bid Process
- Construction Change Orders
- Project Management Inspection Services
- Major Equipment/Materials
- Close-Out Documentation
- Liquidated Damages
- Accounting

## Methodology

KPMG’s approach to this engagement incorporates a work plan shared with the University Auditor’s office as outlined in our Agreement with CSU. During the course of our work we expanded on tasks related to scope sections with the highest potential risk exposure. The work performed by KPMG was conducted in accordance with our aforementioned Methodology, but is not limited to, the following tasks:

- Examine financial records, reports, written CSU procedures, University contract documents and other material related to the Project and compare current practices and procedures with CSU requirements;
- Conduct a preliminary review to determine project emphasis;
- Interview key individuals involved in the project;
- Identify significant deficiencies, if any;
- Recommend changes that may result in streamlining the design/construction process, helping to assure adequate project controls and reducing costs; and
- Prepare a written report of our findings and recommendations.

## Exclusions

The services, fees and delivery schedule for this Engagement are based upon the following assumptions, representations or information supplied by CSU (“Assumptions”).

1. KPMG is not responsible for and will not make management decisions relating to this Project or any other aspect of CSU’s business. CSU shall have responsibility for making all decisions with respect to the management and administration of its real estate and capital projects.
2. CSU management accepts responsibility for the substantive outcomes of this engagement and, therefore, has a responsibility to be in a position in fact and appearance to make an informed judgment on the results of this engagement.
3. Our work under this did not include technical opinions related to engineering, operations and maintenance.
4. KPMG’s work under this engagement did not include a review, audit or evaluation of financial statements, tax services, or other services of KPMG not listed in the above methodology.
5. We have, and will continue to consider the effect of this Engagement on the ongoing, planned and future audits, as required by *Government Auditing Standards* and have determined that this engagement will not impair KPMG’s independence.

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## PROJECT BACKGROUND

The Save Mart Center Project consists of a multi-purpose event center which includes 16,000 spectator seats, 32 private suits, 1,108 club seats, a private club level concourse, locker room, athletic training facilities, and office/support services space. It is located on approximately 48 acres and serves as the greater San Joaquin Valley venue for athletic, cultural and entertainment events.

The Project was funded by a combination of revenue bonds issued by the CSU Fresno Association, sponsorship money, seat licenses and private donations. Construction comprised the main capital outlay component, which was completed on schedule and within the established budget.

During the week of February 14 – 18, 2005, KPMG conducted its field work and reviewed project records from the following entities involved with the project:

General Contractor (“CM/GC”)	Clark Construction, Inc. (“Clark”)
Architect	Sink Combs Dethlefs
Construction Monitor	International Facilities Group
Inspection (“IOR”)	Professional Construction Consultants
Project Management	CSU Fresno Association, Inc. (“the Association”)

Follow-up discussions to clarify issues and supplement supporting documentation were conducted through the completion of this report.

### Delivery Methodology

The project was delivered using a Guaranteed Maximum Price (“GMP”) contract, where the Construction Manager/General Contractor (“CM/GC”) took part in the efforts of establishing the GMP prior to finalizing the final design and subsequently acted as the general contractor during construction, assuming the risk of subcontracting the work, and guaranteeing completion of the project.

### Timeline

The Project received Board of Trustees approval on January 25, 2000. The Architect was officially retained under contract on November 1, 2001, but had completed a substantial portion of work prior to this time under separate letters of agreement. The construction RFP was issued on December 18, 2000. Turner Construction and Clark Construction were both deemed qualified. Turner was eventually selected. After several months of negotiations and attempting to arrive at final GMP, the Association and Turner Construction parted ways and Clark Construction was engaged as a replacement. The GMP was established and the

CM/GC contract was entered into on December 6, 2001. Construction commenced on October 5, 2001 (under a mobilization proposal and early start agreement) and was substantially complete on October 30, 2003.

### Project Costs

The Project as approved by the Board of Trustees for \$116,037,000 included both the East Complex (the Save Mart Center) and the West Complex. This review only covers the Save Mart Center and its associated costs, as the West Complex at the time of our field work had not yet been constructed. The approved costs associated with the Save Mart Center were \$88,407,000.

