



## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

### CONTRACT OVERSIGHT NOTIFICATION (2012-N-0003)

ISSUE DATE: MARCH 21, 2012

Sheryl G. Steckler  
Inspector General

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*"Enhancing Public Trust in Government"*

#### **PALM BEACH COUNTY JAIL EXPANSION II CONSTRUCTION PROGRAM**

#### **ISSUES**

The OIG initiated a review of the procurement, selection, contract obligations, and construction activities involving one of Palm Beach County's (PBC) larger capital improvement projects, the Jail Expansion Program II (JEP II). This report is the first in a series of OIG reports relating to JEP II. Subsequent reports will be issued as developed.

A review of nine Amendments (Exhibit A) to the contract with Moss & Associates, the Construction Manager at Risk (CMAR) for JEP II, revealed two areas of concern with payment of Construction Phase Fee expenses. The first was PBC's total payments of \$370,067 in Travel and Per Diem expenses (Exhibit B) listed in the contract and paid as lump sum payments without supporting documentation. The second was associated with PBC's payments of lump sum fees for expenses which were not listed in the contract (undefined fees) totaling \$512,525 (Exhibit C). Typically, undefined fees are denied during Guaranteed Maximum Price (GMP) negotiations with the CMAR or included in the CMAR's Construction Manager's Fee. If payment of these expenses was negotiated into the GMPs, they should have had supporting documentation.

The JEP II was initiated in 2005 to define the facility and programs needed for expanding the bed capacity and program coverage for the PBC Sheriff Office's Corrections program. Pulitzer/Bogard & Associates, a consultant, was selected through a Request for Proposal (RFP) to coordinate and define the Master Plan for the Jail Expansion. In 2006, PBC Facilities Development and Operations Capital Improvements Division (FDO) selected the following companies through the RFP process: STH Architectural Group partnered with Hellmuth, Obata + Kassabaum, Inc. (STH/HOK) (Architect/Engineering) for the design services; Heery International as PBC's Program Manager; and Moss & Associates as the CMAR.

By January 2007, the completed Master Plan included 1,085,243 square feet with a planned project budget of \$267 million and a project timeline of more than four years (August 2006 through November 2010). The Plan included proposed work in the following areas: West County Detention Center (Belle Glade), Stockade (Fairgrounds) and Main Jail (Gun Club Road).

To expedite the JEP II construction, FDO separated multiple packages of work out of the construction documents during the design phase. As each package was designed, approved by the JEP II principals<sup>1</sup> and moved through the various permitting processes, the CMAR sought bids and developed the GMP for the individual package of work. As each GMP proposal was completed, FDO submitted it to the Board of County Commissioners (BCC) for approval and funding in the form of an amendment to the CMAR's original contract. Upon amendment approval, construction began. The BCC approved nine amendments to the CMAR's contract, ranging in value from \$539,450 to \$70.43 million. To date, approved GMP construction amendments plus change orders for the CMAR's work total \$135.3 million, a little more than half of the original \$267 million budget.

With regard to our first area of concern, during FDO's negotiations with the CMAR for Amendment 1's Construction Phase Fee expenses, FDO approved specific items (Travel and Per Diem) that were estimated by the CMAR. These costs were listed in the contract under Article 7, titled *Payments to Construction Manager*, Section 7.2.6 (Exhibit D). Article 7, Section 7.4, further states: "Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof", thus establishing the expenses of Travel and Per Diem as reimbursables<sup>2</sup>. FDO opted to process these items as lump sum payments and did not obtain supporting documentation to substantiate the expenses. Altogether, PBC paid the CMAR a total of \$370,067 in Travel and Per Diem in Amendments 1 - 9.

In regard to our second area of concern, Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses were not specifically addressed in the contract; however, FDO approved them during negotiations of the GMP proposals with the CMAR. They were listed as specific line items in the GMP proposal that was the backup for each amendment. Amendment 1 included \$137,000 allocated to these line items, but these individual line items were not listed on the CMAR's pay applications. The pay applications included these costs in the Construction Phase Fee Lump Sum total, similar to how Travel and Per Diem Expenses were listed. Again, FDO did not receive any backup documentation to support the CMAR's pay applications for these costs. Exhibit C lists the amounts negotiated by the CMAR and approved for payment (less remaining fee to be paid under Amendment 9) by FDO.

