



Audit of the OCCM, Facilities  
Management Unit –  
Compliance Audit of  
Management and  
Maintenance Services  
Contracts (2006 through  
2011)

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REPORT OF  
INTERNAL AUDIT SERVICES

SEPTEMBER 2012



ADMINISTRATIVE OFFICE  
OF THE COURTS

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FINANCE DIVISION  
INTERNAL AUDIT SERVICES

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**Office of Court Construction and Management,  
Facilities Management Unit  
Compliance Audit of Management and Maintenance Service Contracts**

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## MANAGEMENT SUMMARY

### Introduction

The Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233) made funding of court operations a state responsibility when it shifted funding of court operations from counties to the state. The Trial Court Facilities Act of 2002 (SB1732 and subsequent modifying language) was enacted based on the Task Force on Court Facilities' overarching recommendations to shift the responsibility for trial court facilities including operations, maintenance, facility modifications, and capital-outlay projects from county to state governance, under the direction of the Judicial Council (JC)/Administrative Office of the Courts (AOC). The JC/AOC is to exercise full responsibility, jurisdiction, control, and authority as an owner would have over transferred court facilities.

In 2003, the AOC established the Office of Court Construction and Management (OCCM) to fulfill its responsibilities to lead the implementation of SB 1732. Within OCCM is the Facilities Management Unit (FMU) that plans and implements operations, maintenance, repairs, and alterations for all court facilities responsibilities transferred to the state. Of the total 12.2 million square feet (SF) transferred as of December 2009, 9.3 million SF were transferred in FY 2008/2009 and FMU's staffing level did not keep pace with the volume of facilities transferred from the counties to the state and with it the accompanying responsibilities involved in the management and maintenance of court facilities.

From 2006 to 2009, the AOC entered into separate regional facility management and maintenance services contracts (Contracts) with its regional Contractors<sup>1</sup>. The Contracts required the Contractors to provide full service professional building management services at designated court facilities that may be AOC owned, AOC occupied/county owned, and leased facilities in the AOC's three regions: SRO, BANCRO, and NCRO. The Contracts with the regional Contractors for all three regions expired effective December 31, 2011 new facility operations and management services contracts have been awarded to three new contractors.

### Contract Compliance Audit

As part of the AOC responsibilities that include providing ongoing oversight and management of facilities used by the trial courts as well as the monitoring of all revenues and expenditures for the judicial branch (CRC 10.101 (e) (3)), in August 2010, the AOC's Internal Audit Services (IAS) initiated an audit of the regional Contractors' compliance with key contractual and statutory provisions including:

- The Labor Code's General Prevailing Wage Rate Requirements
- The Contractors' General Building "B" License

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<sup>1</sup> See "Facility Management and Maintenance Services Contracts" section of the Audit Report.

- The Payment Bond and Insurance Requirements
- The Record Retention Requirements to Support the Charges Reported in the Service Work Orders

In order to conduct its audit of the Contractors' compliance with key contractual and statutory provisions, IAS made two requests for documentation from the Contractors:

- January 18, 2011 - Request for Documentation including the Associated Certified Payroll Records (CPRs) to Support the Charges Reported in the SWOs - 102 sample service work order (SWOs) were selected for review from the SWOs billed by the Contractors to the AOC for the thirteen month period of July 1, 2009 through July 31, 2010.
- March 4, 2011 – Request for Documentation Limited to CPRs – An additional thirteen (13) facility modification SWOs were selected as samples for review. These 13 SWOs were billed by the Contractors to the AOC in December 2010 and January 2011. This request was initiated due to the regional Contractors' lateness and/or non-submission of the some of the requested documentation from IAS' January 18, 2011 request, as well as incompleteness (pursuant to LC §1776) noted in some of the submitted CPRs.

From the review of contract terms, statutory provisions, and the submitted supporting documents, IAS also identified operational areas within FMU that need to improve. Instances of non-compliance with key contractual and statutory provisions as well as areas for improvements in FMU's operational processes are highlighted in the Audit Issues Overview below.

To enable OCCM/FMU to continue to improve and strengthen the monitoring of its new regional contractors' compliance with contractual terms and statutory provisions as well as to improve its operational processes, it is important that OCCM/FMU note those areas of noncompliance and areas for improvements reported below and in the body of this report. OCCM/FMU should actively monitor the issues reported in this audit and any issues identified by its own internal 'review' staff that may perform periodic reviews of OCCM/FMU's operations and practices, to ensure it implements prompt, appropriate, and effective corrective action.

### **Audit Issues Overview**

This internal audit identified areas of noncompliance with contractual and statutory provisions as well as areas for improvements in FMU's operational processes that were consolidated into the reportable issues included in this report. IAS provided OCCM/FMU with opportunities to respond to all the issues identified in this report and included these responses in the report to provide OCCM/FMU's perspective. IAS will assist OCCM/FMU in the implementation of some of the corrective measures recommended.

Although the audit identified 50 reportable issues, 38 issues were included in the body of the report as issues needing further detailed discussion with 12 lower risk issues contained in Appendix A as log items. The remaining issues are listed in Appendix A with OCCM/FMU's responses.

The issues in this report deal with practices under the old contracts that were in place during the period 2006 through 2011. The recommendations and responses address practices going forward, as applicable, based on the lessons learned. Primarily, OCCM's responses are that they will work, with IAS's assistance, to finalize an OCCM review or 'audit' and compliance program that will more closely monitor the contractors and costs incurred. Also, there are a few issues that OCCM is not in full agreement with IAS's evaluation of the past practices. These include the 'escorting' and 'management fee' issues. IAS has in its audit consulted with the AOC's Office of General Counsel on these issues prior to raising them in this report. Various issues are still under litigation and, additionally, the Department of Industrial Relations (DIR) is still conducting its investigations based on the AOC's complaint to DIR.

The following issues are highlighted for management's attention:

#### General Prevailing Wages (Issue 2.1 and 1.4)

From IAS' high level review of the certified payroll records (CPRs) submitted by the Contractors and their subcontractors, IAS noted several areas of possible non-compliance with the prevailing wage laws such as: Potential payments of less than the general prevailing rates of per diem wages, possible non-compliance with the apprenticeship standards, inadequate employee craft classifications reported in the CPRs, incomplete CPRs including inadequate certifications of the CPRs, and inconsistent information residing in CPRs, the SWOs, and the payroll records. (Issue 2.1)

In addition, the Contractors did not submit and/or did not submit timely some of the supporting documents including the associated CPRs requested by IAS on January 18, 2011 and March 4, 2011. Pursuant to LC§1726(a), on March 29, 2011, the AOC reported the suspected violations of the prevailing wage laws to the Labor Commissioner of the Department of Industrial Relations (DIR). (Issue # 1.4) In June 2012 the DIR issued a "Civil Wage and Penalty Assessment" on one contractor for \$630,071.88. To the best of our knowledge the DIR has not completed its investigation of the other Contractor.

#### Contractors' General Building "B" License Status (Issue 3.1)

The Contractors represented and warranted that they have, and will continue to have during the term of the agreement a general building contractor license ("B" Contractor's License) issued by the California State Contractors License Board (CSLB).

IAS noted that the NCRO Contractor’s license status was not verified by the AOC’s Accounting and Business Services Unit (Finance Division) prior to the signing of the Contract (and Contract amendments) to ensure that the Contractor, a limited liability company, qualifies for and has the required “B” Contractor’s License. The SRO Contractor’s (Jacobs Facilities Inc. until assigned to Jacobs Project Management Co on November 16, 2009) “B” license status expired during the term of the contract and it was not discovered and resolved in a timely manner.

Contractors’ Charges to the AOC – Labor Charges

- Escort and Other Similar Type Services (Issue # 5.1)  
 Throughout the SWOs selected by IAS for review were numerous direct labor charges for “escort and other similar type services” recorded in CAFM by the Contractors and/or their teammate subcontractor’s employees. These ‘escorters’ did not perform trade work but provided building access to workers and monitored the workers to ensure they do not go into secure (restricted) areas or wander around in the facilities. From IAS high level analysis using “key words” search on the labor descriptions reported in CAFM for the period 7-1-2009 through 7-31-2010 (13 months), IAS noted that the following labor charges associated with these “key words”:

Key Word	SRO		BANCRO		NCRO		Total	
	Hours	Labor Costs*	Hours	Labor Costs*	Hours	Labor Costs*	Hours	Labor Costs*
Escort	1,760	\$ 156,673	2,277	\$ 210,706	3,443	\$ 248,573	7,480	\$ 615,952
Access	6,656	600,620	2,768	269,440	2,630	189,898	12,054	1,059,958
Monitor	1,694	149,338	771	77,050	910	65,900	3,375	292,288
Observe	99	8,553	92	7,530	149	10,459	340	26,542
Supervise	48	4,326	27	3,096	10	587	85	8,009
Attendant	-		30	2,481	-		30	2,481
Total	10,257	\$ 919,510	5,965	\$ 570,303	7,142	\$ 515,417	23,364	\$ 2,005,230

\*Including management fee and the potentially available Performance Based Compensation (PBC)

While the “key word” analysis may include many key words that may not apply, and in many cases the same line in the labor description has other activities not directly associated with escort and similar type services, IAS believes that the amount of labor charges associated with the key words provides perspective on the extent of the issue.

Based upon the Contracts and the nature of the work performed, the labor charges for escorting and other similar type services appear to IAS to be non-allowable charges to the AOC.

- Management and Support Activities (Issue # 5.2)  
 For the 13 months (7-1-2009 through 7- 31, 2010) under review, IAS noted numerous labor charges for “Direct Cost Work” by Contractors/teammate subcontractor’s management and support personnel contrary to contract provisions. Management Fee to

Contractors was structured to compensate Contractors for such management and support type activities including administrative costs. As a result, IAS believes that the Contractors were effectively paid twice for the same costs. For the 13 months under review, a high level analysis of the job titles (management and support type) and the associated labor costs in the SWOs including the management fee and the potentially available PBC indicated that the AOC may have overpaid the Contractors by as much as \$2.2 million.

- IAS recommended and OCCM/FMU management had already discussed with the AOC's Office of General Counsel (OGC) actions to be taken on the previous charges for "escort and other similar type services" and "management and support activities" by the Contractors and whether these charges should be accumulated and discussed with the Contractors as over-charges that should be considered for reimbursement.

#### Submission of Documents by the Contractors (Issue # 4.1)

The Contractor for both the SRO and BANCRO regions has not submitted: (1) the documentation including the associated CPRs to support 42 of the total 71 SWOs from IAS' January 18, 2011 "Request for Documentation" and (2) the CPRs for its non-teammate subcontractors for the 9 SWOs from IAS' March 4, 2011 "Request for CPRs". The costs reported in the SWOs supporting documentation not received from the Contractor totaled approximately \$3.8 million (See Chapter 4 for Detail). The non-submission of the requested documentation by the Contractor was communicated by IAS to the OGC and is currently being addressed in the AOC's on-going litigation against the Contractor.

#### FMU's SWO Audit Process (Issue # 1.1)

Since the validation of every SWO charge (averaged at over 6,000 SWOs per month) residing in the monthly invoice submitted by the Contractors against the supporting documents was neither possible nor cost effective, FMU staff members performed a continuous "SWO Audit" during the month. For the two AOC regions that did not have a dedicated Facility Management Specialist assigned to perform continuous "SWO Audit", FMU personnel self-identified that the "SWO Audits" were performed at a much reduced level of volume, frequency, and detail.

FMU is working collaboratively with IAS in developing an Audit Plan (Plan) to advance its "SWO Audit" processes not only to monitor and review the new contractors' charges to the AOC but also their compliance with various contractual and statutory provisions selected for review.

#### Phase-In and Phase-Out Contractual Sections of Contracts (Issue 9.1)

Both the previous contracts and the current contracts do not provide full accountability and transparency. While the contracts were competitively bid, the review and approval of

expenditures for Phase-In and Phase-Out expenditures were eliminated by amendment shortly after the initial 2006 contracts were executed. Effectively, payments of approximately \$3.5 million on the initial contracts and approximately \$1.7 on the new contracts are made without appropriate review and approval but are contractually allowed. On any new contracts or amendments, Business Services has indicated that this will be part of the review.

#### New Contract Cost Model for Firm Fixed Price Tier (Issue 9.2)

While the new contracts in 2011 were competitively bid, the firm fixed price tier requires monitoring to determine whether a fair value was received. Movement from a primary cost plus model to a model that includes a significant firm fixed price component has its advantages but only if certain analytical work is done with accurate, verifiable, and complete historical information available to be used as a basis for pricing the new contracts. IAS does not believe this was the case. Additionally, it is always prudent from a business perspective to monitor the actual costs for an agreed upon period (especially based on the lack of accurate and acceptable prior cost data) to determine whether best value is being obtained. Therefore it was recommended that the data be obtained from the three Contractors on the new contracts. This is currently in process with the data being obtained.

## **BACKGROUND**

In August 2010, the AOC's Internal Audit Services (IAS) initiated an audit of the regional Contractors' compliance with key contractual and statutory provisions. Additionally, from its contract compliance audit, IAS also identified operational areas within FMU that need to improve. In order to conduct its audit, IAS made two requests for documentation from the Contractors based on samples selected from the Service Work Orders (SWOs) billed by the Contractors to the AOC for the following periods: July 1, 2009 through July 31, 2010 and December 2010 and January 2011.

### **The Judicial Council – Administrative Office of the Courts**

The Judicial Council, chaired by the Chief Justice, is the governing body that provides policy guidelines to the judicial branch and all the California courts. The Administrative Office of the Courts (AOC) was established in 1960 as the staff agency for the Judicial Council of California, which oversees the administration of the state judicial system.

For judicial administration purposes, the State of California is divided into three AOC regions with three regional offices established to facilitate services and improve communication between the AOC at the state level and the courts at the local level:

- Southern Region (SRO) – based in the Burbank office.
- Bay Area/Northern Coastal Region (BANCRO) – based in the San Francisco office.
- Northern/Central Region (NCRO) – based in the Sacramento office.

### **Authority and Responsibility**

The Lockyer-Isenberg Trial Court Funding Act of 1997 (Assembly Bill 233) made funding of court operations a state responsibility when it shifted funding of court operations from counties to the state. The Trial Court Facilities Act of 2002 (Senate Bill 1732 and subsequent modifying language) was enacted based on the Task Force on Court Facilities' overarching recommendations to shift the responsibility for trial court facilities including operations, maintenance, facility modifications, and capital-outlay projects from county to state governance, under the direction of the Judicial Council.

The Judicial Council is to exercise full responsibility, jurisdiction, control, and authority as an owner would have over transferred court facilities (GC §70391). In addition to other responsibilities and authority granted by law or delegated by the Judicial Council, the AOC shall have authority and responsibilities including providing ongoing oversight, management, operation, and maintenance of facilities used by the trial courts (GC §70392).

### Transfer of Court Facilities

Pursuant to the Trial Court Facilities Act (SB 1732), the AOC’s negotiations for transfer of responsibility of all trial court facilities from the counties to the state began July 1, 2004, and continued through June 30, 2007. A number of issues slowed the transfer process including the seismic safety ratings and transactional complexities encountered in the transfer process. The passage of AB 1491 extended through December 31, 2009, the period during which facility transfer agreements could be executed, allowed for the transfer of multiple buildings through a single agreement, and created a tiered payment structure for facility transfers executed after certain dates.

According to the AOC’s Fact Sheet on Transfer of Court Facilities (September 2010), “In December 2009, California’s judicial branch reached a historic milestone: completion of the transfer of 532 court facilities from local to state jurisdiction. The transfer of court facilities to state responsibility fulfills a significant structural reform that creates a single, comprehensive court facilities infrastructure, which is expected to increase efficiency in court operations, enhance court safety, and help ensure equal access to justice for all Californians.”

Source: The AOC’s Fact Sheet on Transfer of Court Facilities (September 2010)



### The Office of Court Construction and Management (OCCM)

In 2003, the AOC established the Office of Court Construction and Management (OCCM) to fulfill its responsibilities to lead the implementation of the Trial Court Facilities Act of 2002 that

shifted the responsibility for California’s courthouses from the counties to the state. OCCM implemented the facility transfers in partnership with county administrative staff and collaborated with county and court officials to establish long-term facilities master plans for the trial courts.

OCCM manages real estate, facilities, and construction for California’s judicial branch. It is located at the AOC headquarter in San Francisco, the AOC regional offices in Sacramento and Burbank, and has also established satellite offices in the superior courts to serve the facility needs of the courts. OCCM is comprised of:

- Business and Planning
- Design and Construction
- Real Estate and Asset Management
- Risk Management

OCCM’s statewide stewardship for California’s judicial branch now includes all planning, design, construction, facility management, risk management, and real estate services. According to the AOC’s Fact Sheet for OCCM (April 2011), consolidating management of California’s court facilities at the state level has created a program unique in its scope and scale:

Square footage managed:	More than 20 million
Facility modification projects:	More than 1,000 annually
Leases managed:	300
Construction projects:	The current program includes more than 50 courthouse projects with an estimated total cost of approximately \$6.4 billion.

Source: AOC Fact Sheet, April 2011:

**The Facilities Management Unit (FMU)**

Within OCCM’s Real Estate and Asset Management Group is the Facilities Management Unit (FMU) that plans and implements operations, maintenance, repairs, and alterations for all court facilities. FMU is headed by a Senior Manager who is responsible for the overall management of the unit that includes planning, budgeting, executing, equipping, and training. Directly reporting to the Senior Facility Manager are FMU staff responsible for the following key functions:

- Regional Management
- Customer Service Center
- Resource and Asset Management
- Facility Plant Engineering
- Continuous Quality-Assurance
- Reports & Analysis

Starting in the middle of 2008, the staffing level in FMU did not keep pace with the volume of facilities transferred from the counties to the state pursuant to the Trial Court Facilities Act (SB 1732). According to FMU, senior management hiring decisions and the current hiring freeze resulted in understaffing and the use of an excessive number of temporary employees. Additionally, FMU staffs are not solely dedicated to the oversight of these three regional contracts but also to work of other operations and management service organizations including but not limited to landlords, counties, cities, and sheriff organizations.

Descriptions	2005/2006	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
<b>Source: OCCM/FMU</b>							
Total square footage FMU is responsible for	272,909	1,576,367	3,442,617	9,584,150	13,410,691	16,267,602	19,391,399
<b>Source: State of California, Department of Finance (DOF) - Salaries and Wages*</b>							
Total number of authorized positions	74	14	22	34	68	66	65
Total number of filled positions	10.90	12.20	15.30	33.10	43.80	40	35
<b>For Perspective</b>							
Total number of square footage per filled position	25,038	129,210	225,008	289,551	306,180	406,690	554,040
* Information is from FMU since information for FY 2011/2012 is not yet available from the DOF website.							

### Regional, District, and Area Offices

In order to facilitate services and improve communication between the AOC and the courts, the State of California is divided into three AOC regions. The three regions are further divided into 3 to 4 districts covering numerous court buildings (See July 2010 Map provided by OCCM - in Appendix D):

AOC Regions	Number of Counties	Number of AOC Districts	Number of Buildings	Number of Square Footage
Southern Region (SRO)	11	4	186	7,523,378
Bay Area/Northern Coastal Region (BANCRO)	16	4	104	3,711,514
Northern/Central Region (NCRO)	31	3	140	2,850,263
Total	58	11	430	14,085,155

### Funding Sources for FMU

- For ongoing operations, repair and maintenance - funded primarily by the Court Facilities Trust Fund.
- Facility Modifications (FM) - funding is derived from various sources such as: State Court Facilities Construction Fund, Immediate and Critical Needs Account (SB 1407),

Court Facilities Architecture Revolving Fund, General Fund, OCCM Labor Savings, and reimbursements from court/counties to cover their share of the FM costs.

### **Computer Aided Facilities Management (CAFM)**

OCCM has implemented the Computer Aided Facilities Management (CAFM) software application Tririga, a web-based application designed to assist in the management of leased and owned buildings, facilities maintenance, building assets and permits, and capital projects by allowing for the centralization of information across OCCM's distributed and varied workforce, via the Internet.

- CAFM is utilized by authorized FMU staff to dispatch service work orders (SWOs) to the contractors to authorize the performance of the work requested. The contractors are required to use the CAFM system provided by the AOC to receive, coordinate, and track all work requests; log, schedule, and record all labor and associated costs to each work request.
- In addition to the basic required data elements (such as the building location, estimated costs, the party responsible for the costs) needed to be entered in CAFM to generate a SWO, a "Request Type" must also be assigned: Electrical, Elevators, Escalators, and Hoists, Fire Protection, Grounds and Parking Lot, Heating, Ventilation, and Air Conditioning (HVAC), Holding Cell Interior Finishes, Janitorial, Pest Control, Roof Request, Plumbing, Security, etc.
- The "Request Types" are also classified into the following "Work Types":
  - Job Order (JO) – are those routine maintenance and repair tasks typically costing less than \$3,500 including travel time and material.
  - Preventative Maintenance (PM) - are those that are preplanned and pre-approved as part of the Contractor's Maintenance Engineering Program.
  - Facility Modifications (FM) - generally planned, physical modification to a facility component(s) that restores or improves the designed level of function of a facility or facility component.
  - Collection Work Orders (CWO) - are those tasks that are recurring or report preparation such as grounds maintenance, snow removal, Work Scope paper development, design work, and planning.
  - Others – janitorial and design
- Priority level is also assigned to the work requested. Priority levels ranges from 1 (Immediately or Potentially Critical) to 6 (Hazardous Material, Managed, but Not Abated).

- Due to the volume of SWOs generated daily, CAFM is configured by FMU to allow for auto approval of some SWOs that meet certain parameters based on the service level agreements (SLA) specific to a particular facility. The SLAs are based on Transfer/Lease Agreements, Joint Occupancy Agreements (JOAs), and contact sheets unique to each building.

## FACILITY MANAGEMENT AND MAINTENANCE SERVICES CONTRACTS

From 2006 to 2009, the AOC entered into separate contracts with its regional contractors to provide facility management and maintenance services at designated court facilities in the AOC’s three regions: SRO, BANCRO, and NCRO. FMU under the management of its Senior Manager was directly involved in working with and monitoring these contractors as they provide the services at designated court facilities pursuant to the contracts.

The facility management and maintenance contracts (Contracts) required the regional contractors to provide full service professional building management services necessary to maintain and preserve the buildings and grounds at the assigned locations. Work can include: dispatching; real property maintenance, operations, and management services; engineering services; environmental services, planning, programming, and minor design, and execution services; and emergency services. The contractors may be assigned to three types of facilities: AOC owned, AOC occupied/county owned, and leased facilities.

The facility management and maintenance contracts were originally signed with three regional contractors but in late 2009, the contractors for both the SRO and BANCRO regions assigned their contracts to another related entity owned by the same parent company resulting in one contractor servicing both the SRO and BANCRO regions and another contractor servicing the NCRO region. Reference to “Contractors” in this audit report refers to the following contractors:

### List of Contractors and the Dollar Amount Encumbered in the Contracts

Region	Contract #	Contractor	Original Contract Effective Date	Total Amount Encumbered Including Extensions and Amendments Effective Dates Ranging from 2009 to 2011			Contract Termination Date
				Total Amount Encumbered to Date	Amendment Number	Effective Date of Amendments	
SRO	1010044	Jacobs Project Management Co.*	4/1/2006	\$ 73,784,072	34	9/16/2011	12/31/2011
BANCRO	1015994	Jacobs Project Management Co.+	4/1/2008	54,381,605	22	9/16/2011	12/31/2011
NCRO	1010042	Aleut Facilities Management, Inc. ¥	3/1/2006	26,319,897	19	9/21/2009	See Contract # 1019945
	1019945	Aleut Facilities Management, Inc. ¥	12/15/2009	23,646,822	12	9/12/2011	
Total				\$ 178,132,396			

\*The contract was assigned on November 16, 2009 by Jacobs Facilities Inc. to Jacobs Project Management Co.

+ The contract was assigned on December 7, 2009 by Jacobs Field Services North America, Inc. to Jacobs Project Management Co.

¥The Contract was originally signed in 2006 with Tekstar, LLC, and Tekstar’s name was subsequently changed to Aleut Global Solutions, LLC. In December 2009, due to a change in some of the contract provisions because of the Contractor’s limited liability status, this contract was replaced by a new contract with the same company. In March 2010, this new contract was assigned to another related entity, Aleut Facilities Management, Inc. (AFM) to take advantage of AFM’s class “B” contractor’s license.

The AOC's facility management and maintenance contracts with the Contractors for all three regions expired on December 31, 2011. In May 2011, the AOC awarded the new facility operations and management contracts to three new contractors.

### **Compensations to the Contractors for Work Performed**

Pursuant to the Contract provisions, the Contractors were compensated for Direct Cost Work and Fixed Price Work (See Chapter 5 for detail):

- Direct Cost Work - The Contractors were compensated for Total Labor Costs, Direct Work Materials Reimbursement, and Travel Reimbursement. In addition, the
- Contractors were also compensated for Management Fee that was based on the predetermined and contractually agreed percentage of 20% to 24.4% and the potentially available Performance-Based Compensation (PBC), which represented the Contractor's potential profit and was available at a maximum of 5% to 7% of Total Labor Costs. The Contractors were also compensated for 50% of their management fee and the full potentially available PBC for non-teammate subcontractor costs (those that are not for materials).
  
- Fixed Price Basis - Facility Modifications between \$50,000 and \$100,000 will normally be Fixed Priced Basis projects and not included in the Management Fee and Performance-Based Compensation. The AOC may negotiate with the Contractor for these services and – if it is in the best interest of the AOC – have the Contractor perform the services based upon negotiated terms and conditions. Contractors are compensated based on the price specified in the specific service work order. The Maximum Approved Cost provided on a Fixed Priced Basis shall include all cost components, including but not limited to cost for labor, services provided by Subcontractors, materials, management cost, travel expenses, and overhead.

## General Background Information - Facilities Management and Maintenance Services Contracts - FY 2009/2010 and July 2010\*

General Background Information Facilities Management and Maintenance Services Contracts For the Period July 2009 through July 2010 *									
Part Row #	Description	SRO		BANCRO		NCRO		Total	
		Jacobs Project Management Co.		Jacobs Project Management Co.		Aleut Facilities Management, Inc.			
<b>Part A</b> Background Information - FMU - Regional, District, and Area Offices - as of June 2010 (Source: FMU - see Appendix D for Map as of June 2010)									
1	Number of counties	11		16		31		58	
2	Number of OCCM districts	4		4		3		11	
3	Number of Buildings (not necessarily the number of buildings assigned to the Contractors)	186		104		140		430	
4	Approximate Square Footage (not necessarily the sf assigned to the Contractors)	7,523,378		3,711,514		2,850,263		14,085,155	
<b>Part B</b> Amount Invoiced by the Contractors (Excluding Performance Based Compensation (PBC)) (Source: Service Providers' Monthly Invoices - FY 09/10 and July 2010 )									
1	Direct Labor Costs	\$ 10,738,601	54.78%	\$ 6,777,827	36.96%	\$ 3,954,589	39.79%	\$ 21,471,017	44.85%
2	Subcontract Costs (Labor)	2,838,263	14.48%	4,818,292	26.28%	1,807,231	18.19%	9,463,786	19.77%
3	Management Fee	2,535,196	12.93%	1,936,382	10.56%	1,118,661	11.26%	5,590,239	11.68%
4	Materials, Equipment, and Others such as Firm Fixed Price Contracts	3,489,740	17.80%	4,804,157	26.20%	3,056,953	30.76%	11,350,850	23.71%
5	<b>Total Invoiced Amount (excluding PBC)</b>	<b>\$ 19,601,800</b>	<b>100.00%</b>	<b>\$ 18,336,658</b>	<b>100.00%</b>	<b>\$ 9,937,434</b>	<b>100.00%</b>	<b>\$ 47,875,892</b>	<b>100.00%</b>
<b>Part C</b> Other Compensations to the Contractors (Source: Service Providers' Contracts with the State of California)									
1	Management Fee (Effective Date: SRO and BANCRO 1/13/2010 and NCRO 12/15/2009)	20.00%		20.00%		22%			
2	Management Fee (Inoperative Date: SRO and BANCRO 1/13/2010 and NCRO 12/15/2009)	22.40%		22.40%		24.40%			
3	Subcontractor Management Fee	50% of management fee		50% of management fee		50% of management fee			
4	Labor Factor Costs	1.16		1.16		0.90			
5	Potentially Available Performance Based Compensation (PBC) % (Applied to Total Labor Costs)	5%		5%		7%			
5.1	For Award Period "September 2009 to February 2010" and "March 2010 to August 2010"								
5.2	PBC Pool Available	\$686,379	100%	\$553,778	100%	\$367,242	100%	\$1,607,399	100%
5.3	PBC Awarded (% of the 100% in row 5.2 above)	\$521,634	76%	\$393,452	71%	\$294,848	80%	\$1,209,934	75%

\* Unless otherwise specified.