Prior to utilization of funds from the Project revenue bonds, approximately \$5,108,630 had already been spent from other sources to perform certain work, including conceptual and architectural design, feasibility studies, establishing a construction GMP and other activities necessary prior to bond issuance. Some of these activities were related to both the East and West Complex. The Save Mart Center project, by itself, was funded at \$95,612,000 from revenue bonds. Paid-in funds were contributed by the Association as necessary. The \$95M of construction costs and the associated funding needs were approved by the Board of Trustee's Committee on Finance. The final project budget, excluding the pre-bond issuance related activities, was \$96,612,000 and final actual project costs were \$96,541,786. The table below outlines the amount funded and listed in the official Bond Issuance Statement versus actual costs incurred.

Description	As Funded (Bond Issuance Statement)	Actual Costs
Construction Contract	\$ 85,965,000	\$ 86,420,275
Architect Fees	1,227,000	2,340,317
Project Management (monitoring)	481,800	1,028,763
Materials Testing	248,200	630,416
Builder's Risk Insurance	300,000	248,200
Inspector of Record	150,000	231,040
Plan Check Fee/Seismic Review	2,000,000	24,704
Owner Contingency	1,000,000	2,400
Fixture, Furnishings and Equipment	2,000,000	4,303,923
Owner Development Costs	incl. above	1,311,748
<b>Total Project Costs</b>	<b>\$ 95,612,000</b>	<b>\$96,541,786</b>

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## **DESIGN COSTS**

The design of the Save Mart Center was conducted by Sink Combs Dethlefs, who was retained through a competitive selection process. Design started under various letters of intent for schematic design and a portion of the construction documents phase.

Two letters of intent specifying scope and fee were produced by the Architect and were not signed by the Association. The first letter was issued August 5, 1998 (for \$394,000 in fees, including expenses, to cover conceptual plans) and a second letter was issued on February 4, 2000 (for \$1,980,000 in fees, including expenses, to cover schematic design and design development). CSU Fresno and the Association also issued a letter of intent on August 21, 1998, referencing the August 5, 1998 fee schedule. This letter was signed by CSU Fresno, the Association, and the Architect. No letter of intent was executed for the Construction Documents Phase. The total fees specified in the letters of intent were \$2,374,000, which is less than the amounts actually paid prior to the execution of the contract.

The Association received a proposal from the Architect dated April 1, 1999 for the Schematic and Design Development Phase. The Association did not modify the original Letter of Intent to continue design and complete Design Development phase, but they did later include the portion of the associated fee in the final agreement that was entered into on November 1, 2001. There were no subsequent Extra Services Agreements or amendments issued to the contract.

It is the Trustee's preference to enter into a formal approved agreement, as mandated by SUAM 9208, on all projects. This is also common industry practice. KPMG reviewed the latest published version of SUAM, which may have been different at the time this contractual arrangement was entered into. CPDC recommends that SUAM be followed to the extent possible on all non-state funded projects.

### ***Observation:***

A significant portion of the work was performed under temporary agreements (letters of intent) or without any letter of intent at all. The letter of intent for the majority of the work was issued by the Architect.

### ***Risks:***

Performing significant portions of work under a temporary agreement, such as a letter of intent, not containing the standard A/E contract language poses a contractual risk for the University, especially when referenced fees are exceeded.

***Recommendation:***

1. On future projects, CSU Fresno should ensure that the Association executes a formal and fully approved contract agreement with all vendors prior to commencing any work. The Association should produce and sign the agreements (not the Architect) and subsequent billings should not be allowed to exceed the contractual amount. (Ownership: CSU Fresno)

***Campus Response:***

1. We concur. Future agreements should be in place before work commences. Also, billings will be monitored as to not exceed contractual amounts unless approved in writing as an amendment to the original agreement and scope of services.

The final agreement allowed for \$548,500 in fees associated with final Construction Documents and \$1,210,500 for Construction Contract Administration, plus and reimbursable expenses at cost.

Prior to the execution of the contract, actual costs for Conceptual Plans were incurred of \$437,059. This is \$43,059 in excess of the amount specified in the letter of intent, \$394,000. The Association attributed this to other additional consultant services needed for the project.

