

**Final Draft
For Review and Discussion Purposes Only**

**Wayne County Consolidated Jail Facility
Construction Cost
Through June 30, 2013**

Independent Auditor's Report

An Agreed-Upon Procedures Report

DAP #2013-57-008

August 16, 2013

CONFIDENTIAL

Table of Contents

EXECUTIVE SUMMARY	1
REPORT DETAIL	25
-PURPOSE/OBJECTIVES-	26
-SCOPE-.....	27
-METHODOLOGY-.....	27
-BACKGROUND AND OVERVIEW-.....	28
-Historical Overview-	28
-Ownership-	30
-Alternate Site-.....	30
-Board Viewpoints-	31
AGREED-UPON PROCEDURES PERFORMED	32
I – EVALUATE INTERNAL CONTROLS – COSO.....	33
-CONTROL ENVIRONMENT-.....	33
-Philosophy and Style-.....	33
- Administration Leadership-.....	35
-Strategic Direction-.....	36
-Organizational Structure-	38
-Governance/Board Independency-.....	42
-RISK MANAGEMENT-.....	45
-Fraud-.....	46
-Failure to Disclose Material Facts-	47
-Roles of Responsibility-	49
-Chronological Order of the Events-	50
-Negligence/Misfeasance-	53
-CONTROL ACTIVITIES (PROCESSES)-.....	57
Observation	57
-Price Eliminated as a Factor-	58
-WCBA Procurement Policy-	63
-Best Practices-	65
-Benchmarking – Similar Projects-	69
-Jail Design – Bed Capacity-	72

-INFORMATION AND COMMUNICATION-	73
-External Architectural\Design Review-	73
-Status Reports-	75
-MONITORING-	78
-Sheriff (User) Participation-	81
II - COMPLIANCE WITH THE CONSTRUCTION CONTRACT, THE DAVIS BACON ACT, ARRA COMPLIANCE, AND THE BOND COVENANTS	83
-BOND ISSUANCE AND COVENANTS-	83
-Rationale for \$200 Million Bond Issuance-	83
-Arbitrage Rules-	83
-State of Michigan Approval Required-	84
-Interest Credit-	84
-Impact on General Fund-	84
-Bond Issuances-	85
-Bond Rating Issues-	85
-CONTRACT OF LEASE-	86
-DAVIS BACON ACT – COMPLIANCE-	89
-AMERICAN RECOVERY & REINVESTMENT ACT (ARRA)-	90
-COMPLIANCE WITH IRS REGULATIONS-	92
-RECORD RETENTION – CONTRACTORS-	95
-OWNER’S REPRESENTATIVE-	96
-NO BID CONTRACTS-	104
-CONTRACT ELEMENTS-	108
-CONTRACT ANALYSIS-	111
-SHERIFF TRANSITION TEAM-	115
III - RECONCILE CONSTRUCTION COST AND CASH BALANCES RECORDED IN THE GENERAL LEDGER	118
-PAYMENT – DRAWDOWN SCHEDULE-	122
IV - SUBSTANTIVE TESTING TO VERIFY CONSTRUCTION COST INCURRED THROUGH AUGUST 16, 2013.....	124
-NO AUTHORIZED SIGNATURES-	127
-ALLOWABLE MARK-UP NOT FORMALIZED-	128
-INVOICES PROCESSED PRIOR TO PM&A-	129
-REVIEW OF PAYROLL PROCESSING CONTROLS-	130
-FACTORS CONTRIBUTING TO BUDGET OVERRUNS-	132

-The Initial Budget Challenges-	133
-ARCHITECT, DESIGNER, PROGRAM MANAGER-	138
-CONSTRUCTION MANAGER AT RISK -	140
-LEGAL FEES-	142
-ACCOUNTING FEES-	145
-COST DURING SUSPENSION PERIOD-	147
-OPTIONS ON CONSTRUCTION OF JAIL-	150
V - REVIEW DOCUMENTS TO SUPPORT THE AUTHORIZATION	153
AND APPROVAL OF ALL CHANGE ORDERS	153
BY THE PROJECT OWNERS.....	153
-CHANGE ORDERS-	153
VI - PERFORMANCE OF PROCEDURES DESIGNED TO	157
IDENTIFY UNUSUAL AND/OR QUESTIONABLE	157
TRANSACTIONS.	157
-LITIGATION COST-	158
-GENERAL FUND COST INCURRED NOT ALLOCATED-	160
VII – ADOPTION AND APPROVAL OF BUDGETS	162
CONCLUSION.....	165
APPENDIX A.....	166
CLASSIFICATION OF FINDINGS.....	167
APPENDIX B.....	168
WAYNE COUNTY ADMINISTRATION	169
AECOM	170
WALBRIDGE-dck	171
PIERCE MONROE AND ASSOCIATES	174