To date, the CMAR has received \$512,525 for Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses without having to provide supporting documentation, thereby creating a potential profit source for the CMAR. In discussions with FDO management they stated: "The Program Manager and FDO review and determine that the estimated costs are reasonable prior to entering into a contract, and are then converted to lump sum within the GMP Amendment". "By proceeding in this manner the CM invoices the costs as lump sum, assuming the risk if the items exceed the estimated costs. The conversion and inclusion in the lump sum fee also eliminates

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<sup>1</sup>Principals include: FD&O, Heery Intl., STH/HOK, PBSO, Moss & Associates.

<sup>2</sup> Reimbursables: to compensate someone for an expense incurred for an official or approved reason.

costs the CM would charge the County for his additional personnel to provide the itemized documentation and more significantly, the County's time and cost of reviewing itemized receipts." However, we noted that other line items for General Conditions estimated in the GMP proposals and paid as "actual expenditure" (Exhibit D - Article 8.2) are listed in the pay applications. These costs averaged 23 line items in the GMP proposals and the same number were transferred to the pay applications. Each month, invoices are submitted for review to verify actual expenditures for these estimated costs. This same level of documentation and review should have been required for Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses.

### RECOMMENDATION

Apply the contract language (Article 7.4) to Travel and Per Diem in future CMAR contracts so full documentation of expenses to these line items are realized or move Travel and Per Diem Expenses to Article 8 - General Conditions where actual expenses are reimbursed.

When undefined fees are negotiated into the contract, every effort to protect public funds should be used. In this case, supporting documentation of receipts/invoices for Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses should be required for payment.

### RESPONSE FROM MANAGEMENT

FDO does not agree that Travel, Per Diem, Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses should be established as reimbursable items that require supporting documentation of actual expenses. FDO stated in their response that by converting these items to lump sum payments the contractor assumes the risk if the items exceed estimated costs. They also stated that this eliminates the costs the contractor would charge the County for providing itemized documentation as well as the County's time to review this documentation. In response to our recommendations they indicated future CMAR contracts will be revised to eliminate the Article 7.4 language, as they see no reason to require these expenses be treated as reimbursable items. We have included their response in its entirety as Exhibit E.

### OIG RESPONSE

FDO's proposed actions, including removal of language in their contracts requiring supporting documentation for pre and post audit, will reduce the level of accountability and hinder the ability to adequately protect public funds. FDO should reevaluate their position that the cost of providing this additional level of control would outweigh the benefit. In their role as owner of projects built for PBC, FDO can specify the level of detail and specific format of documentation required for reimbursement, thereby minimizing resources required to verify actual expenses.

The burden of verifying receipts for expenses charged to the County already exists with the reimbursable general conditions costs. For Amendment # 1 there were 26 line items for the CMAR to verify as a monthly expense to FDO. OIG is recommending that up to five (5) more line items be added for verification of expenses, per Article 7.4.

In summary we maintain that for future CMAR contracts, these types of expense items, for which the County has paid almost \$900,000 to date on this contract, should have supporting documentation that can be subjected to an appropriate level of review.

*The Office of Inspector General's Contract Oversight Unit is established to review an organization's procurement and contracting activity. When necessary, reports will be issued to: 1) identify areas and/or instances where activity conflicts with an organization's established policies and procedures, and; 2) recommend improvements that will result in more effective and consistent contracting practices.*

**EXHIBIT A****Amendments to Contract with CMAR for JEPH**

| <b><u>Amendment #</u></b> | <b><u>Package of Work</u></b> | <b><u>GMP Amount</u></b> |
|---------------------------|-------------------------------|--------------------------|
| 1                         | Demucking                     | \$10,990,137             |
| 2                         | Site Utilities                | 4,001,795                |
| 3                         | HVAC Pod C                    | 539,450                  |
| 4                         | West County Outbuildings      | 18,819,143               |
| 5                         | Asphalt Paving                | 2,108,442                |
| 6                         | Main Jail Additions           | 70,431,312               |
| 7                         | Palm Tran Facility            | 5,726,930                |
| 8                         | Central Video Presentation    | 4,832,770                |
| 9                         | Courts Package                | <u>11,926,673</u>        |
|                           | <b>Total</b>                  | <b>\$129,376,652</b>     |