The Association actually paid the Architect a total fee for Schematics and Design Development of \$1,794,144. The difference between this amount and the amount shown on the final agreement of \$1,441,099 does not include the Architect's design services for the West Complex, which was originally part of the overall project scope as approved by the Board of Trustees at schematic design. The work split into two projects at the Construction Documents phase.

For the Construction Documents phase, the difference between the actual amount paid of \$2,456,444 and the contractual amount of \$2,114,000 was due to additional services for cost estimating and constructability review as additional oversight when the Association began negotiating with Turner Construction for the GMP. The difference of \$342,444 should have been separated on the Architect's invoices as additional services, but were not. Alternatively, the Association should have included the higher amount as their total Construction Documents fee on the final agreement. \$34,925 of the \$342,444 was invoiced against the contract. The other \$307,519 was incurred prior to execution of the contract.

Finally, the Construction Administration Phase was invoiced for \$1,292,481, which is \$81,891 in excess of the contractually allowed amount of \$1,210,500.

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DESIGN COSTS

The Association did not track invoice amounts by phase, although they were submitted as such by the Architect.

Below is a summary of potential inappropriate Architect's billings, payments and variances:

Description	Per Letter of Intent	Per Final Contractual Value	Amount Paid	Variance
1. Concept Plans (letter of intent)	\$ 394,000	\$ 394,000	\$ 437,059	\$ 43,059
2. SD and DD (letter of intent)	\$ 1,980,000	\$ 1,441,099	\$ 1,794,144	\$ 353,045
CD's prior to contract (no letter of intent)	n/a	\$ 1,565,500	\$ 1,873,019	\$ 307,519
Final CD's (contract)		\$ 548,500	\$ 583,425	\$ 34,925
3. Subtotal Construction Documents		\$ 2,114,000	\$ 2,456,444	\$ 342,444
4. Construction Administration (contract)	n/a	\$ 1,210,500	\$ 1,292,481	\$ 81,981
Reimbursable Expenses (contract)	At Cost: \$291,795		\$ 291,795	n/a
Reimb. Expenses as Percent of Contract			17%	
<b>Total</b>		<b>\$ 5,159,599</b>	<b>\$ 5,980,128</b>	<b>\$ 820,529</b>

Total amounts above paid against the contract equal \$ 2,167,701. In addition, per the Association's accounting, \$172,616 was paid prior to receiving the bond proceeds. As a result, the total actual cost of the Architect, for which there was a contract in place and for which the bond funds were used, was \$2,340,317.

**Observation:**

Invoices were not tracked by separate contractual components and as a result, inappropriate charges may have occurred.

**Risks:**

Not tracking invoices by separate contractual components (such as Final Construction Documents, Construction Administration and Reimbursables) may result in inappropriate billings.

***Recommendations:***

2. CSU Fresno should ensure that the Association investigates and considers recovery of possible inappropriate charges by the Architect. If the Association chooses not to pursue such charges, the reason should be documented. At the time of this report, the Association was in contact with the Architect to substantiate the variances. (Ownership: CSU Fresno)
3. On future projects, invoices should be tracked by separate contractual components. (Ownership: CSU Fresno)

***Campus Response:***

2. We concur. I reviewed this matter in detail with the Association's Executive Director and the Vice President for Administration. The Association has fully documented the reasons and need for the additional fees paid to the architect. Therefore, recovery of these fees is not an issue.
3. We concur. Originally, the Save Mart Center and West Complex (Student Recreation Center) were approved as one project, but then subsequently split into two projects during the design phase due to different project financing requirements. We agree that project management should include the tracking of invoices against each project component in order to reconcile against the total fees stipulated in the professional service agreement.

The invoiced amounts include \$291,795 of reimbursable expenses, which is 17% of the Architect's contract costs. This is higher than what would normally be expected, but was justified by the Association as an agreed to and beneficial arrangement of having the designer travel to Fresno frequently, and as a result incurring high associated travel costs. KPMG reviewed support for the reimbursable expenses from invoices sampled for testing and did not see any evidence of costs billed that would not be reimbursable per the definition of the contract.

***Recommendation:***

None

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## CONSTRUCTION BID PROCESS

The CM/GC selection process for this project was administered by the Association with assistance from the Architect. A defined CM/GC selection process was not established by Trustee policy at the time, but an evaluation process with seven firms was performed. (Currently, there is a CM/GC selection process established by CPDC for state funded projects). The RFP was issued on December 18, 2000.

