

CONSTRUCTION
CALIFORNIA STATE UNIVERSITY,
EAST BAY
STUDENT SERVICES REPLACEMENT BUILDING

Audit Report 11-12
August 2, 2011

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ABBREVIATIONS

A/E	Architect/Engineer
BOT	Board of Trustees
CPDC	Capital Planning, Design and Construction
CRB	Certification Review Board
CSU	California State University
CSUEB	California State University, East Bay
ESA	Extra Service Authorization
EO	Executive Order
OUA	Office of the University Auditor
PDC	Planning, Design and Construction
SSRB	Student Services Replacement Building
SUAM	State University Administrative Manual

EXECUTIVE SUMMARY

At its January 2010 meeting, the Board of Trustees directed the Office of the University Auditor (OUA) to review construction activity. Construction auditing had been performed by KPMG since fiscal year 1997/98 with coordination from the OUA. In fiscal year 2008/09, OUA staff began performing construction audits.

We visited the California State University, East Bay campus and the offices of the construction manager and selected subcontractors from April 19, 2011, through May 13, 2011, and audited the Student Services Replacement Building (SSRB) project focusing on the construction management policies and procedures and internal controls and processes in effect at that time.

Our study and evaluation did not reveal any significant construction management or internal control problems or weaknesses that would be considered pervasive in their effects on construction activity controls. However, we did identify other reportable weaknesses that are described in the executive summary and body of this report. In our opinion, the operational and administrative controls in effect for the SSRB project were sufficient to meet the overall audit objective stated below.

As a result of changing conditions and the degree of compliance with procedures, the effectiveness of controls changes over time. Specific limitations that may hinder the effectiveness of an otherwise adequate system of controls include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. Establishing controls that would prevent all these limitations would not be cost-effective; moreover, an audit may not always detect these limitations.

The following summary provides management with an overview of conditions requiring attention. Areas of review not mentioned in this section were found to be satisfactory. Numbers in brackets [] refer to page numbers in the report.

GENERAL CONTROL ENVIRONMENT [7]

The campus capital outlay management plan required revisions and updates to be consistent with current practices.

PROJECT DEVELOPMENT AND DESIGN [8]

The California State University Office of General Counsel did not approve certain service agreement amendments between the campus and the project architectural firm and between the campus and the inspector of record/construction management firm. In addition, three of five extra service authorization letters for additional architectural work were executed after the specified services were performed. Further, the campus did not maintain written certification stating that the campus organization representing people with disabilities was given the opportunity to review the plans for the SSRB.

PRE-CONSTRUCTION AND BID PROCESS [11]

The campus did not ensure that the general contractor included all required trade subcontractors on its expanded list of subcontractors submitted with its bid documents.

CHANGE ORDER ADMINISTRATION [12]

The campus did not have written procedures for reviewing change order costs submitted by the general contractor. In addition, an erroneous labor classification charged by one trade subcontractor inflated labor costs by \$11,782.

INTRODUCTION

BACKGROUND

In March 2006, the Board of Trustees (BOT) approved schematic plans for the California State University, East Bay (CSUEB) Student Services Replacement Building (SSRB) at a project cost of \$42,361,000, with \$38,938,000 of funding from the fiscal year 2006/07 Governor's Budget and the remainder from the Higher Education Capital Outlay Bond Fund of 2004. In the same month, the campus executed a contract with the architectural firm of RMW Architecture and Interiors, for \$692,700, to provide services related, and incidental to, design and construction of the project.

In August 2007, the campus solicited project bids and selected Lathrop Construction Associates, Inc., as the general contractor. CSUEB issued the Notice to Proceed on August 29, 2007, and executed an agreement with the general contractor at a construction cost of \$33,413,000. The campus received a Certificate of Occupancy on March 4, 2010, and filed a Notice of Completion on April 28, 2010.