**EXHIBIT B****Per Diem and Travel Expenses**

(Paid as Lump Sum Construction Phase Fees)

| <u>Amendment #</u> | <u>Document</u> |                      | <u>Payment</u>   |
|--------------------|-----------------|----------------------|------------------|
| 1                  | GMP             | Per Diem             | \$36,000         |
|                    |                 | Travel               | 10,000           |
| 2                  | GMP             | Per Diem             | 14,400           |
|                    |                 | Travel               | 10,000           |
| 3                  | GMP             | Per Diem             | 0                |
|                    |                 | Travel               | 0                |
| 4                  | GMP             | Per Diem             | 28,800           |
|                    |                 | Travel               | 40,000           |
| 5                  | GMP             | Per Diem             | 0                |
|                    |                 | Travel               | 0                |
| 6                  | GMP             | Per Diem             | 43,200           |
|                    |                 | Travel               | 60,000           |
|                    | CO#119          | Per Diem             | 4,680            |
|                    |                 | Travel               | 6,500            |
|                    | CO#134          | Per Diem             | 10,920           |
|                    |                 | Travel               | 15,167           |
|                    | CO#163          | Per Diem             | 10,800           |
|                    |                 | Travel               | 15,000           |
|                    | CUD#52          | Per Diem             | 5,400            |
|                    |                 | Travel               | 7,500            |
| 7                  | GMP             | Per Diem             | 7,500            |
|                    |                 | Travel               | 15,000           |
| 8                  | GMP             | Per Diem             | 0                |
|                    |                 | Travel               | 8,000            |
| 9                  | GMP             | Per Diem             | 0                |
|                    |                 | Travel               | 12,000           |
|                    | CO#180          | Per Diem             | 0                |
|                    |                 | Travel               | 2,700            |
|                    |                 | Travel-Extend PreCon | 6,500            |
|                    |                 |                      | <b>\$370,067</b> |

CO – Change Order to the contract

CUD – Contingency Use Directive – within the contract

**EXHIBIT C****Moving, Relocation, Temporary Living Expenses included  
In Amendments and Change Orders**

| <b>GMP:</b>   | <b>Moving</b>   | <b>Relocation</b> | <b>Temp Living</b> | <b>Totals</b>    |
|---------------|-----------------|-------------------|--------------------|------------------|
| Amendment 1   | \$12,000        | \$65,000          | \$60,000           | \$137,000        |
| Amendment 2   | 0               | 0                 | 24,000             | 24,000           |
| Amendment 3   | 0               | 0                 | 0                  | 0                |
| Amendment 4   | 0               | 8,000             | 61,600             | 69,600           |
| Amendment 5   | 0               | 0                 | 0                  | 0                |
| Amendment 6   | 0               | 27,000            | 104,000            | 131,000          |
| Change Orders | 0               | 0                 | 68,300             | 68,300           |
| Amendment 7   | 0               | 0                 | 12,500             | 12,500           |
| Amendment 8   | 4,000           | 0                 | 12,000             | 16,000           |
| Amendment 9   | 0               | 0                 | 35,000             | 35,000           |
| Change Orders | 0               | 0                 | 19,125             | 19,125           |
|               | <b>\$16,000</b> | <b>\$100,000</b>  | <b>\$396,525</b>   | <b>\$512,525</b> |

**EXHIBIT D**

**PBC Facilities, Development & Operations Construction Manager at Risk  
Services contract with Moss & Associates, LLC. (Articles 7 & 8)**

Article 7: Payments to Construction Manager: Pages D1-D2

Article 8: Cost of the Work: Pages D3-D5



Payments to Construction Manager

7.1 In consideration of the performance of the Contract, the Owner agrees to pay the Construction Manager, as compensation for its services an amount as set forth below:

7.1.1 For preconstruction services, the total sum amount to be paid in the amounts specified at the satisfactory completion of the following phases :

|                         |             |
|-------------------------|-------------|
| 100% Schematic Design   | \$ 70,430*  |
| 100% Design Development | \$ 85,030*  |
| 50% Const. Docs.        | \$ 100,620* |
| Accepted GMP            | \$ 213,496* |
| Total                   | \$ 469,576* |

\*Plus expenses for reproducibles estimated at a total of \$95,960

7.1.1.1 Upon receipt of the Notice to Proceed, the Construction Manager shall begin providing the indemnification described in the Conditions of the Contract, as part of the fee established for the first phase of preconstruction services.