The GMP was initially established at \$85,965,000. The individual line items were originally established as negotiated allowances as they were based on partially completed drawings. As the design progressed, the individual GMP amounts were bought out through competitively bidding each specific subcontractor trade. KPMG reviewed Clark's subcontractor bid files and noted that multiple bidders were solicited and lowest responsible and responsive bidder was selected. The GMP line items were subsequently adjusted as savings were realized and as a result, additional scope could be added.

### ***Recommendation:***

None

### **The CM/GC Contract**

The CM/GC contract used was developed specifically for this project, as Trustee policy at the time did not include a standard CM/GC contract. According to the Association, the Save Mart Center agreement was later used as a template to generate the current standard CSU CM/GC agreement.

The following table summarizes the original GMP:

<b>Description</b>		<b>Original Amount</b>
Trade Work	At Cost	\$ 72,862,000
General Conditions	6.25%	4,554,000
Subcontractor Bonds	LS	260,000
Tax	0.35%	258,000
General Liability, Auto Insurance	0.71%	516,000
Builders Risk Insurance	0.22% per yr	327,000
Payment and Performance Bond	0.71%	516,000
Contractor's Contingency	5.00%	4,094,000
Contractor's Fee	3.25%	2,577,000
Rounding		1,000
<b>Total</b>		<b>\$ 85,965,000</b>

The following provisions were included in the CM/GC contract:

- Fee was specified as a percentage on Trade Work and General Conditions work.
- All other GMP categories, with the exception of Subcontractor Bonds, were specified as a percentage applied to Trade Work only.
- Subcontractor Bonds were specified as a Lump Sum GMP line item.
- One amendment was issued to the Contract, which modified Articles 5 and 6 of the General Conditions (Guaranteed Maximum Price and Changes in the Work).
- In addition to the GMP, the agreement allowed for a \$900,000 (maximum) bonus if cost savings could be achieved by the GM/GC by entering into subcontracts with its subcontractors for amounts less than represented in the Schedule of Values.

At the time the GMP amount was established, the majority of the individual line items were allowances not yet bought out by Clark. This is not an uncommon scenario when the design is in schematic stages at the time the GMP is negotiated. However, the GMP was negotiated in close conjunction with Clark and it was in Clark's best interest not only to achieve a GMP ceiling high enough to cover all anticipated actual costs, but as high as possible in order to take advantage of the full \$900,000 bonus for cost savings.

Within the GMP, nearly \$9M was generated in buyout-savings, which left room to add scope (with additional fee and general conditions payment due Clark) and give the full \$900,000 bonus to the GM/GC and returning a \$544,725 savings to the project without exceeding the final GMP ceiling, for a total project cost of \$85,420,275. As part of covering the costs incurred, the entire Contractor's Contingency of \$4,094,000 was exhausted by Clark.

***Recommendation:***

None

KPMG noted that the definition of Cost of the Work in the contract is limited to:

*"...costs necessarily incurred by the CM/GC in the proper performance of the Work..."*

(Contract General Conditions, Article 5, Guaranteed Maximum Price, §5.1.3)

The language above does not clearly define actual costs types to be reimbursed under the GMP and therefore allows Clark flexibility in interpreting the meaning of "necessary

costs”. However, in the current version of the CPDC General Conditions for a CM at Risk GMP Contract, the language has been improved to detail the types of costs that are allowable under several specific cost category (*General Conditions for CM at risk with GMP, February 2005, §8.0.3*)

***Observation:***

The definition of Cost of Work in the contract does not clearly define actual costs to be reimbursed.

***Risks:***

CSU Fresno is exposed to potential over-billings of costs not intended to be reimbursed.

***Recommendations:***

4. CSU Fresno should ensure that on future projects, the definition of cost of the work is clearly defined in the contract agreement. (Ownership: CSU Fresno)
5. CPDC should formally roll out a stipulated set of General Conditions that apply to non-state funded project for GC/CM as well as other delivery methodologies. (Ownership: CPDC)

***Campus Response:***

4. We concur. On future projects, we will endeavor to define the cost of work as clearly as possible.

***Management Response:***

5. Subsequent to the bidding of this project, CPDC did create Contract General Conditions (CGCs) for Foundation projects in formats for multiple delivery methodologies. This was done from May 2001 through September 2004. However, general counsel had advised CPDC not to produce Foundation CGCs when the project financing is not via the systemwide revenue bond program (SRB). When the Foundation project is funded through the SRB, the Foundation must use the Trustees’ contract documents.