**General Background Information - Facilities Management and Maintenance Services  
Contracts - FY 2009/2010 and July 2010\***

Part Row #	Description	SRO		BANCRO		NCRO		Total	
		Jacobs Project Management Co.		Jacobs Project Management Co.		Aleut Facilities Management, Inc.			
Part D	Contractor/Teammate Subcontractor Employees/Workers (Source: CAFM Direct Labor Costs Reports - FY 09/10 and July 2010)								
Part D.1	Number of Hours Charged								
1	<b>Group 1:</b> Building engineer, building technician, stationery engineer, technician, building maintenance technician/engineer, HVAC technician, site technician, landscapers, carpenters ...	158,836	90.68%	83,357	91.06%	63,198	86.51%	305,391	89.89%
2	<b>Group 2:</b> FM project manager, regional director, admin assistant, district supervisor/manager, construction manager, Court/CSC/FM coordinator, area lead, technical writer, health and safety analyst, designer, CSC intern, estimator, planner	16,317	9.32%	8,185	8.94%	9,851	13.49%	34,353	10.11%
3	<b>Total - Group 1 and 2</b>	175,153	100.00%	91,542	100.00%	73,049	100.00%	339,744	100.00%
Part D.2	Number of Employee/Worker - By Titles								
1	<b>Group 1:</b> Building engineer, building technician, stationery engineer, technician, building maintenance technician/engineer, HVAC technician, site technician, landscapers, carpenters ...	287	85.16%	61	62.24%	47	68.12%	395	78.37%
2	<b>Group 2:</b> FM project manager, regional director, admin assistant, district supervisor/manager, construction manager, Court/CSC/FM coordinator, area lead, technical writer, health and safety analyst, designer, CSC intern, estimator, planner	50	14.84%	37	37.76%	22	31.88%	109	21.63%
3	<b>Total - Group 1 and 2</b>	337	100.00%	98	100.00%	69	100.00%	504	100.00%

\* Unless otherwise specified.

**General Background Information - Facilities Management and Maintenance Services  
Contracts - FY 2009/2010 and July 2010\***

Part E	Total Service Work Orders (by Unique SWOs) and Associated Invoiced Costs (excluding PBC) for the FY 09/10 and July 2010 (Source: Invoice Summary Reports)											
	SRO			BANCRO			NCRO			Total		
	Request Type	Jacobs Project Management Co.		Jacobs Project Management Co.		Aleut Facilities Management, Inc.		Total		Count of SWO	Total Cost (Labor, Subcontractor, Materials, Equipment, Management Fee, and Others)**	% (Dollar Amount)
	Count of SWO	Total Cost (Labor, Subcontractor, Materials, Equipment, Management Fee, and Others)**	% (Dollar Amount)	Count of SWO	Total Cost (Labor, Subcontractor, Materials, Equipment, Management Fee, and Others)**	% (Dollar Amount)	Count of SWO	Total Cost (Labor, Subcontractor, Materials, Equipment, Management Fee, and Others)**	% (Dollar Amount)	Count of SWO	Total Cost (Labor, Subcontractor, Materials, Equipment, Management Fee, and Others)**	% (Dollar Amount)
Electrical	8,159	\$ 2,798,594	14.27%	6,716	\$ 2,401,802	13.10%	4,081	\$ 1,207,880	12.15%	18,956	\$ 6,408,275	13.39%
Elevators, Escalators & Hoists	1,304	1,460,828	7.45%	967	1,162,400	6.34%	589	314,217	3.16%	2,860	2,937,445	6.14%
Exterior Shell	1,016	1,367,600	6.98%	741	1,135,312	6.19%	918	632,232	6.36%	2,675	3,135,144	6.55%
Fire Protection	1,269	560,081	2.86%	902	492,378	2.69%	1,027	281,894	2.84%	3,198	1,334,353	2.79%
Furniture and Equipment	761	572,468	2.92%	734	411,185	2.24%	804	211,026	2.12%	2,299	1,194,679	2.50%
Grounds and Parking Lot	1,053	3,112,339	15.87%	579	1,037,361	5.66%	1,233	827,495	8.33%	2,865	4,977,194	10.40%
Holding Cell	120	46,697	0.24%	96	31,310	0.17%	64	12,009	0.12%	280	90,015	0.19%
HVAC	6,280	3,233,445	16.49%	3,941	4,709,746	25.70%	4,295	2,891,305	29.10%	14,516	10,834,495	22.63%
Interior Finishes	8,012	3,374,242	17.21%	7,120	4,217,992	23.01%	6,542	2,153,879	21.67%	21,674	9,746,113	20.36%
Janitorial	46	62,799	0.32%	38	16,058	0.09%	11	6,067	0.06%	95	84,924	0.18%
Pest Control	314	139,375	0.71%	193	114,910	0.63%	237	70,721	0.71%	744	325,005	0.68%
Plumbing	4,839	1,886,987	9.62%	3,118	1,358,130	7.41%	1,621	457,910	4.61%	9,578	3,703,028	7.74%
Roof Request	145	694,298	3.54%	330	626,777	3.42%	399	706,719	7.11%	874	2,027,794	4.24%
Security	580	262,194	1.34%	537	516,815	2.82%	315	127,450	1.28%	1,432	906,459	1.89%
Utilities	83	30,576	0.16%	135	96,181	0.52%	52	15,748	0.16%	270	142,505	0.30%
Preventive Work	-	-	0.00%	-	-	0.00%	134	20,887	0.21%	134	20,887	0.04%
Others	11	3,723	0.02%	-	-	0.00%	-	-	0.00%	11	3,723	0.01%
<b>Total</b>	<b>33,992</b>	<b>\$ 19,606,244</b>	<b>100.00%</b>	<b>26,147</b>	<b>\$ 18,328,355</b>	<b>100.00%</b>	<b>22,322</b>	<b>\$ 9,937,438</b>	<b>100.00%</b>	<b>82,461</b>	<b>\$ 47,872,038</b>	<b>100.00%</b>

\* Unless otherwise specified.  
\*\* Total cost information varies slightly from the Contractor invoiced amount in Part B - due to miscellaneous adjustments to costs.

## PURPOSE AND SCOPE

The AOC's Internal Audit Services (IAS) conducted a contract compliance audit of the AOC's facilities management and maintenance contracts (Contracts) with the two Contractors for the three AOC regions of SRO, BANCRO, and NCRO. IAS also identified areas for improvements in FMU's operational processes that were noted in its contract compliance audit. IAS performed the following:

- Evaluated the Contractors' compliance with key contractual and statutory provisions in the following areas:
  - The Labor Code's General Prevailing Wage Rate Requirements
  - The Contractors' General Building "B" License
  - The Payment Bond and Insurance Requirements
  - The Record Retention Requirements to Support the Charges Reported in the Service Work Orders
- From the review of contract terms, statutory provisions, and submitted supporting documents, identified operational areas within FMU that need to improve.

To determine whether the Contractors were in compliance with the contractual and Labor Code's requirements pertaining to the general prevailing wage standards, IAS reviewed selected Certified Payroll Records (CPRs) for completeness of financial and non-financial information required pursuant to contractual and Labor Code requirements. IAS' high level review of the selected CPRs did not include review of canceled payroll checks issued to employees/workers, verification of employer payments to various entities employer payments were paid to, nor did IAS interview employee/workers regarding the work they performed for the Contractors that were charged to the SWOs.

To determine whether the Contractors were in compliance with the requirement to have and to maintain during the term of the Contracts a general building "B" Contractor's license, IAS verified the Contractors' license status against the information residing in the California State License Board website. IAS also held discussions with FMU, the AOC's Finance Division - Business Services Unit, and the Office of General Counsel (OGC) regarding the Contractors' compliance with the licensing requirements.

To determine whether the Contractors were in compliance with the payment bond and insurance coverage requirements, IAS reviewed the Contractor submitted documents to substantiate that they had obtained the contractually required payment bonds and insurance coverage. IAS also held discussions with other AOC personnel regarding the Contractors' compliance with these requirements.

To determine whether the Contractors were in compliance with the record retention requirements to maintain all financial data, supporting documents including the Certified Payroll Records (CPRs) relating to each project, and all other records relating to the performance and billing under the Contracts, IAS selected sample of service work orders (SWOs) for review. IAS requested and reviewed the Contractor submitted documentation such as timesheets, CPRs, copies of invoices, and other associated documents to support the charges reported in the SWOs selected for review.

In conjunction with the other audit procedures performed, in order to identify the operational areas within FMU that need improvements, IAS interviewed FMU and other AOC personnel, reviewed supporting documents such as FMU’s policies and procedures manual, meeting reports, and annual reports to the Judicial Council.

This phase of the audit was limited to reviewing the requested documents submitted by the Contractors and discussion with AOC personnel and did not include interview of court personnel or site visits to any courts.

### **Selection of Service Work Orders for Review**

In order to review the regional Contractors’ compliance with key contractual and statutory provisions and to identify operational areas within FMU that need to advance, IAS made two requests for documentation from the Contractors – See Chapter 4 for detail discussion:

**Table A: Requests for Documentation from the Contractors:**

Date of Request	The Number of SWO Selected as Samples for Review				Costs Associated with the SWOs Selected for Review	Documentations Requested	Source of SWOs Selected as Samples
	SRO	BANCRO	NCRO	Total			
January 18, 2011 Request	41	30	31	102	\$ 7,235,730	All supporting documentations to support the charges reported in the service work orders (SWOs) including the associated Certified Payroll Records (CPRs).	SWOs billed by the Contractors - July 1, 2009 to July 31, 2010
March 4, 2011 Request	5	4	4	13	752,327	Request was limited to the CPRs associated with the SWOs.	Facility Modification SWOs billed by the Contractors in December 2010 and January 2011
Total	46	34	35	115	\$ 7,988,057		

## **TIMING AND REVIEWS WITH MANAGEMENT**

Preliminary results were communicated and discussed with OCCM's management during the course of the review.

Preliminary reviews of the audit results were held in January, February, and August 2012 with OCCM/FMU's representatives.

Between the preliminary exits in January and February of this year and August, IAS has been involved in the audit of certain aspects of the new contracts entered into last year with three new vendors. The short delay in the issuance of this report is due to the audit of the new contracts.

IAS received the last management responses to the recommendations in this report on December 17, 2012. IAS incorporated the responses in the audit report and has provided OCCM management with a draft version of the audit report for their final review.

## ISSUES AND MANAGEMENT RESPONSES

### 1. Facilities Management Unit Processes

#### Background

In order to support OCCM's many operational objectives including the development and use of effective internal procedures, OCCM's Facilities Management Unit (FMU) has been working on developing and documenting its policies and procedures. The policies and procedures will set a precedence and standard for FMU's staff to communicate evolving guidelines as well as provide a step-by-step guidelines and standards for communicating new processes and procedures which will reduce inconsistencies in internal processes.

Starting in the middle of 2008, the staffing level in FMU did not keep pace with the volume of facilities transferred from the counties to the state pursuant to the Trial Court Facilities Act (SB 1732). With an average of over 6,000 SWOs generated monthly (July 1, 2009 through July 31, 2010), FMU did not have the sufficient staffing resources necessary to ensure that its operational processes keep pace with the number of facilities transferred.

From IAS' review of the supporting documentation received from the Contractors (See Chapter 5) and discussion with FMU and other AOC personnel, IAS noted several areas in FMU's operational processes that need to advance. Since the facility management and maintenance services contracts (Contracts) with the Contractors expired in December 2011 and have since been replaced by the new facility operations and management service contracts and Job Order Contracting, IAS' recommendations included in this chapter are to address the issues noted in light of the new contracts with their associated cost models awarded to the new contractors. Additionally, some of the areas for improvements recommended by IAS cannot be achieved without a commensurate increase in staffing level required to perform the procedures recommended.

**The following issues were considered significant enough to bring to management's attention in this report. Additional lower risk issues to this report are contained in Appendix A.**

#### 1.1 Improvements Needed Over FMU's Service Work Order (SWO) Audit Processes

##### Background

The Contractors for the three regions submitted a monthly invoice to FMU's Regional Managers for validation. Residing in each invoice was the accumulation of thousands of service work order (SWOs) charges entered in CAFM for work performed the previous month. Due to the volume of service work orders generated per month averaging at over 6,000 per month (for all

three regions for the period July 2009 to July 2010), the facility management and maintenance services contracts with the Contractors did not specifically require the Contractors to upload the supporting documents such as invoices, time logs, and time sheets into CAFM. However, the Contractors were required to maintain all financial data, supporting documents, and all other records relating to performance and billing under the agreement. Thus unless FMU requested for the detail supporting documents to support the charges reported in the SWOs, the information was not on hand for FMU to review for appropriateness before the invoice was processed for payment.

Since the validation of every SWO charge residing in the monthly invoice against the supporting documents as well as the determination of the efficient use of labor, materials, and equipment was neither possible nor cost effective, FMU staff members performed a continuous “SWO Audit” during the month. The “SWO Audit” ranged from high level audit (such as review based primarily on information residing in CAFM, through correspondence, and/or individually requested items) to full audit (all or almost all elements of the SWOs are examined) of SWOs selected for review. The SWO selection process includes among other methods, random sampling, selection of SWOs based on the number of labor hours and time type charged, inquiry from AOC’s staff, and other characteristics that prompted further review of the SWOs.

### **Issues**

Based on IAS’ discussions with FMU personnel and a high level review of sample SWO audits performed by FMU staff for the three regions, IAS noted the following:

1. Due to staffing limitations, the level and number of “SWO Audits” ranging from full audit to high level audit performed during the month vary depending on the AOC region. One of the regions had a dedicated Facility Management Specialist and a more formalized “SWO Audit” process in place. The other two regions that did not have a dedicated Facility Management Specialist assigned, utilized temporary staff or permanent staff with other job functions. In these two other regions, FMU personnel self-identified that the “SWO Audits” were performed at a much reduced level of volume, frequency, and detail.
2. For all three regions, the SWOs selected for audits included many SWOs with total actual costs of \$1,000 or less and classified as “Job Order” work type (for routine maintenance and repair tasks). SWOs classified as Facility Modifications, Preventative Maintenance, and Collection Work Orders work types with higher total actual costs were not as well represented in the SWOs selected for audit.

### **Recommendation**

With its limited staffing level, FMU is cognizant of the challenges it faces in reviewing the thousands of SWOs reported in the monthly facility operations and management services invoice

submitted to the AOC. FMU is working collaboratively with IAS in developing an Audit Plan (Plan) to advance its SWO Audit processes not only to monitor and review the new contractors' charges to the AOC but also their compliance with various contract provisions selected for review.

As of April 2012, the Audit Plan is currently in draft form but IAS and OCCM/FMU have already started discussions with the AOC's executive office regarding the timing for the implementation of the Audit Plan as well as the staffing level required. FMU currently has one permanent Facilities Management Specialist (FMS) for one region and two temporary FMS for the other two regions. It was communicated to the AOC's executive office that success in implementing the Audit Plan is unachievable without the requisite qualified staffing level necessary.

The Audit Plan addresses various areas including:

- The different levels of audits to perform: High level, full level, hybrid audit (combination of full and high level audit), compliance check (for contractual terms such as contractor's license and insurance requirements), and special audit.
- The number of SWOs to audit.
- Selection of SWOs to audit: SWOs selected to include SWOs issued under the Firm Fixed Price Work and Cost Plus Work (under the facility operations and management contracts) as well as SWOs issued via the Job Order Contracting (JOC) contracting model.
- The frequency (monthly, quarterly, semi-annually, and annually) the different levels of audits will be performed. For example: High and full level audits of selected SWOs will be performed monthly, compliance audit will be performed quarterly or semi-annually depending on the required contractual compliance provisions, and special audits will be performed on an as needed basis.
- Monitoring of the new contractors and their subcontractors' compliance with the general prevailing wage rate requirements. This will be performed on a monthly as well as semi-annual basis with varying emphasis on areas reviewed and the level of review.
- Management oversight and review of the SWO Audits conducted by the Facility Management Specialists.

FMU and IAS are continuing to develop specifics to the Audit Plan including the total number of full audits and high level audits to perform monthly (which will vary depending on the risks to the AOC and the staffing resources available to FMU), the representation of SWOs with various cost types (Firm Fixed Price, Cost Plus, and JOC) to select for audit, the documentation of the audits performed, etc. The specifics to the Audit Plan are addressed separately.

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**

Recommendation - In Progress; April 2013 projected completion

OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place that reduced Cost Plus Work from almost 100% of the contract cost to less than 10% of the contract cost. This reduced the likelihood of overcharges and other audit related findings. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities.

While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

## **1.2 Enhancements Needed Over FMU's Service Work Order Authorization and Approval Process**

### **Background**

Among the chief internal control activities are the policies and procedures over approvals and authorizations. A key tool in this activity is the use of an approvals and authorizations matrix which outlines who in an organization is allowed to commit organizational resources.

#### AOC's Matrix of Staff Oversight for OCCM

- The AOC's "*Matrix of Staff Oversight*" is its approval and authorizations matrix. It outlines at the unit level, approval authority with the associated dollar limit for requisitions, contract transmittal forms, and invoices reside primarily in supervisory level and above. For many AOC units, this the only approval and authorizations matrix used.

FMU Approval Authority Matrix - Due to the nature of its function and mission, OCCM has established an additional process and matrix.

- The Trial Court Facility Modification Working Group (Working Group) reviews facility modification requests from across the state and approves facility modifications (FM) funding based upon the policies contained in the Prioritization Methodology for Modifications to Court Facilities.

- In addition to the funding approval by the Working Group, FMU has its own “Approval Authority Matrix” (Approval Matrix) documenting the authority of FMU personnel from non-supervisory Customer Service Center (CSC) staff members to managers to approve service work orders for various work types from job orders to facility modifications that do not require the Working Group’s prior approval for funding (See Trial Court Methodology for Prioritizing and Ranking Facility Modifications, \$15/5 Rule).

## Issues

The following issues were noted:

1. Documentation is insufficient to *support that some of the changes* to FMU’s “Approval Authority Matrix” were initiated and approved by the appropriate level of management. In addition, FMU did not maintain copies of the Approval Matrix in effect over time.
2. FMU’s CSC staff’s operational access to CAFM functionality to forward SWOs to the Contractors is not commensurate with their approval authority documented in FMU’s “Approval Authority Matrix”.
  - CSC staff members can forward SWOs to the Contractors to initiate work chargeable to FMU without dollar limitations.
  - IAS noted several SWOs for facility modification projects ranging from \$100,000 to over a \$1,000,000 in maximum authorized costs, although were approved for funding by the Working Group, were forwarded to the Contractors by CSC staffs.

## Recommendations

1. FMU should maintain the documentation (emails and memos) to support that changes to its “Approval Authority Matrix” were initiated and approved by the appropriate level of management. In addition, FMU should also retain on file the approved “Approval Authority Matrix” in effect over time.
2. FMU should explore limiting the CSC staff’s “SWO forward” operational access in CAFM to their approval authority level or limiting their access up to a specific dollar amount to be determined by FMU.

**OCCM Facilities Management Unit Response    By: Gerald Pfab    Date: August 21, 2012**  
Recommendation #1 – Completed

FMU implemented a tracking process to maintain a record of approved changes to the “Approval Authority Matrix” in August of 2011. FMU was able to compile a file documenting historical changes to approval levels back to October 2009.

## Recommendation #2– Completed

The complexity and cost to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. The current Service Work Order Update process addressed above provides the needed documentation as to who actually approved the action. The CSC staff who releases the SWO to the contractor is acting in an administrative capacity for all work beyond their approval authority. Based on discussions with the IAS Manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.

### 1.3 Enhancements Needed Over FMU’s Service Work Order (SWO) Close-Out Process

#### Background

FMU has been working on developing and documenting its policies and procedures to provide staff with a step-by-step guideline and standard for communicating new processes and procedures.

#### SWO Close-Out Process

- Pursuant to FMU’s operational draft of “*SWO Close-out Process*”, for SWOs that are not auto-closed by the CAFM application (based on criteria set up by FMU), FMU’s Customer Service Staff (CSC) staffs are authorized to close-out SWOs such as (1) job orders, collection work orders (CWOs) for work including landscaping services, preventative maintenance, Facility Modification/design phase – without dollar limitations and (2) Facility Modification/execution phases that are less than \$5,000. FM/execution phases \$5,000 and above requires the approval of regional staff.

#### FM Execution and FM Close-Out

- Pursuant to FMU’s drafts of the “*FM Execution*” and “*FM Close-Out*” processes, the project manager to an FM project is charged with various tasks including but not limited to: establishing the team for the project, reviewing of invoices for approval mid-project, pre-completion site inspection, conducting the punch walk upon completion of a project, and notification of FMU facility plant engineer of new or replaced assets.
- FMU self identified in its drafts of the “*FM Execution*” and “*FM Close-Out*” processes that some of the steps identified are complex and/or not well established and need further clarifications.

Since FMU’s SWO close-out process are still undergoing clarifications and enhancements, IAS limited its review to twelve (12) SWOs for Facility Modification projects ranging in actual costs from \$53,000 to \$1.3 million as well as three (3) SWOs for CWOs (landscaping services) to

determine whether information exist in CAFM to document review by FMU’s project manager or regional staff prior to the close-out of SWOs by CSC staff.

### **Issues**

1. FMU relies on its project managers assigned to various facility modification projects to verify that services were actually performed and materials and/or equipment were received/installed pursuant to the work specified in the service work orders and/or other associated documents. FMU however does not have a formalized process in place to document on a consistent basis (either in CAFM or other data bases used by FMU) the specific steps taken to verify that services were actually performed and the associated materials/equipment was received/installed.

Although residing in CAFM were some pictures, invoices, emails documenting approval of cost increase, from the 12 Facility Modification SWOs selected for review, IAS noted insufficient information residing in CAFM to document the level of review (such as site visit for performance of work, review of invoices, installation and recording of assets, etc.) performed by project managers prior to the close-out of various Facility Modification (FM) SWOs by CSC staff.

Examples (Dollar amount refers to the actual costs including the potentially available Performance Based Compensation (PBC)):

- HVAC chiller replacement project – Design and execution, \$1.5 million
- Lighting project - \$239,000

2. FMU’s CSC staffs have operational access to SWO close-out functionality in CAFM without dollar limitations.
3. Lack of documentation to support that a court lighting project (actual cost including the potentially available PBC of \$238,000) for energy efficiency did not qualify for a rebate.

### **Recommendations**

1. As OCCM continues to refine its policies and procedures, for higher value (dollar amount to be determined by FMU) service work orders that possess the most risks, procedures with established criteria should be developed to document on a consistent basis the review performed by the project managers or other appropriate regional staff prior to the close-out of SWOs.

2. FMU should explore limiting the CSC staff's "SWO Close-Out" operational access in CAFM to their authority level or limiting their access up to a specific dollar amount to be determined by FMU.
3. OCCM needs to establish procedures to document a project's rebates status – whether or not a project qualified for rebate as well as whether there were any associated refunds or discounts received that should be passed on to the AOC.

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**

Recommendation #1 – In Progress; September 2013 projected completion.

Preliminary Procedures are under development. Initial training for documentation submittal requirements completed Sept 11, 2012. Additional follow up training will be required once the formal process is finalized.

Recommendation #2 – Completed

The complexity and programming effort to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. The CSC staff who closes the SWO is acting in an administrative capacity for all work beyond their approval authority. Based on discussions with the IAS Manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.

Recommendation #3 – Completed

OCCM agrees with Recommendation 1.3 #3 to establish procedures to document a project's rebate status, whether or not a project qualified for rebate. To date, OCCM has been tracking approved rebates. OCCM's Business and Finance Unit has recently completed a draft rebate procedure that will include tracking of all projects submitted for rebate. The final procedure is expected to be complete by August 31, 2012. OCCM's Business and Finance Unit staff will be conducting a meeting by September 28, 2012 with FMU and the Service Provider's to review the official procedure. The procedure will document the current process, which requires either FMU or the Service Provider to contact the Utility Engineer Analyst assigned to their region to determine eligibility of energy efficiency projects for available rebate. The procedure requires submission and tracking of all energy related projects for rebate, refunds, and discounts and will include documenting approval or denial of rebate.

Procedural instructions were finalized and released in October 2012. Field and Service Provider training sessions were completed on November 13, 14 and 16th. Monthly progress reporting within the FMU statewide and regional meetings was implemented.

#### **1.4 FMU Needs to Actively Monitor its Contractors' and their Subcontractors' Compliance with the Prevailing Wage Laws and Report Non-Compliance Pursuant to Labor Code Section 1726(a)**

##### **Background**

Labor Code (LC) Sections 1720 to 1861 and the California Code of Regulations Title 8 Division 1 Chapter 8 Subchapter 3 specify the various requirements for public works projects including the duties and responsibilities of the awarding body related to:

- The payment and reporting requirements of the prevailing wage laws
- The posting requirement of the prevailing wages per LC §1773.2
- The compliance with the apprenticeship standards including the notification of the Division of Apprenticeship Standards of the public works contract awarded.
- Informing Contractors to the extent feasible of the public works requirements
- Others duties and responsibilities such as: Withhold monies pursuant to LC §1727, ensure public works projects are not split or separated into smaller work orders or projects to avoid the payment of the prevailing wages ...

In addition, LC §1726(a) requires the body awarding the contract for public work to take cognizance of violations of the prevailing wage laws committed in the course of the execution of the contract, and to promptly report any suspected violations to the Labor Commissioner.

From IAS' high level review of the certified payroll records (CPRs) submitted by the Contractors and their subcontractors, IAS noted some areas of possible non-compliance with the prevailing wage laws such as: Potential payments of less than the general prevailing rates of per diem wages, possible non-compliance with the apprenticeship standards, inadequate employee craft classifications reported in the CPRs, inadequate certifications of the CPRs, and inconsistent information residing in CPRs, the SWOs, and the payroll records.

In addition, the Contractors did not submit or did not submit timely some of the supporting documents including the Certified Payroll Records (CPRs) requested by IAS in its January 18, 2011 and March 4, 2011 Requests for Documentation.

Pursuant to LC§1726(a), on March 29, 2011, the AOC reported the suspected violations of the prevailing wage laws to the Labor Commissioner of the Department of Industrial Relations (DIR).

In April 2011, the AOC received three separate "Notification of Complaint Filed" (for the three contracts) from the DIR advising the AOC that an investigation has commenced to insure compliance with the provisions of the Labor Code. Pursuant to the DIR's request for documents

to assist in their investigations, copies of the requested documents such as copies of the regional contracts, payment bonds, and bid notice were provided to the DIR.

### **Issues**

1. FMU not having a general prevailing wage expert in house or the sufficient qualified staffing level contributed to the inadequate monitoring of the regional Contractors' compliance with the Prevailing Wage Laws. The inadequate monitoring resulted in the late discovery and consequentially late corrective actions taken of the Contractors' (and some of their subcontractors') suspected violations of the Prevailing Wage Laws including the apprenticeship standards.
2. The Certified Payroll Records (CPRs) submitted by the Contractors and accepted for review by FMU did not contain many of the required data elements pursuant to LC §1776.

Examples of missing data elements:

- Employee title that corresponds to the Department of Industrial Relations' craft classifications
- Employer payments
- Employee address

### **Recommendation**

The AOC's facility management and maintenance services contracts with the Contractors expired in December 2011. IAS and FMU are currently working collaboratively to design an Audit Plan to address the monitoring of the new contractors' and their subcontractors' compliance with the payment and reporting requirements (including the required data elements in the CPRs) of the Prevailing Wage Laws as well as the requisite qualified staffing level necessary to implement the plan.

### **OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**

Recommendation #1 – In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels.

While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC

Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

## 1.5 FMU’s Management of its Public Works Project Contracts in Areas Pertaining to the Payment Bond Must Improve

### Background

Pursuant to the Contractors’ Contracts with the AOC, prior to commencing any work, the Contractors shall furnish the following:

- Payment Bond
- Fidelity Bond

### Issue

The amounts of payment bonds obtained by the Contractors for the three regions, although within the amount specified in the original contracts are substantially less than the total amount encumbered for the contracts after the various amendments and extensions. The total encumbered amount per the contracts after the various amendments and extensions totaled \$133.7 million (See Table - Column C) but the payment bond amounts were not adjusted and remained at the original contract amount of \$4.2 million (See Table Column A and E).