The SSRB, a four-story steel-braced frame structure with concrete-filled metal decks, accommodates student and administrative offices previously housed in Warren Hall. This project represents the first step in the seismic upgrade and renovation of Warren Hall, which has significant seismic and code deficiencies, as well as hazardous material risks. The exterior of the SSRB is a combination of insulated metal panel and high-performance vision glass, with a glass curtain wall at the building's main entry point. The project also included site improvements to align Warren Hall with the dominant east-west pedestrian axis, linking it with the library and the eastern perimeter parking lots. Sustainable features incorporated into the project include low-emission-rated glass used as part of the exterior enclosure, energy-efficient lighting in conjunction with natural lighting, use of daylight sensors in public and circulation spaces to minimize energy use, recycled interior finish materials, and water-efficient landscaping.

The CSUEB campus managed the SSRB project, and it chose the Design-Bid-Build delivery method. In this method, the design and construction aspects are contracted for separately, and the project is usually awarded to the lowest bid by a qualified general contractor. The architect/engineer (A/E) develops a schematic design, works with other professionals to complete drawings and specifications, and coordinates the bid documents. The project is advertised and bids are requested for various general contractors, who in turn bid out subcomponents of the project to multiple subcontractors and compile a complete bid for submission. The A/E participates in bid review and selection. During the construction phase, the A/E reviews work progress and issues site instructions, change orders, and other documentation necessary to the construction process; and the general contractor manages the construction process and daily activity on the construction site and often provides work with its own forces. The university remains responsible for project inspection and testing, and for generally administering the project.

Executive Order (EO) 672, *Delegation of Capital Outlay Management Authority and Responsibility*, dated July 25, 1997, delegates to campus presidents the authority to manage directly state and non-state funded capital outlay projects. The chancellor's office issues this delegated authority to the campus subject to its compliance with the capital outlay certification procedure. To comply, the campus submits

a request for Delegation of Capital Outlay Management Authority to the Certification Review Board (CRB) for review. Then the executive vice chancellor and chief financial officer in the chancellor's office must approve the request. The campus president is responsible for ensuring that he or she exercises delegated authority in compliance with applicable statutes, regulations, and policies of the BOT; the campus manages capital projects via a process consistent with the provisions of the State University Administrative Manual (SUAM); and the campus has in place appropriate internal controls and processes to ensure that responsibilities are carried out in a manner consistent with the campus capital outlay management plan submitted with the request for delegated authority.

The certification procedure required by EO 672 includes submission of a capital outlay management plan, which defines the campus organizational and operational structure and expenditure authority, and serves as the campus policies and procedures for the administration of construction activities. Updated plans are to be submitted when campus operational structure changes are made which impact the plan. Certification is continuous unless a Capital Planning, Design and Construction (CPDC) post-project performance review determines that problems were caused by campus negligence, in which case the CRB may recommend that the campus be placed on probation. The CRB may ultimately recommend that certification be withdrawn if identified operational/management deficiencies are not remedied.

For those campuses that are not certified, the chancellor's office may execute a Memorandum of Delegation for a capital outlay project, which delegates administration, including construction management, to the campus. The CPDC construction management unit may also perform construction administration and management.

EO 666, *Delegation of Professional Appointments Related to Capital Outlay Projects and Campus Physical Development*, dated March 7, 1997, delegates the authority to each campus president or designee to make all professional appointments relative to capital outlay projects and campus physical development. Further, the campus president or designee is responsible for ensuring compliance with all applicable statutes and regulations, BOT policies, and SUAM guidelines; and the use of systemwide standardized architectural, engineering, and other professional appointment contract forms.

The SUAM, in part, contains an overview of all CPDC policies and procedures associated with the capital outlay process. SUAM §9700 through §9843, *Construction Management for Public Works Contracts*, describe the requirements for preparing and administering public works contracts under the provisions of Public Contract Code §10700 *et seq.* SUAM §9200 through §9212, *Professional Services for Campus Development*, describe the requirements for developing and administering professional services agreements with service providers such as architects and engineers and for testing services and project-related studies.

The California State University (CSU) *Construction Management Procedures Manual* contains the CSU construction management policies and procedures that apply to a project, and each construction administrator, project manager, inspector of record, campus representative, and design professional is required to use this manual as appropriate during the construction administration of a project.

