



**Internal Audit Committee of
Brevard County, Florida**

Contract Compliance Reviews

**Prepared By:
Internal Auditors of Brevard County
Presented at the December 2, 2009
Audit Committee Meeting**

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Internal Audit Committee of
Brevard County, Florida

*Construction Compliance Review of
Clerk Archives / Tax Office Facilities Project*

Prepared By:
Internal Auditors of Brevard County
September 30, 2009

September 30, 2009

The Audit Committee of
Brevard County, Florida
Viera, Florida 32940-6699

Pursuant to the approved 2008/2009 internal audit plan, we hereby submit our internal audit report covering our review of the contract and related documents for the Clerk Archive / Tax Office construction project ("CATO"). We will be presenting this report to the Audit Committee at the December 2, 2009 meeting.

Our report is organized in the following sections:

- **Objectives and Approach** – The internal audit objectives and approach are expanded upon in this section, which provides a review of the various phases of our audit.
- **Background and Summary of Results** – This provides an overview of Purchasing and Contract Compliance Services for Brevard County ("County"), timeline of events for the CATO project, common definitions used throughout this report and a summary of results.
- **Specific Procedures and Results** – Detailed results for the audit procedures are described more fully in the Objectives and Approach section. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures performed either for the purpose for which this report has been requested or for any other purpose.

While we performed certain substantive procedures on information provided by the Facilities Department ("Facilities") we were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the schedules and financial information accompanying this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

Our report is intended solely for the information and use of the Internal Audit Committee and its designees and is not intended to be and should not be used by anyone other than these specified parties. We would like to thank the Facilities Design & Construction, Purchasing and Finance Departments for their assistance during this Construction Contract Compliance Review of the CATO project.

Respectfully submitted,

INTERNAL AUDITORS

OBJECTIVES AND APPROACH

Objectives

Objectives of the construction contract compliance review include the following:

- To determine contractor compliance with specific contract terms related to inclusive costs and procedures for usage of Owner funds, allowances, contingencies and other provisions as applicable.
- To determine, on a sample basis, the propriety and validity of payments to date and whether payments were in concert with the project budget.
- To identify, during the course of the procedures designed to meet the stated objectives, process improvement opportunities and recommend internal control enhancements to improve the overall construction project management process.

Approach

Our approach consisted of the following test procedures:

Scoping and Analysis of the Project

In our *Purchasing and Contract Compliance Report* dated April 30, 2009 issued to the Brevard County Internal Audit Committee, we made the following recommendation:

Performing audits of contracts are important tools to ensure that the purpose for the agreement or the performance of the contract actually occurs. We noted that compliance audits are not currently being conducted. We selected a sample of 10 contracts to review for right to audit clauses and noted that 2 contracts were lacking right to audit clauses. For one of the exceptions lacking an audit clause, the contract amount is based upon a percentage of sales.

The CATO project was selected for the purposes of a construction cost compliance review. One construction management firm was represented in the selection. The contract was executed under the Construction Management delivery model with a Guaranteed Maximum Price.

Detailed Testing

We planned the scope of procedures based on our understanding of risk and controls related to each construction project, given the type of contract used and method of delivery and based on our experience gained from previous construction project reviews. We conducted facilitated sessions among team members and interviewed members of management at Facilities. The results of the procedures for the construction contract compliance review, detailing the steps performed and results for the specific project are included within this report. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures performed either for the purpose for which this report has been requested or for any other purpose.

OBJECTIVES AND APPROACH - CONTINUED

Approach – continued

Detailed Testing – continued

The audit plan for this review included the following test procedures:

- We obtained copies of the contract between the Brevard County Board of County Commissioners and the contractor (Construction Manager) and analyzed the contract noting items of significance related to costs and payment requirements.
- We performed an analysis of contracts to validate invoices were submitted in accordance with contract terms and amounts were complete and accurate. This included, but was not limited to, the following:
 - Review all change orders and contingency change requests for proper approval and conformity to the contract and/or policies and procedures manual.
 - Review the contractor fees and general conditions against the provisions of the contract.
 - Review general conditions payments for appropriateness and adequate support.
 - Evaluate the guaranteed maximum price, where applicable, and actual costs of construction based upon contractor's records, if available.
- We reviewed the calculation of sales tax savings and any usage of the savings for appropriateness in accordance with the provisions of the contract, proper approval and mathematical accuracy.
- We tested a sample of owner direct purchases for proper authorization; verified mathematical accuracy of payment; verified invoice amounts agreed to payment; verified amounts were posted correctly.
- We reconciled the Pay Applications and sample project disbursements to Finance records for completeness and accuracy of project coding.
- We compared the payments made by the Construction Manager on all subcontracts to the payments made by the Owner to the Construction Manager for those contract line items. We also tested all subcontractor payments made by the Construction Manager comparing payor, payee and amount to the cancelled checks.

Reporting

At the conclusion of our review, we summarized our results and conducted an exit conference with the Facilities Director, and other Facilities and Finance Personnel to discuss our findings. While we performed certain substantive procedures on information provided by Facilities, we were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the schedules and financial information accompanying this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported.

BACKGROUND

Overview

The Brevard County Board of County Commissioners (“Owner”) and A.D. Morgan Corporation (“Construction Manager”) entered into an Agreement on July 9, 2008 between Owner and Construction Manager for the construction of the Clerk Archives and Tax Collector facilities. The provisions of this agreement required a Guaranteed Maximum Price (GMP) of \$3.8M for approval by the Owner, which was submitted and approved with the signing of the Agreement.

Roles and Responsibilities

The following departments play key roles in the facilities construction process:

Facilities Design & Construction

The Facilities department is responsible for providing project management services during all phases of construction, from pre-construction and design to inspection and close-out. This is generally accomplished by contracting with professional firms for all design, construction and other contract services and monitoring the projects until completion.

Purchasing

The Purchasing department assists with facilities construction by administering the competitive bid process for contractual services, as well as processing requests for procurement of services and goods to be received.

Finance

The Finance department oversees all the processes and record keeping of the financial transactions and safeguards assets in accordance with generally accepted accounting principles and applicable regulatory requirements.

Common Definitions

Some common definitions for construction terminology used throughout this report are as follows:

- Owner – refers to the Owner of the completed construction project (i.e., the Brevard County Board of County Commissioners). We may utilize Owner interchangeably with “County” throughout the report. Where we specifically want to refer to the Internal Audit Committee or a specific department within Brevard County, such as Facilities, we use the specific name.
- Project Budget – refers to the Owner’s funds budgeted for the project including the construction budget and all other fees, land acquisition costs, furnishings, equipment and other costs necessary to complete the project.
- Construction Budget – refers to the Owner’s budget for construction of the project, including Construction Manager (CM) management fees, costs of the work and contingencies. This also includes direct purchases made by the Owner. The construction budget is not the same as the contractor’s Guaranteed Maximum Price.
- Guaranteed Maximum Price (GMP) – refers to a written estimate by the contractor of the maximum price the Owner will pay for construction of the planned project.
- Owner Direct Purchases (ODP) – refers to direct purchase of materials by the Owner for the purpose of sales tax savings. The Owner may choose to purchase various construction materials, supplies and equipment that may be part of a subcontract directly from the vendor. The subcontract amounts, and subsequently the GMP, are reduced by the undiscounted purchase order amount, plus all applicable sales taxes, resulting in savings to the Owner.
- Contingency – refers to funds included in a budget to allow for defraying the expense of unforeseen circumstances in a construction project.
- General conditions – refers to direct cost items paid by the contractor that are not included in subcontracts or the negotiated fixed fees. Typical items include direct labor, equipment rental, office expenses, insurance, telephone service, utilities, etc. These costs are also referred to as “general requirements”.
- Payment Application (Pay App) – the invoice submitted by the contractor for payment, including a detailed Schedule of Values (SOV) of the approved GMP and the various components of the costs of the work.
- Retainage – refers to funds withheld from a construction contract until completion of the project, or some other agreed upon date. The amounts are held back to provide the Owner with assurances for the quality of the work. Florida Statute 218.735 and 255.078 outline the requirements for payment of construction contracts for local government entities and for public lands and property, including allowable retainage.

BACKGROUND - CONTINUED

Timeline

The project began in FY2008 and construction was completed in FY2009. Final payment and final completion date is pending. Below is a timeline of major events for the project. We have included increase in the GMP to show the fluctuations in cost estimates that occurred over the project's lifecycle.