**Table A: Payment Bond**

Region	Original Contract Term		Amendments and Extensions		Payment Bond Amount
	Encumbered Amount	Original Term of the Contract	Encumbered Amount after Amendments and Extensions*	Latest Amendment # and Effective Date of the Amendment *	
	A	B	C	D	E
SRO	\$ 2,363,280	4/1/2006 to 3/31/2009	\$ 62,028,778	Amendment # 28 (12/30/2010)	\$ 2,363,280
BANCRO	750,000	4/1/2008 to 3/31/2010	49,915,056	Amendment # 16 (12/30/2010)	750,000
NCRO	1,100,000	12/15/2009 to 3/31/2010	21,802,653	Amendment # 7 (2/17/2011)	1,100,000
Total	\$ 4,213,280		\$ 133,746,487		\$ 4,213,280

\*There may have been further amendments to the contracts, but for illustration purposes, IAS did not include any additional amendments.

### Recommendations

In addition to the improvements needed in the monitoring of FMU’s contractors and their subcontractors’ compliance with the Prevailing Wage Laws, improvements are also needed in

the monitoring of the required payment bond. FMU has already started to implement procedures to address the issues noted:

- FMU's new facility operations and management services contracts with the new contractors require that prior to commencing any work the contractors shall furnish a payment bond to be provided for the full term of the agreement and the amount of the payment bond shall initially be based on the AOC's reasonable estimate of the amount of construction that it believes is likely to actually be done during the full term of the agreement.
- OCCM's Risk Management Unit is now charged with monitoring the new contractors' submission of their certificates of payment bonds. The Risk Management Unit should also monitor the amounts of payment bonds required each time a material change in the contract amounts occurred and evaluate the types of work (in addition to construction) that should be covered under the payment bond in order to protect the AOC's rights in instances where a contractor fails to pay its suppliers, laborers, and subcontractors for labor and materials.

**OCCM Facilities Management Unit Response By: Jim Mullen Date: August 21, 2012**

**Response #1 – Completed**

At each anniversary of the service provider contracts, the Risk Management Unit requests from the service 4 pieces of information:

1. 12 month total of facility modification work
2. 6 month average of facility modification work
3. 12 month total of cost plus work
4. Cost plus work in progress at the anniversary of the contract

Based on an analysis of these 4 pieces of information the payment bond amount is set for the next 12 month period. This process is being set forth in a specific procedure applicable to public works projects that will be complete by October 31, 2012

**1.6 Improvements Needed in Documenting that the Best Value was Obtained for the AOC**

**Background**

According to OCCM's Court Facilities Contracting Policies and Procedures:

- In order to provide Californians the best value initially and over the long-term operational life of court facilities, the AOC will follow competitive practices when contracting with qualified firms and individuals for products and services to be used in the planning,

acquisition, design, construction, operation, and maintenance of trial and appellate court facilities.

- Best Value means that a product or a service provides superior performance with respect to one or more of the following factors: quality, durability, aesthetics, reliability, initial cost, life-cycle cost, energy efficiency, past performance, similar experience, the composition and stability of the Proposer’s team, and the capacity of the Proposer to predictably meet quality, budget, and schedule requirements

Pursuant to the Facility Management and Maintenance Services Contracts entered into with the Contractors:

- The State (AOC) shall have the right to classify any Direct Cost Work with an expected cost of greater than \$50,000 as Facility Modifications (FM) projects to be performed on a Fixed Price basis. (Contract, Exhibit C, Payment Provisions, Section 1)
- “Fixed Price Basis” means that Contractor shall be paid a single fixed amount for all such authorized Work provided. (Contract, Exhibit B, Special Provisions, Section 1)
- Facility modifications between \$50,000 and \$100,000 will normally be Fixed Priced Basis projects and not included in the Management Fee and Performance-Based Compensation. Facility Modifications between \$50,000 and \$100,000 will normally be performed under separate authorization and will be considered within the scope of this agreement.

The AOC may negotiate with the Contractor for these services and – if it is in the best interest of the AOC – have the Contractor perform the services based upon negotiated terms and conditions. (Contract, Exhibit D, Statement of Work, Section 4)

## **Issues**

1. According to FMU, in order to obtain the best value for the AOC, discussions between FMU management and project managers occurred prior to assigning the FM projects to the regional Contractors including whether FM projects should be negotiated on a “Fixed Price” basis. FMU however does not have a formalized process in place to document such discussions and the decisions reached including saving the information in CAFM or other data bases utilized by FMU on a consistent basis.

Examples of SWOs where documentation was not residing in CAFM to leave audit an trail of such discussions within FMU (Dollar amount refers to maximum authorized costs):

- HVAC chiller replacement project – Design and execution, \$1.5 million
  - Lighting project, \$247,000
2. Separate contracts with the regional Contractors for larger facility modifications projects were not entered into by FMU to fully protect the AOC’s legal rights.
- HVAC chiller replacement project – Design and execution, \$1.5 million
  - Lighting project, \$247,000

### **Recommendations**

In order to address the issue of obtaining the best value for the AOC as well as improving efficiency and speed on large-scale facility modification projects (usually those SWOs exceeding \$15,000), the AOC implemented the Job Order Contracting (JOC) model in 2011. The JOC methodology enables facility owners to accomplish a large number of small to medium-sized projects via contracts based on proposals that are competitively evaluated and awarded. JOC contracting utilizes a set of customized, pre-priced construction tasks as its basis for describing the work and setting pricing. The selected contractors are to provide facility repair, alteration, and minor new construction projects in 14 different JOC zones established throughout California.

IAS however recommends that FMU develop and implement a process to document on a consistent basis in CAFM or in another data base relevant discussions and the final decision reached regarding the awarding of larger amount (amount to be determined by FMU) facility modification projects to contractors to leave an audit trail of how the decision was arrived at.

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**  
Recommendations – In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit and oversight processes need to be developed. Many changes have occurred over the past two years that reduce the risk related to this finding. Most importantly, a new contract model is now in place that reduced Cost Plus Work from almost 100% of the contract cost to less than 10% of the contract cost. The most common contracting model used today for all but the smallest of Facility Modifications is Job Order Contracting. This model has pre-established costs for various items of work. This predetermined pricing reduces the likelihood of overcharges and other related findings resulting in the best value for the branch. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities.

While awaiting a formally approved Audit Plan and other oversight processes, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

Many changes have occurred over the past two years that reduce the risk related to this finding. Most importantly a new contract model is now in place which move all non-emergency work to the Fixed Price Job Order Contracting contract that does have different terms and conditions than the services contract.

## **1.7 Improvements Needed Over FMU's Process of Monitoring Subcontractor Costs and Material Costs**

### **Background**

OCCM utilizes the CAFM software application to assist in the management of leased and owned buildings including facilities maintenance and building assets. CAFM is configured to generate Service Work Order (SWO) reports including the:

- Subcontractor Costs Report - provides information such as the invoice date, SWO number, names of the non-teammate subcontractors, and the associated invoiced amount allocated to non-teammate subcontractor's labor charges. Non-teammate subcontractors are those subcontractors who did not perform substantial portion of the effort, have not been declared a teammate by the Contractors, and do not act as partner with the Contractors.
- All Materials Report - provides information such as the invoice date, invoiced amount, part description, part number, work description but does not include a data field for vendor's name. Included in the All Materials Report are purchases of materials as well as payments for work performed on a fixed price basis and this may include charges for both labor and materials.

The functionality in CAFM to pull the information to generate the Subcontractor Costs and All Materials reports was limited to a six month period until April 2011 when the AOC's Information Services Division (ISD) modified this functionality in CAFM. FMU is now able to generate the Subcontractor Costs and All Materials reports extending past a six month period.

## Issues

1. With the limited functionality of generating information from CAFM, FMU was limited in its ability to monitor on an ongoing basis, the various non-teammate subcontractors (and their associated labor charges) utilized by the Contractors in the performance of the service work orders.
2. Missing in the All Materials report is a data field for the vendor's name where materials were purchased from. Except for one Contractor that noted the vendor's name in the "Part's Description" data field, the vendors' names where materials were purchased from were not available to FMU. Without the "Vendor's Name" information, FMU was unable to monitor the dollar value of purchases from the various vendors utilized by the Contractors to determine whether a particular vendor(s) is providing an inordinately high percentage of the materials purchased.

## Recommendations

The Contracts with the Contractors expired in December 2011 and have since been replaced by new facility operations and management service contracts that were awarded to three new contractors. The new contracts contained provisions regarding the new contractors' use of subcontractors. Examples of the contractual provisions include requiring the new contractors to obtain the prior written approval of the AOC for each *Cost Plus* SWO that includes a subcontract of \$5,000 or more to any one subcontractor and the contractors must demonstrate that the subcontractor's pricing is competitive. For Cost Plus subcontract over \$20,000, the contractors must use the AOC's Procurement of Goods and Services Policy as a guideline, and the contractors must obtain the AOC's written approval to subcontract any part of the Cost Plus Work exceeding \$10,000 in a calendar year to any Related Entity.

IAS recommends the following and noted that FMU is in the process of implementing IAS' recommendation # 1:

1. FMU to utilize the Subcontractor Costs report functionality in CAFM to monitor not only the new contractors' subcontractors but also the new contractors' compliance with the specific contractual provisions (obtaining the AOC's written approval, demonstrating competitive pricing, using the AOC's Procurement of Goods and Services as a guideline) regarding the use of subcontractors.
2. FMU should consider adding a data field in the All Materials report to capture the vendors' names where materials were purchased from to assist FMU in monitoring these vendors and to initiate discussions with the new contractors if FMU becomes aware of the dollar value of materials purchased from a single vendor exceeding a certain

percentage (for example 5% or more) when compared to the total materials purchased for the period.

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**

Recommendation #1 – In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place that reduced Cost Plus Work from almost 100% of the contract cost to less than 10% of the contract cost. This reduced the likelihood of overcharges and other related findings. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities.

While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

Recommendation #2 – In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities.

While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight. If as part of the Audit Plan the above requested data is needed to implement the plan, FMU will fully examine the cost and practicality of implementing this recommendation.

## **1.8 OCCM’s Agreement with the AOC’s Accounting Unit Regarding Review of Service Work Order Charges and the Associated Accounting Distributions Must be Documented in Writing**

### **Background**

- The Contractors for the three regions submitted a monthly invoice to FMU’s Regional Managers for review and approval. Residing in each invoice was the accumulation of *thousands* of service work order (SWO) charges entered in CAFM for work performed the previous month. The great volume of SWOs practically precludes a detailed accounts payable validation process for each SWO.
- OCCM’s Facilities Management Unit (FMU) performed continuous “SWO Audits” selected primarily on a judgmental basis. Accounting’s review of the monthly invoice *document* was limited to ensuring the invoice was appropriate to pass the standard requirements for all invoices. The invoice document should be approved as required by FMU’s management and contain all the standard invoice requirements such as dollar amount, a unique invoice number, invoice date, and the contractor’s signature.
- Accounting also reviewed the accounting distributions contained in an excel workbook prepared by OCCM’s Business and Planning Services Unit to expend the invoice costs. Accounting’s review of the workbook data includes ensuring that the total amount in the workbook equaled or did not exceed the invoiced amount as well as verifying and validating the accounting distribution lines matched the fund with the appropriate project cost center, ensures the fiscal year matched the period the work was assigned and the court codes and facility identification codes corresponded. Additionally, Accounting performs various analytics including key word searches for specific types of work along with review of unusually large amounts and/or unusual activities charged to a service word order and/or facility code. Once the workbook data was reviewed and approved, it was matched to the invoice document and submitted to Accounts Payable for the data to be entered in the financial system and payment issued.

### **Issue**

OCCM’s FMU and Business and Planning Service Unit and Accounting did not document in writing their understanding of their respective roles and responsibilities regarding the review of the service work order charges residing in the monthly invoice received from each of the Contractors and the associated accounting distribution charges related to the invoice. Since the aforementioned accounts payable process is unique to these contracts, it is prudent to document this unique working arrangement, especially to discern precisely where each unit’s responsibility begins and ends.

### **Recommendation**

The facility management and maintenance service contracts with the Contractors expired in December 2011 and have since been replaced by new facility operations and management service contracts awarded to three new contractors. OCCM's FMU and Business and Planning Service Unit and Accounting must document in writing their understanding of their respective roles and responsibilities regarding the review of the service work orders residing in the monthly invoices received from the new contractors and the associated accounting distributions.

### **OCCM Facilities Management Unit Response By: Gerald Pfab Date: August 21, 2012**

Recommendation #1 – In Progress; December 2013 projected completion.

OCCM will initiate discussions with AOC Accounting to develop a documented understanding of the roles and responsibilities of the two units regarding the review of SWOs. Prior to developing this understanding, OCCM believes that the Audit Plan needs to be developed to determine the level of review required for SWOs. This will then aid in the assigning of roles and responsibilities.

## 2. General Prevailing Wages

### Background

The AOC's facility management and maintenance services contracts (Contracts) required the Contractors to provide full service professional building management services necessary to maintain and preserve the buildings and grounds at the assigned locations. The Contractors must comply not only with the statutes applicable to their industry but also with the terms specified in their contracts with the AOC which explicitly require the Contractors to abide by Labor Code provisions relating to public works projects (Labor Code Sections 1720 -1861 and 3070-3099.5). The Labor Code provisions mandated among other requirements, the payment of not less than the general prevailing rate of per diem wage, the employment of apprentices in a specific ratio, and the requirement to keep accurate payroll records including Certified Payroll Records (CPRs). In addition, the body awarding the contract for public work must take cognizance of violations of the prevailing wage laws committed in the course of the execution of the contract, and to promptly report any suspected violations to the Labor Commissioner.

The three Contractors' Contracts with the AOC for facility management and maintenance services expired on December 31, 2011. In May 2011, the AOC awarded the facility services contracts to three new contractors, with full performance in late September 2011. FMU is cognizant of its role to monitor its new contractors and their subcontractors' compliance with the Labor Laws relating to public works and general prevailing wages. It currently does not have a general prevailing wage expert in house or the sufficient qualified staffing level but has taken positive steps in addressing the issues by meeting with the AOC's Office of General Counsel (OGC) and IAS to obtain guidance in monitoring compliance with the general prevailing wage requirements. IAS and FMU are currently working collaboratively to design an Audit Plan containing specifics such as the frequency and number of CPRs to review (with the current staffing level available) to monitor the new contractors' and their subcontractors' compliance with the general prevailing wage requirements. Included in the Audit Plan is a discussion of the optimum qualified staffing level in order for FMU to *effectively* monitor compliance.

In September 2011, FMU, OGC, and IAS also met with the new contractors to discuss the contractors' plans to meet the prevailing wage requirements. In March 2012, FMU, OGC, and IAS met again to review the initial submissions of sample CPRs (and other requested information) received from the new contractors to proactively address any areas that would require clarifications and/or corrections from the new contractors.

As discussed in more detail in Chapter 4 "Requests for Documentation from the Contractors", not *all* of the requested information including the Certified Payroll Records (CPRs) from IAS' January 18, 2011 "Requests for Information" and March 4, 2011 "Requests for Certified Payroll Records (CPRs)" was received from the Contractors. IAS' review of the CPRs was therefore

limited to the CPRs received and available for review. Based on IAS' high level review of the selected CPRs, the following issues were considered significant enough to bring to management's attention in this report.

## **2.1 Contractors and Some of their Subcontractors May Not Have Complied with some of the Labor Code's Prevailing Wage Laws**

### **Background**

#### **California Labor Code Regulations**

Labor Code (LC) Sections 1720 to 1861 are the relevant statutes pertaining to public works and the related apprenticeship standards.

LC §1771 specifies that except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wage shall be paid to all workers employed on public works.

LC §1774 requires payment of not less than the "specified prevailing rates of wages" for all hours worked. The specified rates are the rates found in the Director's wage determinations which correspond with the type of work performed by individual workers.

LC §1773.9 specifies the two components of the per diem wages: (1) the basic hourly rate and (2) the employer payments. The employer payments include payments such as: Health and welfare, pension, vacation, travel, subsistence, apprenticeship or other training programs, and worker protection and assistance programs.

LC §1776(a) requires each public works contractor and subcontractor to keep accurate payroll records, including the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual wages paid to each worker. These payroll records shall contain or be verified by a written declaration made under penalty of perjury.

LC §1777.5(g) specifies the employment of registered apprentices in a specific ratio of not less than one hour of apprentice work for every five hours of journeyman work (1 to 5 ratio).

LC §1777.5(o) provides for exemptions from the 1 to 5 ratio including but not limited to when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

#### **Contract Provisions**

In addition to the various terms specified in the three Contracts with the two Contractors (One Contractor for both SRO and BANCRO and another one for NCRO), Exhibit B, Special Provisions, Sections 48 and 49 provided that it is the Contractors' responsibility to ensure compliance with the Labor Code regulations pertaining to the payment of the general prevailing

wage rates and the associated reporting requirements. The Contracts further specified the Contractors responsibility to ensure compliance with LC §1777.5 apprenticeship standards and for the Contractors to become fully acquainted with the law regarding apprentices prior to commencement of work.

### **Methodology**

As described in more detail in Chapter 4 (Requests for Documentation from the Contractors) of this Audit Report, 115 Service Work Orders (SWOs) were selected for review and as of July 15, 2011, documents to support the charges to the SWOs including some partial submissions of the certified payroll records (CPRs), if applicable to the SWO, were received for 73 of the samples while information including CPRs for the remaining 42 samples were not received from the Contractor for both the SRO and BANCRO regions.

A CPR can contain the information for one or numerous employees so that despite the partial and non-submission of some of the requested documents, the volume of data involved in the submitted CPRs (by the Contractors and their teammate/non-teammate subcontractors) is already substantial.

Since IAS' objective is to determine (at a high level) whether the Contractors and their subcontractors are in compliance with the Labor Code provisions regarding the payment and reporting requirements of the general prevailing wage laws, from the SWOs the Contractors submitted information for, IAS judgmentally selected 45 SWOs with total actual cost exceeding \$1,000 each as a basis for selecting the CPRs to review.

Since a SWO can include CPRs not just from the Contractors but also from their teammate and non-teammate subcontractors, from the 45 SWOs selected, IAS judgmentally selected 55 CPRs submitted by the Contractors and their subcontractors to review for compliance with the prevailing wage laws reporting requirements per LC §1776.

Residing in each CPR is the information for one or more employees, so from the 55 CPRs selected for review, IAS selected one to two employees' information in each CPR to review for:

- Compliance with the payment of not less than the specified prevailing rates of wages for all hours worked per LC §1774.
- The hours and the basic hourly rate reported in the CPRs tie materially to the information reported in the service work orders (SWOs).

Additionally, from the 45 SWOs selected, IAS judgmentally selected five (5) SWOs with total costs exceeding \$30,000 each. From the five (5) SWOs selected, IAS judgmentally selected nine (9) CPRs with apprenticeable craft classifications to review at a high level compliance with the employment of apprentices at the required ratio as specified in LC §1777.5.

## Issues

### General Prevailing Wages and Certified Payroll Records

From IAS' high level review of the 55 Certified Payroll Records (CPRs) and selected employee information, the following were noted:

**Table: The Number of CPRs Where Issue # 1 to 5 Were Noted**

Region		SRO	BANCRO	NCRO	Total
The number of service work orders selected as samples		13	8	24	45
The number of CPRs submitted by the Contractors and their teammate/non-teammate subcontractors selected for review		13	8	34	55
Issue #	Descriptions of Issues Noted	The Number of CPRs Where Issues # 1 to 5 were Noted			
	Potential payments of less than the general prevailing wage rates:				
	Incomplete reporting of employer payments	13	8	21	42
1	Contractor self-identified that the base rate paid to employees is less than the prevailing rate of wages and not all employer payments were made	0	0	1	1
2	Inadequate reporting of employee craft classifications	13	8	17	38
3	Incomplete data elements in the CPRs	13	8	30	51
4	Missing phrase "Under the Penalty of Perjury" in the CPR certification language	0	0	4	4
5	Information in the CPRs did not reconcile to SWOs or payroll records	8	2	5	15

1. Potential payments of less than the general prevailing rates of per diem wages required by LC §1774, such as:

- Contractors and some of their subcontractors did not always report the employer payments component of the per diem wages such as payments for vacation and training. At a minimum the CPR is incomplete contrary to statute, but without the information, IAS could not determine compliance with the prevailing wage laws.
- From the AOC's Internal Audit Services' March 4, 2011 request for CPRs, a Contractor self-identified that the base rate (basic hourly rate) paid to its employees is less than the specified prevailing rates of wages and not all of the employer payments were made.

2. The titles for employees who may have performed work/duties subject to the prevailing wage laws and reported in some of the submitted CPRs: (1) do not correspond to the craft classifications as fixed by the Director of the Department of Industrial Relations, (2) did not specify the specific category within the DIR’s craft classification, or (3) were not reported in the CPR. Therefore compliance with the payment of not less than the “specified prevailing rates of wages” for all hours worked cannot be determined.

Examples of employee titles reported in the CPRs that do not correspond to the DIR’s craft classifications:

- Building engineer, building technician, or building maintenance tech
- Stationary engineer, lead engineer
- Area Lead, area supervisor

Examples of employee titles reported in the CPRs that did not specify the “*specific*” craft classifications determined by DIR:

- Laborer - the laborer group number (1 to7) was not specified in the CPR.
- Plumber – the specific craft classifications such as plumber, piper-fitter and refrigeration fitter (HVAC), pipe tradesman, or landscape pipefitter was not specified in the CPR.

3. Some of the submitted certified payroll records (CPRs) did not contain all the required data elements as specified in LC §1776(a). Examples of missing data elements:

- Employee name
- Contractor’s license number
- Worker’s compensation policy number
- Time type
- Employer payments such as payments for health and welfare, training funds...
- Location of the project

4. The certification language in some of the submitted CPRs did not contain the phrase “Under Penalty of Perjury” as required by LC §1776(a).

5. Some of the information reported in the certified payroll records (CPRs) did not reconcile to the information reported in the service work orders. Variances were noted in (1) the date worked, (2) the total number of hours worked, and/or (3) the basic hourly rate.

In addition, some of the CPRs submitted may not be reflective of the Contractor’s payroll records. While the Contractor reported basic hourly rate per the SWOs tied to the submitted

CPRs, one of the Contractors self-identified that the hourly rate paid was processed by payroll at a different time type compared to the time type reported in the SWO.

6. IAS also noted insufficient labor descriptions residing in some of the SWOs (for labor charges by the Contractors' personnel) such as labor descriptions were either left blank or were not documented in sufficient detail to adequately document the work performed and to make a determination whether the work was subject to the prevailing wage laws.

### **Apprentice to Journeyman Ratio**

7. Of the nine (9) CPRs reviewed for employment of apprentices, eight of the CPRs submitted did not report/specify the employment of apprentices in apprenticeable crafts as required by LC §1777.5 and one (1) of the CPRs reported the employment of apprentices but not at the required 1 to 5 ratio of apprentice to journeyman hours as required by LC §1777.5(g). Information whether the subcontractor is exempted from the required apprentice ratio per LC §1777.5 was not submitted.

Examples:

- A SWO for facility modifications (electrical) — a total of 240 “Electrician - Inside-Wireman” work hours was reported in the CPRs but the breakdown of hours between “journeyman” and “apprentice” was not reported.
- A SWO for facility modifications (interior finish due to fire damage) – a total of 184 “Glaziers” work hours was reported in the CPRs but only 8 apprenticeship hours was reported which is less than the required 1 to 5 ratio.

### **Recommendations**

IAS and FMU are currently working collaboratively to design an Audit Plan to monitor the new contractors' and their subcontractors' compliance with the general prevailing wage requirements. Based on the issues noted from the Contractors' and their subcontractors' CPR submissions, IAS recommends the following as areas to consider when monitoring the new contractors and their subcontractors' compliance with the prevailing wage laws:

1. Due to the great number of SWOs that will be issued throughout the term of the new contracts, FMU should also seek guidance and clarification from the AOC's OGC and the Department of Industrial Relations (DIR) pertaining to the appropriate “prevailing wage determinations” (issued twice a year by the DIR) to use and to communicate the information to the new contractors and their subcontractors to ensure that all workers employed in public works are paid at not less than the “general prevailing rate of per diem wages”.
2. FMU to ensure that the new contractors and their subcontractors are in compliance with the requirement to report the specific DIR's craft classifications in the submitted CPRs rather than the employee titles.

3. FMU to communicate the required data elements in a Certified Payroll Record pursuant to LC §1776 and implement procedures to facilitate the monitoring of the new contractors and their subcontractors' compliance with the prevailing wage laws. Procedures such as:
  - Periodic review such as quarterly or semi-annually of CPRs selected for review.
  - If a contractor or any of their subcontractors do not utilize the DIR's "Public Works Payroll Reporting Form (Form A-1-131)" to report their certified payroll information, that a "cross-walk" must be provided to FMU to facilitate the review of the submitted CPRs.
  - Require the new contractors and their subcontractors to note the service work order number in the submitted CPRs. This will ensure that the CPRs submitted can be accurately associated to a specific work order.

Additionally, CPRs should be marked with the "Payroll Number" and marked "Final" to indicate the completion of work.

4. FMU to confirm the new contractors and their subcontractors' compliance with the required phrase "*under the penalty of perjury*" in their CPR certifications pursuant to LC §1776.

In addition, it is recommended for FMU to discuss with the AOC's Office of General Counsel regarding the certification language in the submitted CPRs – whether to require a stricter and/or more extensive form of certification than the certification language posted in the Department of Industrial Relations' website.

5. FMU specified in the new contracts that CPRs must be traceable to actual payroll records. In FMU' review of the CPRs submitted by the new contractors and their subcontractors, information in the CPRs should also be traced to actual payroll records.
6. Require the new contractors to provide sufficient labor descriptions in the SWOs so that the work performed does not require further external explanation whether it is subject to the prevailing wage laws.
7. Require contractors and their subcontractors to certify compliance with the apprenticeship standards and to submit supporting documentation if exempted from the apprentice standards.

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**  
Recommendation #1, 2, 4, 5, 6, and 7: In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the

heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels.

While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

Recommendation #3: Completed

The contractors have been informed as recommended.

### **3. Contractors’ General Building “B” License Status**

#### **Background**

The California Contractors’ State License Law codified within the Business and Professions Code (B&P) Sections 7000 et seq provides for the licensure and regulation of contractors by the California Contractors State License Board (CSLB). Prior to the passage of Senate Bill 392, ([Statutes of 2010, Chapter 698](#)) the CSLB did not issue contractor’s license to limited liability companies (LLCs). Senate Bill 392 authorized the CSLB to begin processing LLC applications no later than January 1, 2012.

**The following issues were considered significant enough to bring to management’s attention in this report.**

#### **3.1 Improvements Needed Over the Verification and Monitoring of Contractors’ “B” License Status**

#### **Background**

##### Business and Professions Code (B&P)

The Business and Professions Code authorizes the issuance of contractors’ licenses to individual owners, partnerships, corporations, and effective January 1, 2011 to limited liability companies (Senate Bill 392, Statutes of 2010, Chapter 698). It authorizes those persons and entities to qualify for a license by the appearance of specified individuals.

- B&P §7048 - Provides an exemption from licensure for minor work if the aggregate contract price, including labor, materials, etc., is less than \$500. This exemption does not apply if the “minor work” is part of a larger or major operation.
- B&P §7055 – Specifies the three license classifications:
  - (a) General engineering contracting.
  - (b) General building contracting.
  - (c) Specialty contracting
- B&P §7057 – Defines general building (B) contractor as one whose principal contracting business is in connection with any structure built, being built, or to be built ... requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.”
- B&P §7065 - Provides that contractors' licenses are to be issued to individual owners, partnerships, corporations, and after the passage of Senate Bill 392 (Statutes of 2010,

Chapter 698), to limited liability companies. Every person who is an officer, member, responsible manager, or director of a corporation or limited liability company seeking licensure shall be listed on the application as a member of the personnel of record.

- B&P §7068.2 – Provides that if the responsible managing officer, responsible managing employee, responsible managing member, or responsible managing manager, disassociates from the licensed entity, the licensee, or the qualifier shall notify the registrar in writing, and the licensee shall replace the qualifier, within 90 days from the date of disassociation.