PURPOSE

The overall audit objective was to ascertain the effectiveness of construction management policies and procedures and internal controls and processes related to the administration of construction activities and, specifically, the Student Services Replacement Building project.

Within the overall audit objective, specific goals included determining whether:

- ▶ Delegated authority to manage capital outlay projects exists, and the campus capital outlay management plan is current for campus-managed projects.
- ▶ Project development is in accordance with statutory and CSU policy requirements, including required BOT and CPDC approvals.
- ▶ Administration and management of the project provide effective internal controls and processes consistent with the campus capital outlay management plan and the SUAM.
- ▶ Professional appointments are in accordance with statutory requirements, BOT policy, and the SUAM; and systemwide standardized professional appointment contract forms are used, approved by the Office of General Counsel, and fully executed prior to performance of work.
- ▶ Extra services are appropriate, authorized, and separately tracked; and an evaluation is performed for each professional service provided.
- ▶ The bidding process is rigidly controlled, performed in accordance with statutory requirements and the SUAM, and incorporates the contract documents maintained on the CPDC website.
- ▶ Contract documents are complete, routed to the Office of General Counsel as appropriate, and timely executed; required contract bonds and insurance are received; and a Notice to Proceed is issued.
- ▶ Subcontractors are adequately monitored, and requests for subcontractor substitutions are handled in accordance with statutory requirements and the SUAM.
- ▶ Operational and administrative controls ensure maintenance of financial accountability and completion of the project within the approved scope, schedule, and budget.
- ▶ Contract and service agreement payments are adequately supported, appropriately approved, and timely paid; and retention is handled in accordance with statutory requirements and the SUAM.
- ▶ Equipment is procured in the most economical method; purchased materials meet specifications required by construction documents and drawings; and all required inspections and tests are timely and properly performed and adequately documented.

- ▶ Change orders are appropriately approved, supported, accurately priced, and sufficiently tracked; and construction allowances and contingency balances are adequately administered and controlled.
- ▶ Project completion is adequately administered, including completion of pre-final/final inspections, punch list items, project closeout checklist, and Notice of Completion; preservation of project files, equipment manuals/warranties, and spare parts/materials; and resolution of any liquidated damages.

SCOPE AND METHODOLOGY

The scope of audit included, but was not limited to, the review of design budgets and costs; the bid and award process; invoice processing and payment; change orders; construction management, architectural, and engineering services; use of major equipment/materials; the closeout process; administration of liquidated damages; and overall project cost accounting and reporting. This included any transactions or activity performed by the campus, construction management firm, and trade subcontractors.

Our study and evaluation were conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors, and included the audit tests we considered necessary in determining that operational and administrative controls are in place and operative. This review emphasized, but was not limited to, compliance with state and federal laws, BOT policies, and Office of the Chancellor and campus policies, letters, and directives.

We focused primarily on the operational and administrative controls in effect for the Student Services Replacement Building project with an emphasis on compliance with the CSU *Construction Management Procedures Manual*, SUAM policies and procedures associated with the capital outlay process, the campus capital outlay management plan, and construction contract general conditions. We evaluated the effectiveness of construction management policies and procedures and adequacy of internal controls and processes, and sought opportunities for improvement to further the success of CSU's capital outlay program.

Specifically, we reviewed and tested:

- ▶ Delegation of construction management authority.
- ▶ Review and approval of project design, budget, and funding.
- ▶ Professional services agreements and any extra services changes.
- ▶ Administration of the bid and award process.
- ▶ Contract execution and required contract bonds and insurance.
- ▶ Subcontractors and subcontractor substitutions.
- ▶ Contract and service agreement payment processing.
- ▶ Procurement of major equipment and materials.
- ▶ Performance of required inspections and tests.
- ▶ Review, approval, and tracking of change orders.
- ▶ Direct labor and associated burden.
- ▶ Construction management and overall project cost accounting and reporting.
- ▶ Construction allowances and contingency balances.
- ▶ Administration of the project closeout process and resolution of any liquidated damages.