7.1.2 Upon acceptance of the GMP, the amount established in the GMP Amendment to this Agreement, which includes the Construction Manager's fee as described in Paragraph 7.2 and the Cost of the Work as described in Article 8, to be paid monthly as described in the General Conditions of the Contract.

7.1.2.1 As required by Section 218.735, F.S., within ten working days from receipt of payment from the Owner, the Construction Manager shall pay each Trade Contractor out of the amount paid to the Construction Manager on account of such Trade Contractor's Work, the amount to which said Trade Contractor is entitled reflecting the percentage actually retained, if any, from payments to the Construction Manager on account of said Trade Contractor's Work. The Construction Manager shall, by appropriate agreement with each Trade Contractor, require each Trade Contractor to make payments to its subcontractors in a similar manner.

7.1.3 Pay requests for preconstruction services and for construction shall be documented in accordance with the General Conditions.

7.2 Construction Manager's Fee during the Construction Phase includes the following:

7.2.1 The cost of its home or branch office employees or consultants not at the Project site, including the cost of all benefits, insurance, and taxes attributable to wages and salaries and other company overhead expenses for said home office employees.

7.2.2 The cost of its field employees identified in Subparagraph 2.2.5 herein, or their approved replacements, including the cost of all benefits, insurance, and taxes attributable to wages and salaries for said field employees.

7.2.3 General operating expenses of the Construction Manager's principal and branch offices other than the field office.

7.2.4 Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

7.2.5 Overhead and profit, or general expenses of any kind, except as may be expressly included in Article 8, herein, as Cost of the Work.

7.2.6 All travel and per diem costs of Construction Manager's employees and consultants.

7.2.7 Those services set forth in Article 2.2

7.2.8 Expenses such as long distance telephone calls, telephone service at the site, postage, office supplies, expressage, and similar items in connection with the Work.

7.2.9 Cost of equipment such as typewriters, cameras, radios, computers, pagers, copiers, facsimile equipment, telephones, dictating units, trailers, vehicles and furniture purchased or rented by the Construction Manager.

7.2.10 Administration of direct tax savings purchase program.

7.3 Adjustments in the fee will be made as follows:

7.3.1 Adjustments due to Changes in the Work shall be made as described in the General Conditions of the Contract.

7.3.2 For delays in the Work caused by the Owner, the Construction Manager shall be entitled to additional fee to compensate the Construction Manager for its increased expenses. The amount of this increased fee shall be calculated at a daily rate derived by dividing the basic fee (excluding overhead and profit) established in the accepted GMP proposal by the Contract Time established in the GMP Amendment to the Agreement.

7.4 Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre audit and post audit thereof.



## Cost of the Work

8.1 The term "Cost of the Work" shall mean costs including General Conditions costs, incurred in the Work as described and defined in Paragraph 8.2, below, and paid or incurred by the Construction Manager, which are not included in Paragraph 7.2, less any reimbursement for scrap value and cash or trade discounts, subject to Article 10, herein. The term "wages" used herein shall include the straight time and overtime pay and the cost of associated employee benefits. Employee benefits include, but are not limited to, unemployment compensation, social security, compensated absences, and other mandatory and customary contributions and fringe benefits insofar as such costs are based on wages, salaries, or other remuneration paid to employees of the Construction Manager. Employee benefits do not include Workers' Compensation insurance when such insurance is provided by the Owner in accordance with Article 11.

8.1.1 The Owner agrees to pay the Construction Manager for the Cost of the Work as defined in Article 8, herein, through completion of the Work. Such payment shall be in addition to the Construction Manager's Fee as stipulated in Paragraph 7.2, herein.

8.2 Cost of the Work includes and is limited to actual expenditure for the following cost items:

8.2.1 Subject to prior approval by the Owner, wages paid for labor in the direct employ of the Construction Manager other than those provided under Paragraph 7.2, herein, as a part of the Construction Manager's Fee in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule agreed upon by the Owner and Construction Manager, and including benefits, if any, as may be payable with respect thereto.