Upon failure to replace the qualifier within 90 days of the disassociation the license shall be automatically suspended or the classification removed at the end of the 90 days.

- B&P §7031 - Specifies the basic restrictions on an unlicensed contractor's right to collect payment for work that requires a license. B&C §7031(a) provides that except in cases of substantial compliance pursuant to §7031(e), "no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract... regardless of the merits of the cause of action..."

#### Facility Management and Maintenance Services Contracts

- From 2006 to 2009, the Administrative Office of the Courts (AOC) entered into separate contracts with three Contractors to provide facility management and maintenance services at designated court facilities in the AOC's three regions: SRO, BANCRO, and NCRO.
- In late 2009, the Contractors for SRO and BANCRO regions assigned their contracts to another related entity owned by the same parent company resulting in one Contractor servicing both the SRO and BANCRO regions.
- The Contractors for the three AOC regions represented and warranted in the Contracts that they have, and will continue to have during the term of the agreement, a general building contractor license ("B" Contractor's License) issued by the California State Contractors License Board (CSLB).
- On December 15, 2009, the Contractor for NCRO entered into a new contract with the AOC. The contract stipulated that the it shall not accept any job order or perform any work which requires a Class "B" Contractor's License except for job orders that are

expected to cost the AOC less than \$500 in total and not requiring a class “C” specialty license. The AOC at its discretion may extend the term of the contract for one additional year provided that a class “B” Contractor’s License has been issued to the Contractor or a related entity.

#### Contractors’ ”B” License Status

- SRO Contractor

The SRO contract was effective on April 1, 2006 and extended through December 31, 2011.

The Contractor’s (Jacobs Facilities Inc.) class “B” License expired on November 30, 2008 due to the disassociation on August 12, 2008 by the responsible managing employee (RME) listed in the California State License Board records qualifying the Contractor for the “B” License and this RME was not replaced within 90 days of the date of disassociation as required by B&P §7068.2.

For almost a year, from the expiry date of the “B” Contractor’s License on November 30, 2008 to November 16, 2009, the assignment date of the SRO Contract to another related entity (Jacobs Project Management Co.) that has the required B Contractor’s License, the Contractor was not in statutory and contractual compliance to maintain the required B Contractor’s License.

- NCRO Contractor

On March 1, 2006, prior to the passage of SB 392 ( Statutes of 2010, Chapter 698), authorizing the CSLB to issue contractor’s licenses to limited liability companies, the NCRO Contractor, an LLC that did not qualify for a class “B” Contractor’s License entered into a facility management and maintenance services contract with the AOC where it represented and warranted it has and will continue to have during the term of the agreement a “B” Contractor’s License issued by the CSLB.

On December 15, 2009, the NCRO Contractor, which was still an LLC at this time, entered into a new Contract with the AOC with limitations regarding the job orders that the Contractor can accept for performance that would not require a class “B” Contractor’s License. On March 22, 2010, this Contractor assigned its Contract to another related entity that has the required class “B” Contractor’s License.

- Litigation Against the Contractors

The AOC is currently in litigation against the SRO and NCRO Contractors arising from the Contractors' failure to comply with the statutory and contractual provisions pertaining to the Contractor's licensing requirement.

### **Issues**

IAS noted the following from its review and discussions with AOC personnel pertaining to the Contractors' "B" license status:

1. The NCRO Contractor's license status was not verified by the AOC's Accounting and Business Services Unit (Finance Division) prior to the signing of the Contract (and Contract amendments) to ensure that the Contractor, a limited liability company, qualified for and had the required "B" Contractor's License.
2. The SRO Contractor's "B" license status was not monitored periodically throughout the contract period by FMU and Business Services Unit (Finance Division) to ensure that the Contractor maintains the "B" license required pursuant to the Business and Professions Code and the terms specified in the contract. The Contractor's "B" License expired during the term of the contract and was not discovered and resolved in a timely manner.

### **Recommendations**

The AOC's FMU and Business Services Unit (BSU) have pro-actively addressed the licensing issues and have arrived at a mutual agreement regarding each other's responsibilities with regards to ensuring that the new contractors are properly licensed and monitoring their license status throughout the term of the contract. FMU and BSU have agreed that:

1. Prior to entering into a contract (and contract amendments), the AOC's Business Services Unit charged with procuring goods and services through the use of purchase orders and contracts, will verify and document the verification that the a contractor is properly licensed.
2. During the contract term, usually on an annual basis, BSU will verify and document the verification of the contractors' license status. FMU will perform its own verifications on a semi-annual basis.

IAS recommends that both FMU and BSU formalize the above agreement in writing, and perform the agreed upon procedures.

### **OCCM Facilities Management Unit Response By Gerald Pfab Date: August 21,**

Recommendation #1 – Completed

Implementation of this recommendation has been in place since May of 2011.

Recommendation #2 – Completed

Implementation of this recommendation has been in place since May of 2011

#### **4. Requests for Documentation from the Contractors**

##### **Background**

The AOC's facility management and maintenance services contracts (Contracts) required the regional Contractors for the SRO, BANCRO, and NCRO regions to maintain all financial data, supporting documents including the Certified Payroll Records (CPRs) relating to each project, and all other records relating to the performance and billing under the Contracts in accordance with California and Federal law, and in no case less than four (4) years from the date of the submission of the final payment request.

The Contracts provided that the Contractors shall permit an authorized representative of the AOC or its designee, at any reasonable time, to inspect or audit all data relating to the performance and billing under the Contracts. Additionally, upon request of an authorized representative of the AOC or its designee, Contractors shall provide copies, at their expense, of data related to performance and billing under the Contracts. (Contract, Exhibit B, Section 18, Audit)

To determine whether the Contractors' charges were properly supported by documents and in compliance with the contractual terms, IAS selected sample of service work orders (SWOs) for review. IAS requested for documentation such as timesheets, CPRs, copies of invoices, and other associated documents from the Contractors to support the charges reported in the SWOs selected for review.

**The following issues were considered significant enough to bring to management's attention in this report.**

##### **4.1 Contractors did not Submit or Submitted Late the Requested Documentation to Support the Charges Reported in the Service Work Orders Selected as Samples for Review**

##### **Background**

###### January 18, 2011 Request for Documentation

- From the SWOs billed by the Contractors for the thirteen month period of July 1, 2009 through July 31, 2010, IAS statistically and judgmentally selected 102 Service Work Orders (SWOs) as samples for review.
- On January 18, 2011, IAS requested from the regional Contractors the supporting documents including the Certified Payroll Records (CPRs) to support the charges

reported in the 102 SWOs selected for review. In order to provide the Contractors with sufficient time to gather the requested information, the AOC’s Internal Audit Services (IAS) divided the requested information into three groups and the Contractors were provided ten working days to submit each group of the requested information. The one Contractor for both SRO and BANCRO regions requested and received approval from the IAS for a two week extension to submit the requested information.

**Table A: January 18, 2011 Request for Documentation**

Request Date	The Total Number of Service Work Orders (SWOs) Selected as Samples for Review and the Total Costs Reported in the SWOs*							
	SRO		BANCRO		NCRO		Total	
(Original Due Dates)	Number of SWOs	Total Costs *	Number of SWOs	Total Costs *	Number of SWOs	Total Costs *	Number of SWOs	Total Costs *
Group 1 (2/1/2011)	14	\$ 123,985	10	\$ 59,501	10	\$ 20,228	34	\$ 203,714
Group 2 (2/16/2011)	14	225,758	10	96,467	10	40,294	34	362,519
Group 3 (3/3/2011)	13	1,047,206	10	1,794,111	11	3,828,180	34	6,669,497
Total	41	\$ 1,396,949	30	\$ 1,950,079	31	\$ 3,888,702	102	\$ 7,235,730

\* Total Costs represent costs for labor, material, and other expenditures including Management Fee and the potentially available Performance Based Compensation (PBC).

**March 4, 2011 Request for Documentation - Limited to CPRs**

- The regional Contractors were either late in submitting some of the requested documentation or did not submit a majority of the requested documentation including the associated CPRs requested by IAS on January 18, 2011. Additionally, the CPRs submitted primarily for the Contractors’ employees and their teammate subcontractors were considered by IAS to be incomplete pursuant to the Prevailing Wage Laws reporting requirements (LC §1776).
- Pursuant to LC §1776(b)(2) and LC §1776(d) that require CPRs to be furnished to the awarding body of the contract within 10 days after receipt of a written request, on March 4, 2011, IAS sent to the Contractors a request limited to the CPRs for an additional thirteen (13) facility modification SWOs selected as samples for review. These 13 SWOs were billed by the Contractors to the AOC in December 2010 and January 2011. Pursuant to LC §1776(d), the due date of the requested CPRs was March 18, 2011.

**Table B: March 4, 2011 Request for Documentation - Limited to CPRs**

Row #	The Number of SWOs Selected as Samples for Review and the Breakdown of Costs Reported in the SWOs	SRO	BANCRO	NCRO	Total
1	Number of SWOs	5	4	4	13
	Breakdown of Costs Reported in the SWOs (Exclusive of Management Fee and the Potentially Available PBC)				
2	Labor Cost*	\$ 44,983	\$ 35,316	\$ 11,364	\$ 91,663
3	Subcontractor Labor Costs**	472,604	147,740	40,320	660,664
4	Total Costs (Row 2 and 3)	\$ 517,587	\$ 183,056	\$ 51,684	\$ 752,327

\* "Labor Costs" represent labor costs reported by the Contractors and their "teammate" subcontractors. Teammate subcontractors are defined in the contract as those subcontractors that perform a substantial portion of the work, have been declared a teammate by the contractor, and act as a partner with the contractor. See Exhibit B of the contract, Section 14.

\*\* "Subcontractor Labor Costs" represent labor costs reported by the non-teammate subcontractors.

January 18, 2011 and March 4, 2011 Requests for Documentation

**Table C: Recap of IAS' Requests for Documentation**

Date of Request	The Number of SWO Selected as Samples for Review				Costs Associated with the SWOs Selected for Review	Documentation Requested
	SRO	BANCRO	NCRO	Total		
January 18, 2011 Request	41	30	31	102	\$ 7,235,730	All supporting documentation to support the charges reported in the service work orders (SWOs) including the associated Certified Payroll Records (CPRs).
March 4, 2011 Request	5	4	4	13	752,327	Request was limited to the CPRs associated with the SWOs.
Total	46	34	35	115	\$ 7,988,057	

**Issues**

The Contracts specified the Contractors' responsibility to maintain and provide upon request all financial data, supporting documents including CPRs, and all other records related to the performance and billing under the Contracts. From IAS' two requests for information (January 18, 2011 and March 4, 2011) from the Contractors, the following were noted:

- As of October 2011, the one regional Contractor for both the SRO and BANCRO regions has not submitted the following:

(1) The supporting documentation including the associated CPRs to support 42 of the total 71 SWOs from IAS' January 18, 2011 Request for Documentation. The 42 SWOs included many higher value SWOs for facility modification projects and represented 95%

of the total dollar value of the service work orders selected as samples for review for the two regions.

**Table D: Status of the January 18, 2011 Request for Documentation – SRO and BANCRO Regions**

Description	SRO		BANCRO		Total		
	Number of SWOs	Dollar Amount	Number of SWOs	Dollar Amount	Number of SWOs	Dollar Amount	%
Information submitted by the Contractor	14	\$ 123,985	15	\$ 36,971	29	\$ 160,956	5%
Information - <u>not</u> submitted by the Contractor	27	1,272,964	15	1,913,108	42	3,186,072	95%
Total	41	\$ 1,396,949	30	\$ 1,950,079	71	\$3,347,028	100%

\*See Attachment A and B for detail.

(2) Although the Contractor submitted its own CPRs as well as its teammate subcontractors', it did not submit the CPRs for its *non-teammate subcontractors* for the 9 SWOs (See Table B: SRO 5 and BANCRO 4) selected for review from IAS' March 4, 2011 Request for Certified Payroll Records.

The costs reported in the SWOs supporting documentation including CPRs that were not received from the Contractor totaled \$3.8 million:

**Table E: Costs Associated with the SWOs Requested Information was not Received by IAS**

Request for Information	SRO		BANCRO		Total	
	Number of SWOs	Dollar Amount	Number of SWOs	Dollar Amount	Number of SWOs	Dollar Amount
January 18, 2011 Request	27	\$ 1,272,964	15	\$ 1,913,108.00	42	\$ 3,186,072.00
March 4, 2011 Request	5	472,604	4	147,740	9	620,344
Total	32	\$ 1,745,568	19	\$ 2,060,848.00	51	\$ 3,806,416.00

As a result, the Contractor for both the SRO and BANCRO regions is not in compliance with the contract provisions to provide upon request all financial data related to the performance and billing under the contract. Therefore, Internal Audit Services cannot determine the sufficiency of the documents to support the approximately \$3.8 million charged to the AOC.

- Although the Contractor for the NCRO region submitted a majority of the requested information by the due dates, it was late in submitting the supporting documents for 11 (Group 3) of the SWOs selected for review from IAS' January 18, 2011 request and the CPRs from its non-teammate subcontractors for the SWOs selected for review from IAS' March 4, 2011 request.

**Recommendation**

The Contracts with the regional Contractors expired in December 2011 and have since been replaced by the new facility operations and management service contracts awarded to three new contractors.

Since the AOC is currently in litigation with the regional Contractor for both the SRO and BANCRO regions, OCCM/FMU should consult with the AOC's Office of General Counsel (OGC) for suggested actions to facilitate the submission of the requested documentation to the AOC for review and analysis. If the information cannot be obtained, consideration for alternative remedies should be explored with OGC.

**OCCM Facilities Management Unit Response By Gerald Pfab Date: September 19, 2012**

Recommendation: Completed

All information has been provided to OGC to include in the ongoing litigation.

## 5. Contractors' Charges to the AOC – Direct Labor Charges

### Background

The AOC's Internal Audit Services (IAS) made two requests for documentation from the Contractors: January 18, 2011 (Request for Documentation including Certified Payroll Records) and March 4, 2011 (Request Limited to Certified Payroll Records).

- Issues noted by IAS from its high level review of the Certified Payroll Records (CPRs) - are reported in Chapter 2 "General Prevailing Wages."
- Issues noted by IAS from its high level analysis of the Direct Labor Hours charged by the Contractors and their teammate subcontractors' employees for the period July 1, 2009 to July 30, 2010 are reported in this chapter.
- Issues noted by IAS from its review of the supporting documentation other than the CPRs from its January 18, 2011 Request for Documentation are reported Chapter 6 – Contractors' Charges to the AOC – Supporting Documents.

FMU is cognizant of the challenges it faced in monitoring the Contractors' and their teammate subcontractors' labor charges. With an average of over 6,000 SWOs generated per month and faced with inadequate staffing level (only one region has a dedicated Facility Management Specialist while the other two regions utilized either temporary staff or permanent staff with other job functions), FMU did not have the resources available to closely monitor the charges reported by the Contractors and their teammate subcontractors in the thousands of SWOs issued monthly. IAS and FMU are currently working collaboratively to design an Audit Plan to address the monitoring of the new contractors' and their subcontractors' compliance with the contract provisions not only as they relate to the charges to the AOC but also the contractors' responsibility to maintain all financial data, supporting documents, and all other records relating to the performance and billing under the contracts.

The facility management and maintenance services contracts (Contracts) with the Contractors expired in December 2011. The new contracts the AOC entered into with the new contractors utilized three cost models: (1) Firm Fixed Price and (2) Cost Plus under the facility operations and management service contracts and (3) Job Order Contracting (JOC) pursuant to JOC contracts. Since the Contracts with the Contractors have since expired, IAS' recommendations included in this chapter are to address the issues noted *in light of the new contracts*.

IAS reviewed at a high level the direct labor charges reported in CAFM for the thirteen month period of July 1, 2009 through July 31, 2010 to assess the extent of labor charges by the Contractors and their teammate subcontractors for escorting and similar activities, management and support activities, and overtime.

**The following issues were considered significant enough to bring to management’s attention in this report.**

### **5.1 Service Work Order Labor Charges for “Escort and Other Similar Type Services” Appear to be Non-Allowable Contractual Charges**

#### **Background**

The Contracts with the regional Contractors were specific concerning the requirement that all Contractor and subcontractor employees must have background checks. There were also specific statements concerning unescorted access: “All Contractor and subcontractor personnel needing unescorted access to facilities will be subject to an AOC background check.” The Contracts further specified that the Contractors shall obtain court identification cards for all Contractor personnel who make frequent visits to facilities and contractor employees without court identification cards must be escorted by Contractor personnel who possess a court issued identification card.

However, even if the Contractor or subcontractor employee has an AOC-issued badge, courts make the ultimate decision whether to allow the contractor or subcontractor employee unescorted access to their facilities. Moreover, the supplemental screening procedures, criteria, and requirements for unescorted access to facilities vary from court to court. OCCM/FMU management stated that it strived to work with the courts on their various additional security requirements to allow unescorted access to court facilities but many courts have been hesitant in granting such unescorted access.

#### **Issues**

IAS selected both statistically and judgmentally sample of service work orders (SWOs) for 13 months covering the fiscal year July 2009 through July 2010 (101 samples in total) and a judgmental sample of facility modification SWOs (13 samples) completed in December 2010 and January 2011. Throughout the SWOs there was numerous direct labor charges for “escort and other similar type services” recorded in CAFM by the Contractors and/or their teammate subcontractor’s employees. One of the Contractors certified that this work was not subject to prevailing wage on Certified Payroll Records (CPRs) submitted to the AOC upon our request, and therefore was not and could not be considered trade work according to them. More importantly, it was explained by OCCM/FMU management that these charges were due to the fact that the subcontracted firms and workers did not have background checks and therefore it was necessary to have a contractor and/or its teammate subcontractor employee who was background checked ‘escort’ the workers and stay with them to monitor them as they performed the work. It is IAS’ understanding that these ‘escorters’ do not normally perform trade work but provide building access to workers and monitor the workers to ensure they do not go into secure (restricted) areas or wander around in the facilities.

According to our review of the information residing in CAFM, this type of work is usually performed by lead stationary engineers, stationary engineers, HVAC technicians, building maintenance technicians, etc. whose straight time hourly rates (including labor factor cost) could range from a low of \$43.20 to a high of \$142.00. As this type of work may be on weekends, an eight hour project could result in a direct labor charge of approximately \$518 to \$1,704 (calculated at overtime rate) where the entire work an employee does is observe and monitor. The description of this type of work in CAFM is usually “escort”, “access”, “monitor”, “work with”, “assist”, or there is no labor description entry at all in CAFM.

Utilizing the CAFM data base for the period 7-1-2009 through 7-31-2010 (13 months), IAS performed a high level analysis using key words search on the labor descriptions reported in CAFM. Using key words such as “escort”, “access”, “monitor”, “observe”, “supervise”, and “attendant”, IAS noted that the labor charges (include management fee and the potentially available performance based compensation) associated with these key word for all three regions vary from \$292,000 (“monitor”), \$615,000 (“escort”) to \$1,059,000 (“access”). While the key word analysis may include many key words that may not apply, and in many cases the same line in the labor description has other activities not directly associated with escort and similar type services, IAS believes that the amount of labor charges associated with the key words provides perspective on the extend of the issue.

Additionally, IAS noted that for facility modification projects such as chiller replacements and HVAC cleaning where the trade work is performed by other non-teammate subcontractors, included in the “FM Cost Spreadsheets” prepared by the Contractors and submitted to FMU are hours budgeted for Contractor/teammate subcontractor’s employees such as HVAC technicians, stationary engineers, and building maintenance technicians. The nature of the work to be performed by these employees was not specified in the “FM Cost Spreadsheets”.

Based upon the Contracts and the nature of the work performed, the direct labor charges (with their associated management fee and the potentially available performance based factor) reported in the SWOs for escorting and other similar type services appear to be non-allowable charges to the AOC.

### **Recommendations**

The new facility operations and management service contracts (Firm Fixed Price Work or Cost Plus Work) awarded in May 2011 to three new contractors provided more specificity pertaining to the criminal background screening and the costs for escorting. Pursuant to the new contract terms, all escorting in connection with Firm Fixed Price Work or Cost Plus Work shall be considered Firm Fixed Price Work even if above the Fixed Price threshold. The contractors will not receive additional compensation or reimbursement from the AOC for any costs related to

escorting in connection with Firm Fixed Price Work or Cost Plus Work. There are however instances when “escorting or similar type services” are allowable charges such as when a court specifically requested for and agreed to pay for such services. IAS recommends the following:

1. FMU continues to actively monitor any labor charges from the new contractors involving escorting or similar type services and communicate promptly and seek adjustments from the new contractors when unallowable escorting or similar type services are charged to the AOC.
2. OCCM/FMU management should discuss with the AOC’s Office of General Counsel actions to be taken, if any, on the previous charges for “escort and other similar type services” by the Contractors and whether these charges should be accumulated and discussed with the Contractors as over-charges that should be considered for reimbursement.

**OCCM Facilities Management Unit Response By Gerald Pfab Date: December 17, 2012**

Recommendation #1 – In Progress; April 2013 projected completion.

FMU met with the new contractors in February 2012 to review the results of the first contractual audit and to provide clear direction as to the applicability of escorting charges within the current contract. Escorting charges are part of the current FMS monthly audit process.

While awaiting a formally approved Audit Plan, FMU has worked with IAS, and other organizations to develop interim procedures to provide auditing of this item within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

Recommendation #2 – Complete

All information has been provided to OGC. The litigation with the SRO and BANCRO contractor is in progress. As stated in the report the new contracts have clearly place the burden of escorting cost on the contractors as part of their firm fixed price work.

In 2006 FMU management determined that escorting cost were allowable charges. The basis for the determination to allow the charges for escorting is based on the following.

Exhibit B, Section 54 Background Checks of the contract states:

Contractor shall comply and shall ensure that all of its employees and its Subcontractors and their employees comply with the requirements for background checks set forth in Appendix A to this Exhibit B as revised by the AOC from time to time during the

duration of this Agreement. No unescorted employees of Contractor or Subcontractors may do Work in any secure area of any Facility without compliance with the background check requirements. The costs for any criminal background checks is included within the Management Fee and Contractor shall not be entitled to any reimbursements for such costs.

Exhibit D, Section 5.4.3 Access Control Requirements of the contract states:

The Contractor shall obtain court identification cards for all Contractor personnel who make frequent visits to facilities. The AOC will inform the Contractor of the procedures for obtaining the court identification cards, upon the award of this contract. Contractor employees without court identification cards must be escorted by Contractor personnel who possess a court issued identification card. As a condition to receiving court issued identification cards, all personnel used to perform work in court locations under the terms of this contract will be required to pass a background check in accordance with the provisions set forth in Section 54 of Exhibit B, Standard Provisions.

Both provisions were viewed as being related to security requirements with a focus on controlling access, not what is or is not allowable as chargeable items under the Direct Cost portion of the contract. The only reference to cost in either provision is a specific reference to the fact that the cost of obtaining the background check was not reimbursable. FMU thus believed that the cost of escorting and related charges were allowed charges. The invoices were also reviewed at some level by members of the AOC Finance Division. FMU has not recollection that the charges were ever questioned by them.

Further support to this interpretation of the contract is the fact that there are many items discussed in Exhibit B that have been treated as reimbursable. Specific examples include the provisions on cleaning up after work is completed, coordinating with the courts, and coordinating with the Region Notifications Center before excavating.

The operational need for the escorts was driven by the two facts, hesitancy of the courts to allow access and the need to get critical work completed before the background checks could be completed. Some courts, especially shortly after transition from the counties, were hesitant to allow AOC contractors, even those with AOC background checks, to have access to the courts facilities. This was especially true for subcontractors. If FMU had determined that the contractors could not be reimbursed for the cost of escorting either because of the hesitancy of the courts or because time did not permit for the completion of the background check before the work was needed, it could have resulted in delaying many critical projects directly impacting court operations.

The contractors did in fact submit 1,093 employees and contracts for the required AOC required background checks over the term of the contract. Over 95% of the background check resulted in approvals by the AOC.

Prior to this audit the only challenge to the escorting charges that is remembered by FMU management was an issue raised by the 5th District Court of Appeal. Unlike the trial courts the Courts of Appeal pay for all work done in their facilities. They did not question the validity of the charges, but questioned why we were paying the contractors when they would provide the escort themselves from their staff. After this discussion they did start providing their own escorts. Attempts over the years to get other courts to provide escorts have resulted in very limited success.

The courts have become much more accepting of the AOC background process over the years and currently escorting is limited. Because procedures are in place and the courts have come to generally accept them we were able to add the cost of escorting into the firm fixed price work of the new contracts. The contracts have been in place for over 15 months. After some initial discussion we have not had issues with the new contractors. The Audit Plan will include this as an item requiring monitoring in the future.

## **5.2 Some Contractor Direct Labor Charges Include Management and Support Activities That Should Already be Part of the Management Fee**

### **Background**

The Contractors were compensated for Direct Cost Work for services set forth in the Contracts (Exhibit D, Statement of Work, Section 6). Examples of services include real property maintenance including facility maintenance and repair, facility modifications, preventative maintenance, master maintenance plan, etc.

Compensations to the Contractors:

- Pursuant to the payment provisions in the Contracts (Exhibit C, Section 1), compensations to the Contractors for Direct Cost Work may include the following components:
  - Total Labor Costs – include (1) the Direct Labor Costs and (2) the Labor Factor Costs.
    - Direct Labor Costs equal the hourly wages paid to the employees of the Contractors and their teammate subcontractors in performance of any Direct Cost Work. Teammates are defined as those subcontractors who performed a substantial portion of the effort, have been declared a teammate by the Contractors, and act as partner with the Contractors.

- The Labor Factor Cost is calculated by multiplying the negotiated percentage for the region (.9 to 1.16) to the Direct Labor Costs. The Labor Factor Cost compensates the Contractors for paid time off (e.g. vacation, holiday, sick pay, and other paid time off) and all benefits provided to employees.
  - Direct Work Material Reimbursements
  - Travel Reimbursements for Overnight Travel or Airfare
- In addition to the above, the Contractors were compensated a Management Fee (20% to 24.4%) and the potentially available Performance-Based Compensation/PBC (5% to 7%) set aside in a PBC pool until earned by the Contractors. The Management Fee and PBC were calculated by multiplying the negotiated percentages for the region to the Total Labor Costs.

The Management Fee compensated the Contractors for all overhead and administrative expenses in support of Direct Cost Work and all management work specified in the Contracts pertaining to the AOC's expectations of the Contractors' management.

The AOC paid the Contractors semi-annually for the Performance-Based compensation (PBC) earned in accordance with the PBC Plan. The PBC Plan described the criteria and process that were used to assess the Contractors' performance when determining the amount of PBC earned in whole, or in part, based on the performance of the Contractors. The PBC Plan addressed those performance evaluation areas that were under the control of the Contractors' management and were viable for evaluation. The average PBC percentage earned by the Contractors for the 13 month period under audit ranged from 68% to 79%.

- Furthermore, in addition to compensations to the Contractors for "all other" non-teammate subcontractor costs (those costs that are not for materials), the Contractors were also compensated for 50% of their Management Fee and the full potentially available Performance Based Compensation against these "all other" non-teammate subcontractor costs.

#### Management Fee /Management and Support Services:

- Under Exhibit C (Payment Provisions) of the Contracts, paragraph (1) (i) (a) 1. (g), "Management and support activities shall not be included in charges to Direct Cost Work."
- Exhibit C (Payment Provisions) of the Contracts, paragraph (1) (i) (a) (2). iii also specified that Management Fee shall compensate the Contractors for all overhead and administrative expenses in support of Direct Cost Work, including without limitation, all management work set forth in Section 5 of the SOW (Statement of Work). There will be no Management Fee for Fixed Price Work as management costs should already be incorporated into the Fixed Price.

- Exhibit D, Statement of Work (SOW), Section 5 - The AOC expects the Contractors' management to ensure all work is properly authorized and prioritized; ensure persons who are utilizing the facilities are well informed; and provide the data needed to support the planning and programming of the AOC mission. The Contractors shall ensure they provide documentation for coordination, cost control, job progress, equipment repair records, and closeout control. The Contractors shall also track work order requests in CAFM until the work is functionally completed. Also specified in the SOW are the AOC's expectations of contractors' management in areas such as: quality of service, work review meetings, information technology, contractor personnel, material, equipment, subcontract purchases, quality control plan, administrative records, safety, and labor disputes.