OBSERVATIONS, RECOMMENDATIONS, AND CAMPUS RESPONSES

GENERAL CONTROL ENVIRONMENT

Administration of the campus capital outlay management plan needed improvement.

We noted that:

- ▶ The campus did not update the capital outlay management plan when the associate vice president for facilities management and planning separated from the campus in April 2009.
- ▶ Five general contractor monthly payment applications totaling \$4,239,641 were approved by the campus associate university planner or a project consultant instead of the campus project manager.
- ▶ Four of nineteen project change orders were not approved by the proper campus personnel, including:
 - Two change orders for less than \$20,000 that were not signed by the project manager.
 - A change order for \$37,953 that was not signed by the manager of design and construction.
 - A change order for a credit of \$185,336 that was not signed by the associate vice president of facilities.
 - Two change orders for more than \$100,000 that were not signed by the vice president of administration and finance.
- ▶ The Notice of Completion was approved by the project manager and contract coordinator, instead of the construction administrator.

Executive Order (EO) 672, *Delegation of Capital Outlay Management Authority and Responsibility*, dated July 25, 1997, states, in part, that the campus is responsible for ensuring appropriate internal controls and processes on the campus are in place to ensure that responsibilities are carried out in a manner consistent with campus management plan submitted with the request for delegation.

The California State University, East Bay (CSUEB) *Capital Outlay Management Plan*, dated September 2007, states, in part, that the campus project manager gives final approval of payments. The plan also states that approval by the project manager is required for change documents less than \$20,000 and approval by the manager of design and construction is required for change documents between \$20,000 and \$100,000.

The CSUEB *Capital Outlay Management Plan*, dated May 2009, states that approval by the associate vice presidents for facilities management and planning is required for change documents between

\$50,000 and \$100,000, and approval by the vice president of administration and business affairs and chief financial officer is required for change documents exceeding \$100,000.

State University Administrative Manual (SUAM) §9002 states that each campus must be certified to qualify for delegation of capital outlay management authority, which is accomplished through a Certification Review Board (CRB). This board reviews and evaluates campus capital outlay management plans that define the campus organizational and operational structure and expenditure authority. Updated plans shall be submitted every two years and/or when campus operational structure changes are made, which impact the management plan.

The director of planning, design, and construction (PDC) stated that the campus had made several revisions to the capital outlay management plan to codify current operating practices. He also stated that the exceptions noted in the audit were due to changes in procedures that are being included in the current revision of the capital outlay management plan, but that the revised plan has not yet been approved by the CRB.

Failure to update the capital outlay management plan and failure to approve expenditures in accordance with that plan increases the risk of misunderstandings and miscommunication regarding campus organizational and operational structure and expenditure authority.

Recommendation 1

We recommend that the campus:

- a. Revise its current capital outlay management plan to reflect the current organizational structure and submit that plan to the chancellor's office Capital Planning, Design and Construction (CPDC) for CRB approval.
- b. Reiterate to staff that payments to general contractors, change orders, and Notices of Completion must be approved and executed according to the approved capital outlay management plan.

Campus Response

We concur.

- a. A revised capital outlay management plan reflecting the current organizational structure will be submitted to the CRB no later than October 31, 2011.
- b. A memo has been sent to PDC staff reiterating that payments are to be approved and executed according to the approved capital outlay management plan.

PROJECT DEVELOPMENT AND DESIGN

SERVICE AGREEMENTS

The California State University (CSU) Office of General Counsel did not approve certain service agreement amendments between the campus and the project architectural firm and between the campus and the inspector of record/construction management firm.

SUAM §9210.01 states that agreements for professional services are not in force or effect until approved by the CSU Office of General Counsel.

The PDC director stated that the campus procurement office is responsible for routing all agreements to the CSU Office of General Counsel, and the lack of general counsel approval was due to oversight.

Failure to obtain approval from the CSU Office of General Counsel on service agreement amendments increases the risk of litigation and implied obligations due to misunderstandings and miscommunication regarding rights and responsibilities.

Recommendation 2

We recommend that the campus ensure that service agreement amendments are approved by the CSU Office of General Counsel.

