



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

**Internal Audit Review of
Facilities Construction**

**Prepared By:
Internal Auditors of Brevard County
July 15, 2003**

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July 15, 2003

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

Pursuant to the approved 2002/2003 internal audit plan, the Facilities Department was the next scheduled audit. This department consists of two primary functions, Facilities Construction and Facilities Maintenance. During our initial entrance conference we learned that Facilities Maintenance was implementing a new work order control system in July of 2003. The work order control system tracks work orders requested by departments and produces a variety of weekly and monthly accounting reports. Since this system is the primary control instrument for the function, it would be to the advantage of the County to allow several months of operation of the new system before the function is audited.

We therefore separated the audit plan of Facilities Department into the two functions and proceeded with the audit on Facilities Construction, which we are hereby submitting our report. The internal audit of the Facilities Maintenance function will be conducted in the next six months to allow ample time to operate the new work order control system. We will be presenting the Facilities Construction report to the Audit committee at the next scheduled meeting on August 20, 2003.

Our report is organized in the following sections:

Background	This provides an overview of Facilities Construction and the related issues.
Objectives and Approach	The internal audit objectives and focus are expanded upon in this section as well as a review of the various phases of our approach.
Issues and Recommended Action	This section gives a description of the issues, the impact and recommended action. Management's response and action plan has been incorporated into this section as well.

The follow-up process for the issues identified in this report will consist of the following:

- County Management will follow-up with responsible personnel and report to the audit committee on a quarterly basis using the approved format.
- The Internal Auditors will conduct a formal follow-up review within six months of the issued report and report back to the audit committee at the regularly scheduled meeting.

We would like to thank all those involved in assisting the Internal Auditors in connection with their review of Facilities Construction.

Respectfully Submitted,

INTERNAL AUDITORS

Background

Background

Facilities Department

In October 2001, the County combined Facilities Construction and Facilities Maintenance into one department called Facilities Department. Although the Department is able to cross utilize their employees between both functions, the two functions continue to maintain separate and distinct responsibilities within the County.

The Facilities Department operates under the following mission statement:

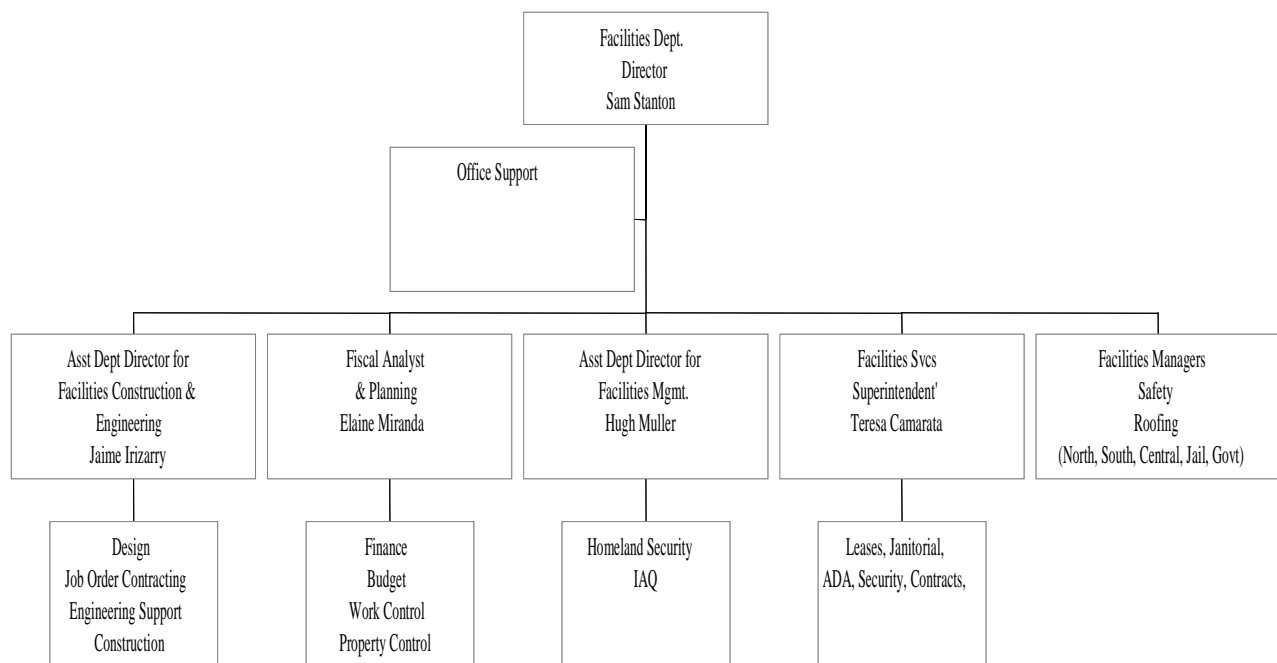
Provide functional, safe and attractive facilities that support County agencies in their efforts to provide quality services to the public.