8.2.2 The cost of all materials, supplies and equipment incorporated in the Work or stored on site, including cost of transportation and storage thereof. At the Owner's sole discretion, the Owner may make payment for materials, supplies and/or equipment stored off-site and bonded.

8.2.3 Payments made by the Construction Manager to Trade Contractors for their Work performed pursuant to Trade Contracts with the Construction Manager.

8.2.4 Cost of the premiums for all insurance or bonds including Trade Contractor bonds which the Construction Manager is required to procure by this Agreement, or other insurance or bonds subsequently deemed necessary by the Construction Manager, and agreed upon by the Owner. The cost of insurance for the Construction Manager, trade contractors, and sub-subcontractors at any tier in the Work shall be excluded for any insurance to be provided by the Owner in accordance with Article 11 herein.

- 8.2.5 Sales, use, gross receipt, or similar taxes related to the Work imposed by any governmental authority and for which the Construction Manager is liable.
- 8.2.6 Building and operating permit fees, inspection and filing fees, sewer and water fees, and deposits lost for causes other than the Construction Manager's own negligence.
- 8.2.7 Cost of removal and disposal of all debris including clean-up and trash removal.
- 8.2.8 Cost incurred due to an emergency affecting the safety of persons and/or property.
- 8.2.9 Subject to prior written approval by Owner, legal costs reasonably, and properly, resulting from prosecution of the Work for the Owner provided, however, that they are not the result of the Construction Manager's own negligence or malfeasance. Legal costs incurred in connection with disputes solely between the Construction Manager and the Owner or incurred in connection with disputes solely between the Construction Manager and Trade Contractors are the responsibility of the Construction Manager and shall not be included in the Cost of the Work.
- 8.2.10 Cost to the Construction Manager of temporary electric power, lighting, water, sanitary facilities, and heat required for the performance of the Work, or required to protect the Work from weather damage.
- 8.2.11 Cost to the Construction Manager of temporary safety-related protection including barricades and safety equipment, temporary roads and parking, dust control, pest control, installation and operation of temporary hoists, scaffolds, ladders and runways, and temporary project signs and costs of permits and fees pursuant to the General Conditions of the Contract.
- 8.2.12 Cost of watchmen or similar security services.
- 8.2.13 Cost of surveys, measurements and layout work reasonably required for the execution of the Work or the requirements of the Agreement.
- 8.2.14 Cost of preparation of shop drawings, coordination plans, photographs, or as-built documents not included in Trade Contracts.
- 8.2.15 All costs for reproduction of documents to directly benefit the work.
- 8.2.16 Costs directly incurred in the performance of the Work and not included in the Construction Manager's Fee as set forth in Paragraph 7.2, herein.
- 8.2.17 Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workmen which are employed or consumed in the performance of the Work.

8.2.18 Rental charges of all necessary machinery and equipment, including hand tools used in the performance of the Work, whether rented from the Construction Manager or others, including installation, repairs and replacements, dismantling, removal, costs of lubrication, transportation and delivery costs thereof.

8.2.19 Costs associated with setting up and demobilizing tool sheds, temporary fences, temporary roads, and temporary fire protection.

## ARTICLE 9

### Changes in the Work

9.1 The Owner, without invalidating this Agreement, may order changes in the Work within the general scope of this Agreement consisting of additions, deletions, or other revisions. All changes in the Work shall be authorized as described in the General Condition of the Contract. Except in cases of emergency endangering life or property, the Construction Manager shall allow no Changes in the Work without the prior written approval of the Owner.

## ARTICLE 10

### Discounts

10.1 All quantity discounts shall accrue to the Owner. All trade discounts, rebates and refunds, and all returns from the sale of surplus materials and equipment shall be credited to the Owner.

## ARTICLE 11

### Insurance

11.1 The Construction Manager shall provide insurance as required by the General Conditions of the Contract.

11.2 The Owner may elect to purchase insurance under an Owner Provided Insurance Program, in which case the Construction Manager will not be required to provide insurance, but will provide coordination with the Owner and the Owner's insurance broker, as required. The Owner will inform the Construction Manager of its intention regarding insurance in sufficient time before the execution of the Guaranteed Maximum Price amendment to allow the Construction Manager to arrange for insurance and include the costs in the GMP, if necessary.