### **Issues**

#### **Direct Cost Work - Contractor/Teammate Subcontractors:**

- For the 13 months (July 1, 2009 through July 31, 2010) under audit review, IAS noted numerous labor charges for "Direct Cost Work" by Contractors/teammate subcontractor's personnel such as the regional director, regional project coordinator, facility modification project manager, area leads, district managers/supervisors, project planner and coordinator, and Customer Service Center (CSC) intern to the SWOs contrary to paragraph 1) i) (a) 1. (g) of Exhibit C. As outlined in paragraph 1) i) (a) 2. iii of Exhibit C and Section 5 of Exhibit D, the Management Fee is structured to compensate the Contractors for such management and support type activities including administrative costs. As a result, Contractors were effectively paid twice for the same costs.
- Exacerbating the financial impact is the total compensation paid to the Contractors for "Direct Cost Work" includes not only the Direct Labor Costs but also the Labor Factor Costs as well as the associated Management Fee and the potentially available Performance-Based Compensation (PBC). For the 13 months under review, a high level analysis of the job titles (management and support type) and the associated labor costs in the SWOs including the management fee and the potentially available PBC indicated that the AOC may have overpaid the three Contractors by as much as \$2.2 million. Examples of costs associated with the job titles: Area lead \$675,000, Area Lead Technician \$375,000, Project Planner/Coordinator \$249,000, Regional Director \$99,000, District Supervisor \$339,000, FM Project Manager \$168,000 and FM Coordinator \$64,000.

#### **Direct Cost Work – Non-Teammate Subcontractors:**

- Additionally, where the trade work was performed by other non-teammate subcontractors, the Contractors were also compensated 50% of their Management Fee and the full potentially available PBC calculated based on the non-teammate subcontractor's labor costs.

For example:

A SWO for an HVAC replacement project, the Contractor charged the SWO Total Labor Costs of \$27,728 for its own personnel (Regional Project Coordinator, District Supervisor, and Facility Modification Project Manager) who provided primarily management and support type services. Combined with the management fee and the potentially available PBC, the Contractor may be compensated a total of \$36,093. This \$36,093 is in addition to the compensation the Contractor received of \$83,156 in 50% Management Fee and the \$52,640 of potentially available full PBC for managing its non-teammate subcontractor that performed the trade work.

Nature of Work in the FM Cost Spreadsheet:

- For some facility modification projects, included in the “FM Cost Spreadsheets” prepared by the Contractors and submitted to OCCM/FMU were hours budgeted for project managers and district supervisors. The nature of the work to be performed by these employees was not specified in the “FM Cost Spreadsheets”.

### **Recommendations**

In order to address the issue of labor charges for management and support type activities charged to the SWOs, under the new facility operations and management service contracts, the new contractors are compensated a total monthly fixed amount in support of Firm Fixed Price Work including the full complement of management and support staff as specified in the contract.

IAS recommends the following:

1. FMU should discuss with the AOC’s Office of General Counsel (OGC) whether the Total Labor Costs inclusive of the associated Management Fee and the earned Performance Based Compensation charged by the Contractors for work that was clearly management and support type work should be accumulated and discussed with the Contractors as over-charges that must be considered for reimbursements since the Contracts were clear that management and support activities shall not be included in charges to Direct Cost Work.
2. For the new facility operations and management contracts, FMU should closely monitor any labor charges to the SWOs by the new contractors’ management and support staff to ensure that these are charges that are not covered under the Firm Fixed Price Work and are thus allowable costs pursuant to contract terms.

**OCCM Facilities Management Unit Response By Gerald Pfab Date: December 17, 2012**

**Recommendation #1 – Completed**

All information has been provided to OGC. The litigation with the SRO and BANCRO contractor is in progress. The new contracts clearly identify which employees are part of the firm fixed price work and provide job descriptions and cost.

In 2006 FMU management determined that some work performed by classifications listed in Group 2 on the chart on page 16 were allowable charges as part of Direct Cost Work. The contract does not list classifications in groups as is done in this chart. The basis for the determination to allow the charges was based on the following.

Exhibit C, Appendix E, Item #18 states:

Regardless of the employee's job title, the work they perform will dictate whether the cost is reimbursable or included in the Management Fee. A Vice President could perform Direct Cost work (prepares a portion of a Facility Transition Plan) and a junior craftsman could perform Management Fee work (participate in a company safety class or write a Disruption of Services Plan for a specific outage he will perform).

Exhibit D, Section 6, address the various tasks that are part of the Direct Cost work. Direct Cost work is the work that is reimbursed based on an actual cost plus a Management Fee. This section includes a number of tasks normally assigned to positions listed as Group 2 on the chart on page 16. These include the development of various plans, facility assessments, asset management, engineering and planning support, drafting, and hazardous material management. This section also includes the traditional craft work such as HVAC, locksmiths, electrical, etc.

Based primarily on the item above, FMU believed that the basis for determining if work was reimbursable or not was based on the work performed not the classification or title of the employee. The invoices were also reviewed at some level by members of the AOC Finance Division. FMU has no recollection that the charges were ever questioned by them. Additionally; early portfolio didn't provide the scale needed to allocate specialized resources at all locations and at all time. Thus some work was done by a higher classification of employee who happened to already be onsite versus having a lower classification drive to the facility to do the work at an overall higher cost to the AOC.

Practical considerations included addressing a customer's concerns, particularly those involving security. FMU acted in good faith to deliver AOC services to the courts.

Because we had a much more stable portfolio and a firmer understanding of the true requirements the new contracts have the vast majority of work done under firm fixed price

provisions. It also clearly identify non craft positions as part of the firm fixed price work providing job descriptions, minimum annual hours to be performed, as well as cost.

Recommendation #2 – In Progress; April 2013 projected completion.

FMU met with the new contractors in February 2012 to review results of the first contractual audit and to provide clear direction on to the applicability of these charges within the current contract. Compliance with this requirement is part of the FMS monthly audit process.

FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

### **5.3 Overtime Paid to Contractors in Excess of the Statutory Minimum Appears to be in Compliance with One Contract Provision But Not Another**

#### **Background**

##### Labor Code

The two components of the general prevailing rate of *per diem wages* are the basic hourly rate (also known as basic rate of pay) and the employer payments. Employer payments include payments for employee benefits such as (1) Health and welfare, (2) Pension, (3) Vacation, (4) Travel, (5) Subsistence, etc. (**Labor Code § 1773.1**)

Labor Code §1815 provides that overtime is to be compensated at not less than 1 1/2 times the basic rate of pay and subsection 4.2.3 of the Department of Industrial Relation’s (DIR) Public Works Manual provides for overtime rate to be based on the basic hourly rate only.

##### Contract Terms and Calculation of Overtime in CAFM

- Exhibit B, section 48, subsection B of the Contracts with the Contractors specified that overtime shall be paid for at a rate of at least one and one-half times the *per diem wages*, unless otherwise specified...while subsection G provides for the payment of overtime at not less than one and a half times the *basic rate of pay*. While the two contract provisions regarding the calculation and payment of overtime are inconsistent, overtime was calculated in CAFM and charged to FMU at one and a half times the “Total Labor Costs” (the sum of the basic hourly rate of pay and employer payments for employee benefits) which is pursuant to one of the contract provisions (Exhibit B, section 48, subsection B) specifying that overtime shall be paid for at a rate of at least one and one-half times the *per diem wages*.

- Using the “Direct Labor Costs” reports residing in CAFM for the 13 month audit period of June 2009 through July 2010, IAS performed an analysis to determine the difference between what was approximately paid to the Contractors in overtime for the period under audit (overtime was calculated in CAFM at one and a half times the “Total Labor Costs”) and what should have been paid properly utilizing the Labor Code’s provision on the calculation of overtime at one and a half times the *basic hourly rate of pay*. The total amount of excess overtime for the three regions for the 13 month period is approximately \$330,000 inclusive of Management Fee (MF) and the potentially available Performance Based Compensation (PBC).

### **Issues**

The Contracts with the Contractors expired in December 2011 and FMU’s management in conjunction with the AOC’s Office of the General Counsel and Business Services Unit have already resolved the issue noted below regarding the conflicting contract provisions in the new facility operations and service contracts awarded to three new contractors in May 2011. The new contracts specified that overtime shall be paid for at a rate of at least one and a half times the basic hourly rate of the general prevailing rate of per diem wage, unless otherwise specified. Overtime calculation in CAFM has also been adjusted to calculate overtime based on the basic hourly rate.

1. Inconsistent language in the Contracts regarding the payment for overtime. Exhibit B, section 48, subsection B provided for the payment of overtime based on the per diem wages (basic hourly rate and employer payments for employee benefits) while subsection G provided for the payment of overtime based on the basic rate of pay.
2. Overtime was calculated in CAFM and charged to FMU at one and a half times the Total Labor Costs rather than at one and a half times the basic rate of pay as provided for in the Labor Code and the DIR’s Public Works Manual.

### **Recommendation**

FMU’s management has already made the necessary corrections to address the issues. IAS however recommends the continuous monitoring of the calculation of overtime in CAFM as changes occur in the contractor employees’ hourly rates to ensure that overtime is calculated and paid pursuant to the Labor Code, the DIR’s Public Works Manual, and the contractual provisions.

**OCCM Facilities Management Unit Response**      **By Gerald Pfab Date: September 19, 2012**  
Recommendation #1 – Completed  
Concur with IAS recommendation.

## **6. Contractors' Charges to the AOC – Supporting Documents**

From IAS' January 18, 2011 Request for Documentation, the regional Contractor for both the SRO and BANCRO regions submitted the requested documentation for only 29 (SRO 14 and BANCRO 15) of the 71 SWOs selected for review and did not submit the requested documentation for the remaining 42 SWOs. (See Chapter 4, "Requests for Documentation from the Contractors").

The Contractor for the NCRO region submitted the requested information for the 31 SWOs selected as samples for review. This chapter discusses IAS's review of 30 samples (sample # 1 to 30) and sample # 31, with a reported actual costs of \$1.7 million, representing 43% of the total dollar value of the SWOs selected for review for the region, is discussed in the next chapter of this report. Additionally, sample # 31 is related to another SWO that was billed to the AOC from December 2007 to December 2008.

IAS' review of the supporting documentation to support the charges to the AOC was therefore limited to the 59 SWOs where documentation was received from the Contractors:

- SRO – 14 SWOs
- BANCRO – 15 SWOs
- NCRO – 30 SWOs (excluding sample 31 discussed in the following chapter)

The 59 SWOs reviewed by IAS consisted of: 5 Collection Work Order (CWOs) for grounds and landscaping work, 17 Facility Modification (FM) projects for work such as HVAC replacement, interior finishes, and roof replacement, 32 Job Orders (JOs), 3 design work, and 2 preventative maintenance (PM) work.

IAS reviewed the Contractor submitted information such as time sheets, time logs, Certified Payroll Records, invoices, and other associated documents to determine whether the submitted information supported the charges reported in the service work orders. Specific procedures performed included: Review of the selected direct labor charges to determine whether hours reported by the Contractors and their teammate subcontractors in the SWOs were properly supported by time sheets and time logs; Analysis of total labor costs per invoice to the labor costs reported in the Certified Payroll Records (CPRs); Review that purchases of materials/equipment and subcontractor services were properly supported by invoices, invoices contained sufficient detail regarding the purchases, and the purchases resulted in the best value to the AOC.

**From IAS’ review of the documentation submitted by the Contractors, the following issues were considered significant enough to bring to management’s attention in this report. Additional lower risk issues to this report are contained in Appendix A.**

## **6.1 Some Contractor Submitted Information is Insufficient, Incomplete, and Illegible to Support the Charges Reported in the Service Work Orders**

### **Issues**

From IAS’ review of the regional Contractor submitted documentation such as time sheets, time logs, invoices, and other associated documents to determine whether the submitted documentation supported the charges reported in the service work orders, the following issues were noted:

### Labor

In addition to the issues discussed in Part A of this Chapter regarding (1) the calculation of overtime in CAFM at one and a half time the fully loaded rate (basic hourly rate and employer payments for employee benefits) rather than based on the basic hourly rate as specified in the Labor Code, (2) the direct labor charges by the Contractors and their teammate subcontractors for management and support activities that should have already been compensated as part of the management fee, and (3) the labor charges for escorting and other similar type services that appear to be non-allowable charges, IAS noted the following additional issues related to labor charges reported in the SWOs by the Contractors and their teammate and non-teammate subcontractors:

1. The invoices/detail sheets to support the labor charges by a Contractor’s six (6) subcontractors for four (4) facility modification projects reported only a lump sum dollar amount for labor charges. The labor charges were described as “Labor” or “Labor/Subs” and missing some basic information such as the nature of the work performed, hourly labor rate charged by the subcontractors, the number of labor hours, time type, and/or the craft classifications of the workers utilized to perform the work. Examples of the SWOs and the invoiced amount from the subcontractors:
  - Lighting Project - “Labor” for \$68,451.
  - HVAC unit cleaning and ducting - “Labor” for \$35,700.
  - HVAC chiller project - “Labor/Subs” for \$293,100.
2. Labor descriptions for nine (9) SWOs that were for tasks that were mostly recurring in nature such as landscaping/grounds maintenance work and report writing were not noted in the SWOs.

3. Timesheets associated with five (5) SWOs for landscaping /grounds maintenance type work were not submitted by one of the Contractors for its teammate subcontractor's workers who performed the work. Additionally, the dates worked in the submitted timesheets for another 2 SWOs involving plumbing and utilities work were not legible.
4. In at least nine (9) SWOs, numerous variances were noted in the number of hours and/or time type information reported and charged to the service work orders when compared to the information residing in the timesheets, time logs and/or Certified Payroll Records. One of the Contractors self identified this issue.

#### Materials/Equipment

5. In 13 of the SWOs reviewed, invoices and detail sheets to support payment requisitions submitted by the Contractors and/or their subcontractors only reported a lump sum for "Materials" purchased or included a very high level description of the materials purchased. Missing are some basic details such as the type of materials/equipment purchased, quantity, brand, and serial number of the equipment purchased. Examples:
  - HVAC chiller project, described in the "Detail Sheet" as "Equipment – Chillers/Pumps & V", cost of \$356,840.
  - Re-roof project, described in the invoice as "Material", cost of \$57,990.
  - Lighting Project, described in the invoice as "Material", cost of \$94,000.

#### **Recommendations**

As FMU works with IAS' in developing an Audit Plan to monitor the new contractors' charges to the AOC as well their compliance to maintain all financial and non-financial records to support the charges in the SWOs, for non-firm fixed price work, FMU should ensure that:

#### Labor

1. Submitted invoice (or attachments to support the invoice) should include, in addition to the SWO number, specific information such as the nature of the work performed, hourly labor rate charged by the contractor and subcontractor, number of labor hours, craft classifications, etc. to support the charges to the SWOs.
2. Labor descriptions should be reported in the SWOs and in sufficient detail to document the work performed.
3. Labor charges are properly supported by legible time sheets.

4. The number of hours and time type information reported and charged to the service work orders should be supported by the information residing in the timesheets, time logs and Certified Payroll Records.

#### Materials/Equipment

5. Submitted invoice (or attachments to support the invoice) should include, in addition to the SWO number, specific information such as the type of materials/equipment purchased, quantity, brand, serial number, etc. to support the charges to the SWO.

#### **OCCM Facilities Management Unit Response By: Gerald Pfab Date: August 21, 2012**

Recommendation #1-5 – In Progress; April 2013 projected completion.

FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.

#### **6.2 Some Contractor Submitted Documents Did Not Provide Sufficient Information to Account for the Variance Noted Between the Labor Charges Reported in the Non-Teammate Subcontractors' Invoices When Compared to the Certified Payroll Records**

##### **Background**

The AOC's facility management and maintenance contracts (Contracts) required the Contractors to comply with the Labor Code provisions relating to public works projects (Labor Code Sections 1720 -1861 and 3070-3099.5). The Labor Code provisions mandated among other requirements, the payment of not less than the general prevailing rate of per diem wage and the requirement to keep accurate payroll records including the Certified Payroll Records (CPRs).

LC §1776(a) specified the various elements to be included in the CPRs including the actual per diem wages (basic hourly rate and employer payments for employee benefits) paid to each journeyman, apprentice, worker, or other employee employed in connection with the public work.

The Contracts required the Contractors to maintain all Certified Payroll Records relating to each project which shall be made available for inspection or furnished upon request to a representative of the State/AOC. (Contract, Exhibit B, Section 49 – Payroll Records)

##### **Issue**

IAS selected five (5) facility modification SWOs with reported labor charges from non-teammate subcontractors ranging from \$8,000 to \$703,000. From the five (5) SWOs, IAS further selected labor charges from seven (7) non-teammate subcontractors and compared the "labor charges per

the non-teammate subcontractors' invoices" to the "labor charges reported in their Certified Payroll Records (CPRs)." From IAS' review of the invoices and CPRs, five (5) of the seven (7) non-teammate subcontractors showed variance ranging from \$5,000 to \$591,000 and from 53% to 97% between the amount invoiced for labor to the labor charges residing in the submitted CPRs.

For example, in a facility modification project for HVAC chiller replacements, IAS noted a variance of \$591,000 (84%) between the amount invoiced for labor and the labor charges reported in the submitted CPRs. There may be reasonable explanations for the variances, for example, the variances may be the difference between the subcontractors' *retail* hourly rates (charged to their customers to support the subcontractors' overhead such as rent, insurance as well as reasonable profit from the work performed) when compared to the labor charges reported in their submitted CPRs which contain the actual labor costs (basic hourly rate and employee benefits) to the subcontractors. However, the submitted documentation did not provide sufficient information to account for the \$591,000 (84%) variance which could be due to factors such as the subcontractor's profit from the work performed, incomplete information in the CPRs, and/or the incomplete submissions of the requested CPRs to IAS. Without sufficient information, IAS was unable to make a determination of the reasons causing the variance.

### **Recommendation**

FMU anticipates that with the two new types of contracts (1) the facility operations and management service contract with the "Firm Fixed Price" and the "Cost Plus" cost models and (2) the "Job Order Contracting (JOC)" that utilizes a set of customized, pre-priced construction tasks as its basis for describing the work and setting pricing, instances of material variance (dollar amount and percentage) between the "labor charges per the subcontractors' invoices" to the "labor charges reported in the CPRs" should be reduced.

IAS and FMU are currently working collaboratively to design an Audit Plan to address the monitoring of the new contractors' and their subcontractors' compliance with the payment and reporting requirements (including the required data elements in the CPRs) of the Prevailing Wage Laws as well as the requisite qualified staffing level necessary to implement the plan. IAS recommends adding to the monitoring process especially for SWOs issued under the "Cost Plus" the analysis for reasonableness (amount and percentage to be determined by FMU and IAS) of the variance between the "labor charges per the subcontractors' invoices" to the "labor charges reported in the CPRs."

**OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**  
Recommendation #1 - In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased

responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels.

While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

### **6.3 Some Supporting Documents did not Provide Sufficient Information to Demonstrate that the Best Value was Obtained for the AOC**

#### **Background**

- The OCCM's *Court Facilities Contracting Policies and Procedures* (Policies and Procedures) defines "Best Value" to mean that a product or a service provides superior performance with respect to one or more of the following factors: quality, durability, aesthetics, reliability, initial cost, life-cycle cost, energy efficiency, past performance, similar experience, the composition and stability of the Proposer's team, and the capacity of the Proposer to predictably meet quality, budget, and schedule requirements.
- The Contracts specified that the Contractors' purchase of all materials, equipment, and subcontracts shall be consistent with sound business practices, which should result in the best value for the AOC. The Contractor will be required to demonstrate that the source of the purchase is in the best interest of the AOC based on cost, delivery date, and quality of material/services provided... (Contract, Exhibit D, Facility Operations and Management Services Statement of Work, Section 5.5.1, Purchases)

#### **Issues**

From the submitted documentation received from the Contractors, IAS judgmentally selected four (4) facility modification SWOs (that included higher value non-teammate subcontractor charges) to review. Actual cost represented subcontractor and material costs, not including management fee and potentially available performance based compensation:

- Purchase and installation of HVAC chillers – actual cost of \$1.2 million.
- Facility lighting project – actual cost of \$201,000.
- Two (2) re-roofing projects – actual costs of \$138,000 each.

The following were noted by IAS:

1. Contractor submitted information for the 4 SWOs did not provide sufficient information (such as proposals received from *other* subcontractors to evidence competitive bidding or justification for sole source) to demonstrate that the purchase of materials and/or subcontractor's services resulted in the best value to the AOC.
2. Furthermore, the proposals submitted by the Contractor for the 4 SWOs, which served primarily as the basis of the amounts charged to the AOC did not provide sufficient information regarding how the proposed amounts were arrived at. Missing information such as: Breakdown of costs between materials and labor, hourly labor rates, labor craft classifications, number of labor hours, time type, and descriptions and/or quantity of materials and equipment to be utilize for the project.

### **Recommendations**

FMU anticipates that most of the SWOs generated under the new contracts will fall either under the Firm Fixed Price threshold or for large-scale facility modifications, under the JOC contracting model so that for the majority of the SWOs, best value is expected to be obtained for the AOC. IAS however recommends the following:

1. FMU, as part of its SWO Audit process, especially for Cost Plus Work, monitor that the new contractors can demonstrate that purchases of materials and equipment are consistent with sound business practices, resulting in the best value for the AOC and the contractual requirements relating to subcontracting are complied with.
2. Any proposals (for non-firm fixed price work) submitted to the AOC should be in sufficient detail and to include information such as: Breakdown of costs between materials and labor, hourly labor rates, labor craft classifications, number of labor hours, time type, and descriptions and quantity of materials and equipment to be utilized for the project.

### **OCCM Facilities Management Unit Response By: Gerald Pfab Date: September 19, 2012**

Recommendation #1 and 2 - In Progress; April 2013 projected completion.

OCCM agrees that an ongoing audit process needs to be developed. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels.

While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the

existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

## 7. Merced Old Courthouse Projects – Phases 1 and 2

### Background

As discussed in the previous chapter (Chapter 6), the Contractor for the NCRO region submitted the requested information for the 31 SWOs selected as samples for review. IAS’s review of 30 samples (sample # 1 to 30) is discussed in that chapter. Sample # 31, with reported actual costs of \$1.7 million, representing 43% of the total dollar value of the 31 SWOs selected for review for the NCRO region, is related to another SWO that was billed to the AOC in 2008. These two (2) related SWOs were for the Merced Old Courthouse projects (Phase 1 and 2) and according to the information residing in CAFM, the total actual costs reported in these SWOs are as follows:

Source: CAFM

Description	SWO Related to Sample # 31	Sample # 31	Total
	Phase 1*	Phase 2**	
Renovation of the Fire Damage in the Old DA Space	\$ 1,135,310	\$ -	\$ 1,135,310
Renovation of the Remaining South Wing of Courthouse	-	1,680,410	1,680,410
Total	\$ 1,135,310	\$ 1,680,410	\$ 2,815,720

\* Due to an upgrade from CAFM 8.4 to CAFM 9i, the \$1.1 million resides in two SWOs (one in CAFM 8.4 and another in CAFM 9i).

\*\* Included in the actual costs for the Merced Phase 2 (Sample # 31) are three other SWOs totaling \$796 for miscellaneous charges.

Issues noted from IAS’ review of the two related SWOs for the Merced Old Courthouse projects are discussed in this chapter. IAS believes many of the issues noted are indicative of practices during the 2007-2009 timeframe when many of OCCM’s policies and procedures were still in their developmental and draft stages.

### Transfer of Court Facility – Merced Old Courthouse

The Merced Old Courthouse (Courthouse) is the 17,716 square foot one story court facility located at 627 West 21st Street, Merced, California 95340. The Courthouse, built in 1950, has three jury capable courtrooms and houses the following court departments: central accounting, small claims, court administration, human resources, and information technology.

The Judicial Council of California (Council), the AOC, and the County of Merced (County) entered into a Transfer Agreement dated December 12, 2006 (Transfer Agreement) for the transfer of responsibility for the funding and operation of the Merced Old Courthouse and for the conveyance to the State of California on behalf of the Council, the County's title to the Courthouse and the land on which it is located. Prior to the execution of the Transfer Agreement, the AOC exercised its rights under Government Code §70344(b) of the Trial Court Facilities Act of 2002 to purchase for \$161,000 the “equity” rights of the County for

approximately 2,975 square feet of space in the Courthouse previously occupied and used by the County for its District Attorney's office space.

### **Fire Damage to the Merced Old Courthouse**

Government Code § 70326(c) specified that neither title to a deficient building nor responsibility for the court facilities in that building shall transfer to the state or the Judicial Council unless provision is made in the transfer agreement for correction of the deficient items.

In July 2006, 2,975 square feet of the Courthouse interior (County District Attorney's office space) and the related building systems, interior and exterior structures were extensively damaged by a fire (Fire Damaged Areas/Future Court Space). Damage to the Courthouse included damage directly and indirectly caused by the fire, smoke, water, and other efforts to contain and extinguish the fire. Pursuant to GC § 70326(c), the County agreed to repair/restore the "Fire Damaged Areas/Future Court Space" of the Courthouse, and to clean and prepare it in "shelled" condition as a condition of the transfer. The Transfer Agreement specified the scope of work to include the complete restoration (by repair or replacement) of the shell and core of the fire damaged areas of the Courthouse. The scope of work included work on the foundation, steel structure, roof, exterior wall, electrical and communications, and HVAC systems. (See Transfer Agreement, Article II, Section 2.1 and 2.2)

### **Merced Old Courthouse Projects - Phase 1 and 2**

Pursuant to GC § 70326(c) and the Transfer Agreement, the County of Merced performed the repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse and the AOC accepted the County's work on December 16, 2008. Additionally, disbursement of the \$161,000 equity purchase price to the County for the County District Attorney's office space was subject to the County's completion and the AOC's acceptance of the repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse.

Pursuant to the Transfer Agreement, the County was not responsible for designing and constructing tenant improvements on the "Fire Damaged Areas/Future Court Space" which shall be performed by the AOC after the final completion of the County's work.

### **The Trial Court Facilities Modification Working Group Role**

The Trial Court Facility Modification Working Group (Working Group) was established in 2005 to review facility modification (FM) requests from across the state and approve all facility modification (FM) funding. In its October 22, 2007 meeting, the Working Group approved FMU's proposal to combine funded FM work at the same facility into a single job to improve design and construction efficiency, ensure that there are no conflicting overlaps, and reduce administrative overload. The Working Group's approval of combining FMs in the same facility

resulted in the consolidation of several FM projects for the Merced Old Courthouse into the Merced Phase 1 and 2 projects (Merced Projects):

**Source: The Trial Court Facility Modification Working Group Meeting Reports - Facility Modifications Approved for Funding**

Description of Facility Modifications	Phase 1	Phase 2
	Cost Estimate	Cost Estimate
<b>Phase 1:</b> Renovate DA space for court - including two FMs consolidated into Phase 1: Update HR offices and install smoke detectors. (Originally approved for funding in 2006 and 2007.)	\$ 369,000	\$ -
<b>Phase 2:</b> Upgrade traffic section so traffic can move from county - including various FMs consolidated into Phase 2: Balance HVAC system, arbor for outdoor sitting area, replace water fountains, install emergency lighting , upgrade lighting, repaint common areas, install smoke detectors, add entryway for security control, upgrade deptmt1 green, upgrade deptmt 2 red, upgrade deptmt 3 blue, upgrade windows, replace HVAC equipment. (Originally approved for funding in 2006 and 2007.)	-	1,575,500
Various cost increases/decreases from 2007 to 2009	884,225	105,057
Current cost estimate per "All Funded List" in the Working Group 2/29/2008 Meeting Report (Phase 1) and 10/13/2009 (Phase 2)	\$ 1,253,225	\$ 1,680,557

OCCM/FMU’s Agreement with Aleut Global Solutions, LLC (AGS)

In 2006, the Administrative Office of the Court’s OCCM/FMU contracted with Aleut Global Solutions, LLC (NCRO Contractor), formerly known as Tekstar, LLC to provide facility management and maintenance services in designated court facilities in the AOC’s NCRO region which included the Merced Old Courthouse.

On August 25, 2008, OCCM/FMU accepted AGS’ July 22, 2008 fixed price proposal to provide contract services for the Merced Old Courthouse - Phase 1 and 2 Projects for a flat fee of 11% (management fee) of its Subcontractor’s (Fregoso Builders, Inc. (FBI)) contract price including all approved change orders. AGS’ contract services included providing construction contract funding and consulting services to FBI based upon FBI’s plans and specifications for the projects. Payment of fees will be included as part of the monthly AGS-AOC invoice for any accepted and approved payment applications made to date with FBI and the applicable AGS 11% management fee.

