

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

May 4, 2023

Mr. Framroze M. Virjee, President
California State University, Fullerton
800 N. State College Boulevard
Fullerton, CA 92834

Dear Mr. Virjee:

**Subject: Audit Report 22-53, Kinesiology and Health Services Pool Replacement,
California State University, Fullerton**

We have completed an audit of the *Kinesiology and Health Services Pool Replacement* construction project as part of our 2022-2023 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,
Fullerton**

**Kinesiology and Health Services
Pool Replacement**

Audit Report 22-53
May 4, 2023

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, except for the weaknesses described below, the operational, administrative, and financial controls for the Kinesiology and Health Services (KHS) Pool Replacement project as of February 17, 2023, taken as a whole, provided reasonable assurance that risks were being managed and objectives were met.

However, the review did find that improvements were needed in the permitting process to ensure that required approvals were obtained and building permits were issued before construction activities were performed. We also noted that the campus did not timely obtain required builder's risk insurance, and we identified opportunities for improvement in the change order process, specifically in the areas of contract extensions and supporting documentation for project costs and credits.

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

OBSERVATIONS, RECOMMENDATIONS, AND RESPONSES

1. PLAN CHECK APPROVALS

OBSERVATION

Campus processes to obtain and document project approvals needed improvement.

We reviewed project approval documentation relating to the design and development of the KHS Pool Replacement project and found that:

- Demolition activities began in February 2021, but the permit for these activities was not approved by the campus deputy building official until April 2021.
- Construction began in May 2021, before approval of the schematic design by Capital Planning, Design and Construction (CPDC) on June 11, 2021, and before the issuance of the project building permit on September 29, 2021.
- A building permit was not issued, and related Division of State Architect (DSA) approvals were not obtained, for an additional scope of work that was added to the project for a shade structure and bleachers. However, we did note that the campus obtained relevant state fire marshal and seismic approvals and had its Certified Access Specialist inspector perform a review for the added work.

Obtaining appropriate approvals and permits before beginning work on a project reduces the risk of noncompliance with state regulations and reduces the probability of rework and increased project costs.

RECOMMENDATION

We recommend that the campus:

- a. Remind appropriate personnel about CPDC approvals that must be obtained and building permits that must be issued by the campus deputy building official before work begins.
- b. Obtain DSA approval and document a building permit for the shade structure and bleacher portion of the project.

MANAGEMENT RESPONSE

We concur. Campus management will:

- a. Provide training to appropriate personnel about CPCD approvals that must be obtained and building permits that must be issued by the campus deputy building official before work begins.
- b. Obtain DSA approval and document a building permit for the shade structure and bleacher portion of the project.

This will be completed by October 6, 2023.

2. INSURANCE

OBSERVATION

The campus did not timely enroll in the builder's risk insurance program (BRIP) for the KHS Pool Replacement project.

We found that the contractor was given a Notice to Proceed for the project on January 27, 2021, but the campus did not enroll into BRIP until April 2022.

Obtaining insurance in a timely manner and complying with California State University (CSU) insurance requirements reduces the potential for loss to the campus and the CSU.

RECOMMENDATION

We recommend that the campus reiterate to staff that all construction projects must be enrolled in the CSU BRIP before the start date specified in the Notice to Proceed.

MANAGEMENT RESPONSE

We concur. Management will provide relevant training to staff on the CSU BRIP process, including that all construction projects must be enrolled in the CSU BRIP before the start date specified in the Notice to Proceed.

This will be completed by July 31, 2023.

3. CONTRACT EXTENSION

OBSERVATION

The campus did not follow appropriate processes to either assess liquidated damages or extend the time to complete the contract for a ten-month delay to the contract completion date.

We found that the campus approved an additional scope of work through the change order process for the addition of a shade structure and bleachers that significantly lengthened the project schedule. However, the campus did not officially extend the time to complete the project when processing the change order. As a result, the contracted completion date of January 26, 2022, was not met, with the final certificate of completion executed on November 30, 2022, and liquidated damages were not assessed.

Campus management noted that this was due to an oversight, and that the contract time should have been extended to account for the additional scope of work.

