

Audit and Advisory Services
401 Golden Shore
Long Beach, CA 90802-4210

June 8, 2022

Dr. Eduardo M. Ochoa, President
California State University, Monterey Bay
100 Campus Center, Administration Building
Seaside, CA 93955

Dear Dr. Ochoa:

**Subject: Audit Report 21-53, Construction – Otter Student Union,
California State University, Monterey Bay**

We have completed an audit of the *Otter Student Union* construction project as part of our 2021-2022 Audit Plan, and the final report is attached for your reference. The audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

I have reviewed the management response and have concluded that it appropriately addresses our recommendations. The management response has been incorporated into the final audit report, which will be posted to Audit and Advisory Services' website. We will follow-up on the implementation of corrective actions outlined in the response and determine whether additional action is required.

Any observations not included in this report were discussed with your staff at the informal exit conference and may be subject to follow-up.

I wish to express my appreciation for the cooperation extended by the campus personnel over the course of this review.

Sincerely,



Vlad Marinescu
Vice Chancellor and Chief Audit Officer

c: Jolene Koester, Interim Chancellor
Lateefah Simon, Chair, Committee on Audit
Yammilette Rodriguez, Vice Chair, Committee on Audit

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CONSTRUCTION

**California State University,
Monterey Bay**

Otter Student Union

Audit Report 21-53
June 8, 2022

EXECUTIVE SUMMARY

OBJECTIVE

The objectives of the audit were to ascertain the effectiveness of operational, administrative, and financial controls related to construction activities; identify cost recovery opportunities; and ensure compliance with relevant governmental regulations, Trustee policy, Office of the Chancellor (CO) directives, construction contract general conditions, and campus procedures.

CONCLUSION

Based upon the results of the work performed within the scope of the audit, the operational, administrative, and financial controls for the construction of the Otter Student Union as of April 1, 2022, taken as a whole, provided reasonable assurance that risks were being managed and objectives were met. However, our review noted that the project final reconciliation had not been completed and identified opportunities for improvement in the campus delegation of authority process.

Specific observations, recommendations, and management responses are detailed in the remainder of this report.

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

1. FINAL ACCOUNTING

OBSERVATION

The campus did not require the collaborative design-builder (DB) to submit a final accounting of project costs for the Otter Student Union project.

Specifically, we found that the DB did not provide sufficient documentation demonstrating that the total cost of the project equaled or exceeded the final guaranteed maximum price (GMP) in the construction agreement. This documentation should include, but not be limited to, all actual subcontractor costs, direct material and labor provided by the general contractor, and a reconciliation of contractual fees paid by the campus.

Submittal of a final accounting of actual project costs by the DB decreases the risk that the campus's payments will exceed actual construction costs (up to the GMP) and that any errors and irregularities will not be detected.

RECOMMENDATION

We recommend that the campus require the DB to submit a final accounting of project costs for the Otter Student Union project and perform a verification of the costs. If the total cost of the project was less than the final GMP in the construction agreement, the campus should request that the difference be returned.

MANAGEMENT RESPONSE

We concur. The campus will require the DB to submit a final accounting of project costs for the Otter Student Union project and will perform a verification of the costs. If the total cost of the project was less than the final GMP in the construction agreement, the campus will request that the difference be returned. Anticipated completion date is November 15, 2022.

2. DELEGATION OF AUTHORITY

OBSERVATION

The campus delegation of authority process for the Otter Student Union project needed improvement.

We found that:

- The director of business support services signed the DB construction agreement but did not have signature authority per the capital outlay management plan, and the campus could not locate a separate delegation of fiscal authority from the campus president.
- The interim associate vice president of administration and finance signed one change order for \$2,314,000 but did not have signature authority per the capital outlay

management plan. The individual did have a separate delegation of fiscal authority to approve expenditures from the vice president of administration and finance, but it did not appear to address capital projects.

Proper delegations of authority provide assurance that significant transactions affecting California State University (CSU) assets are administered in accordance with policy and best practices.

RECOMMENDATION

We recommend that the campus review and update the capital outlay management plan and any associated delegations of authority to sign construction agreements and construction change orders as necessary to ensure that the delegations are current and appropriately approved and cover all necessary types of transactions.

MANAGEMENT RESPONSE

We concur. The campus will ensure capital outlay management plans and any associated delegations of authority to sign the construction agreements and construction change orders as necessary are current and appropriately approved and cover all necessary types of transactions. Anticipated completion date is November 15, 2022.

GENERAL INFORMATION

BACKGROUND

In November 2016, the board of trustees (BOT) approved schematic plans for the Otter Student Union project at a cost of \$55,558,000, with funding from student union fee revenue reserves and systemwide revenue bonds.