Work Performed

Due to the staffing limitations within FMU, OCCM’s Design and Construction Unit (D&C) was assigned to manage the Merced Projects. D &C project managers were assigned to monitor the work performed and that work stayed within budget. According to OCCM, the work performed on the Merced Old Courthouse - Phase 1 and 2 are as follows:

Phase 1: Renovation of the Fire Damaged Area in the Old DA Space – construction improvements for areas of the Courthouse building that suffered damage as a result of fire. Interior construction was located at: Court administration area consisting of areas such as the

server room, six private offices, and staff workstations; Human Resources suite consisting of secure file room, long term storage, workstations, manager's office and conference/interview room; and judicial space including jury deliberation room, chambers and courtroom.

Phase 2: Renovation of the Remaining South Wing of the Courthouse - construction improvements associated with the non-fire damaged areas of the Courthouse building. Interior construction was located at: Civil administrative area consisting of areas such as the public counter with waiting area, three private offices, and storage rooms; Fiscal services area consisting of three private offices and open office for workstations; General office areas consisting of staff break-room and restrooms; judicial space consisting of minor work in a jury deliberation room; and improvements for fire and life-safety.

Included in both phases of the Merced Projects are: Structural and rough carpentry, millwork; mechanical to include heating, cooling, ductwork and tie-into existing building systems; electrical to include lighting, power for court operations, power for building systems, power as required by code; plumbing (fire sprinkler, restroom, staff sink); interior and exterior windows; and fire, life-safety to include fire sprinkler and alarm systems.

## General Background Information - Merced Old Courthouse Projects - Phase 1 and 2

Row	Descriptions	Phase 1	Phase 2	Total
<b>AGS' (NCRO Contractor) July 22, 2008 Fixed Price Proposal to OCCM/FMU</b>				
A	Fregoso Builders, Inc. (FBI) - Contract Price Prior to Approved Change Orders	\$ 925,637	\$ 1,306,041	\$ 2,231,678
A.1	Plus: AGS Flat fee for Contract Services	11% of FBI Contract Price (Includes Approved Change Orders )		
A.2	AGS Project Proposal Accepted by OCCM/FMU	August 25,2008		
<b>AGS' Agreement with its Subcontractor - Fregoso Builders, Inc. (FBI)</b>				
B	AGS' Agreement with Fregoso Builders, Inc dated:	November 9, 2007	July 21, 2008	
B.1	Contract Sum/Schedule of Values * - agreed to by AGS and its subcontractor FBI	\$ 925,637	\$ 1,321,090	\$ 2,246,727
B.2	<b>Applications and Certificates for Payment Submitted by FBI to AGS</b>			
B.2.1	<b>Project Initiated</b>			
B.2.2	Period Covered - Based on the first Application and Certificate for Payment Submitted by FBI to AGS	11/09/2007 to 4/30/2008	"Not Specified" to 1/22/2009	
B.2.3	Percentage Completed.	18%	19%	
B.2.4	<b>Project Completed</b>			
B.2.5	Period Covered - Based on the Application and Certificate for Payments reporting work to be <u>100%</u> completed.	10/31/2008 to 11/30/2008	6/30/2009 to 7/31/2009	
<b>The Contract Sum Included the Following Components from the "Schedule of Values":</b>				
C	A&E Design Fees	\$ 109,420	\$ 126,100	\$ 235,520
D	Permit and Impact Fees	39,750	35,000	74,750
E	Others: General conditions, millwork, metal stud/drywall, fire suppression system, plumbing, electronic safety and security	622,079	940,144	1,562,223
F	Project Subtotal	771,249	1,101,244	1,872,493
G	Construction Contingency (5%)	38,562	54,912	93,474
H	Contract Fee (7.5%)	60,736	86,487	147,223
I	Liability Insurance (2.3%)	20,023	28,512	48,535
J	Bond - (2.15%)	19,147	27,265	46,412
K	Builder's Risk Insurance - (1.75%)	15,920	22,670	38,590
L	Contract Sum/Schedule of Values Total *	\$ 925,637	\$ 1,321,090	\$ 2,246,727
<b>Change Orders Added to Contract Sum and Total Paid to FBI</b>				
M	Contract Sum/Schedule of Values Total	\$ 925,637	\$ 1,321,090	\$ 2,246,727
N	Add/Less: Change Orders (1 to 19) Including Miscellaneous Credits	91,825		91,825
O	Add/Less: Change Orders (1 to 18) Including Miscellaneous Credits		192,840	192,840
P	Total Paid to FBI (Application and Certificate for Payment # 10 (Phase 1) and # 9 (Phase 2))	\$ 1,017,462	\$ 1,513,930	\$ 2,531,392
<b>Actual Costs Reported in the SWOs Including Management Fee</b>				
Q	Total Costs Reported in the SWOs:  <b>Phase 1</b> - SWO # 20067 (CAFM 8.4) \$757,915 and SWO # 2005869 (CAFM 9i) \$377,395  <b>Phase 2</b> - SWO # 12241 (CAFM 8.4) \$607, SWO # 30585 (CAFM 8.4) \$95, SWO # 2005865 (CAFM 9i) \$94, and SWO # 2005893 (CAFM 9i) \$1,680,410.	\$ 1,135,310	\$ 1,681,206	\$ 2,816,516
R	Total Paid to FBI (from Row P)	1,017,462	1,513,930	2,531,392
S	Adjustments - Payments to AGS - not considered management fee	-	744	744
T	Balance - Calculated Management Fee to AGS (Row Q-R-S) per SWO Info and Payments to FBI	\$ 117,848	\$ 166,532	\$ 284,380

\* Phase 2 - Difference of \$15,049 between "AGS' fixed price proposal to FMU of \$1,306,041" and the "Contract Sum Agreed to Between AGS and FBI of \$1,321,090" was due to increased costs.

### **General Recommendation Regarding Merced Projects**

IAS interviewed OCCM personnel and reviewed the documentations for the Merced Phase 1 and 2 projects and noted the issues that follow. IAS' recommendations generally follow the issues identified. In this particular case, the practices in the Merced Projects did not correspond in general to standard practices and procedures that should be followed and are not generally compliant with the current informal practices and procedures, including some that are in development. The general recommendation therefore is for management to ensure that established practices and procedures, or those that are recognized industry standard guidelines, are followed in the monitoring of projects. While management has extensive experience in the industry, this did not translate to effective practices on the Merced Projects.

IAS does recognize that the Merced Projects, initiated in late 2007 and 2008, were one of the first facility modification projects initiated and completed by OCCM when its policies and procedures were still in early development, and a staffing shortage (management and staff level) also existed. However, these do not excuse some of the practices that are identified below. These practices provide in one project examples of many of the issues previously discussed in this report and for that reason are included here together and not separately in different sections of this report as examples.

**The following issues identified concerning the Merced Projects were considered significant enough to bring to management's attention in this report. There is no response required from FMU management to these issues as responses are contained in other sections of the report to similar issues.**

#### **7.1 Lack of Formalized Policies and Procedures in Place During the Merced Project's Performance Period**

##### **Background**

Project management standards establish guidelines to follow in construction/renovation type work. These standards established by the nationally recognized organizations including the Project Management Institute's *Project Management Body of Knowledge* (PMBOK) guidelines identify certain standard practices such as the development of a "Project Management Plan". A "Project Management Plan" documents the actions necessary to define, prepare, integrate, and coordinate all subsidiary plans. It becomes the primary source of information for how the project will be planned, executed, monitored, controlled, and closed.

##### **Issues**

OCCM's Design and Construction Unit (D&C) was assigned by the Facilities Management Unit (FMU) to manage the Merced Phase 1 and 2 projects. Both units currently have many of their

policies and procedures in place and are working on developing other much needed policies and procedures as well as finalizing the ones identified as “Drafts”. IAS however noted the following:

1. During the period from late 2007 to early 2009, when the Merced Phase 1 and 2 projects were initiated, many of the policies and procedures such as the development of a project management plan for facility modification work involving construction/renovation were not formalized or in place to provide OCCM (D&C and FMU) staff guidance in the managing, monitoring, and documenting the facility modification (FM) projects undertaken.
2. Additionally, although OCCM (D&C and FMU) staff worked on ensuring that it maintains all the relevant meeting reports, e-mails, and documents to support its FM projects, OCCM did not have a formal document control system in place to provide specific guidance to OCCM staff the requisite files needed to support FM work performed. IAS noted that OCCM had an incomplete copy of the Contractor and Subcontractor’s contract for the Merced Phase 1 project and did not have a copy of the contract for the Merced Phase 2 project.

## **7.2 NCRO Contractor Did Not Have the Required “B” General Building Contractor License**

### **Background**

On March 1, 2006, prior to the passage of SB 392 ( [Statutes of 2010, Chapter 698](#)), authorizing the California State License Board (CSLB) to issue contractor’s licenses to limited liability companies, the Contractor for the NCRO region, an LLC did not qualify for a class “B” general building contractor license. The NCRO Contractor however entered into a facility management and maintenance services contract with the AOC where it represented and warranted that it has and will continue to have during the term of the agreement a “B” contractor’s license issued by the CSLB.

On December 15, 2009, the NCRO Contractor, which was still an LLC, entered into a new facility management and maintenance services contract with the AOC limiting the job orders it can accept to work that would not require a class “B” contractor’s license.

On March 22, 2010, the NCRO Contractor assigned its facility management and maintenance services contract with the AOC contract with the AOC to another related entity that has the required class “B” contractor’s license.

### **Issue**

Although the licensing issue was resolved in December 2009, during the performance period (from November 2007 to July 2009) of the Merced Phase 1 and 2 projects, the NCRO Contractor

did not have a class “B” general building contractor license yet it provided “consulting services” to its Subcontractor for the Merced Phase 1 and 2 Projects. The Merced Projects involved construction work requiring Architectural and Engineering (A&E) services and the NCRO Contractor was compensated approximately \$284,000 in management fees for providing consulting services to the Merced Projects.

### **7.3 Competitive Procurement Methods Were Not Followed in the Merced Projects**

#### **Background**

OCCM’s Court Facilities Contracting Policies and Procedures (December 7, 2007):

- In order to provide Californians the best value initially and over the long-term operational life of court facilities, the AOC will follow competitive practices when contracting with qualified firms and individuals for products and services to be used in the planning, acquisition, design, construction, operation, and maintenance of trial and appellate court facilities.
- Best Value means that a product or a service provides superior performance with respect to one or more of the following factors: quality, durability, aesthetics, reliability, initial cost, life-cycle cost, energy efficiency, past performance, similar experience, the composition and stability of the Proposer’s team, and the capacity of the Proposer to predictably meet quality, budget, and schedule requirements.
- A Sole Source Contract is a contract awarded without an RFQ (Request for Quote) or an RFP (Request for Proposal) or a traditional bidding process. A proposal for a Sole Source Contract is solicited from a single source and is done so only under exceptional conditions. Sole source contracts may be used only when approved by the OCCM Assistant Division Director (or Director) for reasons such as an emergency condition exists and after solicitation of a number of sources, the competition is determined to be inadequate. Before a Sole Source Contract is awarded, a written justification of the rationale for Sole Source Contract must be submitted to the OCCM Assistant Division Director for review.

#### **Issues**

From IAS’ review of documentation and discussions with OCCM staff, competitive procurement methods were not followed for both phases of the Merced Projects. Without independent proposals/estimates received from other contractors, IAS was unable to determine whether the 11% management fee charged by the NCRO Contractor to the AOC/FMU and the contract sum (prior to change orders) totaling \$2.2 million negotiated by the NCRO Contractor with its Subcontractor for the Merced Projects represented the best value for the AOC.

Source: “Schedule of Values” in the NCRO Contractor and Subcontractor Contracts for the Merced Projects

Row	Description	Phase 1	Phase 2	Total
		Renovation of the Fire Damage in the Old DA Space	Renovation of the Remaining South Wing of Courthouse	
1	NCRO Contractor and Subcontractor's Contract Price - Per Schedule of Values (Prior to Approved Change Orders)	\$ 925,637	\$ 1,321,090	\$ 2,246,727
2	NCRO Contractor's 11% Management Fee (11% of Subcontractor's Contract Price - Row 1 x 11%)	101,820	145,320	247,140
3	Total Amount For the Merced Projects Prior to Change Orders (Row 1 and 2)	\$ 1,027,457	\$ 1,466,410	\$ 2,493,867

NCRO Contractor :

1. Competitive procurement methods were not followed prior to OCCM/FMU assigning the Merced 1 and 2 projects to the NCRO Contractor. The NCRO Contractor was compensated approximately \$284,000 in management fee for providing “contract funding and consulting services” to its Subcontractor for the Merced Projects.

NCRO Contractor’s Subcontractor:

2. Merced Phase 1:

Competitive procurement methods were not followed prior to OCCM/FMU directing the NCRO Contractor to negotiate with the Subcontractor recommended by the AOC’s architect for the Merced Projects.

3. Merced Phase 2:

Although OCCM’s D&C project manager provided to FMU’s regional manager (NCRO region) a written justification of the rationale for sole sourcing the Merced Phase 2 project to the same Subcontractor utilized for the Merced Phase 1 project, documentation was not available to indicate that the sole sourcing was approved by OCCM’s Assistant Division Director or Director.

**7.4 Contracts Specific to the Merced Projects Were Not Entered Into Between OCCM/FMU and the Contractor to Protect the AOC’s Rights**

**Background**

A contract defines the scope, schedule, consideration, and terms and conditions which the parties agree to abide by under the agreement.

According to OCCM/FMU’s facility management and maintenance services contract (Contract) with the NCRO Contractor, facility modifications (FM) between \$50,000 and \$100,000 will normally be performed under separate authorization and will be considered within the scope of this agreement. The AOC may negotiate with the Contractor for these services and – if it is in the best interest of the AOC – have the Contractor perform the services based upon negotiated

terms and conditions. (Exhibit D, Facility Operations and Management Services Statement of Work, Section 4.3)

**Issue**

OCCM/FMU did not enter into a separate contract with the NCRO Contractor to perform the work required in the Merced Phase 1 and 2 projects. OCCM/FMU accepted the NCRO Contractor’s Fixed Price Proposal by signing off on the proposal and utilizing the existing AOC facility management and maintenance services contract it had with the NCRO Contractor for the Merced Projects. The lack of a contract specific to the Merced Projects resulted in the lack of clarity in areas such as defining the work expected of the NCRO Contractor specific to the Merced Projects, project timeline, the pricing, supporting documentation required, and other terms necessary to protect the AOC’s interests.

**7.5 The NCRO Contractor Listed Itself as the Owner in its Contracts with its Subcontractor for the Merced Phase 1 and 2 Projects**

**Background**

The NCRO Contractor’s facility management and maintenance services contract for the NCRO regions provided that “Contractor and its employees and Subcontractors, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the state.” (See Contract, Exhibit A, Section 2, Relationship of Parties)

NCRO Contractor and Subcontractor Contracts:

In order to perform the work on the Merced Projects, the NCRO Contractor entered into two separate contracts with its Subcontractor – one contract for each phase of the Merced Projects:

Descriptions	Phase 1	Phase 2	Total
	Renovation of the Fire Damage in the Old DA Space	Renovation of the Remaining South Wing of Courthouse	
Contract Date	November 9, 2007	July 21, 2008	
Contract Sum/Schedule of Values - Agreed to by the NCRO Contractor and its Subcontractor (Prior to Approved Change Orders)	\$ 925,637	\$ 1,321,090	\$ 2,246,727

In order to document the terms and conditions agreed to in the performance of the Merced Projects, the NCRO Contractor and its Subcontractor utilized the American Institute of Architect’s (AIA) contract documents that are available for purchase by the public: A101-1997 (Standard Form of Agreement Between Owner and Contractor) and AIA Document A201-1997 (General Conditions of the Contract for Construction). The contracts specified the terms agreed to in areas such as: contract documents, contract sum, the work as specified in the accompanying “Schedule of Values”, payment terms, the roles of the owner, contractor, and architect to the

projects. In the two contracts entered into by the NCRO Contractor with its Subcontractor for both phases of the Merced Projects, the NCRO Contractor (AGS) entered into the contracts as the “Owner” with its Subcontractor (FBI) as the “Contractor”, and Nacht and Lewis Architects (Architect) was listed as the architect.

### **Issue**

Due to the nature of the AIA’s contract documents where the main parties to the contracts are referred to only as “The Owner” and “The Contractor”, the NCRO Contractor listed itself as “The Owner” which is in conflict with the provision in its facility management and maintenance services contract with OCCM/FMU which specified that “Contractor and its employees and Subcontractors, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the state.”

In the AIA contract documents utilized by the NCRO Contractor and its Subcontractor is a notice that the documents have important legal consequences and consultation with an attorney is encouraged with respect to its completion or modification. This was not apparently satisfactorily done.

## **7.6 Timing and Payment of Work**

### **7.6.1 Work and Payments on the Merced Phase 1 Project Occurred Prior to the AOC's Formal Acceptance of the County's Repair Work and OCCM/FMU's Formal Acceptance of the Contractor's Fixed Price Proposal for the Merced Projects**

#### **Background**

##### County’s repair/restoration of the “Fire Damaged Areas/Future Court Space”

Pursuant to GC § 70326(c), in the Transfer Agreement between the Judicial Council, the AOC, and the County of Merced (County) for the transfer of title and responsibility of the Merced Old Courthouse, the County agreed to repair/restore the “Fire Damaged Areas/Future Court Space” of the Courthouse, and to clean and prepare it in "shelled" condition as a condition of the transfer. The Transfer Agreement also required the County to obtain the AOC’s prior written approval before issuing a final punch list to the construction contractor, and the County shall not accept the construction as finally complete without the AOC’s prior written approval. The AOC, in its letter dated December 16, 2008 formally accepted the County’s repair/restoration of the “Fire Damaged Areas/Future Court Space” of the Courthouse.

### NCRO Contractor's Fixed Price Proposal

On August 25, 2008, OCCM/FMU accepted the NCRO Contractor's July 22, 2008 fixed price proposal to provide *construction contract funding and consulting services* for the Merced Projects.

### Timing and Payment of Work

IAS reviewed the "Applications and Certificates for Payment Submitted by the Subcontractor to the NCRO Contractor" and the "NCRO Contractor's Charges", including its management fee and the Subcontractor's charges, for Merced Phase 1 (Renovation of the Fire Damaged in the Old DA Space) and noted the following:

#### Timing of Work:

- As of November 2008, work on the Merced Phase 1 project was 100% completed by the NCRO Contractor and its Subcontractor prior to the AOC's December 16, 2008 formal acceptance of the County's repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse. (See Table below, Col E, Row 9)
- As of July 2008, work on the Merced Phase 1 project was at least 28% completed prior to OCCM/FMU's August 25, 2008 acceptance of the Contractor's fixed price proposal for the Merced Projects. (See Table below, Col E, Row 5)

#### Payment for Work:

- As of October 2008, 67% of the payments were made by OCCM/FMU to the NCRO Contractor prior to the December 16, 2008 formal acceptance of the County's repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse by the AOC. (See Table below, Col I, Row 8)
- As of July 2008, 19% of the payments were made by OCCM/FMU to the NCRO Contractor prior to the OCCM/FMU's August 25, 2008 acceptance of the NCRO Contractor's fixed price proposal for the Merced Projects. (See Table below, Col I, Row 5)

Row #	Source (Applications and Certificates for Payment from the Subcontractor)				Source (CAF: Monthly Dollar Amount Invoiced by the NCRO Contractor)			
	Application and Certificate for Payment #	Period from/to	Total Completed and Store to Date (Not Including the NCRO Contractor's Management Fee)	% Completed to Date	Month Invoiced	Invoiced by the NCRO Contractor Including the NCRO Contractor's Management Fee	% Invoiced to OCCM/FMU	% Invoiced to Date
A	B	C	D	E	F	G	H	I
1					3/2008	\$ 963	0.08%	0.08%
2	1	11/9/2007 - 4/30/2008	\$ 166,592	18%	4/2008	843	0.07%	0.16%
3	2	4/30/2008 - 5/31/2008	211,445	22%	5/2008	157,249	13.85%	14.01%
4					6/2008	632	0.06%	14.07%
5	3	5/31/2008 - 7/31/2008	267,287	28%	7/2008	54,758	4.82%	18.89%
6	4	7/31/2006 - 8/29/2008	550,930	54%	8/2008	-	-	18.89%
7	5	8/29/2008 - 9/26/2008	751,939	74%	9/2008	55,670	4.90%	23.79%
8	6	9/26/2008 - 10/31/2008	944,780	92%	10/2008	486,719	42.87%	66.66%
9	7	10/31/2008 - 11/30/2008	1,016,741	100%	-	-	-	66.66%
10	8	11/30/2008 - 11/30/2008	1,016,741	100%	-	-	-	66.66%
11	9	11/30/2008 - 12/31/2008	1,017,462	100%	-	-	-	66.66%
12	10	12/31/2008 - 12/31/2008	1,017,462	100%	12/2008*	378,476	33.34%	100.00%
13	Total		\$ 1,017,462		Total paid	\$ 1,135,310	100.00%	

\* Includes \$1,082 of adjustments.

## Issue

Work was performed by the NCRO Contractor and its Subcontractor and payments were made by OCCM/FMU prior to its acceptance of the NCRO Contractor's fixed price proposal for the Merced Projects and the AOC formal acceptance of the County's repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse.

According to OCCM, since the Court needs the court space for court functions, the Contractor's Subcontractor started work on the areas such as the Courthouse hallway and fire sprinkler and alarm systems that were not predicated on the County finishing and the AOC's formal acceptance of the County's repair/restoration of the "Fire Damaged Areas/Future Court Space" of the Courthouse. Additionally, the AOC's December 16, 2008 formal acceptance letter was all-inclusive – pertaining to all areas impacted by fire damage.

### 7.6.2 Some Advance Payments Were Made to the NCRO Contractor for the Merced Phase 2 Project

#### Background

In February 2009, OCCM/FMU accepted the NCRO Contractor's progress payment plan proposal of \$389,000 per month over a four (4) month period (February 2009 to May 2009) for a total of \$1.6 million (inclusive of change order # 1) for the Merced Phase 2 project.

In March 2009, the NCRO Contractor charged OCCM/FMU \$778,000, twice the \$389,000 per month agreed upon based on the aforementioned progress payment plan proposal. Additionally,

IAS compared the “Charges by the NCRO Contractor to OCCM/FMU” to the “Charges reported in the Subcontractor’s Applications and Certificates for Payment, adjusted to include the NCRO Contractor’s 11% Management Fee”, and as of March 2009, OCCM/FMU paid the NCRO Contractor \$421,000 in advance. This is in conflict with the NCRO Contractor’s fixed price proposal accepted by OCCM/FMU that for the 11% management fee, the Contractor will provide *contract funding* and consulting services for the Merced Phase 1 and 2 projects. (See Table below, Row 3, Column C and Column EE).

Row	NCRO Contractor's Charges to OCCM/FMU - from 2/2009 to 4/2009) (Source: CAFM)				Subcontractor's Charges and NCRO Contractor's Management Fee				Difference Between Col D and Col DD  (Balance to Date)
					Source: Subcontractor's Applications and Certificates for Payment - from 1/2009 to 4/2009			Total Completed and Store to Date	
	Description	Date Reported	Actual Cost	Balance to Date	Period from/to				
	A	B	C	D	AA	BB	CC	DD	EE
1					Specified - 1/22/2009	\$ 248,196	18.79	\$ 275,498	\$ (275,498)
2	Progress payment #1	2/20/2009	\$ 389,130	\$ 389,130	1/22/2009 - 2/26/2009	395,219	28.04	438,693	(49,563)
3	Progress payment #2	3/2/2009	778,207	1,167,337	2/26/2009 - 3/30/2009	672,598	45.54	746,584	420,753
4	Final Progress payment #3	4/6/2009	389,130	1,556,467	3/30/2009 - 4/29/2009	954,312	64.67	1,059,286	497,181

**Issue**

In March 2009, the NCRO Contractor charged OCCM/FMU \$778,000, twice the \$389,000 per month agreed upon based on the NCRO Contractor’s progress payment plan proposal accepted by OCCM/FMU. This primarily resulted in OCCM/FMU’s advance payments to the NCRO Contractor of \$421,000 in March 2009.

**7.6.3 Lack of Documentation to Support that the Applications and Certificates for Payment Submitted to OCCM Were Certified by the Architect for the Merced Projects**

**Background**

The NCRO Contractor and its Subcontractor utilized the American Institute of Architect’s (AIA) contract documents A101-1997 (Standard Form of Agreement Between Owner and Contractor) and AIA Document A201-1997 (General Conditions of the Contract for Construction) to document the terms and conditions both parties agreed to in the performance of the Merced Projects. As already explained in another section of the audit report, the NCRO Contractor (AGS) entered into these contracts as the “Owner” with its Subcontractor (FBI) as the

“Contractor” and two separate contracts were entered into, one for each phase of the Merced Projects.

The name of the architectural firm, Nacht and Lewis Architects (Architect) and its specific roles and responsibilities in the performance of the Merced Projects were detailed out in the contract documents and AIA Document A201-1997 specifically stipulated the architect’s various roles and responsibilities such as:

#### Architect’s Administration of the Contract

- The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner’s representative (1) during construction, (2) until final payment is due, and (3) with the owner’s concurrence, from time to time during the one-year period for correction of Work as described in Section 12.2. (Section 4.2.1)
- Based on the Architect’s evaluation of the Contractor’s Applications for Payment, the Architect will *review and certify* the amounts due to the Contractor and will issue Certificates for Payment in such amounts. (Section 4.2.5)

#### Applications for Payment

- At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values... (Section 9.3.1)
- The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents... The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified...(Section 9.4.2)

From IAS’ review of the “Applications and Certificates for Payment” submitted to the NCRO Contractor (AGS) by its Subcontractor (FBI) for both phases of the Merced Projects, except for the “Application and Certificate for Payment # 1” for Phase 1 where a signature was noted in the “Architect’s Certificate for Payment” section, in the remainder of the “Applications and Certificates for Payment” for both phases of the Projects, only the signatures of OCCM’s project manager and the NCRO Contractor’s regional contracts manager were noted. OCCM’s project manager and the NCRO Contractor’s regional contracts manager were not the architects to the projects.

Merced Phase	Application and Certificate for Payment	"Architect's Certificate for Payment" Section in the Application and Certificate for Payment		
		Signature Was Noted in the "Architect's Certificate for Payment" Section	Signature Was Not Noted in the "Architect's Certificate for Payment" Section	Total
1	# 1	\$ 166,591	\$ -	\$ 166,591
1	# 2 to # 10	-	850,870	850,870
2	# 1 to 9	-	1,513,930	1,513,930
	Total	\$ 166,591	\$ 2,364,800	\$ 2,531,391

## Issues

According to OCCM, it initially contracted with the Architect for some pre-design work that included architectural program, conceptual layout, outline specifications, and building investigation. The remainder of the project phases (from budgeting and schematic design through contract administration) was coordinated by the NCRO Contractor. Thus, the agreement for architectural services *after the pre-design phase* was between the NCRO Contractor and the Architect. OCCM did not have access to the documentation of the Architect's review of the "Applications and Certificates for Payment" submitted by the Subcontractor to the NCRO Contractor since the agreement was between the NCRO Contractor and its Subcontractor. OCCM stated that the Architect was at the job site frequently to review the progress of the work on the Merced Projects.

Without the documentation of the Architect's certifications on the "Applications and Certificates for Payment" submitted by the Subcontractor to the NCRO Contractor available for review, IAS cannot determine whether the Architect evaluated the work on the Merced Projects and the data comprising the Applications for Payment to ensure that the work has progressed to the point indicated and the quality of the work is in accordance with the contract documents.

### 7.6.4 Documentation to Support Change Orders Must Improve

#### Background

The AIA contract document A201-1997 (General Conditions of the Contract for Construction) utilized by the NCRO Contractor and its Subcontractor for the Merced Projects specified that a Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect, stating their agreement upon all of the following: (1) change in the Work, (2) the amount of the adjustment, if any, in the Contract Sum; and (3) the extent of the adjustment, if any, in the Contract Time.

The Change Orders for the Merced Phase 1 and 2 projects included both charges that increased and credits that decreased the project costs.