Date	Event Description	Clerk's Archives (Clerk)	Tax Collector's Office (Tag)	Total GMP
July 9, 2008	The Brevard County Board of County Commissioners ("Owner") and A.D. Morgan Corporation ("Construction Manager") enter into an Agreement Between Owner and Construction Manager for the construction of the Clerk Archives and Tax Collector facilities. The provisions of this agreement require a Guaranteed Maximum Price (GMP) for approval by the Owner, which was submitted and approved with the signing of the Agreement.	\$2,434,173	\$1,396,129	\$3,830,302
October 28, 2008	The GMP was increased by a total of \$1,195 split evenly between Clerk and Tag for an unforeseen condition agreed to by Owner.	\$2,434,771	\$1,396,726	\$3,831,497
December 8, 2008	The GMP was increased by \$2,194 and \$1,791 respectively for Clerk and Tag at the request of the Owner for increase in scope.	\$2,436,965	\$1,398,517	\$3,835,482
March 11, 2009	The GMP was increased by \$16,443 and \$17,323 respectively for Clerk and Tag for price increase for bid adjustments that took place subsequent to the original approval of GMP.	\$2,453,408	\$1,415,840	\$3,869,248
March 11, 2009	The GMP was increased by \$81,772 for Owner requested modifications and additions to the fire protect system, server room, administration office, and recreation area.	\$2,535,180	\$1,415,840	\$3,951,020
March 11, 2009	The GMP was increased by \$25,485 for Owner requested modifications for tax collector facility	\$2,535,180	\$1,441,325	\$3,976,505
April 29, 2009	The GMP was increased by \$20,023 for Owner requested modifications for tax collector facility.	\$2,535,180	\$1,461,348	3,996,528
May 19, 2009	The GMP was increased by a total of \$1,220 split evenly between Clerk and Tag for unforeseen conditions related to an Architect / Engineer Error /Omission.	\$2,535,790	\$1,461,958	3,997,748
May 19, 2009	The GMP was increased by \$3,828 and \$9,308 respectively for Clerk and Tag for an Owner requested unforeseen condition.	\$2,539,618	\$1,471,266	4,010,884
June 25, 2009	The GMP was increased by \$10,728 and \$6,394 respectively for Clerk and Tag for an Owner requested scope increase.	\$2,550,346	\$1,477,660	4,028,006

SUMMARY OF RESULTS

Results

Below is a summary of our results, as detailed in the Specific Procedures and Results section of this report. This information has been provided to the Facilities department for review and comment prior to submission to the Internal Audit Committee.

Summary of Results

The following is a summary of results related to the contract with the construction manager, A.D. Morgan Corporation:

Potential adjustments based on this report:	
Contingency usage (# 3)	\$ 1,426
Unsupported general conditions (# 5)	5,881
Unsupported Direct Labor (# 5)	173,597
ODP specific deduction (# 7)	6,712
ODP deduction - based on PO amount (# 7)	14,750
Potential cost recovery amount due from CM	<u>\$ 202,366</u>
Amount due to CM - per final pay app #11 (retainage)	<u>400,638</u>
Amount paid to CM, net of potential cost recovery amount	\$ 198,272

The above potential adjustments had been determined prior to the Owner's receipt of final pay app #11. Based on the potential cost recovery amount due from the CM noted above, Facilities management determined to pay the CM the amount billed and currently due, less the potential cost recovery amount. Subsequently, the Facilities Department reviewed our results in detail for each potential cost recovery item and presented some information about our findings to the CM in order to determine the final disposition. Attached is the Facilities Department's response for each item noted above.

*In Article 8, the contract specifies the following regarding the final price to be paid to the CM by the Owner:

"The sum of the Cost of the Work and the CM's fee shall not exceed the GMP. The CM's fee shall constitute CM's total compensation for profit. All costs in excess of the final approved GMP are the responsibility of the CM. Any savings between the GMP and the sum of the actual cost of the Work, plus the CM's fees, will be returned to Owner."

Note: The results of these procedures and potential cost recoveries are subject to the legal review and interpretation of the CM contract.

In addition to the information above, and based on the testing we performed, we noted various compliance and control recommendations as noted in the respective procedures below.

SPECIFIC PROCEDURES AND RESULTS

Procedure	Results
1. Obtain and review the Construction Manager (CM) contract and amendments to determine if they were properly executed and approved by the Board.	We obtained a copy of the original contract. No amendments were noted. <u>Conclusion:</u> The original contract were properly executed and approved by the Clerk of the Brevard County of County Commissioners.
2. Determine the reasonableness of the timeline between entering into the Construction Manager contract and approving the Guaranteed Maximum Price (GMP) amount for construction.	The initial GMP was approved on 7/9/08. <u>Conclusion:</u> The GMP was approved with the original contract.