Campus Response

We concur. A memo has been sent to both PDC and finance staff notifying them that all service agreement amendments are to be submitted to and approved by the CSU Office of General Counsel.

The campus has always made a distinction between a service agreement amendment, which fundamentally alters the scope of the agreement (for example, moving from the schematic phase to construction documents phase), and an extra service agreement, which typically represents only a minor, incremental change in scope (for example, adding a second boiler to a building already under design). Because it is by definition minor in nature, an extra service agreement is not submitted to the CSU Office of General Counsel, but rather is approved by finance.

EXTRA SERVICES

Three of five extra service authorization (ESA) letters for additional architectural work were executed after the specified services were performed.

SUAM §9208.02 states that extra services for professional service agreements call for the provision of services to be authorized in writing in advance.

The PDC director stated that the ESA letters were not executed in a timely manner due to oversight.

The absence of complete ESA letters increases the risk of misunderstandings and miscommunication regarding rights and responsibilities.

Recommendation 3

We recommend that the campus reiterate to staff that ESA letters are to be executed prior to the performance of the specified services.

Campus Response

We concur. A memo has been sent directing PDC staff that specified services are not to commence until the ESA has been reviewed and approved.

PLAN REVIEW

The campus did not maintain written certification stating that the campus organization representing people with disabilities was given the opportunity to review the plans for the Student Services Replacement Building (SSRB).

SUAM §9233.01 states that the campus project administrator shall submit a written certification to the chancellor's office CPDC department warranting that the campus organization representing persons with disabilities had the opportunity to review the plans for compliance with accessibility standards.

The PDC director stated that the campus did consult with accessibility services during the planning of the SSRB, but the written certification was not maintained in the construction file.

Failure to maintain written certifications stating that the campus organization representing people with disabilities has been given the opportunity to review plans for capital projects increases the risk that campus expectations for accessibility will not be met.

Recommendation 4

We recommend that the campus maintain future certification statements showing that the campus organization representing people with disabilities was given the opportunity to review capital project plans.

Campus Response

We concur. At the time of this project, the campus organization representing people with disabilities was the Student Disability Resource Center, which, as the name implies, was limited to students. In an effort to broaden representation to also include faculty and staff, the campus recently formed Accessibility Services. In the future, this organization — representing students, faculty and staff —

will be given the opportunity to review project plans for compliance with accessibility standards; this review will be documented by PDC staff and included in the project files.

PRE-CONSTRUCTION AND BID PROCESS

The campus did not ensure that the general contractor included all required trade subcontractors on its expanded list of subcontractors submitted with its bid documents.

We found that a trade subcontractor who was paid in excess of one-half of one percent of the builder's construction agreement was not included on the final expanded list of subcontractors. The total value of the trade subcontract was \$435,000.

Public Contract Code §4104 and §4110 state that the specifications prepared for the work or the general conditions under which bids will be received shall set forth that the prime contractor will provide the name and location of each subcontractor who will perform work or labor or render services to the prime contractor in an amount in excess of one-half of one percent of the prime contractor's total bid. A prime contractor violating any of the provisions of this chapter (the Subletting and Subcontracting Fair Practices Act, Public Contract Code §4100 *et seq.*) violates his or her contract and the awarding authority may exercise options, including cancelling the contract or assessing the prime contractor a penalty in an amount of not more than ten percent of the amount of the subcontract involved.

The *Contract General Conditions for Design-Bid-Build Projects* §4.04.c states that when requested by the construction administrator, the contractor shall submit a subcontractor status report, which will be compared with the expanded list of subcontractors. If any subcontractors are still outstanding at the time of submittal, a follow-up request will be made. Further, if any firms are substituted without approval of the Trustees in accordance with Section 4107(a) of the Public Contract Code, or if subcontractors are added and perform work in excess of one-half of one percent of base contract, penalties are applicable per Section 4110 of the Public Contract Code.

The PDC director stated that the campus was unaware that the general contractor had paid a trade subcontractor that was not listed on the final expanded list of subcontractors.