The intent of this report is to address Facilities – Construction. As reported in our transmittal letter, we will be reviewing Facilities Maintenance within the next six months after they have had time to implement and use the new work order control software system.

As part of the restructure, Contract files that were maintained by Facilities Maintenance were transferred to Facilities Construction for administration. Since the restructure, they have been monitoring the files and obtaining documentation as required by County Policies. In addition, they have setup a new file indexing system. We would like to note that the department has made great strides in implementing a system to ensure contract compliance. However, as identified in the “Issues, Impact and Recommended Actions” we have identified issues that still need to be addressed.

Staffing

The organizational structure of Facilities Department is as follows:



Background - continued

Facilities Construction

Facilities Construction (the Department) is responsible for providing project management services as well as pre-construction and design phase services for the County. This is accomplished by developing standardized contracts for all construction and monitoring the projects until completion. Upon completion of the project, the Department will forward all documentation to the requesting department or maintain the files internally if the project was originated from within this Department.

The Department establishes continuing contracts for professional services that are utilized throughout the year for projects in which construction costs do not exceed \$1,000,000. These contracts are for one year with three one-year renewal options. The advantage of using the continuing contracts is that the Department is not required to advertise or obtain bids for services that fall within the scope of these contracts. By utilizing these types of contracts, it allows the County to significantly shorten the length of time to complete a construction project. The three types of continuing contracts currently utilized are as follows:

- Job Order Contracting (JOC)
- Construction Management (CM)
- Engineering services

Job Order Contracting (JOC)

JOC is designed to be used for projects ranging between \$2,500 and \$250,000. A JOC is established with a vendor who can provide different types of services at predetermined rates. The contract provides the County with the ability to contact an approved vendor and have them begin working on a project within 10 days at the predetermined rates. Facilities Construction currently has contracts with three vendors who can provide services in different geographic sections of the County: north, south and County-wide.

The County contracted with The Gordian Group (Gordian) for software consulting services and to use Gordian's JOC software system (PROGEN). The contract requires the County remit to Gordian a fee based upon the Notice to Proceed (NTP) amount on all projects entered into the JOC system. The contract provides for a two-tiered fee schedule of five percent (5%) for the accumulated contract values totaling up to \$6,000,000 and for one and one half percent (1.5%) for accumulated contract values above \$6,000,000 for as long as the County retains the contract with the Gordian Group. The contract is for thirty-six months or when the County meets the \$2,000,000 JOC Contract award threshold whichever is later. The Brevard County Board of Commissioners can authorize an option to renew for additional periods of a minimum of twelve months each. It should be noted that NTP is generally the maximum contracted value of the service/construction that the County has agreed to pay the vendors. The County has paid Gordian \$17,228.53 from May 1, 2002 through our audit date.

Construction Management (CM)

Construction management is designed to eliminate cost overruns and excessive change orders found in the construction process. In this approach, the County hires a construction manager based on qualifications who then provides services before, during and after the actual construction. The County negotiates a maximum price with the construction manager who then contracts directly with the subcontractors, using competitive bidding. These contracts provide for a Guaranteed Maximum Price and the construction manager absorbs any cost overruns. The CM can also act as a sub-contractor for specific work on the construction project. Some advantages to using this approach are smaller projects can be combined into a larger project to attract more qualified bidders, it reduces the completion time of the project and the costs of projects contracted using this process are often lower than with a traditional construction process.

Background - continued

Engineering Services

Engineering services are designed to provide design phase services to include, but not limited to, full scope of work, interior space requirement, conceptual design criteria and value engineering. The County hires a qualified design engineering firm which not only designs the project and prepares the specifications, but also is required to oversee the construction process. This is to ensure that the project is being completed in accordance with the design specifications set forth in the scope of work. The County is required to rotate the projects amongst the contracted Engineering firms.

Other Contracts

For construction projects that do not fall within the scope of the continuing contracts identified above and the expected costs are more than \$250,000, the County will contract the project in accordance with Administrative Order AO-28, (Construction Administration, Contract Administration, Construction Management & Construction Procurement) and AO-32 (Acquisition of Design/Build Public Construction Projects).

Objectives and Approach

Objectives and Approach

Objectives

Objectives of the audit of Facilities Construction include the following:

<input type="checkbox"/> Obtain an understanding and assess control risk associated with the internal controls over construction projects.
<input type="checkbox"/> Determine that transactions for capital projects occurred, are complete, and are properly measured.
<input type="checkbox"/> Determine compliance with applicable laws, rules and regulations.
<input type="checkbox"/> Determine that policies and procedures are effective, documented and in place.