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																
<p>3. Obtain all change orders request related to contingency usage (Authorization to Initiate Work) that does not increase the GMP, and determine the following:</p> <ul style="list-style-type: none"> ▪ The Owner properly approved the request. ▪ The usage was reasonable in accordance with the provision of the contract. ▪ Usage was properly accumulated on the contractor's pay application and that supporting documentation was available and reasonable. 	<p>The following requirements are found in Article 7.3:</p> <p style="padding-left: 40px;">Construction contingency funds will be used for the purpose of defraying the expenses due to unforeseen circumstances relating to construction. The CM will be required to furnish documentation evidencing expenditures charged to this contingency prior to the release of funds by the Owner. Documentation for use of the Contingency shall be determined by the Construction Team. The Architect/Owner shall verify and approve the actual costs.</p> <p>The total contingency fund approved in the GMP amounted to \$70,186. The final contingency tracking log prepared by the Owner totaled \$70,186. During our analysis of contingency items, we noted the following relative to the usage of the fund:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-align: left;">Contingency usage:</th> <th style="text-align: right;">Total</th> <th style="text-align: right;">Archive</th> <th style="text-align: right;">Tax</th> </tr> </thead> <tbody> <tr> <td>Beginning Balance</td> <td style="text-align: right;">\$ 70,186</td> <td style="text-align: right;">47,025</td> <td style="text-align: right;">23,161</td> </tr> <tr> <td>Usage</td> <td style="text-align: right;"><u>(71,612)</u></td> <td style="text-align: right;">(44,708)</td> <td style="text-align: right;">(26,905)</td> </tr> <tr> <td>Ending Balance</td> <td style="text-align: right;">\$ (1,426)</td> <td style="text-align: right;">2,317</td> <td style="text-align: right;">(3,744)</td> </tr> </tbody> </table> <p>Based on our review of all the "Authorizations to Initiate Work" change orders for contingency costs (change orders 1,3,5,10) the contingency usage was properly authorized and approved pursuant to the contract. Further, based our discussions with the Contract Administrator and Project Manager, there were no unresolved disputes with the CM regarding the use of the contingency fund.</p> <p><u>Conclusion:</u> The contingency usage slightly exceeded the amount established in the fund within the GMP by \$1,426. This amount is included in the "Summary of Results" noted on page 6.</p>	Contingency usage:	Total	Archive	Tax	Beginning Balance	\$ 70,186	47,025	23,161	Usage	<u>(71,612)</u>	(44,708)	(26,905)	Ending Balance	\$ (1,426)	2,317	(3,744)
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																																																
<p>4. Obtain all change orders that increase the GMP, and determine the following:</p> <ul style="list-style-type: none"> ▪ Change order was properly supported and approved by the Owner. ▪ The timeline for approval of the change order was appropriate. 	<p>The following represents a recap of the approved change orders that increased the original GMP:</p> <table border="1" data-bbox="598 370 1333 764"> <thead> <tr> <th>Change Order</th> <th>Total</th> <th>Clerk Archive</th> <th>Tag Office</th> </tr> </thead> <tbody> <tr> <td>Original GMP</td> <td>\$ 3,830,302</td> <td>2,434,173</td> <td>1,396,129</td> </tr> <tr> <td>Change Order #2</td> <td>1,195</td> <td>598</td> <td>597</td> </tr> <tr> <td>Change Order #4</td> <td>3,985</td> <td>2,194</td> <td>1,791</td> </tr> <tr> <td>Change Order #6</td> <td>33,766</td> <td>16,443</td> <td>17,323</td> </tr> <tr> <td>Change Order #7</td> <td>81,772</td> <td>81,772</td> <td></td> </tr> <tr> <td>Change Order #8</td> <td>25,485</td> <td></td> <td>25,485</td> </tr> <tr> <td>Change Order #9</td> <td>20,023</td> <td></td> <td>20,023</td> </tr> <tr> <td>Change Order #11</td> <td>1,220</td> <td>610</td> <td>610</td> </tr> <tr> <td>Change Order #12</td> <td>13,135</td> <td>3,827</td> <td>9,308</td> </tr> <tr> <td>Change Order #13</td> <td>17,122</td> <td>10,728</td> <td>6,394</td> </tr> <tr> <td>Final GMP</td> <td>\$ 4,028,005</td> <td>2,550,345</td> <td>1,477,660</td> </tr> </tbody> </table> <p><u>Conclusion:</u> The change orders were properly supported and approved. See the timeline in the Background section.</p>	Change Order	Total	Clerk Archive	Tag Office	Original GMP	\$ 3,830,302	2,434,173	1,396,129	Change Order #2	1,195	598	597	Change Order #4	3,985	2,194	1,791	Change Order #6	33,766	16,443	17,323	Change Order #7	81,772	81,772		Change Order #8	25,485		25,485	Change Order #9	20,023		20,023	Change Order #11	1,220	610	610	Change Order #12	13,135	3,827	9,308	Change Order #13	17,122	10,728	6,394	Final GMP	\$ 4,028,005	2,550,345	1,477,660
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																					
5. Review pay applications and for a sample of payments on General Conditions (GC), determine the following: <ul style="list-style-type: none"> ▪ Supporting documentation is available and reasonable for the costs incurred. ▪ Reimbursable costs are valid in accordance with the provisions of the contract. ▪ Direct labor charged is supported and calculated at cost plus the labor burden specified in the contract 	<p>During our review of the pay applications for General Conditions (GC), we noted that there was only 1 (out of 10) pay applications that supporting invoices were included – supporting \$19,094 out of total GC billed of \$135,450. We discussed this with management and contacted the CM requesting the supporting invoices for the other pay applications 2-10. Based on our review of the supporting invoices provided by the CM for pay applications 2-10, we identified the following unsupported charges totaling \$5,881 related to pay applications 5-7. Our testing covered approximately 83% of general conditions billed by the CM.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Pay Application</th> <th style="text-align: left;">Vendor</th> <th style="text-align: right;">Amount</th> </tr> </thead> <tbody> <tr> <td>Pay Application #5</td> <td>Stottler Stagg</td> <td style="text-align: right;">\$ 2,100</td> </tr> <tr> <td>Pay Application #6</td> <td>Stottler Stagg</td> <td style="text-align: right;">1,500</td> </tr> <tr> <td>Pay Application #7</td> <td>City of Titusville-Gen Permit</td> <td style="text-align: right;">870</td> </tr> <tr> <td>Pay Application #7</td> <td>Acton</td> <td style="text-align: right;">822</td> </tr> <tr> <td>Pay Application #7</td> <td>Home Depot</td> <td style="text-align: right;">589</td> </tr> <tr> <td style="text-align: center;">Total</td> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$ 5,881</td> </tr> </tbody> </table>	Pay Application	Vendor	Amount	Pay Application #5	Stottler Stagg	\$ 2,100	Pay Application #6	Stottler Stagg	1,500	Pay Application #7	City of Titusville-Gen Permit	870	Pay Application #7	Acton	822	Pay Application #7	Home Depot	589	Total		\$ 5,881
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results										
<p>5. General Conditions continued:</p>	<p>Additionally, we reviewed the direct labor charges included on the monthly pay applications noting that the CM did not charge direct labor as specified in the contract. The following represents an excerpt from the contract regarding the charging of direct labor (Article 9.2):</p> <p style="padding-left: 40px;">Labor wages paid for the on-site Project Superintendent directly responsible for the operation and supervision of the project (as opposed to wages paid to management or supervisory personnel who are not part of the on-site project management) in the direct employ of the CM in the performance of the CM's work under this Agreement, acceptable salary wage or wage schedules and such fringe benefits, if any, as may be payable with respect thereto (labor burden not to exceed 40% for payroll and 15% per diem).</p> <p>Further, the direct labor billed by the CM included the project manager, project executive and other costs that per the contract are indirect labor/costs and come under Article 8 of the contract. Per Article 8.1.1, sections (1) and (2) and Exhibit N, these types of costs and expenses are considered part of "Overhead and Profit" and as such are considered to be already included in the CM's manager fee.</p> <p>Article 9.2 and Exhibit O per the contract indicate that full payroll costs for the Project Superintendent and Job Site Secretary are direct labor at cost, plus labor burden (labor burden is the lesser of 40% or actual labor burden percentage). We calculated the Project Superintendent and the Job Site Secretary actual labor cost, plus labor burden by obtaining payroll records from the CM. We determined that the actual labor burden exceeded or equaled the 40% limitation so we utilized the 40% rate. We then calculated the actual labor plus labor burden as follows:</p> <table border="1" data-bbox="600 971 1503 1166"> <tbody> <tr> <td>Amount billed - per CM pay app 10, schedule of values</td> <td style="text-align: right;">\$ 300,125</td> </tr> <tr> <td>Project Superintendent - actual labor costs per CM</td> <td style="text-align: right;">68,440</td> </tr> <tr> <td>Project Job Site Secretary - actual labor costs per CM</td> <td style="text-align: right;">21,937</td> </tr> <tr> <td>Total actual labor amount, plus 40% labor burden</td> <td style="text-align: right;">126,528</td> </tr> <tr> <td style="text-align: right;">Potential cost recovery</td> <td style="text-align: right;">\$ 173,597</td> </tr> </tbody> </table> <p><u>Conclusion:</u> Based on our review, we identified potential cost recovery for unsupported general condition items of \$5,881 and unsupported labor charges of \$173,597. These amounts are included in the "Summary of Results" noted on page 6.</p> <p><u>Recommended Action:</u> We recommend that the Owner obtain and review actual labor and labor burden support from the CM to ensure that the amount being charged for direct labor is based on actual labor costs plus labor burden as defined in the contract. We also recommend that the Owner review the pay applications ensuring that all applicable supporting invoices for General Conditions are included before releasing payment.</p>	Amount billed - per CM pay app 10, schedule of values	\$ 300,125	Project Superintendent - actual labor costs per CM	68,440	Project Job Site Secretary - actual labor costs per CM	21,937	Total actual labor amount, plus 40% labor burden	126,528	Potential cost recovery	\$ 173,597
Amount billed - per CM pay app 10, schedule of values	\$ 300,125										
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Total actual labor amount, plus 40% labor burden	126,528										
Potential cost recovery	\$ 173,597										

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results
6. Recalculate the fixed fees per contract, including change orders and validate against the amounts paid. Determine that the appropriate amounts were proportionately paid based on the percentage of completion at the time of the payment request.	<p>The project was substantially completed at the time of testing. The fixed fees were recalculated in total based on the final pay application and not the percentage of completion throughout the project since any variances would be timing differences only.</p> <p><u>Conclusion:</u> The fixed fees charges appear reasonable and in keeping with the contract.</p>

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																											
<p>7. Obtain a listing of all ODP and, determine the following:</p> <ul style="list-style-type: none"> ▪ Recalculate sales tax savings and determine that amounts were properly accumulated on the contractor's pay application. ▪ Sales tax savings was appropriately credited to the Owner. ▪ Amounts paid agree to project detail records. 	<p>During our testing, we noted potential cost recovery that appears to relate to excess ODP reserve in the GMP not fully deducted. The ODP reserve is an estimate included in the originally approved GMP based on the materials estimates in the subcontractor bid packages. The encumbered amount (issuance of a purchase order) would represent the best estimate of the needed materials in the GMP.</p> <p>The potential general cost recovery is \$14,750 and is generated by the variance between the PO amount and the amounts invoiced/paid by the Owner including applicable taxes. This general variance can be due to quantity (less usage) or price (discounts).</p> <p>Further, we noted a specific potential cost recovery related to ODP deductions included in the subcontractor records not included in the CM's Schedule of Values totaling \$15,582 related to the following:</p> <table border="1" data-bbox="600 735 1688 1084"> <thead> <tr> <th colspan="3" style="text-align: center;"><u>Detail of ODP variance:</u></th> </tr> </thead> <tbody> <tr> <td>Chrome Electric</td> <td style="text-align: right;">A</td> <td style="text-align: right;">6,712</td> </tr> <tr> <td>Climatic Refrigeration</td> <td style="text-align: right;">B</td> <td style="text-align: right;">8,870</td> </tr> <tr> <td>Unidentified difference</td> <td></td> <td style="text-align: right;">(164)</td> </tr> <tr> <td></td> <td></td> <td style="text-align: right;">\$ 15,418</td> </tr> <tr> <td> </td> <td></td> <td></td> </tr> <tr> <td>Total identified for potential recovery - before final pay app #11</td> <td style="text-align: right;">A</td> <td style="text-align: right;">\$ 15,582</td> </tr> <tr> <td>Climatic Refrigeration - deduction taken on pay app #11</td> <td></td> <td style="text-align: right;">8,870</td> </tr> <tr> <td>Remaining potential cost recovery</td> <td></td> <td style="text-align: right;"><u>\$ 6,712</u></td> </tr> </tbody> </table> <p><u>Conclusion:</u> There is a potential general cost recovery related to ODP of \$14,750 and potential specific cost recover related to ODP of \$6,712. These amounts are included in the "Summary of Results" noted on page 6.</p> <p><u>Recommended Action:</u> An ODP reserve should be established and tracked separately from the other items in the GMP, and deducted from the contract. We recommend splitting GMP amounts for each subcontractor into materials and labor. This way, the owner can verify that any savings on materials are actually credited to materials rather than to the overall total i.e. savings on materials are not offset by an increase in costs charged to labor.</p>	<u>Detail of ODP variance:</u>			Chrome Electric	A	6,712	Climatic Refrigeration	B	8,870	Unidentified difference		(164)			\$ 15,418	 			Total identified for potential recovery - before final pay app #11	A	\$ 15,582	Climatic Refrigeration - deduction taken on pay app #11		8,870	Remaining potential cost recovery		<u>\$ 6,712</u>
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results										
<p>8. Obtain all contractor payment applications and determine the following:</p> <ul style="list-style-type: none"> ▪ Verify the mathematical accuracy of the invoice including the carry forward of the previous invoice's balances and calculation of retainage. ▪ The supporting documentation agrees to the summary invoice. ▪ The invoice was appropriately approved in accordance with the provisions of the contract. ▪ The subcontractor invoices agree to the detailed schedule of values. 	<p>The following represents a reconciliation of the GMP to actual amounts paid to the CM by the Owner exclusive of the potential cost recovery adjustments noted throughout this report:</p> <table border="1" data-bbox="873 435 1692 597"> <tr> <td>Final GMP as revised via change orders noted at procedure 4</td> <td style="text-align: right;">\$ 4,028,004</td> </tr> <tr> <td>ODP deductions to date - per SOV, pay app 11</td> <td style="text-align: right;">(743,730)</td> </tr> <tr> <td>Actual payments made to CM - (pay apps 1-10)</td> <td style="text-align: right;">(2,883,636)</td> </tr> <tr> <td>Current payment due - per SOV, pay app 11</td> <td style="text-align: right;">(400,638)</td> </tr> <tr> <td></td> <td style="text-align: right; border-top: 1px solid black;">\$ -</td> </tr> </table> <p><u>Conclusion:</u> We were able to reconcile amounts paid to the CM by the Owner to final pay application 11, schedule of values as noted above. During our testing we noted that there were no supporting invoices included in pay applications 2-10 for the General Conditions charges; however, pay applications 2-9 were approved for payment (pay application 10 had not been fully processed for approval at the time of our test work). Also, see results of General Conditions testing in procedure 5.</p> <p><u>Recommended Action:</u> The Owner should monitor and require fully supported pay applications for all charges on the schedule of values including charges for General Conditions and subcontracts as support for the pay request prior to approval for payment. If supporting documentation for General Conditions and subcontracts does not agree to the schedule of values, the Owner should take steps to reconcile the SOV line item amounts to the actual amounts paid by the CM to the subcontractors to ensure that the lesser amount is paid by the Owner.</p>	Final GMP as revised via change orders noted at procedure 4	\$ 4,028,004	ODP deductions to date - per SOV, pay app 11	(743,730)	Actual payments made to CM - (pay apps 1-10)	(2,883,636)	Current payment due - per SOV, pay app 11	(400,638)		\$ -
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Current payment due - per SOV, pay app 11	(400,638)										
	\$ -										