Following established processes to adjust contract time and document this through the change order process reduces the risk of misunderstandings and helps to ensure compliance with contract terms and conditions.

RECOMMENDATION

We recommend that the campus reiterate to appropriate personnel that if the completion date for a project needs to be extended, this should be processed through a change order; otherwise, if a project is not completed according to the agreed-upon completion date, liquidated damages should be assessed in accordance with contract terms and conditions.

MANAGEMENT RESPONSE

We concur. Management will provide relevant training to appropriate personnel on contract completion dates and the change order process, including that completion date extensions must be processed through a change order; otherwise, liquidated damages should be assessed in accordance with contract terms and conditions.

This will be completed by July 31, 2023.

4. CHANGE ORDER REVIEW

OBSERVATION

The change order review and approval process needed improvement.

Specifically, change order costs and credits did not always include adequate supporting documentation. We reviewed selected costs and credits from six of the 12 change orders executed and found that:

- For three items, change order credits did not include supporting documentation for the credit amounts shown.
- For two items, adequate support was not provided for labor rates charged by the design-builder for costs noted as direct general conditions and general requirements, or for non-standard design-builder mark-up amounts.

The campus provided some additional documentation obtained from the design builder that addressed some of the costs and credits noted above, and we determined that the specific costs and credits these pertained to appeared reasonable. However, supporting documentation for costs and credits should be provided and reviewed during the change order review and approval process.

Proper review and approval of change orders decreases the risk of unwarranted changes and inappropriate or unsupported project costs.

RECOMMENDATION

We recommend that the campus provide training to appropriate personnel on the change order review and approval process.

MANAGEMENT RESPONSE

We concur. Management will provide training to the appropriate staff on the change order review and approval process to ensure adequate documentation is retained.

This will be completed by July 31, 2023.

GENERAL INFORMATION

BACKGROUND

In March 2018, the Board of Trustees (BOT) authorized approval authority for capital projects up to \$40 million to the chancellor. In June 2021, the associate vice chancellor of CPDC approved the schematic design for the KHS Pool Replacement project. The budget for the project was \$7,100,000, and therefore, it did not require BOT approval.

In July 2020, the campus solicited project bids and selected Turner Construction Company as the design-builder. The campus executed a design and construction agreement with Turner Construction Company on January 22, 2021, at a cost of \$5,896,966 and issued the Notice to Proceed on January 27, 2021. The final project cost after all change orders had been processed was \$6,822,478. The campus filed the first Notice of Completion on April 5, 2022, and the final Notice of Completion on December 1, 2022.

The KHS Pool Replacement project was designed to replace existing pools at the KHS building on the south side of Gymnasium Drive. The building houses the kinesiology and health sciences departments and includes lecture halls, classrooms, offices, exercise rooms, laboratories, a wellness center, a gymnasium, and pools. The original outdoor 25-yard swimming pool and outdoor diving pool did not comply with current code standards and did not meet the programming requirements of the College of Health and Human Services and the athletics department. The replacement pool is an Olympic-size 50-meter competition pool with nine lanes that meets National Collegiate Athletic Association standards; construction also included associated pump equipment and sitework and addressed code compliance issues and water leakages caused by deteriorated water lines.

The California State University, Fullerton campus managed the KHS Pool Replacement project, and it chose the Design-Build delivery method. In this method, the design and construction aspects are contracted with a single design-builder who has full responsibility for finalizing and implementing a design that meets or exceeds CSU's performance expectations. The design-build entity is responsible for the adequacy of design and any construction defects, which allows the CSU to avoid these types of claims and limits errors and omissions in change orders. Further, the design-build approach shortens project completion by overlapping the design and construction project phases. This approach also minimizes the university's need to schedule and coordinate the overall project, although clear specifications of CSU performance requirements and high-quality inspection of work in progress are required to fully realize the benefits of this approach.

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 January 17, 2023, through February 17, 2023. Our audit and evaluation included the audit tests we considered necessary in determining whether operational, administrative, and financial controls for the KHS Pool Replacement project 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.
- 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 design-builder 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 Design-Build Projects*

AUDIT TEAM

Assistant Vice Chancellor: Wendee Shinsato
Senior Auditor: Jamarr Johnson