11.3 For insurance coverage, if provided by the Owner in accordance with Paragraph 11.2 above, the Owner shall provide insurance in effect from the issuance of the Notice to Proceed with the Work until Final Completion of the Work, and the Construction Manager shall ensure that each Trade Contractor and Sub-subcontractor are insured under the Owner's insurance programs, in accordance with this Article.

**EXHIBIT E**



Facilities Development &  
Operations Department

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March 19, 2012

To: Sheryl Steckler, Inspector General

Thru: Audrey Wolf, Director *AW*  
Facilities Development & Operations

From: John Cheshier, Director *JAC*  
Capital Improvements Division

Re: **Contract Oversight Notification: Palm Beach County Jail  
Expansion II Program**

FDO/CID has reviewed the above referenced Contract Oversight Notification dated March 13, 2012 and offers the following discussion and ultimately the Department's response to the two recommendations.

**Travel and Per Diem Expenses**

***Sections 7.2 and 7.4 of the CMAR Contract***

The travel and per diem costs are included on a list of ten (10) allowable expenses included in the Construction Manager's Fee. The requested compensation for all ten items (including travel and per diem expenses) are submitted by the CMAR to the Program Manager and FDO during the fee negotiations. The Program Manager and FDO review and determine that the estimated costs are reasonable prior to entering into a contract, and are then converted to lump sum within the GMP Amendment (see discussion below regarding PPM direction). By proceeding in this manner the CM invoices the costs as lump sum, assuming the risk if the items exceed the estimated costs. The conversion and inclusion in the lump sum fee also eliminates the costs the CM would charge the County for his additional personnel to provide the itemized documentation and more significantly, the County's time and cost of reviewing itemized receipts, thus ultimately saving the County money in reduced CM charges, reduced Program Manager staff, reduced FDO staff, and reduced Clerk staff time in verifying the receipts.

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As stated in the OIG report, costs for travel and per diem are allowed and listed under Article "Payments to Construction Manager", Section 7.2, specifically 7.2.6 as one of ten categories of allowed expenses.

Section 7.4 of the CMAR contract states that "Invoices for fees or other compensation for services or expenses shall be submitted in detail sufficient for a proper pre-audit and post audit thereof." FDO believes that the intent of Section 7.4 is to provide a basis for preparing a detailed schedule of values for payment applications; not to require the CM to submit itemized receipts for any of the expenses in Section 7.2.

However, the OIG quotes this language in Section 7.4 as a link to define these particular (travel and per diem) as "reimbursables" and defines reimbursables as "to compensate someone for an expense incurred for an official or approved reason." Based on that logic, then all 10 allowable expenses listed in Section 7.2 could be classified as reimbursable and require itemized receipts. Further, if the IG is correct in its logic that reimbursables always require documentation, then to what level of subcontractor does a reimbursable audit extend to?

The OIG continues that FD&O opted to process these items as lump sum payments and did not obtain supporting documentation to substantiate the expenses. It is FD&O's opinion that "lump sum" items do not require supporting documentation. Only when the expenses are explicitly noted as reimbursables are backup receipts required.

FDO believes the requirements of PPM CW-F-049 are applicable here. The Section "General Contract Requirements", Paragraph I states:

*"I. Negotiation of Fixed Price (Lump Sum) Contracts Which Involve Reimbursables: The following procedure shall apply in negotiating fixed price contracts which include reimbursables: The vendor shall submit a schedule of labor hours (with name, title, raw hourly rates, load factors, and corresponding hourly costs); a schedule of materials, tasks, deliverables, and milestones (where applicable); and a detailed line-item schedule of reimbursables. Each schedule shall be negotiated to the maximum extent possible and the fixed price (lump sum) shall be negotiated total for each schedule."*

FD&O followed the guidelines from the PPM exactly as described. The estimated reimbursables were converted to lump sum fixed price and paid as were the other estimated items associated with the requirements of Section 7.2 of the CMAR contract.

Finally, the contract and amendments were reviewed and approved by both the County Attorney's office and Contract Review and Development, and the invoices have been paid by the Clerk and Comptroller's Office without exception.