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results										
<p>9. Obtain the final subcontractor pay applications and determine the following:</p> <ul style="list-style-type: none"> ▪ Verify the mathematical accuracy of the final subcontractor invoice and pay application. ▪ The final invoice and subcontractor pay application was appropriately approved in accordance with the provisions of the contract. ▪ The subcontractor invoices agree to detailed schedule of values. ▪ The payment application amount agrees to the amounts paid per the CM supporting financial records. ▪ Vouch subcontractor payments to the cancelled checks determining the following: <ul style="list-style-type: none"> ○ Verify the check payee and amount agrees to the list provided by the CM. ○ Verify the endorsement agrees to the check payee. ○ Verify the amount paid agreed to the amount written on the face of the check. ○ Verify the check amount in dollars agrees to the check amount in words. ▪ Verify the check has not been apparently altered. 	<p>For subcontracts, we tested the CM's subcontractors' costs and payments by agreeing the original contract amounts, change orders, and total amount paid to the CM's "Subcontractor Status Report". No exceptions were noted. Additionally, we vouched CM contractor payments to the cancelled checks. No exceptions were noted.</p> <p>The following represents a reconciliation of actual subcontractor costs billed to the Owner compared to actual payments made to the subcontractors by the CM:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Subcontractor construction costs thru pay app 9 - per CM Pay App 10 SOV *</td> <td style="text-align: right;">\$ 2,520,284</td> </tr> <tr> <td>Actual payments made to Subcontractors - per CM cancelled checks thru pay app 9</td> <td style="text-align: right;">(2,253,392)</td> </tr> <tr> <td>Retainage (10% of total completed construction costs)</td> <td style="text-align: right;">(252,028)</td> </tr> <tr> <td>ODP specific deduction adjustment (procedure #7)</td> <td style="text-align: right;">(15,582)</td> </tr> <tr> <td>Variance</td> <td style="text-align: right; border-top: 1px solid black;">\$ (718)</td> </tr> </table> <p>*This reconciliation was based on the CM's subcontractor status report and payments to subcontractors made through CM pay app 10 prior to the Owner's receipt of final pay app #11. See additional explanation at "Summary of Results" noted on page 6.</p> <p><u>Conclusion:</u> Based on our testing, subcontractor costs completed and paid through pay application 9 correspond to the amount the CM billed the Owner (excluding the ODP adjustment noted in procedure # 7).</p> <p><u>Recommended Action:</u> The Owner should monitor and require an updated SOV and subcontractor pay request prior to approval for payment, which reconciles with the respective GMP line item in the GMP Report.</p>	Subcontractor construction costs thru pay app 9 - per CM Pay App 10 SOV *	\$ 2,520,284	Actual payments made to Subcontractors - per CM cancelled checks thru pay app 9	(2,253,392)	Retainage (10% of total completed construction costs)	(252,028)	ODP specific deduction adjustment (procedure #7)	(15,582)	Variance	\$ (718)
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FACILITIES DEPARTMENT
2725 Judge Fran Jamieson Way, Viera, FL 32940

Telephone: (321) 633-2050
Fax: (321) 633-2051

November 12, 2009

RSM McGladrey
Attn: Rob Broline, Manager
7351 Office Park Place
Melbourne, FL 32940

**RE: Internal Audit – Construction Contract Compliance Review
Clerks Archive/Tax Collector Project
Facilities Department Response**

Dear Mr. Broline:

The Brevard County Facilities Department has completed its review of the draft audit report provided on September 30, 2009. We presented information from the audit findings to the Construction Manager for this project, A.D. Morgan Corporation, and received responses from them relating to these findings on October 12 and October 29, 2009. Based on the information received from A.D. Morgan, the findings of the internal auditor and the language stipulated in the contract documents, we respond as follows:

- Item #3 – Construction Contingency Use- we agree with the audit finding that “contingency usage slightly exceeded the amount established in the fund within the Guaranteed Maximum Price (GMP) in the amount of \$1,426. The approved contingency within the GMP was \$70,186; however, realignments were processed in the amount of \$71,612. It is the opinion of the Facilities Department that a change to the contract, whether a realignment or change order, would have been required in order for the Construction Manager to complete the requested work; therefore we will be paying A.D. Morgan Corporation \$1,426.
- Item #5 – General Conditions Unsupported Charges in the amount of \$5,881.00. It is the opinion of the Facilities Department that since A.D. Morgan Corporation failed to submit adequate, supporting back-up documentation as requested for these general condition charges, we deduct this amount from their contract balance.
- Item #5 – Unsupported Labor Charges in the amount of \$173,597. We agree with internal audit that, although the Agreement Between Owner and Construction Manager match the approved Guaranteed Maximum Price (GMP), the CM did not bill for direct labor as

specified in the contract documents. At this time it is the opinion of the Facilities Department that the \$173,597 be withheld from the balance due to A.D. Morgan Corporation. The Facilities Department has turned over all contract information, payment applications and a copy of the draft audit report to the County Attorney's Office for review and legal recommendation. Upon their review and recommendation our final decision may or may not change. As recommended by Internal Audit the Facilities Department will, for all future contracts, more closely review "actual" labor and labor burden support from the CM to ensure that the amount being charged for direct labor is based on actual costs plus labor burden as defined in the contract. Additionally, Facilities staff will review all payment applications more closely to ensure that all applicable supporting documents/invoices for general condition costs are included before releasing payment.

- Item #7 – Excess Owner Direct Purchase (ODP) Reserves – in the amount of \$21,462 for the variance between the Purchase Order amount and the actual amount invoiced/paid by the Owner. We agree with Internal Audit that these costs should be withheld from final payment to A.D. Morgan Corporation. As recommended by Internal Audit we will work with the County Attorney's Office on modifying our existing Agreement Between Owner and Construction Manager to have the contract language modified to include splitting the GMP amounts for each subcontractor into materials and labor when submitting the final Guaranteed Maximum Price for incorporation into the contract documents.

Sincerely,



Mary Bowers
Support Services Manager
Brevard County Facilities Department

/mb

cc: Steve Quickel, Facilities Department Director
Bill Clifton, Manager of Design and Construction, Facilities Department
Jill Hayes, Department Finance Manager, Facilities Department
File



Internal Audit Committee of
Brevard County, Florida

Contract Compliance Review of
Construction of Emergency Sand Berm 2008
Contract 4586

Prepared By:
Internal Auditors of Brevard County
October 21, 2009

October 21, 2009

The Audit Committee of
Brevard County, Florida
Viera, Florida 32940-6699

Pursuant to the approved 2008/2009 internal audit plan, we hereby submit our internal audit report covering our review of the contract and related documents for the Construction of Emergency Sand Berm 2008 ("project" or "sand restoration project"). We will be presenting this report to the Audit Committee at the next scheduled meeting on December 2, 2009.