In light of the recommendation by the Trustees' Auditor, CPDC will revisit the CGCs that were prepared for Foundation projects that are funded outside the SRB and formalize standard contract language for the Foundations to use by December 31, 2006. Contract General Conditions will be provided for the design-bid-build, design-build, and construction manager at risk delivery methods.

### **Contractor Construction Costs**

KPMG obtained Clark's actual construction costs for any items that were billable based on actual costs. KPMG also reviewed cost categories billable on a percentage or lump sum basis. When recalculating allowable billings based on this information, KPMG found no evidence that Clark inappropriately billed the project. KPMG did not obtain Clark's actual construction costs for any items that were not billable based on actual costs, as described in the summary of the original GMP. These actual costs did not have any bearing on KPMG's review of the billings to the Association, as these categories were billed as a percentage of reimbursable costs or as a lump sum. Costs actually incurred by Clark in these categories did not contractually matter or impact the audit.

### **Contractual Audit Clause**

The Association used a modified version of the standard audit clause included with the General Conditions for non-state lump sum projects in place at the time. A good business practice would have been to consult with the University Auditor on this issue.

### ***Observation:***

The General Conditions contained a modified audit clause not approved by the CSU Office of General Counsel.

### ***Risk:***

The intent of the Audit clause may be compromised, if the language is altered or authored without approval.

### ***Recommendation:***

6. On future projects, CSU Fresno should ensure that the Association uses the standard CSU audit clause, unaltered, as included with the current General Conditions. (Ownership: CSU Fresno)

***Campus Response:***

6. We concur. The Association executed this Agreement for this construction procurement in November of 2001, prior to such documented method being available from the Chancellor's Office. Association staff counsel did consult with the Office of General Counsel during development of the CM/GC Agreement and General Conditions and we will continue to do so on future projects.

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## CONSTRUCTION CHANGE ORDERS

The Project GMP included eight change orders of which only two affected the total GMP amount. The first increased the scope and GMP by \$1,000,000 and the second issued a deductive credit for total project savings of \$544,725 at the end of the project, for a net GMP increase of \$455,275. All other change orders re-allocated GMP line item savings to added scope items including associated CM/GC general conditions and fee. The net effect of these change orders on the total GMP was zero.

The Schedule below outlines the changes to the GMP:

Work Description	Original GMP	Final GMP	Changes
Trade Work	\$ 72,862,000	\$ 72,575,320	\$(286,680)
General Conditions	4,554,000	4,905,292	351,292
Subcontractor's Bonds	260,000	260,000	-
Gross Receipts Tax	258,000	270,000	12,000
General Liability, Excess and Auto Insurance	516,000	540,000	24,000
Builder's Risk Insurance	327,000	343,000	16,000
Payment and Performance Bond	516,000	540,000	24,000
Preconstruction	-	-	-
Contractor's Contingency	4,094,000	4,094,000	-
Contractor's Fee	2,577,000	2,891,663	314,663
<b>Total</b>	<b>\$ 85,965,000</b>	<b>\$ 86,420,275</b>	<b>\$ 455,275</b>

KPMG evaluated change orders and traced subcontractor estimates to the actual subcontractor change orders. We noted that the Association consistently received detail quotes or estimates from the subcontractor or vendors for the change orders. KPMG also found that all change orders as presented by Clark to the Association were issued to and invoiced accordingly by the subcontractor. KPMG did not find any inappropriate change order billings by Clark.

***Recommendation:***

None

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## **PROJECT MANAGEMENT INSPECTION SERVICES**

The Association retained Professional Construction Consultants as the Inspector of Record. The agreement in place does not contain language that specifies a date when the contract was entered into, however it was signed by Professional Construction Consultants on October 1, 2001. KPMG noted that the signed executed contract was an agreement authored by Professional Construction Consultants.

The payment terms specifies a monthly payment of \$10,400 based on an hourly rate of \$60. In addition, the contract had manual corrections of the payment terms and contract duration. In total, \$231,040 was billed under this contract.