In April 2016, the campus solicited project bids and selected Gilbane Building Company as the DB. The campus executed a design and construction agreement with Gilbane Building Company on August 27, 2018, at a cost of \$55,886,766, which included some additional funding for related campus utility projects and funds from a campus auxiliary. The Notice to Proceed (NTP) was issued on September 10, 2018, with an anticipated completion date of June 1, 2020. The campus filed the Notice of Completion with the county recorder on March 9, 2021. The final project cost, after all change orders had been processed, was \$57,680,940.

The Otter Student Union project is a new three-story building located on the south end of the California State University, Monterey Bay (CSUMB) campus. The 70,000-square-foot building houses the campus bookstore and a 6,000-square-foot ballroom, which can be opened up to an outdoor space for concerts and event activities, on the first level. The second level, referred to as the Main Quad level, promotes student life through food services, clusters of lounge and seating areas, interior and exterior seating, and steps creating highly visible spaces. The sizable, yet protected, courtyard frames the southern entrance to the building. The third level houses administrative offices, student program spaces, and a game room. The building's siting captures sustainability best practices, maximizing natural daylight and shading with a design that yields a synergy of indoor and outdoor gathering space and provides a welcoming transition from the Main Quad. The project was designed to achieve a Leadership in Energy and Environmental Design (LEED) gold certification. LEED is a third-party certification program begun in 1999 by the United States Green Building Council and is a nationally accepted benchmark for the sustainable "green" design, construction, and operation of buildings.

The CSUMB campus managed the Otter Student Union project, and it chose the Collaborative Design-Build delivery method. In this method, the campus establishes the project criteria, and the general contractor and architect/engineer propose together as a design-build team. Working closely with the campus, the design-build team establishes a design, specifications, and GMP for the project. The design-build team acts as the general contractor during construction, assumes the risk of subcontracting the work, and guarantees completion of the project. The liability for the success in completing the project on time and in budget lies with the design-build team, and not with the university. Further, there is a potential for cost savings should the project be completed below the GMP.

Campus presidents have been delegated the authority to directly manage 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 BOT policies; the campus manages capital projects via a process consistent with the provisions of the Integrated California State University Administrative Manual (ICSUAM); 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 campus capital outlay management plan 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 that 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.

Each campus president (or designee) also has been delegated authority to make all professional appointments relative to capital outlay projects and campus physical development in accordance with applicable statutes, regulations, BOT policies, and ICSUAM provisions; and must ensure the use of systemwide standardized architectural, engineering, and other professional appointment contract forms. Further, each construction administrator, project manager, inspector of record, campus representative, and design professional is required to use the CSU Construction Management Project Administration Reference Manual, which contains the CSU construction management policies and procedures that apply to a project.

SCOPE

We performed fieldwork from February 14, 2022, through April 1, 2022. Our audit and evaluation included the audit tests we considered necessary in determining whether operational, administrative, and financial controls for the Otter Student Union are in place and operative. The audit focused on procedures in effect during the planning and construction of the project.

Specifically, we reviewed and tested:

- Delegation of construction management authority.
- Administration of the bid and award process.
- Contract execution and required contract bonds and insurance.
- Plan reviews and permitting in accordance with CSU requirements.
- Construction management and accounting, including allowance and contingency tracking and invoicing and payment applications.
- Review, approval, pricing, and tracking of change orders.
- Subcontractor administration.
- Close-out processes, including completion of required inspections and certifications.

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.

Our testing and methodology, which was designed to provide a review of key operational, administrative, and financial controls, included interviews, walkthroughs, and detailed testing on a limited number of DB and subcontractor transactions. Our review did not examine all aspects of financial controls or encompass all financial transactions for every contractor and subcontractor.

CRITERIA

Our audit was based upon standards as set forth in federal and state regulations and guidance; Trustee policy; Office of the Chancellor directives; and campus procedures; as well as sound administrative practices and consideration of the potential impact of significant risks. This audit was conducted in conformance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing*.

This review emphasized, but was not limited to, compliance with:

- Public Contract Code Chapter 2.5, *CSU Contract Law*
- Public Contract Code §4100 et seq., *Subletting and Subcontracting Fair Practices Act*
- Government Code §13402 and §13403
- Executive Order (EO) 666, *Delegation of Professional Appointments Related to Capital Outlay Projects and Campus Physical Development*
- EO 672, *Delegation of Capital Outlay Management Authority and Responsibility*
- ICSUAM §9000 through §9005, *Capital Outlay and Public Works Contracts*
- ICSUAM §9200 through §9212, *Professional Services for Campus Development*
- ICSUAM §9230 through §9237, *Project Plan Development for Major Capital Construction Projects*
- ICSUAM §9700 through §9843, *Construction Management for Public Works Contracts*
- *CSU Construction Management Project Administration Reference Manual*
- *Contract General Conditions for Collaborative Design-Build Major Projects*

AUDIT TEAM

Assistant Vice Chancellor: Wendee Shinsato
Senior Auditor: Jamarr Johnson