Our report is organized in the following sections:

- **Objectives and Approach** – The internal audit objectives and approach are expanded upon in this section, which provides a review of the various phases of our audit.
- **Background and Summary of Results** – This provides an overview of contract services for Brevard County ("County"), timeline of events for the project, common construction-related definitions and a summary of results.
- **Specific Procedures and Results** – This section provides detailed results for the audit procedures described more fully in the Objectives and Approach section. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures performed either for the purpose for which this report has been requested or for any other purpose.

While we performed certain substantive procedures on information provided by the County we were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the schedules and financial information accompanying this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

Our report is intended solely for the information and use of the Internal Audit Committee and its designees and is not intended to be and should not be used by anyone other than these specified parties. We would like to thank the Natural Resources Management Office ("NRMO") and Purchasing Department for their assistance during this Contract Compliance Review of the Construction of Emergency Sand Berm 2008 project.

Respectfully submitted,

INTERNAL AUDITORS

OBJECTIVES AND APPROACH

Objectives

Objectives of the contract compliance review include the following:

- To determine contractor compliance with specific contract terms related to inclusive costs and procedures for usage of Owner funds, allowances, contingencies and other provisions as applicable.
- To determine, on a sample basis, the propriety and validity of payments to date and whether payments were in concert with the project budget.
- To identify, during the course of the procedures designed to meet the stated objectives, process improvement opportunities and recommend internal control enhancements to improve the overall construction project management process.

Approach

Our approach consisted of the following test procedures:

Scoping and Analysis of the Project

In our *Purchasing and Contract Compliance Report* dated April 30, 2009 issued to the County's Internal Audit Committee, we made the following recommendation:

Performing audits of contracts are important tools to ensure that the purpose for the agreement or the performance of the contract actually occurs. We noted that compliance audits are not currently being conducted. We selected a sample of 10 contracts to review for right to audit clauses and noted that 2 contracts were lacking right to audit clauses. For one of the exceptions lacking an audit clause, the contract amount was based upon a percentage of sales.

The Construction of Emergency Sand Berm 2008 project was selected for the purposes of a contract compliance review. One contractor and one construction oversight firm was represented in the selection. A general services contract was approved by the Board of County Commissioners on January 8, 2008, and includes an agreed-upon price for a specified amount of sand, including delivery and placement.

Note: We have specifically excluded the FEMA contract and testing of expenditures in compliance with the provisions of that contract due to the FEMA funding applying to more than just the expenditures related to this project. However, we did ascertain at a high level that the related project expenditures were incurred as a result of a disaster-related event, specifically Tropical Storm Fay.

Detailed Testing

We planned the scope of procedures based on our understanding of risk and controls related to the project, given the type of contract used and method of delivery and based on our experienced gained from previous contract compliance reviews. We interviewed staff members of the NRMO and Purchasing department as needed. The results of the procedures for the contract compliance review, detailing the steps performed and results for the specific project are included within this report. The sufficiency of these procedures is solely the responsibility of the parties specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures performed either for the purpose for which this report has been requested or for any other purpose.

OBJECTIVES AND APPROACH - CONTINUED

Approach – continued

Detailed Testing - continued

The audit plan for this review included the following test procedures:

- We evaluated the competitive selection process for the associated contracts in accordance with Florida Statutes.
- We obtained copies of the contracts and amendments between the Board of County Commissioners and the contractors and analyzed the contracts noting items of significance related to costs, delivery and payment requirements.
- We performed an analysis of the contracts to validate invoices were submitted in accordance with contract terms and amounts were complete and accurate. This included, but was not limited to, the following:
 - Review all change orders for proper approval and conformity to the contract and/or policies and procedures, Florida Statutes, etc.
 - Review the contractor fees against the provisions of the contract.
 - Evaluate the final contract price in comparison with the project budget.
- We reconciled the contractor invoices to public Finance records for completeness and accuracy of project coding.
- We determined whether the use of Federal grant funding was appropriate and adequately supported for the specific type of funding received.

Reporting

At the conclusion of our review, we summarized our results and conducted an exit conference with the Director, Watershed Program Manager, Beach Project Coordinator and Support Services Manager of the Natural Resources Management Office. These results and management's response are contained within this report.

While we performed certain substantive procedures on information provided by the County, we were not engaged to, and did not, conduct an examination, the objective of which would be the expression of an opinion on the schedules and financial information accompanying this report. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported.

BACKGROUND

Project Overview

Beach sand dune and berm monitoring, preservation and restoration projects are ongoing at the County. A beach is an area of unprotected, unconfined sand along a body of water subject to winds, tides, currents, and/or waves. The beach profile is very dynamic, constantly changing with changes in the tides, currents, and wave action that affect it. Sand moves from the backshore dune and/or berm to the foreshore and underwater nearshore zones, and back again. This movement or redistribution of sand within the beach profile is a natural process.

Occasionally a storm causes such dramatic changes in the tides, currents, and wave actions that affect a beach, that sand is moved outside of the beach profile. It is moved too far on-shore, off-shore, or along-shore such that it is not recoverable by natural processes. In these cases, the beach is considered damaged by the storm. In late 2007, Tropical Storm Noel contributed to beach erosion in Brevard County, prompting the Board of County Commissioners to approve the Emergency Sand Berm project that is the subject of this report.

Roles and Responsibilities

The following departments play key roles in the project's lifecycle:

Natural Resources Management Office

The NRMO is responsible for protecting and managing the County's environmental resources. Some examples of environmental resources include rare and native plants, natural wildlife habitats, wetlands and beaches.

For the Construction of the Emergency Sand Berm 2008 project, the NRMO provided project management services during all phases of construction, from pre-construction and design to inspection, environmental monitoring and close-out. This is generally accomplished by contracting with professional firms for all construction and other contract services and monitoring the projects until completion.

Purchasing

The Purchasing department assists by administering the competitive bid process for contractual services, as well as processing requests for procurement of services and goods to be received.

Finance

The Finance department oversees all the processes and record keeping of the financial transactions and safeguards assets in accordance with generally accepted accounting principles and applicable regulatory requirements.

Common Definitions

Some common definitions for construction terminology used throughout this report are as follows:

- Owner – refers to the Owner of the completed construction project (i.e., the Brevard County Board of County Commissioners).
- Project Budget – refers to the Owner's funds budgeted for the project including the construction budget and all other fees, land acquisition costs, furnishings, equipment and other costs necessary to complete the project.
- Contract Amount – refers to the Owner's budget for construction of the project, and the approved contract amount to the construction contractor. The contract amount is not the same as the Owner's project budget.
- Payment Application – the invoice submitted by the contractor for payment, detailing the various components of the costs of the work.
- Sand Berm – a sloped mound of beach quality sand used to protect upland structures and dune vegetation from the effects of beach erosion and/or disaster events.

BACKGROUND - CONTINUED

Timeline

The project began in FY2008, was extended and re-scoped due to Tropical Storm Fay, and completed in FY2009. Environmental monitoring will continue as required for the next three years. Final payment on the construction portion has occurred. Below is a timeline of major events related to the project. We have included increases in the contract amount(s) to show the fluctuations in cost estimates that occurred over the project's lifecycle.

Date	Event Description	Project Budget	CKA	AMEC/Olsen
11/1/2007	Tropical Storm Noel passes offshore Florida's coast, causing beach erosion in Brevard County.			
12/13/2007	Board of County Commissioners (BoCC) approves FDEP grant contracts, including local cost matching of \$2,343,570 from General Fund Reserves, to repair erosion damage in the Mid Reach and South Beaches areas. (These are add-ons to existing FDEP contracts 05BE1 (Mid Reach) and 07BE1 (South Beaches). Estimated cost for sand placement, monitoring and construction (as shown on FDEP contract) is \$32.75 per cubic yard.	\$4.1 million (126,535 cy)		
1/3/2008	Bid package for the sand restoration project is advertised and released, reducing ad period to 10 days citing F.S. 255.0525 for emergency circumstances.			
1/8/2008	BoCC approves Invitation to Bid the sand restoration project and reduce to ad period to 10 days and negotiation of contract with the low bidder and authorize Chairman to execute for lowest cost responsive bid.			
1/8/2008	BoCC approves sole source agreement with AMEC Earth and Environmental, Inc. ("AMEC") for project oversight, due to a) emergent nature of project being performed and b) AMEC's previous performance of same services since 2001 on similar projects. Professional services are solicited as RFQ per CCNA regulations; therefore, low bid was not a requirement.*			
1/9/2008	NRMO holds a mandatory pre-bid meeting for contractors interested in proposing on the sand restoration project. 29 companies are represented.			
1/14/2008	Time and Materials service agreement between BoCC and AMEC is executed for construction management services related to the sand restoration project.			\$308,400
1/14/2008	Bid opening for construction portion occurs at 3:00pm and 8 proposals are received and tabulated by Purchasing Services. CKA, LLC is the lowest bidder, at \$19.80/cubic yard.			
2/11/2008	Contract for the Construction of a Beach Emergency Sand Berm is executed by BoCC with a not-to-exceed amount.		\$2,537,073 (128,135 cy)	
2/13/2008	Notice to Proceed issued to CKA, LLC.			