In addition to Professional Construction Consultants, the Association retained International Facilities Group (“IFG”) to serve as the lender representation function and also to provide project management consulting services. The Consulting Agreement with IFG was entered into on January 14, 2002. The agreement is in a different format than the current standard CPDC Professional Services Agreement. The Agreement allows for a lump sum fee of \$1,152,000 payable in monthly installments of \$48,000 plus expenses. In total, \$1,028,763 was paid by the Association under this contract.

KPMG obtained a copy of the invoices related to the aforementioned contracts and noted that all billings were all in accordance with the agreed upon hourly rates and contained appropriate signature approvals.

Nothing came to KPMG’s attention indicating that Project Management Services were unreasonably invoiced.

### ***Observation:***

Professional Construction Consultants was allowed to author its own contract, which is not standard practice. The executed contract contained manual alterations of the payment terms and contract duration.

### ***Risks:***

CSU Fresno may be exposed to undesired contractual obligations, potential disputes and legal consequences.

### ***Recommendation:***

7. On future projects, the current CPDC Professional Services Agreement or otherwise CPDC and legally approved documents should be used and manual alterations should be avoided. (Ownership: CSU Fresno)

***Campus Response:***

7. We concur. We will use the model agreements and seek approval for any deviation.

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## MAJOR EQUIPMENT/MATERIALS REVIEW

KPMG performed review of drawings, specifications and major materials and equipment on a sample basis at the Save Mart Center. All relevant documentation such as submittals and engineering recommendations were made available for KPMG's review and original copies were retained by the Association as well as Clark. Design was in initial stages at time of bid, therefore no detail size and output requirements for equipment were available at time the contract was entered into with Clark. Equipment was judgmentally selected by KPMG and was verified in the field against performance specifications issued, drawings and engineering calculations available.

The following equipment items and specific model data were approved and visually confirmed as installed on the project:

Division	Drawing No.	Brand	Model No./ Capacity	Description
07530	A.2.73	Firestone	UltraPly 78+PVC; 60mil	Single Ply Membrane Roofing
15680	M3.15	McQuay Intl.	WDC 087MBC, 975 tons	Chiller CH-1
16620	M2.13A	Caterpillar	1250 ekW	Emergency Generator
15710	ME1.11	B & G	VSCS-10 x11 x 11 3/4	Condenser Water Pump (for Cooling Tower)
15710	M3.15, ME1.10	Baltimore Aircoil	Series 3000, 5700 USGPM, 50 HP motor	Cooling Tower
15400	M1.11	Custom Built	85,000 CFM	Air-handling Unit AH11-1
15400	M1.11	Custom Built	85,000 CFM	Air-handling Unit AH12-1

All equipment conformed to the specifications above, based on a visual inspection of equipment labeling.

***Recommendation:***

None

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## **CLOSE-OUT PROCESS**

KPMG reviewed Certificate of Completion, Certificate of Occupancy, Punch List, Operating Permits, Operating and Maintenance (O & M) Manuals, Warranties, As-Built Drawings, Pre-Final and Final Inspections, and other relevant project close-out documentation, which was filed and retained properly at the University. The CSU Standard Close-Out Check list was not used by the Association, but otherwise the project close-out requirements established by the Contract General Conditions and SUAM were adhered to.

KPMG encountered difficulties in locating all relevant documentation related to the close-out process as well as many of the other stages of the construction. Although Save Mart Center staff and the Association were eventually able to locate relevant documentation, it took considerable effort. The CSU Construction Management Procedures Guide recommends a filing system, which would aid in organizing and indexing the Project Documentation.

### ***Observation:***

The project documentation has not yet been filed in an organized fashion.

### ***Risk:***

Necessary project reference materials may be lost or not located in a timely manner if a systemic and organized filing of project documentation does not occur.

### ***Recommendation:***

8. As a final step in the close-out process, CSU Fresno should ensure that the Association completes a filing system for the project documentation.  
(Ownership: CSU Fresno)

### ***Campus Response:***

8. We concur. A filing system was completed for this project and a system will be used on future projects.

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## **LIQUIDATED DAMAGES**

The Contract directed the CM/GC to achieve substantial completion by 730 days after the commencement of work set forth in the Notice to Proceed. Notice to Proceed was issued with directive to commence work on February 1, 2002 and substantially complete work on or before November 12, 2003. Substantial Completion was established on October 17, 2003 and Certificate of Completion was issued by the Architect. Since Clark completed the project ahead of schedule, liquidated damages did not apply.