Approach

Our audit approach consisted of three phases:

Understanding and Documentation of the Process (Phase 1)

During phase one, we interviewed the Director and other personnel at Facilities Construction to discuss the scope and objectives of the audit work, obtain preliminary data, and establish working arrangements. We reviewed other documents including budgets of Facilities Construction, Operating Procedures Manual and mission statement. Additionally, we reviewed Florida Statutes, County Ordinances, Administrative Orders and County Policies applicable to the Department.

Detailed Testing (Phase 2)

The purpose of this phase was to test detail construction projects for compliance with applicable laws, rules and regulations. Our testing included, but was not limited to, the following compliance requirements:

- Plans and specs properly reviewed and approved
- Proper selection and payment of contracted entities
- Change orders approved by the County Manager or the Board of County Commissioners
- Contractor furnish a payment and performance bond
- All required insurance in force
- Prequalification of bidders
- Retainage properly withheld and recorded
- Application and certification for payment properly reviewed and approved
- Adequate project records kept
- Proper facilities construction fees charged to requesting Department for oversight of project
- Bid packages, contracts and other related documentation required to be maintained by the Construction Manager of the Harry T & Harriette V Moore Justice Center project
- Follow-up on prior audit findings related to the Construction process.

Objectives and Approach - continued

Reporting (Phase 3)

At the conclusion of our audit, we documented our understanding of the process surrounding Facilities Construction based on our interviews at the County and summarized our findings. We conducted an exit conference with management at Facilities Construction, the Assistant County Manager of Management Services Group and County Manager. We have incorporated management's response into our report.

**Issues, Impact, Recommended Action
and Management Response**

Issue # 1	File Maintenance
	<p>We noted on two of the two continuing contracts tested that the contract files were not consistently organized in the same manner and/or were not complete. For example, Administrative Order-45 (AO-45), requires that a contractor's performance evaluation form be utilized to evaluate a Contractor's performance and eligibility for future County projects. However, we noted that both sampled closed files did not contain a Contractor's performance form or the form was not completed. We also noted that the files were not organized in such a manner that would facilitate management review and concurrence that all required documentation was included in the project files.</p> <p>Impact</p> <ul style="list-style-type: none"> ❑ Performance evaluations and quality assessments of contractors work that should be referred to and considered in subsequent proposals is not properly documented or readily available. ❑ Contract Administration and management review of the required documents is impacted by the level of effort needed to identify and validate that the required documentation has been obtained and retained in the project files. <p>Recommended Action</p> <p>We recommend that Facilities Construction develop and utilize a standardized checklist for the various contracts utilized by the Department to ensure that the files are complete and accurate. The checklist should identify, at a minimum, the date the item was completed, preparer sign-off, management approval/review, file number (if applicable) and the location of the item in the folder. In addition, a standardized indexing system should be used on all construction contracts.</p>
	Management Response
Response	<p>Facilities Staff has developed and implemented a checklist that contains the above referenced information. In addition to a standardized indexing system a standard operating procedure is being developed regarding file maintenance for work requested through Facilities Maintenance Work Order System. The exception noted above happened during the initial stages of combining the Facilities Construction and Facilities Management departments into one department. Both projects were handled by new construction project managers.</p>
Time Frame	<p>Checklist implemented June 2, 2003.</p> <p>The SOP will be implemented by October 1, 2003</p>
Person Responsible	Mary Bowers

Issue # 2	<i>Lien Waivers from Subcontractors</i>
	<p>The Board of County Commissioners Policy – BCC-27 states that payments to a Contractor should not be made until an original signed release form (lien waiver) by the subcontractor is received indicating that they have been paid for all work, material, and supplies. However, during our testing, we noted an instance in our sample in which the final payment to a Contractor was made and the County had not received all original copies of the lien waivers. Copies of the lien waivers were kept in the file in lieu of the originals until the originals were received.</p> <p><i>Impact</i></p> <ul style="list-style-type: none"> ❑ Without the original copies of the lien waivers, the County is subject to the risk that subcontractors are not getting properly paid for work performed on the contract and could be subject to potential litigation. <p><i>Recommended Action</i></p> <p>We recommend that a monitoring process be established that ensures original lien waivers requirements (BCC-27) are received from the Contractor before final payment is made. Clerical personnel could monitor the requirements, however ultimate review and responsibility is with the Department/Office Representative. Part of the monitoring process should include notifying the vendor when original lien waivers are not received and that their invoice will not be paid until original lien waivers are received.</p>
	<i>Management Response</i>
Response	<p>With regard to the above reference instance Construction staff allowed payment based on a faxed copy in an effort not to delay payment to a small vendor while awaiting the original lien waivers. The original waiver was received and file appropriately. Per the above referenced recommended action faxed copies will no longer be acceptable. Staff will reiterate to vendors that payments can be only released upon receipt of original lien waivers.</p>
Time Frame	Implemented June 2, 2003.
Person Responsible	Mary Bowers