*Although low bid was not required, we reviewed the contract with AMEC and noted it was a time and materials contract based on actual hours worked and a not-to-exceed amount.

BACKGROUND - CONTINUED

Timeline - continued

Date	Event Description	Project Budget	CKA	AMEC/Olsen
2/14/2008	Pre-construction meeting held, including representatives from NRMO, AMEC, CKA, Florida Department of Environmental Protection and the Fish and Wildlife Conservation Commission.			
2/26/2008	Change Order #1 to the CKA sand restoration project is executed, increasing the contract by \$15,000 for excavation and removal of previously unseen concrete rubble and debris. CO is approved by County Manager, as allowed by BCC-27 "Construction Contracts", delegating Change Order approval to the County Manager of up to \$100,000.		\$2,552,073	
4/11/2008	Change Order #1 to the AMEC construction management contract is executed, increasing the contract by \$53,325 for two additional weeks of oversight due to delivery delays related to switching to a local sand company with a slower production process than commercially available sand located out-of-county. CO is approved by County Manager, as allowed by BCC-27 "Construction Contracts", delegating Change Order approval to the County Manager of up to \$100,000.			\$361,725
4/19/2008	Final sand placement of original project scope is completed; site restoration, project inspections and grain size testing continue on schedule.			
5/1/2008	Deadline for completion of the sand restoration project due to marine turtle nesting season.			
5/20/2008	BoCC approves an extension of FDEP contract 05BE1 to May 5, 2010, for design, permitting and monitoring of the Mid Reach Shore Protection project.			
6/5/2008	RFQ is accepted from firms interested in continuing coastal engineering consultant services at the County. Through the selection process, Olsen Associates, Inc. is ranked as the #1 firm by the approved selection committee.			
8/18 – 23/2008	Tropical Storm Fay makes four landfalls across Central Florida and the panhandle, causing extensive flooding and beach erosion.			
8/28/2008	Change Order #2 to the CKA sand restoration project is executed by the NRMO Director, to extend the contract through December 31, 2008, in order to determine the impact of T.S. Fay on the beach sand volume. No change to budget or contract amounts.			
10/21-22/2008	Brevard County staff and FEMA beach erosion specialist evaluate the damages to Mid Reach and South Beaches and determine that 161,778 cubic yards of sand were lost as a result of the 2008 hurricane season, including T.S. Fay. The FEMA sand replacement estimate is \$4,707,317, with a local cost share of \$588,415 (12.5%).			

BACKGROUND - CONTINUED

Timeline - continued

Date	Event Description	Project Budget	CKA	AMEC/Olsen
11/17/2008	Change Order #3 to the CKA sand restoration project is approved and executed by the BoCC, increasing the contract amount by \$3,166,576 to 1) delete the balance of the scope of the work on the previous specifications and 2) add a new project to restore the losses associated with T.S. Fay.		\$5,718,649 (289,803 cy)	
12/18/2008	Olsen Associates, the County's approved continuing contractor for coastal engineering services, proposes to perform construction oversight and management on the updated scope of work related to the 2009 T.S. Fay Dune Restoration, for an amount not-to-exceed \$364,185.			\$364,185
3/17/2009	Change Order #4 to the CKA sand restoration project is executed, increasing the contract amount by \$48,000 for beach tilling at \$800/acre required by environmental permits. CO is approved by County Manager, as allowed by BCC-27 "Construction Contracts", delegating Change Order approval to the County Manager of up to \$100,000.		\$5,766,649	
3/24/2009	Final sand delivery is made on the T.S. Fay-related sand restoration project, within the contracted timeline of April 1, 2009, for completion of beach work.			
3/24/2009	BoCC approves an extension of FDEP contract 07BE1 to April 30, 2010 to ensure final documentation the emergency sand dune restoration project as well as allow for required monitoring.			
4/29/2009	Final invoice (less retainage) is submitted by CKA to NRMO, within the contracted timeline of May 1, 2009, for completion of vegetation and beach access work.			
6/30/2009	Release of final retainage authorized after allowing FDEP 30 days to review post-construction testing results.			
7/16/2009	Final payment is made to CKA, LLC for retainage on the contract.			

SUMMARY OF RESULTS

Results

Below is a summary of our results, as detailed in the Specific Procedures and Results section of this report. This information has been provided to the NRMO department for review and comment prior to submission to the Internal Audit Committee. Management's response is included where applicable within this report.

Relative Risk is an evaluation of the severity of the concern and the potential impact on the operations. Items rated as "High" are considered to be of immediate concern and could cause significant operational issues if not addressed in a timely manner. Items rated as "Moderate" may also cause operational issues and do not require immediate attention, but should be addressed as soon as possible. Items rated as "Low" could escalate into operational issues, but can be addressed through the normal course of conducting business.

Relative Risk	Summary of Results
Low	Administrative Order-33 "Prompt Payment of Invoices" states that departments should mark/stamp/date contractor invoices when they are received, and forward approved invoices to Finance within 10 days of receipt, in order for the County to process payments in compliance with the Local Government Prompt Payment Act. During our testing of contractor payments, we noted 13 of 24 (54%) instances of non-compliance with County policy with regard to submitting invoices to County Finance for payment within 10 days of receipt. In addition, we noted the majority of invoices were not properly marked with the date of receipt. See additional details at procedure #5.

Based on the testing performed and outlined in the following pages, process controls at the Natural Resource Management Office, as they relate to specific project management, appear to be in place and operating effectively.

SPECIFIC PROCEDURES AND RESULTS

Procedure	Results
<p>1. Obtain and review the contracts associated with the project and any amendments; determine if they were properly executed and approved by the Board.</p>	<p>We obtained a copy of the following contracts and amendments:</p> <ol style="list-style-type: none"> 1. AMEC Earth & Environmental, approved by BoCC January 8, 2008. 2. AMEC Change Order #1, executed April 11, 2008. 3. CKA, LLC, approved by BoCC January 8, 2008. 4. CKA Change Order #1, executed March 11, 2008. 5. CKA Change Order #2, executed August 29, 2008. 6. CKA Change Order #3, approved by BoCC November 17, 2008. 7. CKA Change Order #4, executed March 23, 2009. 8. Olsen Associates Task Order FAY-2008-1, executed December 17, 2008, based on a November 17, 2008 approval by the BoCC. <p><u>Conclusion:</u> The original contracts and subsequent amendments were properly executed and approved by the Brevard County of County Commissioners or designee in compliance with BCC-27 "Construction Contracts".</p>
<p>2. Review the competitive selection process in accordance with F.S. 255.20 and 287.055, as applicable, and ensure the following:</p> <ul style="list-style-type: none"> ▪ Advertisement of Bid ▪ Pre-Bid Meeting Attendance (if applicable) ▪ Bid Opening Tally Sheet ▪ Bid Tabulation ▪ Recommendation for Award 	<p>We reviewed the competitive selection documentation for the AMEC, CKA and Olsen.</p> <ul style="list-style-type: none"> • For the CKA construction agreement, we reviewed the advertisements of bid, pre-meeting attendance sheet, bid opening tally sheets and proposals submitted, verifying the amounts noted on the bid tally sheets. • The AMEC time and materials contract was a sole source agreement and we verified Board approval on January 8, 2008. • The Olsen contract is a continuing services contract for coastal engineering services. We reviewed the request for qualifications, advertisement of bid, selection committee tally sheet, Board agenda item and approval documentation. <p><u>Conclusion:</u> We noted no instances of non-compliance with statutory requirements.</p>
<p>3. Review the contracts for special reporting provisions and test for compliance.</p>	<p>For the CKA contract, we noted the following submittal requirements:</p> <ul style="list-style-type: none"> • Transport Route • Contact List • Load Check In report – for monitoring of daily deliveries, including truck ID, load quantity, time and date of arrival. <p><u>Conclusion:</u> We noted no exceptions during our testing.</p>