***Recommendation:***

None

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## ACCOUNTING

KPMG reviewed the accounting process, including accounts payable, for the Project. The Project accounting was maintained independently by the Association in a spreadsheet representing all bond requisitions, which included entries for all invoices from the CM/GC, Architect, Inspector, and other vendors. KPMG's testing of the spreadsheet and underlying documentation did not reveal any discrepancies. The process of receiving, reviewing and entering a contractor or vendor invoice into the system for processing was discussed with the Association. The Construction Monitor on the Project, International Facilities Group, played a central role in approving contractor and vendor payments and assembling the bond requisitions.

Because expenditures occurring prior to the issuance of the revenue bonds were accounted for separately, KPMG also reviewed the Summary Balances reports for these costs. Both provided reports were updated regularly and were found to be a reliable source to track project spending.

***Recommendation:***

None



CALIFORNIA  
STATE  
UNIVERSITY,  
FRESNO

**MEMORANDUM**


RECEIVED  
UNIVERSITY AUDITOR

DEC 12 2005

THE CALIFORNIA STATE  
UNIVERSITY

December 12, 2005

TO: Larry Mandel  
University Auditor

FROM: John D. Welty   
President

SUBJECT: **Campus Responses to Recommendations 1, 2, 3, 4, 6, 7 and 8 in  
the Construction Project Evaluation of the Save Mart Center**

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My staff and I have reviewed the findings of the above captioned evaluation. Enclosed is our campus response addressing the specific recommendations contained in the report. This reformatted memo contains the same information that was in our response on October 27.

Please contact me if you should have any questions.

DA:mb  
Enclosure

c: Ms. Debbie Adishian-Astone  
Mr. Matt Babick  
Ms. Cindy Teniente-Matson

Office of  
the President

Thomas Administration Building,  
103  
5241 North Maple Ave. M/S TA48  
Fresno, CA 93740-8027

559.278.2324  
Fax 559.278.4715

**CONSTRUCTION PROJECT EVALUATION**  
**CALIFORNIA STATE UNIVERSITY, FRESNO**  
**SAVE MART CENTER**

**DESIGN COSTS**

***Recommendations:***

1. On future projects, CSU Fresno should ensure that the Association executes a formal and fully approved contract agreement with all vendors prior to commencing any work. The Association should produce and sign the agreements (not the Architect) and subsequent billings should not be allowed to exceed the contractual amount. (Ownership: CSU Fresno)
2. CSU Fresno should ensure that the Association investigates and considers recovery of possible inappropriate charges by the Architect. If the Association chooses not to pursue such charges, the reason should be documented. At the time of this report, the Association was in contact with the Architect to substantiate the variances. (Ownership: CSU Fresno)
3. On future projects, invoices should be tracked by separate contractual components. (Ownership: CSU Fresno)

***Campus Response:***

1. We concur. Future agreements should be in place before work commences. Also, billings will be monitored as to not exceed contractual amounts unless approved in writing as an amendment to the original agreement and scope of services.
2. We concur. I reviewed this matter in detail with the Association's Executive Director and the Vice President for Administration. The Association has fully documented the reasons and need for the additional fees paid to the architect. Therefore, recovery of these fees is not an issue.
3. We concur. Originally, the Save Mart Center and West Complex (Student Recreation Center) were approved as one project, but then subsequently split into two projects during the design phase due to different project financing requirements. We agree that project management should include the tracking of invoices against each project component in order to reconcile against the total fees stipulated in the professional service agreement.

## CONSTRUCTION BID PROCESS

### *Recommendations:*

4. CSU Fresno should ensure that on future projects, the definition of cost of the work is clearly defined in the contract agreement. (Ownership: CSU Fresno)
6. On future projects, CSU Fresno should ensure that the Association uses the standard CSU audit clause, unaltered, as included with the current General Conditions. (Ownership: CSU Fresno)

### *Campus Response:*

4. We concur. On future projects, we will endeavor to define the cost of work as clearly as possible.
6. We concur. The Association executed this Agreement for this construction procurement in November of 2001, prior to such documented method being available from the Chancellor's Office. Association staff counsel did consult with the Office of General Counsel during development of the CM/GC Agreement and General Conditions and we will continue to do so on future projects.