Issue # 3	Change Orders
	<p>We noted on one of the four contracts tested that a change order was signed by the County authorizing the additional work after the work had been performed and after the extended completion date written on the change order. It is our understanding that this occurred because the contractor performed certain work that was initially disputed by the County. At the end of the contract the County settled the disputed items and therefore needed to execute a change order after the fact. This however, is in violation with Policy BCC-27 which requires that change orders be approved before commencing any additional work.</p> <p>Impact</p> <ul style="list-style-type: none"> ❑ Facilities Construction was not in conformance with BCC-27 regarding approval of change orders in the instance noted above. ❑ This could lead to work being performed without proper approval or funding.. <p>Recommended Action</p> <p>We recommend the County review the existing procedures and enhance the process as necessary to address disputed items.</p>
	Management Response
Response	<p>Historically, disputed items are settled at the end of a project so that the project is not delay or stopped as a result of disputed items. The above referenced change order items resulted from several items that were pending resolution between the Architect and the Contractor. These items were disputes with regards to the dollar amount of the work and not the amount of or type of work performed.</p> <p>Facilities Construction will submit recommended changes/modifications to Policy BCC-27 to the Board to allow the County to settle disputed items at the end of the project so work on the project does not stop.</p>
Time Frame	October 1, 2003.
Person Responsible	Sam Stanton, Facilities Director

Issue # 4

Job Order Contracting (JOC)

In October 2002, the County implemented JOC as one of their continuing contracting methods to provide construction services for smaller projects (\$2,500 - \$250,000). During our testing, we noted the following:

- ❑ Although Facilities Construction utilizes a system provided checklist, there are no formal written policies or procedures over JOC.
- ❑ Two out of the three JOC contractors had expired insurance certificates for the general liability, automobile and workers compensation coverage's. The third JOC contractor had an expired workers compensation insurance certificate.
- ❑ Due to a software limitation the system does not allow for change orders. In order to process a change order, a new JOC order number has to be generated and a separate file setup.
- ❑ Although we noted no exceptions during our testing, there is no documented process to reconcile the fees charged from the Gordian Group (consultant) to the amount of "Notice to Proceed projects" in the JOC system.

Impact

- ❑ Clear, concise and standardized processes and procedures help minimize inconsistencies, misunderstandings and inadvertent oversight of obtaining proper documentation.
- ❑ In the event of employee turnover, lack of clearly defined procedures may lead to inefficiencies, possible discrepancies, and potential non-compliance with laws or policies.
- ❑ Because change orders have to be setup as separate jobs in JOC, when the entire project is not tracked in the same file, the potential exists that the individual project components costs could exceed required management approval levels. The current system also has the potential to circumvent timely management monitoring of contract progress and total project costs.
- ❑ A lack of documented procedures to reconcile invoices received from the Gordian Group to the Notice to Proceed projects within the JOC system in a timely manner could result in discrepancies and possible over charges.

Recommended Action

We recommend the following:

- ❑ Facilities Construction develop formal, written policies and procedures surrounding the JOC process to include but not be limited to items above as well as to reconciling invoices received from the Gordian Group to the Notice to Proceed projects within the JOC system.

<i>Issue # 4</i>	<i>Job Order Contracting (JOC), continued</i>
	<i>Recommended Action, continued</i>
	<ul style="list-style-type: none"> ❑ It is our understanding as stated above that the JOC System does not allow change orders to be processed to existing jobs. Therefore, we recommend the County develop a written process to ensure that all jobs and charge orders are properly consolidated.
	<i>Management Response</i>
Response	<p>Facilities' is developing written procedures for the JOC process to address the concerns listed above. It is envisioned that there will be a number of rewrites to any procedures developed as Facilities has only been utilized the JOC process for 10 months.</p> <p>Since JOC (software) is a proprietary system and does not allow change orders to the original project, the binders will be consolidated at the end of the job to allow all work to be filed together into one binder.</p>
Time Frame	Implemented July 1, 2003.
Person Responsible	Sam Stanton, Facilities Director

Issue # 5

Certificate of Substantial Completion & Final Completion

The County often acquires professional services (architecture, professional engineering, landscape architect, etc) to develop a design package for a public construction project as well as provide oversight of the project until completion of the project. Some of the oversight responsibilities include inspecting the project and approving all final documentation to include the Certificate of Substantial Completion and Certificate of Final Completion forms. During our testing, we noted the following regarding the Certificate of Substantial Completion and Certificate of Final completion forms for the one sampled closed contract:

- ❑ The contract required the Certificate of Substantial Completion be completed on December 28, 2002, however the Certificate of Substantial Completion form was signed by the A&E and the Sub-contractor performing the work on May 16, 2003 the sub-contractor was paid prior to the A&E contractor approval.
- ❑ The contract required the Certificate of Final Completion be completed on January 28, 2003, however the Certificate of Final Completion form was signed by the A&E contractor and the Contractor performing the work on May 16, 2003 and June 3, 2003 respectively.
- ❑ As noted above the certificates of completion were not signed by the A&E contractor until May 16, 2003, however the final payment was made April 17, 2003.