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																																								
<p>4. Obtain all change orders that increase the original contract amount, and determine the following:</p> <ul style="list-style-type: none"> ▪ Change order was adequately supported and approved by the Owner. ▪ The decision to issue a Change Order rather than re-bid the additional work was considered and in compliance with statute. ▪ Total amount contracted was in accordance with the approved project budget. 	<p>The following represents a recap of the approved change orders that increased the original not-to-exceed amounts:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Change Order</th> <th style="text-align: right;">Total</th> <th style="text-align: right;">AMEC</th> <th style="text-align: right;">CKA</th> <th style="text-align: left;">Justification of no re-bid</th> </tr> </thead> <tbody> <tr> <td>Original Contract</td> <td style="text-align: right;">\$ 2,845,473</td> <td style="text-align: right;">\$ 308,400</td> <td style="text-align: right;">\$ 2,537,073</td> <td>N/A - original contract</td> </tr> <tr> <td>Change Order #1</td> <td style="text-align: right;">15,000</td> <td></td> <td style="text-align: right;">15,000</td> <td>Increases debris removal scope for deep excavation.</td> </tr> <tr> <td>Change Order #1</td> <td style="text-align: right;">53,325</td> <td style="text-align: right;">53,325</td> <td></td> <td>Extends timeline due to other agency delay.</td> </tr> <tr> <td>Change Order #2</td> <td style="text-align: right;">-</td> <td></td> <td style="text-align: right;">-</td> <td>No change to pricing. Extension of contract.</td> </tr> <tr> <td>Change Order #3</td> <td style="text-align: right;">3,166,576</td> <td></td> <td style="text-align: right;">3,166,576</td> <td>Same rates from contract (11 months earlier); no timing delay.</td> </tr> <tr> <td>Change Order #4</td> <td style="text-align: right;">48,000</td> <td></td> <td style="text-align: right;">48,000</td> <td>Cost per acre 10% lower than 2008 quoted rate.</td> </tr> <tr> <td>Final Contract</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 6,128,374</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 361,725</td> <td style="text-align: right; border-top: 1px solid black; border-bottom: 3px double black;">\$ 5,766,649</td> <td></td> </tr> </tbody> </table> <p><u>Conclusion:</u> The change orders were adequately supported and approved. The decisions recommended by County staff and approved by management to not re-bid changes to the scope of the work were reasonable. We did note that Change Order #2 to the CKA contract was for the approval of a contract extension to December 31, 2008. However, the change order was not approved until August 28, 2008, when the original contract deadline of May 1, 2008 had already passed. Per discussion with NRMO, the original contract deadline of May 1 was specified to coincide with the start of marine turtle nesting season, during which time the beach and sand work cannot be performed. It was expected that required inspections and environmental monitoring would continue after that date.</p>	Change Order	Total	AMEC	CKA	Justification of no re-bid	Original Contract	\$ 2,845,473	\$ 308,400	\$ 2,537,073	N/A - original contract	Change Order #1	15,000		15,000	Increases debris removal scope for deep excavation.	Change Order #1	53,325	53,325		Extends timeline due to other agency delay.	Change Order #2	-		-	No change to pricing. Extension of contract.	Change Order #3	3,166,576		3,166,576	Same rates from contract (11 months earlier); no timing delay.	Change Order #4	48,000		48,000	Cost per acre 10% lower than 2008 quoted rate.	Final Contract	\$ 6,128,374	\$ 361,725	\$ 5,766,649	
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results
<p>5. Review payment applications and/or invoices and determine the following:</p> <ul style="list-style-type: none"> ▪ Supporting documentation is available, reasonable for the costs incurred, and agrees to the summary invoice. ▪ Verify the mathematical accuracy of the invoice including the carry forward of the previous invoice's balances and calculation of retainage, if applicable. ▪ Invoices were properly approved in accordance with statutes and County policies. 	<p>Administrative Order-33 "Prompt Payment of Invoices" states that departments should mark/stamp/date contractor invoices when they are received, and forward approved invoices to Finance within 10 days of receipt, in order for the County to process payments in compliance with the Local Government Prompt Payment Act, as defined in Florida Statutes 218.73 and 218.735. We reviewed the following invoices related to the project, as illustrated at Chart A on the following page:</p> <ul style="list-style-type: none"> • AMEC invoices N13413406, N13413573, N13414060, N13414410. • CKA Phase I (pre-TS Fay) invoices 1-4 (PO 4500051610) • CKA Phase II (TS Fay) invoices 1-5 (PO 4500057141) • Olsen invoices, various under PO 4500056776 as shown on the table. <p><u>Conclusion:</u> We noted the invoices contained support, were mathematically accurate and were reasonable for the costs incurred. We also noted the invoices were properly approved. However, we noted 13 of 24 (54%) instances of non-compliance with County policy with regard to submitting invoices to County Finance for payment within 10 days of receipt. We also noted the majority of invoices were not properly marked with the date of receipt, making it difficult to determine compliance. See the notes referenced under the table.</p> <p><u>Recommended Action:</u> The department should comply with AO-33 and mark invoices when received and invoice review should occur promptly in order to monitor compliance with Florida Statute and internal policy.</p> <p><u>Management's Response:</u> The project manager's workload was doubled by this emergency project. In prioritizing tasks, successful completion of the project (and other non-emergency projects) and thoroughly reviewing invoices for accuracy were given higher priority than timely invoice processing. That said, the project manager acknowledges the importance of adhering to AO-33 and will assure compliance for future projects. Department staff has been reminded of the requirements of AO-33.</p>

SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																																																																																																																																																																																					
Procedure #5 - continued	Chart A:																																																																																																																																																																																					
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

Procedure	Results																
<p>6. Review payments made to the vendor(s) and determine the following:</p> <ul style="list-style-type: none"> ▪ Amounts paid agree to the approved invoiced amount. ▪ Amounts were paid in accordance with the Prompt Payment Act, as defined by Florida Statute 237.035. ▪ Total amounts paid to vendor agree to the final contract amount. 	<p>Local Government Prompt Payment Act states that construction invoices should be paid within 20 business days of the date of receipt by the oversight agency, and that non-construction invoices should be paid within 45 days of the date received by Finance, after being approved by the department. We tested the invoices for compliance with these rules as illustrated at Chart B on the following page.</p> <p>With respect to final contract amounts, we noted the payments were within the allowable not-to-exceed contract amounts as follows:</p> <table border="1" data-bbox="726 509 1514 712"> <thead> <tr> <th></th> <th>AMEC</th> <th>CKA</th> <th>Olsen</th> </tr> </thead> <tbody> <tr> <td>Contract Amount</td> <td>\$ 361,725</td> <td>\$ 5,766,649</td> <td>\$ 364,185</td> </tr> <tr> <td>Actual Amounts Paid</td> <td>354,454</td> <td>5,745,562</td> <td>345,786</td> </tr> <tr> <td></td> <td><u>\$ 7,271</u></td> <td><u>\$ 21,087</u></td> <td><u>\$ 18,399</u></td> </tr> </tbody> </table> <p><u>Conclusion:</u> Payments to vendors agreed to the amounts invoiced and approved by the department. The total amounts paid were in accordance with the final contract amounts. We noted that all construction and non-construction invoices were paid within the required statutory period.</p>		AMEC	CKA	Olsen	Contract Amount	\$ 361,725	\$ 5,766,649	\$ 364,185	Actual Amounts Paid	354,454	5,745,562	345,786		<u>\$ 7,271</u>	<u>\$ 21,087</u>	<u>\$ 18,399</u>
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SPECIFIC PROCEDURES AND RESULTS - CONTINUED