Failure to ensure that the general contractor provides the campus with a complete expanded list of subcontractors results in non-compliance with the Subletting and Subcontracting Fair Practices Act and increases the risk that violations of the act will not be detected.

Recommendation 5

We recommend that the campus:

- a. Reiterate to staff and future general contractors that the expanded list of subcontractors must include all subcontractors who will be paid in excess of one-half of one percent of the base contract.
- b. Consider assessing a penalty of not more than \$43,500 to the general contractor for violation of the Public Contract Code and Contract General Conditions.

Campus Response

- a. We concur. A memo has been sent reiterating to both PDC and finance staff the necessity of ensuring that the general contractor must include all required trade subcontractors who will be paid in excess of one-half of one percent of the base contract.
- b. While recognizing that it is entitled to assess a penalty of up to \$43,500 for violation of the Public Contract Code and Contract General Conditions, the university has determined that the omission was an oversight on the part of Lathrop Construction Associates, Inc. and that the project was not negatively impacted by the omission. As such, in this instance, the university will not be assessing the allowable penalty, with the understanding that should Lathrop Construction Associates, Inc. perform as a general contractor at CSUEB or any other CSU campus in the future, failure to properly list all subcontractors per the Public Contract Code will result in the assessment of penalties to the full extent allowed under the law.

CHANGE ORDER ADMINISTRATION

PROCEDURES

The campus did not have written procedures for reviewing change order costs submitted by the general contractor.

EO 672, *Delegation of Capital Outlay Management Authority and Responsibility*, dated July 25, 1997, states, in part, that the campus is responsible for ensuring appropriate internal controls and processes on the campus are in place to ensure that responsibilities are carried out in a manner consistent with campus management plan submitted with the request for delegation. EO 672, further states, that the campus shall maintain financial accountability for each project.

The PDC director stated that the campus has policies for processing change orders, but he was unaware that written procedures were required.

Failure to develop, document, and communicate procedures compromises internal controls and increases the risk that unallowable project costs will not be detected.

Recommendation 6

We recommend that the campus document its procedures for reviewing change order costs submitted by the general contractor and distribute them to the appropriate personnel.

Campus Response

We concur. A document that specifies the procedures for reviewing and approving change order costs has been distributed to both PDC and finance staff.

LABOR RATES AND BURDEN

Administration of trade subcontractor labor rates and associated labor burden needed improvement.

We reviewed hourly labor rates and the associated labor burden charged by two trade subcontractors for a sample of change orders, and we found that one subcontractor charged labor rate costs for a general foreman as a percentage of the required journeymen electrician hours, although the costs are only allowed as actual payroll. In addition, the same trade subcontractor did not include a credit for foreman labor costs on any credit change order. The inclusion of these labor costs increased the labor cost for this trade subcontractor by \$11,782.

The *Contract General Conditions for Design-Bid-Build Projects* §6.01.b (1) states that the contractor shall submit a fully detailed breakdown of the cost of every labor classification to be utilized on a proposed change on the hourly labor rate worksheet. The unit cost of labor shall be an accurate accounting of actual costs being paid.

The PDC director stated that the campus utilized a third-party construction management firm, which should have been reviewing the labor rates submitted on change orders to the hourly labor rate worksheets before submitting the change orders to the campus.

Failure to review hourly labor rates and the associated labor burden may result in increased project costs.

Recommendation 7

We recommend that the campus:

- a. Pursue recovery of the \$11,782 overcharge charged by the trade subcontractor and determine, as appropriate, if other change order work performed by this trade subcontractor had been cost-inflated in a similar manner. The results of this recovery should be reported to the chancellor's office CPDC department.

- b. Conduct staff training to ensure that hourly labor rates and the associated labor burden charged by trade subcontractors are appropriate and accurate in accordance with §6.00, Changes in the Work, of the *Contract General Conditions for Design-Bid-Build Projects*.

Campus Response

We concur.

- a. We have sent correspondence to Lathrop Construction Associates, Inc. requesting payment in the amount of \$11,782 for overcharges. Within 60 days, the university will determine if any other change order work was cost-inflated and whether further recovery is required.
- b. Based on the findings of a previous audit, PDC staff participated in a one-hour webinar training conducted by CPDC on labor rate worksheets/certified payroll on November 5, 2010.