## PROJECT MANAGEMENT INSPECTION SERVICES

### *Recommendation:*

7. On future projects, the current CPDC Professional Services Agreement or otherwise CPDC and legally approved documents should be used and manual alterations should be avoided. (Ownership: CSU Fresno)

### *Campus Response:*

7. We concur. We will use the model agreements and seek approval for any deviation.

## CLOSE-OUT PROCESS

### *Recommendation:*

8. As a final step in the close-out process, CSU Fresno should ensure that the Association completes a filing system for the project documentation. (Ownership: CSU Fresno)

### *Campus Response:*

8. We concur. A filing system was completed for this project and a system will be used on future projects.



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**RICHARD P. WEST**  
Executive Vice Chancellor  
Chief Financial Officer

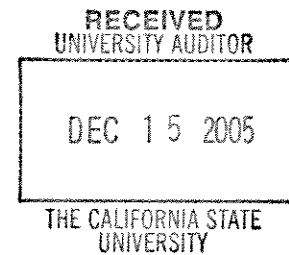
## MEMORANDUM

**Date:** December 12, 2005

**To:** Larry Mandel  
University Auditor  
Office of University Auditor

**From:** Richard P. West  
Executive Vice Chancellor  
and Chief Financial Officer

**Subject:** Audit Report – Revised Response to Recommendation #5  
Save Mart Center  
California State University, Fresno



We have revised our response to your audit recommendation number 5, see attached copy.

Once your staff has an opportunity to review this revised response, we would appreciate your closing this recommendation.

RPW:JRC:bn

Attachments

cc: Ms. Elvyra F. San Juan  
Mr. Larry Piper  
Mr. Thomas M. Kennedy  
Mr. James R. Corsar

**CONSTRUCTION PROJECT EVALUATION  
CALIFORNIA STATE UNIVERSITY, FRESNO  
SAVE MART CENTER**

**CONSTRUCTION BID PROCESS**

***Recommendation:***

5. CPDC should formally roll out a stipulated set of General Conditions that apply to non-state funded project for GC/CM as well as other delivery methodologies. (Ownership: CPDC)

***Management Response:***

5. Subsequent to the bidding of this project, CPDC did create Contract General Conditions (CGCs) for Foundation projects in formats for multiple delivery methodologies. This was done from May 2001 through September 2004. However, general counsel had advised CPDC not to produce Foundation CGCs when the project financing is not via the systemwide revenue bond program (SRB). When the Foundation project is funded through the SRB, the Foundation must use the Trustees' contract documents.

In light of the recommendation by the Trustees' Auditor, CPDC will revisit the CGCs that were prepared for Foundation projects that are funded outside the SRB and formalize standard contract language for the Foundations to use by December 31, 2006. Contract General Conditions will be provided for the design-bid-build, design-build, and construction manager at risk delivery methods.

THE CALIFORNIA STATE UNIVERSITY  
OFFICE OF THE CHANCELLOR



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SAN LUIS OBISPO  
SAN MARCOS  
SONOMA  
STANISLAUS

December 19, 2005

**MEMORANDUM**

TO: Mr. Larry Mandel  
University Auditor

FROM: Charles B. Reed  
Chancellor

A handwritten signature in black ink that reads "Charles B. Reed".

SUBJECT: KPMG Draft Final Report on the *Save Mart Center*  
Construction Project at California State University, Fresno

In response to your memorandum of December 19, 2005, I accept the response as submitted with the draft final report on the *Save Mart Center* construction project at California State University, Fresno.

CBR/amd

Enclosure

cc: Ms. Erika Alvord, KPMG  
Mr. Matt Babick, Internal Auditor, CSU Fresno  
Mr. Dennis Hordyk, Assistant Vice Chancellor, Financial Services  
Ms. Elvyra San Juan, Assistant Vice Chancellor, CPDC  
Dr. John D. Welty, President  
Mr. Richard P. West, Executive Vice Chancellor and Chief Financial Officer