We were told that Facilities Construction contacted the A&E Contractor several times to check the status of their review and approval of both Certificates. However, the A&E Contractor provided the final copies to Facilities Construction approximately five months after the dates required in the contract.

Impact

- ❑ If final payment is made to the contractor prior to final approval and sign-off by the A&E, the County may have difficulty in obtaining satisfactory performance on the contract for open items and final completion of the job.

Issue # 5	<i>Certificate of Substantial Completion & Final Completion – continued</i>
	<p><i>Recommended Action</i></p> <p>We recommend the following:</p> <p>The department should institute written procedures to monitor receipt of required certificates. These procedures should include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Utilization of a close-out checklist. <input type="checkbox"/> Certified letters to the A&E contractor for failure to provide the forms. <input type="checkbox"/> A time-period in which staff would escalate the non-receipt to management and ultimately to the County Attorney. <p>The County implement a standardized and written policy related to the amount withheld on A&E contracts prior to “close out” (currently approximately 5% is retained). In addition the County should consider increasing the amount withheld until “close out”.</p>
<i>Management Response</i>	
Response	<p>A checklist has been put in place. A request to change the final payment amount to the A/E firm per their contract is forthcoming. This change would allow a larger amount of money to be held as an incentive to submit documents to the County in a more timely fashion.</p> <p>After no responses to two certified letters to contractor requesting receipt of certificates, Facilities Construction will escalate as appropriate to the County Attorney’s Office.</p>
Time Frame	Implemented June 2, 2003.
Person Responsible	Sam Stanton, Facilities Director

Issue # 6	<i>Facilities Construction - Certificate of Insurance</i>
	<p>The County requires contractors maintain via their contracting process, adequate insurance coverage and provide updated Certificates of Insurance while working on each project. We noted the County has a procedure in place to monitor these Certificates of Insurance for each contractor working of the various projects. However, we noted that Facilities Construction did not have a current Certificate of Insurance for workers compensation from a sampled A&E contractor.</p> <p><i>Impact</i></p> <p>Without assurance of proper insurance coverage by each Contractor, the ability to recoup damages should an accident occur is diminished. The County may be at risk should an accident occur and the responsible party was not properly insured.</p> <p><i>Recommended Action</i></p> <p>We recommend that Facilities Construction Department enhance their current monitoring process to ensure that current Insurance Certificates are on file. Staff should notify the contractor in advance of the insurance coverage expiration date. In the event the certificates are not received appropriate action should be taken.</p>
	<i>Management Response</i>
Response	<p>Pursuant to the audit, an updated copy of the insurance was obtained and faxed to the Auditors. The updated copy included the date range mentioned above, so the County was not without coverage during the timeframe in question.</p> <p>Facilities Construction will ensure that all insurance is updated on the Contracts Monitoring Systems as Department will have direct access to the system beginning October 2003 and will be able to undertake more frequent monitoring.</p>
Time Frame	Completed July 2, 2003.
Person Responsible	Mary Bowers

Issue # 7	Contract Approval Documentation
	<p>The County has a policy which requires execution of a memorandum which documents contract review by key County personnel (which includes the County Attorney), on all A&E Contracts. During our testing we noted on two out of seven contracts tested, that the County did not have any of the required signatures or a copy of the memorandum. Although the contracts were executed by the Board Chair and recorded in the Clerks office, neither the Clerks office nor the Facilities Construction Department was able to provide the internal signed off memorandum.</p> <p>Impact</p> <p>Without monitoring by both the Facilities Department and the Clerks office it is possible that contracts could be executed without appropriate management approval. This could expose the County to unwarranted risk if required contract clauses or other documentation are left out of the contract.</p> <p>Recommended Action</p> <p>We recommend that the County review the approval documentation process to ensure that all required approvals are obtained and documentation is retained to substantiate such approval.</p>
Management Response	
Response	<p>It has been standard operating procedure for the Chairman not to execute contracts that do not have the appropriate management signatures on the routing memorandum and therefore staff is assured that appropriate contract review was conducted. Routing has been changed so that Facilities Department gets the signature page before it is forwarded to the Clerk's Office in order to maintain proof of appropriate contract review.</p>
Time Frame	<p>Completed July 7, 2003.</p>
Person Responsible	<p>Mary Bowers</p>