#### **Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses**

With regard to the Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses concern, the OIG states that these costs were "...listed as specific line items in the backup for each Amendment. Amendment 1 included \$137,000 allocated to these line items..."

This is incorrect. The \$137,000 was detailed in the CM fee proposal along with a listing of other items (staff costs, vehicle expenses, office supplies, etc.) under the heading "Article 7.2 Construction Phase Fee, ITEMS TO BE CONVERTED TO LUMP SUM". The Amendment only lists the overall "Construction Phase Fee" of \$1,157,330. The proposal is not attached or referenced in the Amendment. This fee is paid monthly as a percentage of construction completion and does not require backup documentation.

The OIG report disputes FD&O's explanation that the above expenses were not verified due to the labor extensive resources necessary for the verification and pointing out that invoices are required for verification for 23 line items included in the GMP proposal (General Conditions actual expenditures). The general conditions line items are "hard costs" that are readily available for verification at the job site. In addition, Paragraph 7.1.3 of the contract states that pay requests shall be documented in accordance with the contract general conditions. GC 67 Measurement of and Payment for Work states that costs be confirmed by "actual measurement of the work in place" which is not possible with the soft costs.

The difference between general condition line items and the Moving Allowance/Incentives, Relocation Expenses and Temporary Living Expenses are that the latter are classified as "soft costs".

#### **CONCLUSION**

Staff did not act without careful consideration in approving these expenses. The reasoning behind the conversion of these estimated expenses (reimbursable and moving allowance/incentives, relocation expenses and temporary living expenses) is solid and is entirely consistent with the requirements of PPM CW-F-049. Heery International (the County's contracted Program Manager) is a well known consultant and expert in the area of construction management and program management with considerable experience in multi-million dollar criminal justice projects. They were contracted as our Program Manager to assist FD&O with managing the design professional and construction management contracts. We were advised by our Program Manager that the expenses are customary for this specialized service the County required (i.e. a construction manager with the staff expertise to manage a \$200M+ jail expansion program).

A CMAR firm with this type of expertise does not have local resources in Palm Beach County and brings in personnel from all over the country and this service is not provided for free. If the expenses had not been detailed and approved in the Construction Phase Fee, they would have been charged by the CM via a higher Overhead and Profit factor. The CM was up-front with providing detailed costs of what is included in his fee, rather than burying it in a higher OH&P factor. FD&O is confident that the estimated expenses that were approved during the fee negotiations are reasonable and customary for this type of contract.

FD&O understands that the OIG believes that the contract language could be re-written in a manner which better protects the County. However, it is FD&O's position that FD&O actually saved the County money by shifting the risk to the CMAR. The CMAR is responsible when



employees assigned to our project are changed, or the rates go up in the motel, etc., not the County. In fact, after discussion with the CMAR on this project, he has stated that his company has lost money on these lump sum expenses.

FD&O clearly understands that the OIG's opinion is that verification of itemized back-up for these two categories of expenses would better protect the County but takes exception to the implication that FD&O's actions were improper by approving these expenses without requiring backup thereby "creating a potential profit source for the CMAR" and by making payment for undefined expenses implying which FD&O had no contractual authority to make payment in the amount of \$512,525.

### **RECOMMENDATIONS**

**Apply the contract language (Article 7.4) to Travel and Per Diem in future CMAR contracts so full documentation of expenses to these line items are realized or move Travel and Per Diem Expenses to Article 8 – General Conditions where actual expenses are reimbursed.**

Future CMAR contracts will be revised to eliminate the Article 7.4 language however, we see no reason to change these expenses to the reimbursable category which shifts the cost risk and burden of verifying the travel receipts to the County.

**When undefined fees are negotiated into the contract every effort to protect public funds should be used. In this case, supporting documentation of receipts/invoices for Moving Allowances/Incentives, Relocation Expenses and Temporary Living Expenses should be required for payment.**

We see no reason to change these expenses to the reimbursable category which shifts the risk and burden of verifying the receipts to the County. Further, we believe public funds were protected by placing the risk with the CMAR and eliminating the extra staff costs necessary to verify and justify the receipts.

C: Robert Weisman, County Administrator  
Jim Mize, Sr. County Attorney, County Attorney's Office