APPENDIX A: PERSONNEL CONTACTED

<u>Name</u>	<u>Title</u>
<u>Office of the Chancellor</u> Elvyra San Juan	Assistant Vice Chancellor, Capital Planning, Design and Construction
<u>California State University, East Bay</u> Leroy M. Morishita Mohammad Qayoumi Shawn Bibb	Interim President (Currently) President (At time of review) Vice President, Administration and Finance and Chief Financial Officer (At time of review)
Christopher Brown David Schultz Brad Wells	Associate Vice President, Enterprise Operations and Foundation Facilities Operations Manager Interim Vice President, Administration and Finance and Chief Financial Officer (Currently)
Jim Zavagno	Director of Planning, Design, and Construction



CALIFORNIA STATE
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EAST BAY

Office of the President

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RECEIVED
UNIVERSITY AUDITOR

SEP 13 2011

THE CALIFORNIA STATE
UNIVERSITY

September 8, 2011

Mr. Larry Mandel
University Auditor
The California State University
401 Golden Shore
Long Beach, CA 90802

RE: Campus Response to Recommendations: Audit Report Number 11-12
Student Services Replacement Building, California State University, East Bay

Dear Mr. Mandel,

I have reviewed the audit findings with my staff from Facilities Development and Operations and our specific responses to the auditors' findings and recommendations are enclosed. I am pleased that the audit report for the referenced project was positive and found overall compliance with established procedures, particularly as this was such an important project for the university.

Please let us know if you have any questions or need additional information.

Sincerely,

Leroy M. Morishita
Interim President

Cc: Mr. Brad Wells (with enclosure)
Mr. Chris Brown (with enclosure)

CONSTRUCTION
CALIFORNIA STATE UNIVERSITY,
EAST BAY
STUDENT SERVICES REPLACEMENT BUILDING
Audit Report 11-12

GENERAL CONTROL ENVIRONMENT

Recommendation 1

We recommend that the campus:

- a. Revise its current capital outlay management plan to reflect the current organizational structure and submit that plan to the chancellor's office Capital Planning, Design and Construction (CPDC) for CRB approval.
- b. Reiterate to staff that payments to general contractors, change orders, and Notices of Completion must be approved and executed according to the approved capital outlay management plan.

Campus Response

- a. We concur. A revised capital outlay management plan reflecting the current organizational structure will be submitted to the Certification Review Board no later than October 31, 2011.
- b. We concur. A memo has been sent to PDC staff reiterating that payments are to be approved and executed according to the approved capital outlay management plan.

PROJECT DEVELOPMENT AND DESIGN

SERVICE AGREEMENTS

Recommendation 2

We recommend that the campus ensure that service agreement amendments are approved by the CSU Office of General Counsel.

Campus Response

We concur. A memo has been sent to both PDC and Finance staff notifying them that all service agreement amendments are to be submitted to and approved by the CSU Office of General Counsel.

Please note that the campus has always made a distinction between a Service Agreement Amendment, which fundamentally alters the scope of the agreement, (for example, moving from the Schematic Phase to Construction Documents phase) and an Extra Service Agreement, which typically represents only a minor, incremental change in scope (for example, adding a second boiler to a building already under design). Because it is by definition minor in nature an Extra Service Agreement is not submitted to the CSU Office of General Counsel, but rather is approved by Finance.

EXTRA SERVICES

Recommendation 3

We recommend that the campus reiterate to staff that ESA letters are to be executed prior to the performance of the specified services.

Campus Response

We concur. A memo has been sent directing PDC staff that specified services are not to commence until the Extra Service Agreement has been reviewed and approved.

PLAN REVIEW

Recommendation 4

We recommend that the campus maintain future certification statements showing that the campus organization representing people with disabilities was given the opportunity to review capital project plans.