Issue # 8

Moore Justice Center Addition

During our testing of contract compliance of the Construction Management (CM) process, we selected the Moore Justice Center Addition contract and reviewed the CM's files which are maintained in their administrative office. We noted the following:

Certificate of Insurance

The CM's contract for the "Moore Justice Center Addition" stated that the CM shall require each of his subcontractors to procure and maintain insurance (as further explained in Issue #9). The minimum insurance coverage per the sub-contracts or contracts are as follows:

- Contractors comprehensive general liability coverage's – bodily injury and property damage – \$1,000,000 each occurrence and combined single limit.
- Automobile liability coverage's – bodily injury and property damage - \$500,000 each occurrence – combined single limit.
- Worker's compensation and employees Liability – in accordance with the Laws of the State of Florida.

However, we noted the following exceptions during our review:

- Two out of 32 sub-contractors had insurance coverage that was not in compliance with the minimum amounts required per the contract.
- Three out of 32 sub-contractors did not have any evidence of automobile coverage as required in the contract provisions.

As discussed in issues 9 (D) the above coverage levels may not be in accordance with the requirements of the CM contract.

Subcontractor Contracts

All sub-contractor contracts are maintained by the CM in their administrative offices. Facilities Management is generally notified of the contractors that will be on the project but is not provided copies of the respective sub-contractor contracts. Our testing determined that the CM had contracts in place for the thirty-two sub-contractors as of our audit date.

Section 2.2.3(4) of the Contract requires the CM to enter into a contract with those low bidders determined to be qualified. The CM is required to "substantially follow the County's Ordinance 98-37. Section 2.4.2.1 requires the CM to competitively bid all subcontracts and select the lowest responsive and qualified bidder unless consented to in writing by the owner

During our testing we noted:

- Three contracts were not dated as to when the sub-contractor executed the contract.
- None of the thirty-two contracts had the signatures of the CM witnessed and only a few had the a sub-contractor witness.
- Several bids were negotiated down to lower amounts without sufficient written justification.
- One bid amount was increased without sufficient written justification.
- No bid information could be located for several contracts.
- There is no formal CM administrative review process performed by the County.

Issue # 8	Moore Justice Center Addition, continued
	<p>Impact</p> <p>Certificate of Insurance Although the Contract and direct responsibility is between the County and the CM, without proper insurance coverage of the sub-contractors the County may be at risk should an accident occur and the responsible party was not properly insured.</p> <p>Subcontractor Contracts Without specific requirements regarding the Construction Managers bid requirement and award process, irregularities may occur.</p> <p>Recommended Action</p> <p>Certificate of Insurance We recommend that the Facilities Construction Department consult with the County Attorney to understand and evaluate the risk of exposure that exists if a sub-contractor does not have adequate insurance coverage. In addition, on-site visits of the CM should be performed which include a review for proper insurance coverage.</p> <p>Subcontractor Contracts</p> <ul style="list-style-type: none"> ❑ The County prior to executing the next CM agreement should re-evaluate current contract requirements. Such review should include but not be limited to sub-contractor bid process and procedures. ❑ The CM needs to document their files adequately to justify bid awards as well as to adjustments to bid amounts to avoid any controversy or impact the timely delivery of the project. ❑ Facilities Management should consult with the County Attorney as to what corrective action needs to be taken to address the lack of witnessed signatures on the existing contracts. Provisions for having the signatures witnessed and the sub-contractor dating the contract should be included in future CM contracts as a requirement. ❑ Facilities Construction as part of its review of the CM should perform on-site visits and review the contracts for proper documentation, signatures, dates and other critical requirements.

Issue # 8	<i>Moore Justice Center Addition, continued</i>
	<i>Management Response</i>
Response	<p><u>Certificate of Insurance</u> - Again the contractual relationship is between the County and the Construction Manager and not the subcontractor, however per the Auditor's recommendation, the County has requested an opinion from the County Attorney's Office for further clarification or opinion as the existing contract does contain an indemnification process. Facilities Department will evaluate the cost benefit of outsourcing the audit function as part of the contract to ensure that proper documentation, signatures, dates, and other critical requirements are met.</p> <p><u>Subcontractor Contracts</u> - The CM contract template has been changed to require the CM to submit all bids to the Owner for our review and comment prior to entering into their subcontract agreements. Also, The CM contract has been changed to require the CM to submit all bids to the Owner for our review and comment prior to their subcontract agreements.</p> <p><u>Subcontractor Contracts - Recommended Action C</u> - Facilities Department is consulting with the County Attorney's Office.</p>
Time Frame	Implemented July 14, 2003; to be completed by October 1, 2003.
Person Responsible	Sam Stanton/County Attorney's Office