Source: Change Order Forms Submitted by the NCRO Contractor to OCCM

Change Orders	Phase 1		Phase 2		Total	
	Number of Change Orders	Dollar Amount	Number of Change Orders*	Dollar Amount	Number of Change Orders	Dollar Amount
Change Orders Resulting in <u>Increased</u> Project Costs	12	\$ 112,819	13	\$ 250,003	25	\$ 362,822
Change Orders Resulting in <u>Decreased</u> Project Costs (due to miscellaneous credits such as unused permit fees, adjustment to insurance, contingency fees)	3	(20,994)	4	(57,163)	7	(78,157)
<b>Total</b>	<b>15</b>	<b>\$ 91,825</b>	<b>17</b>	<b>\$ 192,840</b>	<b>32</b>	<b>\$ 284,665*</b>

Change Orders that included both increase and decrease (credits) to project costs are presented and counted separately.

### Issues

According to OCCM, frequent meetings and discussions were held among OCCM staff, the NCRO Contractor, its Subcontractor, and the Architect prior to the initiation of any Change Orders, and the Architect had a high degree of presence on the job site. Additionally, these Change Order meetings and discussions also resulted in revisions in the architectural drawings to document the change orders discussed and agreed upon by the parties. From IAS’ review of the Change Order forms, the following were noted:

- For both phases of the Merced Projects, Change Order forms for work such as adding structural engineering for HVAC unit, concrete demolitions, and adding window openings, the Architect’s signature was not noted in the “Change Order” forms. The Change Order forms were however signed off by the NCRO Contractor, its Subcontractor, and OCCM’s project managers.
- In all of the “Change Order” forms for Merced Phase 2, OCCM’s project manager signed off as the “Architect” but OCCM’s project manager was not the architect for the Merced Projects.
- For both phases of the Projects, the information residing in some of the “Change Order” forms and the accompanying “Potential Change Order” forms were high level and did not provide detailed information such as: the number of labor hours and the associated hourly labor rate, the quantity and type of materials, and the descriptions of work were at times insufficient to document the specific work performed.

### 7.6.5 Contractor Submitted Documents Did Not Provide Sufficient Information to Account for the Variance Noted Between the “Adjusted Charges Reported in the

## **SWO for the Merced Phase 2 Project" and the "Labor Costs and Estimated Employer Benefits Reported in the Contractor Submitted CPRs"**

### **Background**

The AOC's facility management and maintenance contracts (Contracts) required the Contractor to comply with the Labor Code provisions relating to public works projects (Labor Code Sections 1720 -1861 and 3070-3099.5). The Labor Code provisions mandated among other requirements, the payment of not less than the general prevailing rate of per diem wage and the requirement to keep accurate payroll records including the Certified Payroll Records (CPRs). GC §1776(a) specified the various elements to be included in the CPRs including the actual per diem wages (basic hourly rate and employer payments for employee benefits) paid to each journeyman, apprentice, worker, or other employee employed in connection with the public work.

IAS only performed the high level analysis of the Certified Payroll Records (CPRs) submitted for the Merced Phase 2 project since the CPRs for Phase 1 was not available for review.

### **Issue**

IAS compared the "Charges reported in the SWO for the Merced Phase 2 project adjusted for costs related to management and other professional fees, permit fees, construction contingency, contract fee, and various insurance" to the "Labor costs and estimated employer benefits reported in the NCRO Contractor submitted CPRs" and noted a variance of \$926,000. Since the Merced Phase 2 project involved construction/renovation type work that necessitated the purchase of materials as well equipment, IAS believes that a majority of the variance may be due to the costs of the materials and equipment purchased for the project as well as Subcontractor's profit for the work performed. However, since a breakdown of the costs of materials and equipment costs is not available for review, IAS cannot make a determination of the reasonableness of the \$926,000 variance noted, whether there were other reasons that caused the variance such as not all of the CPRs were submitted to IAS.

## **8. FMU SWO Administrative Oversight Activities**

### **Background**

As part of an overall monitoring process to assist FMU management in ensuring its policies and procedures are being complied with and its Audit and Contract Compliance Program meets industry standards, FMU is working collaboratively with the AOC's Internal Audit Service (IAS) to develop an Audit Program that includes a formal expanded Audit Plan with a contract compliance component. The Audit Program will be supplemented by an Internal Audit Services process that periodically evaluates the efficiency and effectiveness of the Program.

FMU had established in each region individuals who in addition to other responsibilities were charged with reviewing judgmentally selected samples of SWOs and other management directed projects or tasks. The reviews generally 'drill down' into the details and documents associated with the projects to primarily determine if documents support the costs and other information in CAFM. These reviews have been limited during the last two to three years as there is only one individual assigned to each region.

### **8.1 FMU Should Establish an Audit Program to Include a Formal Expanded Audit Plan With a Contract Compliance Component**

#### **Issue**

Responses by FMU too many of the issues identified in this report refer to the establishment of an Audit Plan. The formal expanded Audit Plan with its contract compliance component will be part of FMU's Audit Program that should be developed as soon as possible to ensure that management is made aware of issues promptly in order to evaluate and implement corrective measures. This Audit Program can then be complimented by an Internal Audit Services process to ensure that it is working effectively and efficiently.

#### **Recommendation**

Establish an Audit Program that includes a formal expanded audit plan with a contract compliance component. This Audit Program should be formally documented, re-evaluated annually, and approved by management. Additionally, the results of the testing should be documented and reviewed by management to ensure corrective measures are being undertaken.

**OCCM Facilities Management Unit Response**    **By: Gerald Pfab**    **Date: October 4, 2012**  
April 2013 projected completion.

OCCM agrees that a more formal audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to this finding. Most importantly a new contract model is now in place that reduces many of the risk associated with the old model.

OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities.

While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide a level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.

## 9. Review of Selected 2011 Contract Sections

In 2011 the AOC entered into new contracts for facility operations and management services for each of the three regions. The contracts were competitively bid and awarded to new contractors:

Bay Area / North Coast	Enovity, Inc.	\$ 837,090 per month
Southern	ABM Engineering Services Company	\$ 1,259,644 per month
North / Central	Pride Industries One, Inc.	\$ 699,246 per month

There are two items of the new contracts that have been reviewed as part of this audit:

- Phase-In and Out expenditures and reporting; and
- the new firm fixed price tier.

### 9.1 Phase-In and Phase-Out Contractual Sections Continue to Not Provide Full Accountability and Transparency

#### Background

Each contract allows for the Contractors to be paid Phase-In and Phase-Out money. These costs are part of the competitive bidding process. Phase-In is covered by Exhibit B in the new contract:

4.1 During the Phase-In Period, the Contractor will acquire all equipment, manpower, and other Materials necessary to perform the Work at all facilities. The Contractor will make all other preparations necessary to begin performing the Work at all Facilities on the Full Performance Date. [Note: Full Performance Date is September 30, 2011]

4.2 The AOC will pay Phase-In Costs as described in Exhibit E, Section 2.5 (“Phase-In Costs and Phase-Out Costs”).

4.3 Expenditures of the Phase-In Costs shall be recorded and provided to the AOC. The following types of expenses are considered Phase-In Costs:

- 4.3.1 Cost for mobilization such as obtaining equipment, manpower, subcontractors, and facilities needed to support the Agreement.
- 4.3.2 Training costs including any travel necessary to educate employees in the requirements and procedures to be followed in the performance of the Agreement. This includes CAFM training and related expenses, as further described in Exhibit B, Section 7.1.7 (“Training Classes for CAFM”) below.
- 4.3.3 All management cost during the Phase-In Period including Travel expenses, salaries, office space, administrative expenses, and other related expenses.
- 4.3.4 All reports and plans listed in Exhibit B, Section 2.7 (“Plans, Studies, and Reports”) due prior to Full Performance Date.

4.4 No other compensation shall be paid to the Contractor by the AOC for the cost or expense of mobilization or the acquisition of tools and equipment for the performance of Work under this Agreement. The AOC will pay no additional phase-in costs, regardless of the number or size of buildings added to the list of Facilities.

Phase-Out is covered by Exhibit B, Section 5, of the new contract:

- 5.1 If the AOC transitions all or a portion of the Work in-house, to a Court, or to another entity, the Contractor shall cooperate with the AOC, Court, and/or such other entity to ensure an orderly change over.
- 5.2 During the Phase-Out Period, Contractor shall cooperate to ensure an orderly transition to any successor entity. Recruitment notices may be placed in each Facility to allow a successor entity's access to incumbent employees.
- 5.3 The AOC will pay phase-out costs as described in Exhibit E, Section 2.5 ("Phase-In Costs and Phase-Out Costs").
- 5.4 During the Phase-Out Period, Contractor will deliver and assign ownership to the AOC of:
  - 5.4.1 any tangible or intangible property originally purchased at or over one thousand dollars (\$1,000) by Contractor using Phase-In funds.
  - 5.4.2 any computer equipment or software purchased using Phase-In funds; and
  - 5.4.3 any equipment, supplies, Materials, etc, purchased pursuant to an SWO in support of the Work.

Phase-In and Out costs are covered by Exhibit E, Section 12, of the contract. The Phase-In costs are either paid annually (in equal installments) over the first three years of the term of the contract (starting on Oct. 1, 2011) or in the case of one Contractor immediately in the first three months after the Full Performance Date (Enovity). Phase-In costs shall be "the only costs the AOC pays in relation to (i) the Contractor's preparations for performing the Work, or (ii) any work performed by Contractor prior to the Full Performance Date. Each of the bidders for the contracts provided information concerning their basis for amount bid for Phase-In or Phase-Out. This ranged from detailed categories of costs listed by one bidder to one sentence given by another of the three bidders.

The Phase-Out costs are invoiced to the AOC and paid upon expiration or termination of the contract. These costs represent expenditures required to demobilize site operations upon the termination of the contract.

The following table provides the Phase-In and Out costs for each of the Contractors under the two contracts (initial contracts in 2006 and last contracts executed in 2011).

PHASE IN AND PHASE OUT COSTS BY CONTRACT AND CONTRACTOR				
	2006 - 2011 Contracts			
	Jacobs --SRO	Jacobs -- BANCRO	Aleut -- NCRO	Total
Phase In	1,300,000	1,025,000	400,000	2,725,000
Phase Out	400,000	400,000	20,000	820,000
	1,700,000	1,425,000	420,000	<b>3,545,000</b>
	2011- 2015 Contracts			
	ABM -- SRO	Enovity -- BANCRO	Pride -- NCRO	Total
Phase In	210,000	816,000	396,000	1,422,000
Phase Out	72,000	150,000	79,000	301,000
	282,000	966,000	475,000	<b>1,723,000</b>

Note: The amounts in the table above are dollars that are rounded to the nearest thousand.

### Issues

1. The original 2006 contracts specified certain requirements:

- Contractors were required to invoice Phase-In costs monthly, as these costs are incurred.
- **All** expenditures of Phase-In cost must be approved in writing by the Project Manager.
- Not to exceed amounts were established based upon square footage of responsibility.
- At the time of Phase-Out the salvage value of **any** equipment, furnishings, and vehicles purchased with Phase-In Cost will be deducted from the Not to Exceed Phase-Out Cost or the title of the assets will be assigned to the AOC at the AOC's discretion.
- The Contractor will provide to the AOC **all** equipment, materials, etcetera, purchased with AOC funds in support of their work under the agreement. Except in the case of termination for cause, the Contractor will be reimbursed for Phase-Out costs on a Not-to-Exceed basis. (7.2)

This effectively established an approval requirement for **all** Phase-In expenditures with an amount not to be exceeded. This latter requirement could be considered a limitation so that only expenditures invoiced and approved would be paid.

Shortly after the original contracts were executed, the contracts were amended to allow the full payment of the contracted Phase-In costs without the appropriate reporting and approval

of all expenditures of Phase-In expenditures. The contract amendment changes specified that:

- All expenditures of Phase-In Costs **in excess of \$1,000** per line item must be approved in advance and in writing by the Project Manager.
- **All vehicles, equipment, and other items purchased with Phase-In Cost funds will be the property of the Contractor.**
- At the time of Phase-Out the salvage value of any equipment, furnishings, and vehicles purchased with Phase-In Cost funds will be deducted from the Phase-Out Cost or the title to the assets will be assigned to the AOC **or the AOC's designee**, at the AOC's sole discretion.
  - **The Contractor will provide the AOC a list of all items with a purchase value of more than \$1,000 purchased with Phase-In Cost funds. This list will include a description of the item, purchase price, serial number or other identifying data, and the intended storage location of the item.**
  - **Each January and July the Contractor will provide a report on these items showing the current location, status, current book value, and estimated salvage value for each item.**

These changes effectively eliminated the tracking and accountability for Phase-In expenditures as outlined in the original contract.

It is believed that the amendment was initiated due to a declination of a Phase-In expenditure by AOC Accounting for relocation expenses. One reason for this contract amendment was an expressed desire to “not want to know what the vendors were spending the Phase-In money for” as it was a competitively bid amount that was considered necessary to initiate the program. It was also considered an “inefficient use of staff time.” The contract amendment was reviewed and approved by FMU and AOC Business Services but did not go to AOC Budget or AOC Accounting as there “was no fiscal impact.” Yet there was fiscal impact and if it would have gone to either of these two units there might have been a question concerning the change being made. Additionally, the amendment to Phase-In expenditures included the allowance for “moving allowances . . . and other costs to obtain and position the staffing and equipment to provide services to the AOC.” The contract did not have a monetary change reported on the cover but there was a fiscal impact in terms of the accountability and transparency of monies spent.

2. The new 2011 contracts require, as noted above, that the Contractor provide a record of all Phase-In costs:

“Expenditures of the Phase-In Costs shall be recorded and provided to the AOC.

This requirement does not establish a timing on when the reporting should be provided to the AOC but section 4.1 states that “During the Phase-In Period, the Contractor will acquire all equipment, manpower, and other Materials necessary to perform the Work at all facilities. The Phase-In Period is defined in the contract as the period “between the Effective Date and the Full Performance Date” or the period from June 20, 2011 and September 30, 2011. It would be reasonable to assume that the reporting would then be prepared and remitted by at least January 1, 2012.

In discussions with FMU management there appeared to be some confusion as to the timing during which Phase-In expenditures could be made under the new contract. Initial comments were that they could be made during the course of the contract. Under the old contracts the Phase-In money was tiered and paid as transfers were made and the square footage responsibility increased. This was not the case with the new contracts as outlined previously in this chapter. As of discussions and questioning of FMU management in early 2012, the Phase-In expenditure reports were not sent to the AOC nor were they requested to be sent to the AOC by FMU management. After further discussions, IAS in April\May 2012 requested FMU management to include in the firm fixed price letter a request that by July 1, 2012 a detailed accounting of all Phase-In costs in accordance with the contract be provided by each Contractor.

3. As noted in issue 2 above, the reporting was required under the new contract but had not been received as it was never requested. By the time the request was made in mid 2012 at IAS’s request, the full payment for one Contractor’s Phase-In expenditure ‘allowance’ of over \$800,000 and the first of three installments for the other two (approx. \$200,000) were already remitted. Again, this was done without receipt of any accounting for the expenditures.

It took almost two months to obtain the accounting for the Phase-In expenditures from all three of the Contractors after several conferences and questions and answer processes. Upon review of the detail provided by the Contractor, there were a number of items that resulted in questions and concerns. Two examples relating to one Contractor are:

- Expenditures listed with acquisition dates prior to the contracts execution which were requested to be removed.
- Expenditures for \$3,000 ‘ruggedized tablet’ computers totaling over \$50,000 in addition to laptops, desktops, monitors and software totaling over \$126,000. Some of the workers for the Contractor received both a tablet and a laptop.

This specific Contractor's expenditures as listed exceeded the contractual Phase-In 'allowance' but as will be noted in issue 4 below a review and denial of expenditures is not allowed in the contract except in certain circumstances.

4. Unlike the original contracts requirement for review and approval of Phase-In expenditures, the new contracts do not have this requirement. The reports requested and received on Phase-In expenditures noted in issue 3 above had many items that could and should have been questioned but without any contractual ability to deny them it would not be a worthwhile endeavor. Yet, certain questions and concerns were discussed by IAS with the Contractors as certain expenditures are covered by other contractual requirements.

According to the both the attorney from OGC and the Business Services personnel involved with the contract, FMU management was adamant about using a set Phase-In cost approach. Again, FMU justified this approach as valid because the actual amount of the Phase-In costs were "competitively bid." This issue was not raised by either of them to their supervisors even though they were knowledgeable of the concerns from the prior contract.

5. Another issue concerns the Phase-In expenditures as bid by ABM in the southern region (\$210,000) being significantly below the amount bid in the original contract by Jacobs (\$1.3 million). It should be noted that ABM was the primary subcontractor for Jacobs on the prior contract for the southern region and then subsequently the bay area region. The comparison of the other region's Contractors and their Phase-In expenditure estimates are somewhat similar.

The reason for this comment is that the prior contract on page 46, subsection v, concerning phase out stated that:

At the time of Phase-Out the salvage value of any equipment, furnishings, and vehicles purchased with Phase-In Cost will be deducted from the Not to Exceed Phase-Out Cost or the title of the assets will be assigned to the AOC at the AOC's discretion. Phase-Out Cost will not exceed the cost in the table below for the highest Square Footage of Responsibility assigned during the term of the Agreement.

An assumption may be made that because ABM personnel and equipment are in place in the south and therefore there is no need for significant Phase-In money. Yet, on request to provide Phase-Out accounts of the inventory purchased with Phase-In money, Jacobs provided an accounting listing of only \$1,700 in asset salvage value for the south. While some or much of the equipment would be written down it would still be useful and appears that ABM may be utilizing some of it due to the discrepancies between the two bid amounts. In total, the asset value listed for both the southern region and BANCRO was only

approximately \$4,000 consisting of software licenses, a temporary shed, several HEPA vacuums and some scaffolding.

6. Phase-Out costs according to the contract as described in the background section above. In the bids received the Contractors did not provide much detail nor was much asked for. In one the Contractor provided some cost elements without any associated costs and in another the only explanation and detail was “[t]he Phase Out costs have been estimated at a lump sum amount of \$150,000.

The contract specifies in section 5.4 that tangible and intangible property and computer equipment or software purchased with Phase-In funds, and any equipment, supplies, Materials, etc, purchased pursuant to an SWO in support of the Work be delivered and ownership assigned to the AOC. There are two concerns here:

- Phase-Out costs have no limitation or deduction basis similar to the original contracts and must be paid at the amount specified. The Reasons to Withhold Payment section may be used here.
- If detail is not obtained on the firm fixed price work concerning equipment, supplies, Materials, etc. purchased pursuant to a SWO what method will be used to determine what should be considered to be delivered and assigned ownership to the AOC.

### **Conclusion and recommendations**

The new contracts cover many of the concerns included above. While no contract is generally without a ‘hole or two’ the changes made by the amendment to the original contracts resulted in an increased risk, lack of accountability and transparency, and concerns relating to contract management. Going forward, Business Services and the Office of General Counsel are more aware of the concerns expressed and they have agreed to monitor amendments based on the issues discussed above. Contracts for this work in the future will incorporate changes as noted above. IAS is working with the new Office of Real Estate & Facilities Management (which formerly included the Facilities Management Unit of the Office of Court Construction and Management) on Phase-In reporting and other key provisions of the contract.

**AOC Business Services Unit**

**By: Pat Haggerty Date: October 2012**

Recommendation - Completed

Future contracts will ensure that all appropriate provisions in these sections are covered.

## **9.2 Contract Cost Model for the Firm Fixed Price Tier Does Not Provide for Accurate Determination of Whether Fair Value Was Received**

The new Office of Real Estate & Facilities Management (which formerly included the Facilities Management Unit of the Office of Court Construction and Management) separate regional facility management and maintenance services contracts executed in 2006 that expired in 2011. The contracts were bid out to new vendors in 2011 that utilized a three-tier cost model:

- firm fixed price for the basic contract overhead and support cost, and for most work under \$2000;
- cost plus for most work over \$2,000 but under \$15,000; and
- job order contracting for most work over \$15,000.

The new contracts were competitively bid and selection was based on experience, proposed concept of operations, and cost. Riverside, Napa, Fresno, and one appellate court were part of the selection panel. Separate job order contractors were selected to bid on larger facility modification projects. A performance based compensation percentage was set at 7% of total invoice to allow for a much larger pool and a bigger incentive for the contractor to exceed the contract minimum standards. The 7% is withheld from the contractor payment and put into a pool where every six months a determination of the amount of the pool to release to the contractors is made. The decision is made by a panel that includes a number of courts.

Industry reports typically emphasize a general requirement to use firm fixed price contracts only when costs and pricing of the contracts can be estimated with sufficient accuracy. One source of this information is the September 2009 United States Government Accountability Office report entitled Contract Management: Extent of Federal Spending under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used. The following discusses three general contract types that are used to procure goods and services for this type of work by government agencies.

### **Firm fixed price contracts**

Firm-fixed price contracts are those contracts that provide for a price which normally is not subject to any adjustment. However, prices are subjected to changes if they are explicitly included in the agreement. The changes include contract change, economic pricing, or defective pricing. This contract type is where a contractor is paid a negotiated amount regardless of incurred expenses. This contract type can include variations for target efforts, level of effort, materials reimbursement, award fees, economic price adjustments, incentives, etc. Attributes include:

- Generally lower or minimal risk and will provide saving (lowered costs or cost growth)  
**IF**
  - Historical data over an appropriate period of time is accurate, verifiable, and complete at a lower level of cost or work type (i.e. not a bundled or high level);
  - Realistic pricing can be established based on the historical data so that a good reasonable accurate estimation of a contract bid can be achieved in total and by primary work types; and
  - The program is a mature program that is not expected to be subject to significant cost growth or fluctuations.
- Under this type of contract the contractor usually charges a higher base fee and the ‘buyer’ gets a set dollar amount that avoids cost escalation.
- A fixed price contract places minimum administrative burden on contracting parties, but subjects a contractor to maximum risk arising from full responsibility for all cost escalations and resulting profit or loss.
- It provides a contractor maximum incentive to control costs and perform effectively and imposes minimum administrative burden upon contracting parties.
- A firm-fixed-price contract is generally used when the risk involved can be predicted with a high degree of certainty.

### **Cost plus contract types**

This contract type is where a contractor is paid for all of his allowed expenses to a set amount plus an additional payment to allow for a profit as an incentive. Cost reimbursement contracts which pay out all allowable, allocatable, and reasonable costs incurred and generally a fee or profit include: cost plus fixed-fee, cost plus incentive fees, cost plus award fee, and cost plus a percentage of cost. Attributes include:

- Generally higher risk and are initially used in a program that is early in its life cycle and has no reasonable comparative programs that can provide a good frame of reference concerning pricing. Pricing is generally built by work type to accumulate to a contract estimated total.
- A cost-reimbursement contract is appropriate when it is desirable to shift some risk of successful contract performance from the contractor to the buyer. It is most commonly used when the item purchased cannot be explicitly defined or detailed, as in research and development, where there is not enough data or concern about the accuracy of the data so that an accurate estimate of the final cost cannot be made.
- A cost-plus contractor has less incentive to control costs.
- A cost-plus contract is often used when long-term quality is a much higher concern than cost.
- Final cost may be less than a fixed price contract because contractors do not have to inflate the price to cover their risk.
- Additional concerns about this contract type include:

- There is limited certainty as to what the final cost will be.
- Requires additional oversight and administration to ensure that only permissible costs are paid and that the contractor is exercising adequate overall cost controls.
- Properly designing award or incentive fees also requires additional oversight and administration.
- There is less incentive to be efficient compared to a fixed price contract.

**Time and material contracts** are used when it is not possible to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. This type of contract pays fixed per-hour rates that include wages, overhead, general administrative costs, and profit; government agencies might reimburse contractor for other direct costs, such as travel and materials costs. Contracts include a ceiling price that the contractor exceeds at its own risk. Government agencies are not guaranteed a completed end item or service within the ceiling price. The contractor normally should make a good faith effort to meet the government agency's needs within the ceiling price. This type of contract for the maintenance work is not normally considered.

### **Contract selection**

Frequently individuals utilize the contract type that they are comfortable with but may not be the contract type that is the best or most appropriate for the requirements of the program being considered or in place. It also occurs as individuals are either not as concerned about cost, have a limited amount of time, or do not wish to exert efforts to ensure the best contract type for the program in the current environment is obtained.

### **AOC Program**

Usually during a program life cycle you may move from cost plus to firm fixed price contracts based on the attainment of the attributes identified above. If the attributes discussed above that would reasonably allow moving from cost plus to firm fixed price are not adequately achieved, it is questionable as to whether to move from closer management and control of the work and expenditures to a lesser form of management and control. The AOC's program was initiated in 2005-2006 but the facility transfer completion was at the end of 2009 with significant transfers during 2009. This generated the volume of maintenance activity seen only in the more recent years of 2010 through 2012 rather than the prior years. Concerns include:

- The data that has been accumulated over time is not believed to be sufficient nor as reliable as it could be to reasonably and accurately estimate the pricing for the new contracts.
  - Examples of concerns relating to reliability are included in previous sections of this report and include issues such as escorting costs.
  - Lack of supporting data being provided upon request of IAS leads to concerns relating to both sufficiency of information and reliability.

- The contracts are unique and there are no comparable models for primarily single use facilities out there for various purposes including the full bundling of all work types: landscaping, electrical, plumbing, minor repair, etc.
- While the bidding was competitive without the data above IAS cannot determine whether or not the awarded bids were within a reasonable tolerance level of lowest probable cost considering all information such as volumes of work, type of work, locations/facilities work histories, age of facilities, etc. Review of the competitive bidding on the phase in and out costs by contract provides a simple example of the difficulties of pricing on these contracts.

Additionally, there have been comments made by FMU management that on firm fixed price contracts:

- There are ‘winners and losers and the government always loses.’
- The contracts were competitively bid primarily utilizing square feet and associated maintenance cost standards. The firm fixed price tier appears to have been felt to be a solution or remedy to various inquiries concerning how much money was being spent and the maintenance activities it was spent on. CAFM records the work requests but the contract does not require any details beyond the request and approval information.
- Sufficient information is still available in CAFM initially to identify concerns about expenditures under the new contracts, especially under the cost plus tier.
- The contract provides for less administrative burden on the AOC because of the firm fixed tier.

It is expected that government agencies and their management extend significant and maximum efforts to ensure that all contracts entered into minimize cost and provide full accountability for the taxpayer monies expended and transparency of the process. Maintenance and repair pricing of contracts is not an exact science whereby there is a direct nexus between requests and cost. However, with accurate, verifiable, and complete historical analysis of data, a reasonably accurate approximation can be made that over time results in no ‘real’ winners and losers. More importantly, it should not be the expectation of management that in the contract process the government will always lose but rather that the winning bid be within an acceptable and expected limited range even when competitively bid. It is, though, still critical to know what is being paid for and to determine whether the state is receiving fair value for the money paid under all tiers of the contract and especially for the firm fixed price tier.

The current contracts allow for the request of data by service work order including firm fixed price.

Exhibit B, Section 2.2.6 of the contract specifies that the Contractor:  
“is responsible for providing to the AOC requested data on the status of all Work in a timely manner. This includes information on SWO status, cost, schedule, and general trend information on Contractor performance.”

Exhibit B, Section 7.1.3 of the contract specifies that the Contractor:  
“. . . shall use CAFM to (i) receive, review, approve, coordinate, and track all SWOs; and (ii) log, schedule, and as required record all labor and associated costs and activities to each SWO.”

Exhibit B, Section 7.1.5 of the contract concerning work closeout specifies that the Contractor:  
“. . . and as required recording all cost, Materials, equipment, subcontracted work, etc. in CAFM.”

The contracts also have very broad audit rights in Exhibit F, Section 17.

The contracts therefore allow for the direct charges (labor, materials, etc.) to be obtained by work order. They also directly specify mandatory management and support staff costs and with data provided they allow for the reasonable imputation of other minor costs. Requesting this information for the purposes of accumulating data on the work and associated costs can allow data to be compiled to determine whether the pricing on the contract was reasonable or not. An analysis using a 12 month period can be done to evaluate the pricing. It is not being done to determine profitability of the contract by vendor but to establish whether the pricing was reasonable as a basis to use for when the existing contracts expire or, depending on the results of the analysis, a change in the current status of the existing contracts.