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Procedure #6 - continued	<p><u>Chart B:</u></p> <table border="1" data-bbox="863 313 1686 1435"> <thead> <tr> <th colspan="6" data-bbox="863 313 1686 354">Non-construction invoices:</th> </tr> <tr> <th data-bbox="863 354 989 427">Vendor</th> <th data-bbox="989 354 1136 427">Invoice #</th> <th data-bbox="1136 354 1283 427">Invoice Date</th> <th data-bbox="1283 354 1409 427">Received Finance</th> <th data-bbox="1409 354 1535 427">Actual Pymt Date</th> <th data-bbox="1535 354 1686 427">Lag (days)</th> </tr> </thead> <tbody> <tr><td>AMEC</td><td>N13413406</td><td>03/06/2008</td><td>04/08/2008</td><td>04/17/2008</td><td>9</td></tr> <tr><td>AMEC</td><td>N13413573</td><td>04/04/2008</td><td>07/10/2008</td><td>07/17/2008</td><td>7</td></tr> <tr><td>AMEC</td><td>N13414060</td><td>06/19/2008</td><td>11/03/2008</td><td>11/06/2008</td><td>3</td></tr> <tr><td>AMEC</td><td>N13414410</td><td>09/03/2008</td><td>10/31/2008</td><td>11/13/2008</td><td>13</td></tr> <tr><td>Olsen</td><td>2008386</td><td>12/05/2008</td><td>12/22/2008</td><td>12/29/2008</td><td>7</td></tr> <tr><td>Olsen</td><td>2009025</td><td>01/05/2009</td><td>01/28/2009</td><td>02/05/2009</td><td>8</td></tr> <tr><td>Olsen</td><td>2009028</td><td>01/05/2009</td><td>01/28/2009</td><td>02/05/2009</td><td>8</td></tr> <tr><td>Olsen</td><td>2009048</td><td>02/12/2009</td><td>02/23/2009</td><td>03/05/2009</td><td>10</td></tr> <tr><td>Olsen</td><td>2009085</td><td>03/05/2009</td><td>03/26/2009</td><td>04/02/2009</td><td>7</td></tr> <tr><td>Olsen</td><td>2009089</td><td>03/10/2009</td><td>03/26/2009</td><td>04/02/2009</td><td>7</td></tr> <tr><td>Olsen</td><td>2009127</td><td>04/10/2009</td><td>04/24/2009</td><td>04/30/2009</td><td>6</td></tr> <tr><td>Olsen</td><td>2009142</td><td>05/05/2009</td><td>05/27/2009</td><td>06/04/2009</td><td>8</td></tr> <tr><td>Olsen</td><td>2009144</td><td>05/05/2009</td><td>05/21/2009</td><td>05/28/2009</td><td>7</td></tr> <tr><td>Olsen</td><td>2009191</td><td>06/10/2009</td><td>06/26/2009</td><td>06/30/2009</td><td>4</td></tr> <tr><td>Olsen</td><td>2009199</td><td>06/10/2009</td><td>06/11/2009</td><td>06/18/2009</td><td>7</td></tr> </tbody> </table> <table border="1" data-bbox="863 1027 1686 1435"> <thead> <tr> <th colspan="6" data-bbox="863 1027 1686 1068">Construction invoices:</th> </tr> <tr> <th data-bbox="863 1068 989 1141"></th> <th data-bbox="989 1068 1136 1141">Invoice #</th> <th data-bbox="1136 1068 1283 1141">Invoice Date</th> <th data-bbox="1283 1068 1409 1141">Finalized NRMO</th> <th data-bbox="1409 1068 1535 1141">Actual Pymt Date</th> <th data-bbox="1535 1068 1686 1141">Lag (days)</th> </tr> </thead> <tbody> <tr><td>CKA</td><td>1</td><td>03/06/2008</td><td>03/19/2008</td><td>03/27/2008</td><td>6</td></tr> <tr><td>CKA</td><td>2</td><td>04/01/2008</td><td>04/03/2008</td><td>04/10/2008</td><td>5</td></tr> <tr><td>CKA</td><td>3</td><td>05/12/2008</td><td>05/19/2008</td><td>06/05/2008</td><td>13</td></tr> <tr><td>CKA</td><td>4</td><td>07/22/2008</td><td>08/11/2008</td><td>08/28/2008</td><td>13</td></tr> <tr><td>CKA</td><td>1</td><td>02/02/2009</td><td>02/02/2009</td><td>02/19/2009</td><td>13</td></tr> <tr><td>CKA</td><td>2</td><td>02/19/2009</td><td>03/04/2009</td><td>03/19/2009</td><td>11</td></tr> <tr><td>CKA</td><td>3</td><td>03/02/2009</td><td>03/04/2009</td><td>03/26/2009</td><td>18</td></tr> <tr><td>CKA</td><td>4</td><td>04/29/2009</td><td>04/29/2009</td><td>05/14/2009</td><td>11</td></tr> </tbody> </table>						Non-construction invoices:						Vendor	Invoice #	Invoice Date	Received Finance	Actual Pymt Date	Lag (days)	AMEC	N13413406	03/06/2008	04/08/2008	04/17/2008	9	AMEC	N13413573	04/04/2008	07/10/2008	07/17/2008	7	AMEC	N13414060	06/19/2008	11/03/2008	11/06/2008	3	AMEC	N13414410	09/03/2008	10/31/2008	11/13/2008	13	Olsen	2008386	12/05/2008	12/22/2008	12/29/2008	7	Olsen	2009025	01/05/2009	01/28/2009	02/05/2009	8	Olsen	2009028	01/05/2009	01/28/2009	02/05/2009	8	Olsen	2009048	02/12/2009	02/23/2009	03/05/2009	10	Olsen	2009085	03/05/2009	03/26/2009	04/02/2009	7	Olsen	2009089	03/10/2009	03/26/2009	04/02/2009	7	Olsen	2009127	04/10/2009	04/24/2009	04/30/2009	6	Olsen	2009142	05/05/2009	05/27/2009	06/04/2009	8	Olsen	2009144	05/05/2009	05/21/2009	05/28/2009	7	Olsen	2009191	06/10/2009	06/26/2009	06/30/2009	4	Olsen	2009199	06/10/2009	06/11/2009	06/18/2009	7	Construction invoices:							Invoice #	Invoice Date	Finalized NRMO	Actual Pymt Date	Lag (days)	CKA	1	03/06/2008	03/19/2008	03/27/2008	6	CKA	2	04/01/2008	04/03/2008	04/10/2008	5	CKA	3	05/12/2008	05/19/2008	06/05/2008	13	CKA	4	07/22/2008	08/11/2008	08/28/2008	13	CKA	1	02/02/2009	02/02/2009	02/19/2009	13	CKA	2	02/19/2009	03/04/2009	03/19/2009	11	CKA	3	03/02/2009	03/04/2009	03/26/2009	18	CKA	4	04/29/2009	04/29/2009	05/14/2009	11
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<p>7. Review the project funding and determine if expenditures were allowable for the respective funding source.</p> <ul style="list-style-type: none"> ▪ If local match was required, determine if required match was made. ▪ Given the final project costs, determine if overall project assumptions, budget estimates and considerations made to were reasonable and appropriate. 	<p>On December 21, 2007, the Board of County Commissioners approved using FDEP funding to complete an estimated \$4.1M in dune restoration to the Mid Reach and South Beaches. The funding called for \$1,756,430 in grant revenue and \$2,343,570 in local cost share or "match". The Board approved a General Fund transfer of \$2,343,570 to the NRMO operating budget in order to fund the match.</p> <p>Prior to the contract extension that resulted from Tropical Storm Fay and additional funding from FEMA, the County had expended the following on the dune restoration project:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th colspan="6">Actual Expenditures (per SAP):</th> </tr> <tr> <th></th> <th>Mid Reach</th> <th>S Beaches</th> <th>Total</th> <th>Budget</th> <th>Variance</th> </tr> </thead> <tbody> <tr> <td>Grant</td> <td>\$ 890,821</td> <td>\$ 435,121</td> <td>\$ 1,325,942</td> <td>\$ 1,756,430</td> <td>\$ (430,488)</td> </tr> <tr> <td>Match</td> <td>1,194,470</td> <td>440,281</td> <td>1,634,751</td> <td>2,343,570</td> <td>(708,819)</td> </tr> <tr> <td>Total</td> <td>2,085,291</td> <td>875,402</td> <td>2,960,693</td> <td></td> <td></td> </tr> <tr> <td>Budget</td> <td>3,100,000</td> <td>1,000,000</td> <td>4,100,000</td> <td>\$ 4,100,000</td> <td>\$ (1,139,307)</td> </tr> <tr> <td>Variance</td> <td>\$ (1,014,709)</td> <td>\$ (124,598)</td> <td>\$ (1,139,307)</td> <td></td> <td>*unexpended*</td> </tr> <tr> <td>Match %</td> <td>57.28%</td> <td>50.29%</td> <td>55.22%</td> <td></td> <td></td> </tr> </tbody> </table> <p>We reviewed the T.S. Fay FEMA reimbursement request documentation, the agenda report for the 11/17/2008 meeting related to the FEMA portion of the project, and the general ledger report and noted the following:</p> <ul style="list-style-type: none"> • At the 11/17/2008 Commission meeting, the total estimated cost of the work for 161,778 cubic yards of lost sand was \$4,707,317, which agrees to the SAP budget for NRMO cost center 223208. • At the time of the 11/17/2008 estimate, the required 12.5% local cost share was \$588,415. The BoCC approved an additional general funds transfer of \$98,500 to NRMO operating budget to cover the estimated match differential required to complete both projects. • The total costs submitted to FEMA for reimbursement and expensed through 9/21/2009 were \$3,632,884, and CKA and Olsen represent 98% of that amount. <p><u>Conclusion:</u> The pre-TS Fay payments to AMEC and CKA represent approximately 97% of the project expenditures and are allowable costs under the provisions of the grant agreement. The required local cost share was met for the amounts expended. As shown above, there are unused FDEP grant dollars of \$430,488. The BoCC approved the extension of the grant agreements through April 30, 2010, in order for the County to utilize those funds for ongoing monitoring and project documentation.</p> <p>During the 11/17/2008 Commission meeting, the estimated unexpended match was \$490,000, as compared to the actual unexpended amount of \$708,819 shown above. There was also an additional \$98,500 in general fund transfer to NRMO approved by the Board for FEMA local match. The required match was only \$588,415, leaving \$218,904 in leftover funds in the NRMO budget. (\$708,819 + \$98,500 - \$588,415 = \$218,904). The NRMO has included the leftover funds in Restricted Balance Forward to meet the local cost share requirements of the remaining grant, which is required to be set aside for purposes of the grant.</p>	Actual Expenditures (per SAP):							Mid Reach	S Beaches	Total	Budget	Variance	Grant	\$ 890,821	\$ 435,121	\$ 1,325,942	\$ 1,756,430	\$ (430,488)	Match	1,194,470	440,281	1,634,751	2,343,570	(708,819)	Total	2,085,291	875,402	2,960,693			Budget	3,100,000	1,000,000	4,100,000	\$ 4,100,000	\$ (1,139,307)	Variance	\$ (1,014,709)	\$ (124,598)	\$ (1,139,307)		*unexpended*	Match %	57.28%	50.29%	55.22%		
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