Issue # 9	<i>Construction Management Contract</i>
	<p>During our review of the Construction Manager agreement dated October 14, 2002 between the Owner and the Construction Manager for the Moore Justice Center Addition we noted the following provisions which should be considered for revision in future CM Contracts. The Department management was currently reviewing these issues.</p> <p>A. Contract Section 9.2 Direct Cost Items Sub section (5) Allows for the rental of machinery or equipment exclusive of hand tools used on the site of the project to be rented from the CM at rental charges consistent with those prevailing in the area. No formal approval of rental rates by the owner (County) is required.</p> <p>The CM was allowed based upon the above contract provisions to rent equipment to itself as part of the project costs. Facilities Construction personnel have challenged certain costs and were able to reduce the rental fee.</p> <p>B. Contract Section 9.4 Audit Requirements states that the CM shall keep books, records and accounts of all activities related to the Contract, Books, records and accounts related to the performance of the Contract shall be open to inspection during regular business hours by an authorized representative of the CM. This provision basically requires the CM to maintain the records etc. and allow itself to inspect the records. The Owner (County) is not mentioned in this provision.</p> <p>C. Contract Section 2.9 Job Site Administration Sub-section (4) Payments to contractors requires the CM to develop and implement a procedure for reviewing and processing payment applications by Sub-contractors for progress and final payments. This allows the CM to develop a procedure that Facilities Construction may not have any input into. Such procedures may not ensure payment of sub-contractors is adequately documented or paid timely as required by the County ordinance and State Statutes.</p> <p>D. Contract Section 13.2 Insurance – The CM shall not commence any construction work in connection with the agreement, nor shall the CM allow any Sub-contractor to commence work on his sub-contract until all similar insurance has been obtained and approved. The agreement calls for not less than \$2,000,000 combined single limit per occurrence for Commercial General Liability, Automobile Insurance and Workers Compensation coverage in compliance with State of Florida Laws. Sub-section (e) states that the CM shall require each of his subcontractors to procure and maintain during the life of the subcontract, insurance of the type previously specified. The above provisions appear to require sub-contractors to have the same insurance coverage levels as the CM. However, as detailed in Issue #8 sub-contractor contracts do not contain such requirements.</p>

Issue # 9	<i>Construction Management Contract, continued</i>
	<p><i>Impact</i></p> <p>A. Contract Section 9.2 Direct Cost Item Sub-section (5), without formal review and approval equipment rental may be charged at rates that are not consistent with those in the prevailing area.</p> <p>B. Contract Section 9.4 Audit Requirements - The access to the records by the County is limited if the CM enforces the verbiage of this provision.</p> <p>C. Contract Section 2.9 Job Site Administration – Without County input the CM may institute a procedure that causes Facilities Construction to delay payment of the monthly progress billing or pay without documentation the County deems sufficient to justify payments to the sub-contractors.</p> <p>D. Contract Section 13.2 Insurance – Without clearly specified adequate levels of insurance coverage by the sub-contractors, the County may be at risk should an accident occur.</p> <p><i>Recommended Action</i></p> <p>A. Although the Facilities Construction personnel identified the above issue, it is important to provide a provision that the CM provide justification for renting equipment from its self or a subsidiary. The County could then review and approve the request based upon the supporting documentation provided by the CM.</p> <p>B. The CM contract should be revised to state the books and records be open to the Owner’s (County’s) authorized representative.</p> <p>C. Facilities Management should review and approve the procedures used by the CM to facilitate timely review, approval, and payment of draw requests to ensure all required documentation is sufficient for its purposes.</p> <p>D. Facilities Construction in consultation with the County Attorney and the Risk Manager should review contract provisions to determine what levels of insurance coverage are required and follow-up accordingly. Future contracts should clearly identify insurance requirements.</p> <p>Facilities Construction personnel along with the County Attorney should review the CM contract provisions to determine whether any other provisions need to be addressed in future agreements.</p>

Issue # 9	<i>Construction Management Contract, continued</i>
	<i>Management Response</i>
Response	<p><u>Recommended Action A</u> - Facilities Construction had identified and made changes to the contract template for this item. Self-renting of equipment will not be allowed on future contracts without sufficient supporting documentation.</p> <p><u>Recommended Action B</u> - Facilities Construction had identified and made changes to the contract template for this item. The CM contract has been changed to reflect the recommendation</p> <p><u>Recommended Action C</u> - The Waiver of Rights is deemed sufficient to justify payment to the contractor for subcontractor payment submittals.</p> <p><u>Recommended Action D</u> - Facilities Department will consult with the County Attorney's Office and the Risk Manager on the levels of insurance required. Recommended changes will be instituted into future contracts.</p>
Time Frame	Implemented July 14, 2003; to be completed by October 1, 2003.
Person Responsible	Sam Stanton/County Attorney