Campus Response

We concur. At the time of this project the campus organization representing people with disabilities was the Student Disability Resource Center (SDRC), which as the name implies was limited to students. In an effort to broaden representation to also include faculty and staff the campus recently formed Accessibility Services. In the future this organization — representing students, faculty and staff — will be given the opportunity to review project plans for compliance with accessibility standards; this review will be documented by PDC staff and included in the project files.

PRE-CONSTRUCTION AND BID PROCESS

Recommendation 5

We recommend that the campus:

- a. Reiterate to staff and future general contractors that the expanded list of subcontractors must include all subcontractors who will be paid in excess of one-half of one percent of the base contract.

- b. Consider assessing a penalty of not more than \$43,500 to the general contractor for violation of the Public Contract Code and Contract General Conditions.

Campus Response

- a. We concur. A memo has been sent reiterating to both PDC and Finance staff the necessity of ensuring that the general contractor must include ALL required trade subcontractors who will be paid in excess of one-half of one percent of the base contract.
- b. While recognizing that it is entitled to assess a penalty of up to \$43,500 for violation of the Public Contract Code and Contract General Conditions the university has determined that the omission was an oversight on the part of Lathrop and that the project was not negatively impacted by the omission. As such, in this instance the university will not be assessing the allowable penalty, with the understanding that should Lathrop perform as a general contractor at CSUEB or any other CSU campus in the future failure to properly list all subcontractors per Public Contract Code will result in the assessment of penalties to the full extent allowed under the law.

CHANGE ORDER ADMINISTRATION

Recommendation 6

We recommend that the campus document its procedures for reviewing change order costs submitted by the general contractor and distribute them to the appropriate personnel.

Campus Response

We concur. A document that specifies the procedures for reviewing and approving change order costs has been distributed to both PDC and Finance staff.

LABOR RATES AND BURDEN

Recommendation 7

We recommend that the campus:

- a. Pursue recovery of the \$11,782 overcharge charged by the trade subcontractor and determine, as appropriate, if other change order work performed by this trade subcontractor had been cost-inflated in a similar manner. The results of this recovery should be reported to the chancellor's office CPDC department.
- b. Conduct staff training to ensure that hourly labor rates and the associated labor burden charged by trade subcontractors are appropriate and accurate in accordance with §6.00, Changes in the Work, of the *Contract General Conditions for Design-Bid-Build Projects*.

Campus Response

- a. We concur. We have sent correspondence sent to Lathrop Construction Associates, Inc. requesting payment in the amount of \$11,782 for overcharges. Within 60 days the university will determine if any other change order work was cost-inflated and further recovery required.
- b. We concur. Based on the findings of a previous audit PDC staff participated in a one-hour webinar training conducted by CPDC on Labor Rate Worksheets/Certified Payroll on November 5, 2010.

THE CALIFORNIA STATE UNIVERSITY
OFFICE OF THE CHANCELLOR

BAKERSFIELD

CHANNEL ISLANDS

October 26, 2011

CHICO

MEMORANDUM

DOMINGUEZ HILLS

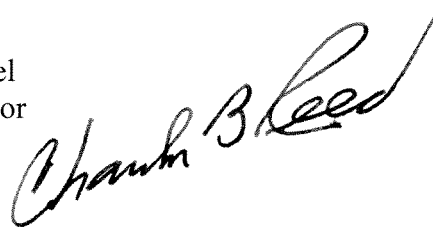
EAST BAY

TO: Mr. Larry Mandel
University Auditor

FRESNO

FULLERTON

FROM: Charles B. Reed
Chancellor



HUMBOLDT

SUBJECT: Draft Final Report 11-12 on the
Student Services Replacement Building
California State University, East Bay

LONG BEACH

LOS ANGELES

MARITIME ACADEMY

In response to your memorandum of October 26, 2011, I accept the response as submitted with the draft final report on the *Student Services Replacement Building*, California State University, East Bay.

MONTEREY BAY

NORTHBRIDGE

POMONA

CBR/amd

SACRAMENTO

SAN BERNARDINO

SAN DIEGO

SAN FRANCISCO

SAN JOSÉ

SAN LUIS OBISPO

SAN MARCOS

SONOMA

STANISLAUS