### **Conclusion**

On May 25, 2012, based upon direction from the AOC’s Executive Office, a formal request was made by FMU to each of the companies to provide cost data in accordance with Exhibit B, Section 2.2.6, of the contracts with them. After a series of meetings to work out the details, the data is being obtained and analyzed.

While the vendors expressed concerns (operational and cost) over providing the data based on the contract, data has been provided timely every month. There are concerns that have been expressed internally about the time and effort put into the current data collection efforts. These concerns include the efforts of the vendors being directed to other than maintenance work, cost

of their efforts, and whether adequate data and information will be obtained to evaluate the cost of the contracts.

Consideration of additional methods of analysis and metrics (both quantitative and qualitative) of the contract work will be evaluated to determine the adequacy and value of the services provided. The only valid means of determining whether best value was obtained is gathering the data and it continues to be recommended that this be done for at least a year before reassessment.

**OCCM Facilities Management Unit Response    By: Gerald Pfab    Date: August 2012**

Recommendation - Completed

Process established and Contractors have agreed to provide the data. Data for three months has been obtained starting in August 2012.

## **APPENDICES**

- A: Issues Control Log**
- B: Legislative Framework**
- C: OCCM Timeline**
- D: FMU Map: Regional, District, and Area Offices**

# **Appendix A**

## **Issues Control Log**



Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	C/I	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			FMU's CSC staff's operational access to CAFM functionality to forward SWOs to the Contractors is not commensurate with their approval authority documented in FMU's "Approval Authority Matrix". CSC staff members can forward SWOs to the Contractors to initiate work chargeable to FMU without dollar limitations.	C	The complexity and cost to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. The current Service Work Order Update process addressed above provides the needed documentation as to who actually approved the action. The CSC staff who releases the SWO to the contractor is acting in an administrative capacity for all work beyond their approval authority. Based on discussions with IAS manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.	Gerald Pfab	August 20, 2012
	1.3	11	<b>Enhancements Needed Over FMU's Service Work Order (SWO) Close-Out Process</b>				
			FMU does not have a formalized process in place to document on a consistent basis (either in CAFM or other data bases used by FMU) the specific steps taken to verify that services were actually performed and the associated materials/equipment was received/installed.  For 12 Facility Modification SWOs, insufficient information residing in CAFM to document the level of review performed by project managers prior to the close-out CSC staff.	I	Preliminary Procedures are under development. Initial training for documentation submittal requirements completed Sept 11, 2012. Additional follow up training will be required once the formal process is finalized.	Gerald Pfab	September 2013
			FMU's CSC staffs have operational access to SWO close-out functionality in CAFM without dollar limitations.	C	The complexity and programming effort to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. The CSC staff who closes the SWO is acting in an administrative capacity for all work beyond their approval authority. Based on discussions with IAS manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.	Gerald Pfab	August 20, 2012

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			Lack of documentations to support that a court lighting project for energy efficiency did not qualify for a rebate.	C	OCCM agrees with Recommendation 1.3 # 3 to establish procedures to document a project's rebate status, whether or not a project qualified for rebate. To date, OCCM has been tracking approved rebates. OCCM's Business and Finance Unit has recently completed a draft rebate procedure that will include tracking of all projects submitted for rebate. The final procedure is expected to be complete by August 31, 2012. OCCM's Business and Finance Unit staff will be conducting a meeting by September 28, 2012 with FMU and the Service Provider's to review the official procedure. The procedure will document the current process, which requires either FMU or the Service Provider to contact the Utility Engineer Analyst assigned to their region to determine eligibility of energy efficiency projects for available rebate. The procedure requires submission and tracking of all energy related projects for rebate, and will include documenting approval or denial of rebate.  Procedural instructions were finalized and released in October 2012. Field and Service Provider training sessions were completed on November 13, 14 and 16th. Monthly progress reporting within the FMU statewide and regional meetings was implemented .	Gerald Pfab	October 1, 2012
	1.4	7	<b>FMU Needs to Actively Monitor its Contractors' and their Subcontractors' Compliance with the Prevailing Wage Laws and Report Non-Compliance Pursuant to Labor Code Section 1726(a)</b>				
			Inadequate monitoring by FMU of the regional Contractors' compliance with the Prevailing Wage Laws which resulted in the late discovery and consequentially late corrective actions taken of the Contractors' (and some of their subcontractors') suspected violations of the Prevailing Wage Laws including the apprenticeship standards.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			The Certified Payroll Records (CPRs) submitted and accepted for review by FMU did not contain many of the required data elements pursuant to LC §1776.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
	1.5	6	<b>FMU's Management of its Public Works Project Contracts in Areas Pertaining to the Payment Bond Must Advance</b>				
			The amounts of payment bonds obtained by the Contractors, although within the amount specified in the original contracts were substantially less than the total amount encumbered for the contracts after the various amendments and extensions.	C	Completed At each anniversary of the service provider contracts, the Risk Management Unit requests from the service 4 pieces of information: (1) 12 month total of facility modification work (2) 6 month average of facility modification work (3) 12 month total of cost plus work (4) Cost plus work in progress at the anniversary of the contract. Based on an analysis of these 4 pieces of information the payment bond amount is set for the next 12 month period. This process is being set forth in a specific procedure applicable to public works projects that will be complete by October 31, 2012	Jim Mullen	October 2012

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	1.6	16	<b>Improvements Needed in Documenting that the Best Value was Obtained for the AOC</b>				
			FMU does not have a formalized process in place to document the discussions and decisions reached by FMU staff in obtaining the best value for the AOC.	I	OCCM agrees that an ongoing audit and oversight processes need to be developed. Many changes have occurred over the past two years that reduce the risk related to this finding. Most importantly, a new contract model is now in place that reduced Cost Plus Work from almost 100% of the contract cost to less than 10% of the contract cost. The most common contracting model used today for all but the smallest of Facility Modifications is Job Order Contracting. This model has pre-established costs for various items of work. This predetermined pricing reduces the likelihood of overcharges and other related findings resulting in the best value for the branch. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan and other oversight processes, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			Separate contracts with the regional Contractors for larger facility modifications projects were not entered into by FMU to fully protect the AOC's legal rights.	C	Many changes have occurred over the past two years that reduce the risk related to this finding. Most importantly a new contract model is now in place which move all non emergency work to the Fixed Price Job Order Contracting contract that does have different terms and conditions than the services contract.	Gerald Pfab	October 1, 2011
	1.7	17	<b>Improvements Needed Over FMU's Process of Monitoring Subcontractor Costs and Material Costs</b>				
			The functionality in CAFM to pull the information to generate the Subcontractor Costs and All Materials reports was limited to a six month period until April 2011. Thus FMU was limited in its ability to monitor on an ongoing basis, the various non-teammate subcontractors (and their associated labor charges) utilized by the Contractors in the performance of the work.	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place that reduced Cost Plus Work from almost 100% of the contract cost to less than 10% of the contract cost. This reduced the likelihood of overcharges and other related findings. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			Missing in the All Materials report is a data field for the vendor's name where materials were purchased from. Without the "Vendor's Name" information, FMU was unable to monitor the dollar value of purchases from the various vendors utilized by the Contractors to determine whether a particular vendor(s) is providing an inordinately high percentage of the materials purchased.	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight. If as part of the Audit Plan the above requested data is needed to implement the plan, FMU will fully examine the cost and practicality of implementing this recommendation.	Gerald Pfab	April 2013
	1.8	13	<b>OCCM's Agreement with the AOC's Accounting Unit Regarding Review of Service Work Order Charges and the Associated Accounting Distributions Must be Documented in Writing</b>				
			OCCM's FMU and Business and Planning Service Unit and Accounting did not document in writing their understanding of their respective roles and responsibilities regarding the review of the service work order charges residing in the monthly invoice received from each of the Contractors and the associated accounting distribution charges related to the invoice.	I	OCCM will initiate discussions with AOC Accounting to develop a documented understanding of the roles and responsibilities of the two units regarding the review of SWOs. Prior to developing this understanding, OCCM believes that the Audit Plan needs to be developed to determine the level of review required for SWOs. This will then aid in the assigning of roles and responsibilities.	Gerald Pfab, Pat Haggerty and Gisele Corrie	December 2013
		<b>Log</b>	FMU's policies and procedures are currently a work in progress and as of August 2010, many of the policies and procedures were in draft form.	I	FMU continues to update and document procedures.	Gerald Pfab	December 2013
		<b>Log</b>	The "Subcontractor Costs" section of the SWOs does not provide a data field for specifics regarding the description of subcontractor services charged to the SWO including the number of labor hours charged, time type, and worker craft classifications.	C	The complexity and programming effort to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. Based on discussions with IAS manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.	Gerald Pfab	August 20, 2012
		<b>Log</b>	Many of the descriptions for materials and equipment purchased and reported in the "Material Costs" section of the SWOs were general and did not provide sufficient detail (such as type and quantity of materials purchased, model name and serial number of the equipment purchased).	C	The complexity and programming effort to develop CAFM to the level recommended is not worth the impact on the system or the cost to develop it. Based on discussions with IAS manager on August 20, 2012, IAS and FMU agree that this recommendation is not economically viable to be implemented at this time.	Gerald Pfab	August 20, 2012

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	Log		Three SWOs for landscaping services were closed-out by one of the Contractor's staff without sufficient documentation of on-going site reviews performed by FMU staff that work was performed and performed according to FMU's agreement with the Contractor. According to FMU, it completes scheduled site reviews for landscaping work for all court facilities throughout the course of the year based on a calendar matrix. The reports on site reviews provided by FMU did not provide information such as the name of the individuals that performed the site reviews and any comments related to the site reviews performed.	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight	Gerald Pfab	April 2013
	Log		Other insufficient and inaccurate information residing in the Asset Module in CAFM: Missing model number of two HVAC equipment purchased, error in recording the serial number for an HVAC equipment, and error in the installation dates of two roofing systems.	C	FMU continues to verify data related to the almost 10,000 assets in the AOC database. Each asset has between 20-35 data points, like the examples in the issue. Additionally assets are changed, added, or inactivated at a rate of between a few dozen and over a hundred each month. With a live data base of over 250,000 data points it will be an ongoing effort to ensure the highest reliability possible for the data but it is unlikely that it will ever be 100% accurate. FMU will continue to update the data base as errors are found and items are changed out, added, or inactivated. Since we consider this to be an ongoing effort this item should be closed..	Gerald Pfab	September 26, 2012
	Log		Possible misclassifications of work types from "Job Order" to "Facility Modification" for four SWOs (for maintenance repair, landscaping, and inspection of fire sprinklers) resulted in the state fund (usage is limited to alteration and construction type activities) charged for the work performed.	I	While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
	Log		The Contractor for SRO and BANCRO did not note in their certificate of liability insurance coverage for fidelity bond as required by the contract if in the event that the insurance coverage does not include crime coverage. The certificate of insurance was not provided to OCCM's Risk Management Unit.	I	The commercial crime insurance (fidelity bond) would not usually be verified in the same document as the commercial general liability insurance. Further, certificates of insurance were, and still are the responsibility of the AOC Business Services Unit to collect and review. The OCCM Risk Management Unit provides assistance to Business Services on request. The Risk Management Unit will work with Business Services to review and modify, if necessary, the practice of certificate of insurance review.  This is still an open item to be considered as part of the final review of the procedures being developed in response to the capital program audit completed by Pegasus Global Holdings, Inc. Resolution expected on or before July 15, 2013.	Jim Mullen	July 15, 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	Log		Copies of payment bonds were not readily available and had to be requested from the Contractors.	C	Service Provider payment bonds are now forwarded to the OCCM Risk Management Unit. The Risk Management Unit has established an annual diary date of August of each year to review the amount of construction related work both fixed cost and cost plus provided by the service provider since the last anniversary of the contract and based on that work effort adjusts the principle amount of the payment bond as necessary, and notifies the service provider. The Risk Management Unit receives, reviews, and files a copy of the bond.	Jim Mullen	October 1, 2012
<b>2</b>	<b>General Prevailing Wages</b>						
	2.1	4 and 5	<b>Contractors and Some of their Subcontractors May Not Have Complied with Some of the Labor Code's Prevailing Wage Laws</b>				
			Potential payments of less than the general prevailing rates of per diem wages required by LC §1774.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			The employees' titles reported in some of the submitted CPRs did not correspond to the craft classifications as fixed by the Director of the Department of Industrial Relations (DIR) or were not reported in the CPR.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			Some of the submitted certified payroll records (CPRs) did not contain all the required data elements as specified in LC §1776(a).	C	The contractors have been informed as recommended.	Gerald Pfab	October 2011

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			The certification language in some of the submitted CPRs did not contain the phrase “ <i>Under Penalty of Perjury</i> ” as required by LC §1776(a).	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			Some of the information reported in the certified payroll records (CPRs) did not reconcile to the information reported in the service work orders. In addition, some of the CPRs submitted may not be reflective of the Contractor’s payroll records.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			Insufficient labor descriptions residing in some of the SWOs such as labor descriptions were either left blank or were not documented in sufficient detail to adequately document the work performed and to make a determination whether the work was subject to the prevailing wage laws.	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			Of the nine CPRs reviewed for employment of apprentices, eight of the CPRs submitted did not report/specify the employment of apprentices in apprenticeable crafts and one (1) of the CPR reported the employment of apprentices but not at the required 1 to 5 ratio of apprentice to journeyman hours as required by LC §1777.5(g).	I	OCCM agrees that an ongoing audit process needs to be developed and that FMU staff need additional training on Prevailing Wage compliance related issues. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
<b>3</b>	<b>Contractors' General Building "B" License Status</b>						
		<b>3.1</b>	<b>9</b>		<b>Improvements Needed Over the Verification and Monitoring of Contractors' "B" License Status</b>		
			The NCRO Contractor's license status was not verified by the AOC's Accounting and Business Services Unit (Finance Division) prior to the signing of the Contract (and Contract amendments) to ensure that the Contractor, a limited liability company, qualified for and had the required "B" Contractor's License.	C	Implementation of this recommendation has been in place since May of 2011.	Gerald Pfab	May 2011
			SRO Contractor's "B" license status was not monitored periodically throughout the contract period and its "B" License expired during the term of the contract.	C	Implementation of this recommendation has been in place since May of 2011.	Gerald Pfab	May 2011

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
<b>4</b>							
<b>Requests for Documentations from the Contractors</b>							
	4.1	8	<b>Contractors did not Submit or Submitted Late the Requested Documentations to Support the Charges Reported in the Service Work Orders Selected as Samples for Review</b>				
			As of October 2011, the Contractor for both the SRO and BANCRO regions has not submitted the following: (1) The supporting documentations including the associated CPRs to support 42 of the total 71 SWOs from IAS' January 18, 2011 Request for Documentations and (2) The CPRs for its non-teammate subcontractors for the 9 SWOs from IAS' March 4, 2011 Request for Certified Payroll Records. The costs reported in the SWOs supporting documentations including CPRs were not received from the Contractor totaled approximately \$3.8 million.	C	All information has been provided to OGC to include in the ongoing litigation.	Gerald Pfab	October 1, 2011
			The Contractor for the NCRO region was late in submitting some of the requested supporting documents including the CPRs for its non-teammate subcontractors.	C	All information has been provided to OGC.	Gerald Pfab	October 1, 2011
<b>5</b>							
<b>Contractors' Charges to the AOC – Labor</b>							
	5.1	2	<b>Service Work Order Labor Charges for “Escort and Other Similar Type Services” Appear to be Non-Allowable Contractual Charges</b>				
			Throughout the SWOs were numerous direct labor charges for “escort and other similar type services” recorded in CAFM by the Contractors and/or their teammate subcontractor’s employees. Based upon the Contracts and the nature of the work performed, the direct labor charges (with their associated management fee and the potentially available performance based factor) reported in the SWOs for escorting and other similar type services appear to be non-allowable charges to the AOC.	I	<p>Recommendation # 1 - In- progress - FMU met with the new contractors in February 2012 to review the results of the first contractual audit and to provide clear direction as to the applicability of escorting charges within the current contract. Escorting charges are part of the current FMS monthly audit process. While awaiting a formally approved Audit Plan, FMU has worked with IAS, and other organizations to develop interim procedures to provide auditing of this item within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.</p> <p>Recommendation # 2 - Complete - All information has been provided to OGC for inclusion in the ongoing litigation. FMU is not in full agreement with this interpretation of the previous contract by IAS and believes that escorting was an allowable expense within certain parameters.</p>	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	C/I	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	5.2	3	<b>Some Contractor Direct Labor Charges Include Management and Support Activities that Should Already be Part of the Management Fee</b>				
			Numerous labor charges reported in the SWOs for "Direct Cost Work" by Contractors/teammate subcontractor's management and support personnel. Pursuant to the Contracts, the Management Fee was structured to compensate the Contractors for such management and support type activities including administrative costs. As a result, Contractors were effectively paid twice for the same costs.	I	<p>Recommendation #1 – In Process - FMU met with the new contractors in February 2012 to review results of the first contractual audit and to provide clear direction on to the applicability of these charges within the current contract. Compliance with this requirement is part of the FMS monthly audit process. FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.</p> <p>Recommendation # 2 – Completed - All information has been provided to OGC. The litigation with the SRO and BANCRO contractor is in progress. FMU is not in full agreement with this interpretation of the previous contract by IAS and believes that generally throughout the contract, billing for management personnel when acting in a construction management capacity was an allowable charge.</p>	Gerald Pfab	April 2013
	5.3	1	<b>Overtime Paid to Contractors in Excess of the Statutory Minimum Appears to be in Compliance with One Contract Provision But Not Another</b>				
			Inconsistent language in the Contracts regarding the payment for overtime. One subsection provided for the payment of overtime based on the per diem wages while another subsection G provided for the payment based on the basic rate of pay.	C	Concur with IAS recommendation.	Gerald Pfab	October 1, 2011
			Overtime was calculated in CAFM and charged to FMU at one and a half times the <i>Total Labor Costs</i> rather than at one and a half times the <i>basic rate of pay</i> as provided for in the Labor Code and the DIR's Public Works Manual.	C	Concur with IAS recommendation.	Gerald Pfab	October 1, 2011
<b>6</b>			<b>Contractors' Charges to the AOC – Supporting Documents</b>				
	6.1	10	<b>Some Contractor Submitted Information is Insufficient, Incomplete, and Illegible to Support the Charges Reported in the Service Work Orders</b>				

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
			The invoices/detail sheets to support the labor charges by a Contractor's six subcontractors for four facility modification projects reported only a lump sum dollar amount for labor charges.	I	FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.	Gerald Pfab	April 2013
			Labor descriptions for nine SWOs that were for tasks that were mostly recurring in nature such landscaping, grounds maintenance work and report writing were not noted in the SWOs.	I	FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.	Gerald Pfab	April 2013
			Timesheets associated with five SWOs for landscaping /grounds maintenance type work were not submitted by one of the Contractors for its teammate subcontractor's workers who performed the work. Additionally, the dates worked in the submitted timesheets for another two SWOs involving plumbing and utilities work were not legible.	I	FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.	Gerald Pfab	April 2013
			In at least nine SWOs, numerous variances were noted in the number of hours and/or time type information reported and charged to the service work orders when compared to the information residing in the timesheets, time logs and/or Certified Payroll Records. One of the Contractors self identified this issue.	I	FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.	Gerald Pfab	April 2013
			In 13 of the SWOs reviewed, invoices and detail sheets to support payment requisitions submitted by the Contractors and/or their subcontractors only reported a lump sum for "Materials" purchased or included a very high level description of the materials purchased.	I	FMU continues to work with IAS on developing an approved Audit Plan to include review of labor and material related charges. The plan should include necessary staffing levels and expertise to ensure compliance.	Gerald Pfab	April 2013
	6.2	10	<b>Some Contractor Submitted Documents Did Not Provide Sufficient Information to Account for the Variance Noted Between the Labor Charges Reported in the Non-Teammate Subcontractors' Invoices When Compared to the Certified Payroll Records</b>				
			From IAS' review of the invoices and CPRs, five (5) of the seven (7) non-teammate subcontractors showed variance ranging from \$5,000 to \$591,000 and from 53% to 97% between the amount invoiced for labor to the labor charges residing in the submitted CPRs was noted	I	OCCM agrees that an ongoing audit process needs to be developed. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	6.3	10	<b>Some Supporting Documents did not Provide Sufficient Information to demonstrate that the Best Value was Obtained for the AOC</b>				
			Contractor submitted information for the four facility modification SWOs reviewed did not provide sufficient information (such as proposals received from <i>other</i> subcontractors to evidence competitive bidding or justification for sole source) to demonstrate that the purchase of materials and/or subcontractor's services resulted in the best value to the AOC.	I	OCCM agrees that an ongoing audit process needs to be developed. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
			The proposals submitted by the Contractor for the four facility modification SWOs, which served primarily as the basis of the amounts charged to the AOC did not provide sufficient information regarding how the proposed amounts were arrived at.	I	OCCM agrees that an ongoing audit process needs to be developed. OCCM agrees with the IAS assessment as stated throughout the audit that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities and that the heavy reliance on temporary employees has hampered the ability of FMU to provide oversight at the expected levels. While awaiting a formally approved Audit Plan, FMU has worked with IAS, OGC, and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight.	Gerald Pfab	April 2013
		<b>Log</b>	A Contractor billed the AOC \$69,100 (1/2 of the total billed by its subcontractor of \$138,200) on September 30, 2009 but the work was not performed by the subcontractor until October 2009. The proposal by the subcontractor to the Contractor by did not specify the billing schedule. The contractor also stated in its proposal that it will provide "construction contract funding".	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight	Gerald Pfab	April 2013

Report Chapter	RPT NO.	ISSUE MEMO	ISSUE	CI	FMU RESPONSE	RESPONSIBLE EMPLOYEE	ESTIMATED COMPLETION DATE
	Log		Three non-emergency SWOs reported labor hours prior to SWO open date.	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight	Gerald Pfab	April 2013
	Log		An invoice for materials purchased was reported in the "Subcontractor Cost" section of the SWO thus management fee and the potentially available Performance Based Compensation were automatically calculated by CAFM and added to the actual costs of the SWO.	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight	Gerald Pfab	April 2013
	Log		An invoice for materials was reported twice in the same SWO. Another invoice for subcontractor labor was reported in the wrong SWO. (The invoiced amounts were less than \$150 each).	I	OCCM agrees that an ongoing audit process needs to be developed. Many changes have occurred over the past two years that reduce the risk related to these findings. Most importantly a new contract model is now in place. OCCM agrees with the IAS assessment, as stated throughout the audit, that the FMU staff has not kept pace with the increased responsibilities involved in the management and maintenance of court facilities. While awaiting a formally approved Audit Plan, FMU has worked with IAS and other organizations to develop interim procedures to provide some level of oversight within the existing staffing resources. OCCM has been and will continue to work with IAS and the AOC Executive Office to develop an Audit Plan that will balance the risk, expectations, and the cost of increased staffing necessary to provide adequate oversight	Gerald Pfab	April 2013
7	Merced Old		This chapter provides in one project examples of issues discussed in previous chapters and therefore does not require a response.				



## **Appendix B**

### **Legislative Framework**

- Proposition 220 - passed by California voters in 1998, allowed for the voluntary unification of the state's superior and municipal courts into a single trial court in each county.
- The Lockyer-Isenberg Trial Court Funding Act of 1997 (Assembly Bill 233) - made funding of court operations a state responsibility when it shifted funding of court operations from counties to the state.
- The Trial Court Employment Protection and Governance Act (2000) - made the courts independent employers of the more than 20,000 trial court workers.
- The Trial Court Facilities Act of 2002 (Senate Bill 1732 and subsequent modifying language) - was enacted based on the Task Force on Court Facilities' overarching recommendations to shift the responsibility for trial court facilities - including operations, maintenance, facility modifications, and capital-outlay projects - from county to state governance, under the direction of the Judicial Council.

The AOC established the Office of Court Construction and Management (OCCM) in 2003 to fulfill its responsibilities pursuant to the Trial Court Facilities Act.

- Assembly Bill 1491 (2008) – extended the facility transfer deadline to December 31, 2009.
- Senate Bill 1407 (2008) – authorized up to \$5 billion in lease-revenue bonds for courthouse construction and renovation. The Judicial Council adopts a list of 41 courthouse construction and renovations projects to be funded by SB 1407.

## Appendix C

### OCCM Timeline

Source: Fact Sheet – OCCM (April 2011 and April 2012)

- **1997**  
A statewide Task Force on Court Facilities is established by statute, to document the condition of California's existing court buildings and the need for new or modified court facilities, and to identify funding mechanisms. The task force included 18 members: 6 who represented the courts; 6 who represented the counties; and 4 who represented the state bar and the executive branch.
- **2001**  
The Task Force on Court Facilities identifies critical physical deficiencies in court buildings throughout the state. Its final report outlines, in broad terms, a program to improve or replace courthouses to make them safe, secure, and accessible.  
The most far-reaching recommendation is that responsibility for courthouse stewardship should be shifted from the counties to the state. The task force recommends that the judicial branch, which is responsible for all court functions, should also be responsible for the buildings in which they operate.
- **2002**  
The Trial Court Facilities Act (Sen. Bill 1732) is enacted. The act provides for the shift of responsibility for trial courthouses from county to state governance, under the direction of the Judicial Council.
- **2003**  
Separate master plans are created for each of California's 58 superior courts. The Judicial Council adopts the first procedure to prioritize the first two-thirds of all 340 projects identified in the master plans. This procedure is applied to 201 projects to develop the first Trial Court Capital-Outlay Plan, a prioritized list of projects.
- **2004**  
The first transfer of a courthouse from a county to the state is completed.
- **2005**  
The Judicial Council adopts the first Judicial Branch Five-Year Infrastructure Plan, which documents the urgent need for a multibillion-dollar program for improvement of the state's courthouses. The five-year plan is submitted annually to the California Department of Finance as part of the court project funding request process.

The first two trial court capital-outlay projects, in Merced and Contra Costa are funded by the Legislature.

The Prioritization Methodology for Modifications to Court Facilities is adopted by the Judicial Council.

- **2006**

Four more projects, for Superior Courts in Fresno, Mono, and Plumas Counties, are funded by the legislature.

To facilitate transfer of courthouses to judicial branch oversight, the legislature revises the Trial Court Facilities Act by enacting Senate Bill 10, which resolves liability issues for the state in taking over buildings that do not meet seismic safety standards. Under SB 10, buildings with a seismic level V rating can be transferred to the state so long as liability for all earthquake-related damage remains with the counties.

The Judicial Council adopts the Prioritization Methodology for Trial Court Capital-Outlay Projects, which results in a Trial Court Capital-Outlay Plan with projects assigned to one of five project priority groups.

OCCM contracts with three regional service providers for facility management services.

First meeting of Trial Court Facility Modification Working Group.

- **2007**

Funding for nine additional trial court capital-outlay projects is approved by the legislature.

- **2008**

Senate Bill 1407 (Perata) authorizes up to \$5 billion in lease-revenue bonds for courthouse construction and renovation.

The Judicial Council adopts a list of 41 courthouse construction and renovations projects to be funded by SB 1407.

By year's end, a record number of buildings, more than 400, transfer to the state.

- **2009**

Senate Bill 1407 revenue collection begins in January, officially kicking off the beginning of a historic improvement to California's court facilities.

In February, the Legislature enacts SBX2 12, which provides an expedited funding authorization process for the acquisition and preliminary plans phases of SB 1407-funded projects.

OCCM completes a new courthouse for the Fourth District Court of Appeal, in Santa Ana, and in Portola, the first multijurisdictional courthouse, which serves the Superior Courts of Plumas and Sierra Counties.

OCCM completes transfer of all 532 court facilities to judicial branch management on December 29, 2009.

- **2010**

All 41 SB 1407 projects receive funding authorization to proceed. The capital program now totals 59 projects, either completed, current, or pending, at \$6.5 billion.

OCCM handles its 100,000th service work order.

OCCM completes courthouse projects in Fresno and Pittsburg and breaks ground in Mammoth Lakes and Susanville.

- **2011**

Courthouse construction funding cut, projects cancelled: The Court Facilities Working Group was established by the Chief Justice to provide oversight of the facilities program. Due to the state's budget crisis, the legislature swept \$310 million from court construction funds for other state needs. Another \$440 million was borrowed, and \$150 million of facilities funds were redirected to court operations. As a consequence, in December 2011, the Judicial Council cancelled two SB 1407 projects and directed cost reductions on all others

# Appendix D

## Facilities Management Unit – Regional, District, and Area Offices

### FACILITIES MANAGEMENT UNIT