Issue # 10	Construction Manager Role
	<p>We selected and reviewed the Construction Management Agreement for the Moore Center Addition project noting that the project budget was set at \$7,200,000. Per review of this contract we noted the primary role of the CM is to oversee the project and deliver it on time and within the construction budget.</p> <p>Pursuant to the contract provision 2.1, 2.4 and 7.3 the CM was allowed to perform work up to \$1,084,766 of this allotted budget. With regards to such work, the CM has the option of sub-contracting however, the CM can directly invoice for the work performed and is not required to submit invoices for sub-contracted work and typically does not. This work is billed directly from the CM and is not subject to the same level of scrutiny as the process followed when a sub-contractor (through the formal bid process) is hired. For example, the contract provisions do not appear to require comparative bids be obtained for work billed directly from the construction manager. The contract in effect is placing the CM in dual roles that may not be mutually compatible. In addition, the department does not have formal procedures in place to ensure that the services provided by the CM are the most economical.</p> <p>To date, there have been approximately \$20,000 in disputed expenses. (i.e. clean-up costs and barricades) these disputed costs have not been resolved as of our audit date. These disputed costs appear to be a result of the CM performing dual roles.</p> <p>It is our understanding that “release of liens” were received from sub-contractors by the County as required. However, we were unable to confirm that payments were released to the subcontractor from the CM per the amount of the lien. Further review of the CM records should be conducted upon completion of the contract.</p> <p>The County has no written policies and procedures in regards to this process, and the roles and responsibilities of the parties.</p> <p>Impact</p> <p>The current process as noted above could lead to the following:</p> <ul style="list-style-type: none"> ❑ The CM serving in dual roles may cause the evaluation of the cost components to not be done objectively, thus resulting in the County not receiving the optimal mix of quality and price. ❑ Allows the CM to receive a fee to manage work, which they are performing. ❑ The CM does not appear to have incentive to bring the job in under the “guaranteed maximum price”. ❑ Clear, concise and standardized processes and procedures help minimize inconsistencies, misunderstandings and inadvertent oversight of obtaining proper documentation.

<i>Issue # 10</i>	<i>Construction Manager Role, continued</i>
	<p><i>Recommended Action</i></p> <p>We recommend the following actions:</p> <p>A. Consider either minimizing or eliminating the dual role of the CM. This could be accomplished by restricting the “sub-contract work the CM may perform”.</p> <p>B. If the County elects to continue to have the CM provide both “oversight” and “sub-contract work” additional controls should be put in place, such as: 1) require the CM to bid on cost components in the same manner as any independent sub-contractor. 2) This bid process would have to be monitored and evaluated by County personnel. 3) Establish contract provisions and procedures to monitor and minimize the inherent conflicts.</p> <p>C. The County could consider offering an incentive for the CM to bring the job in under the “guaranteed maximum price”.</p> <p>D. As we reviewed the construction project “in progress” we were unable to validate, by review of final sub-contractor invoices and cancelled checks that all items were paid in accordance with the terms of the contract. We recommend a follow-up review occur to substantiate that sub-contractors were paid based on the “pay requests” submitted to the County.</p> <p>E. The County should develop written procedures related to internal controls and processes surrounding managing a contract with a CM.</p> <p>F. We recommend on substantial future contracts that an on-site review of the CM books and records (and considered necessary sub-contractor records) be built into the project.</p>

Issue # 10	Construction Manager Role, continued
	Management Response
Response	<p>Recommended Action A. Facilities Department is in the process of establishing or changing contract provisions regarding the CM's role in providing oversight and sub-contract work.</p> <p>Recommended Action B. The County will consult with the appropriate staff to determine if an incentive can be offered.</p> <p>Recommended Action C. Facilities Department agrees that a follow-up review should occur.</p> <p>Recommended Action D. Facilities Department has instituted controls as this project has progressed. Written procedures relating to these controls will be developed. Facilities Department is contacting the contractor for backup documentation and additional information to address the inherent conflicts that may have arisen under the dual role of the CM. During this project Facilities Department instituted additional processes to continually monitor and request backup documentation in several key areas. The additional processes instituted by the Department have provided more improved controlling processes.</p> <p>Recommended Action E. Facilities Department will evaluate the cost-benefit of outsourcing the audit function as a part of the contract.</p>
Time Frame	Implemented July 14, 2003; to be completed October 1, 2003.
Person Responsible	Sam Stanton