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Purpose and Scope

The Wayne County Building Authority Board of Commissioners (WCBA), requested the Office of Legislative Auditor General (OAG) to perform an Agreed-Upon Procedures Engagement which included a review of expenditures for the Wayne County Consolidated Jail Project (Project) construction cost through August 16, 2013. The OAG and the representative of the WCBA entered into a Memorandum of Understanding (MOU) as to what work would be performed in completing this engagement. **See page 26**

The engagement was conducted in accordance with applicable Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants and Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States. **See page 27**

The fieldwork for this engagement was substantially completed as of August 16, 2013.

Methodology

The agreed-upon procedure engagement included performing certain procedures, on a test basis, to assess the assertions made by the county, WCBA officials and selected vendors. The agreed-upon procedures also involved reviewing, assessing, and observing certain processes performed by the consulting firm of Pierce, Monroe and Associates (PM&A) to gain an understanding of the transaction processes and the existing controls to mitigate the risk of non-allowable expenses being paid from the bond proceeds to construct this jail. **See page 27.**

OAG Engagement Process

On all engagements, it is the OAG's practice to hold a closing conference with the auditee. The purpose of this conference is to discuss and validate the facts included in the report and allow the auditee a reasonable amount of time to prepare a response. The responses can either be incorporated into the report or attached as an appendix. Also, for this engagement, the definition of the classification of each finding can be found in **Appendix A.**

For this engagement, the auditees have elected to prepare official responses and we have agreed to include them in the report as appendices. It is imperative that readers of this report read the responses in the appendices in order to arrive at a balanced and objective viewpoint regarding matters being discussed. **See Appendix B thru F.**

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For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Background and Overview

Significant Chronological Events¹

In November 2010, the WCBA passed a resolution authorizing the issuance of up to \$300 million in bonds for the construction of the jail. In December 2010, AECOM - Program Manager met with the Wayne County Commission and presented financial data regarding the cost of issuing the bonds, the proposed cost of up to \$220 million for construction of the jail and affirming a total project cost of \$300 million, including both hard construction and soft costs such as design, project management and professional services. The Wayne County Commission approved the issuance of up to \$300 million in bonds. **See page 28 - 30.**

The Wayne County Commission passed a resolution in December 2010 conveying the construction of the new consolidated jail to the WCBA. It was agreed that the WCBA would issue the bonds which are backed by the good faith and credit of the county.

The consolidated jail was originally designed to be a 2,192 bed facility with 2,000 beds for the Wayne County Sheriff's Office (WCSO) prisoners and 192 beds for housing city of Detroit prisoners. The city of Detroit opted out of its option to participate and the county reduced the jail's capacity to 2,000 beds.

On September 1, 2011, the county administration presented a contract in the amount of \$220 million to the Wayne County Commission recommending Walbridge-dck as the Construction Manager at Risk (CMAR) for this Project.

In November 2012, a review of the Project led the county to anticipate that Walbridge-dck would exceed the \$220 million; unofficially it was estimated that the construction cost would be approximately \$265 million.

Alternative Site²

AECOM, at the request of the WCBA and the CEO, performed an in-depth analysis of the Mound Road facility and concluded in a memorandum dated January 10, 2012 that "based on our preliminary review of the Mound Road facility, we do not believe that occupying this facility is a viable alternative to new construction for three primary reasons:³

- ✓ The physical configuration of the facility as a campus and "dry cells" does not respond to the classification, security and programmatic needs identified for the new facility.

¹ Information obtained from presentation made by CEO Chief of Staff on June 11, 2013.

²Memorandum from AECOM dated January 10, 2012.

³Memorandum from AECOM dated December 8, 2011, Revised 12/12/11, Final 1/10/12

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

- ✓ The new facility is projected to result in decreased operational costs, our review of the existing facility suggests that total operating costs would in fact increase over current base line conditions.
- ✓ Finally, retaining and renovating Division 1 or 2 in order to meet projected system capacity requirements would continue the use of antiquated facilities with relatively high staff to inmate ratios and a physical environment that is not conducive to security or staff and inmate safety. **See page 30 - 31.**

It is problematic to us because the administration supported this AECOM recommendation in January 2012; however, as of August 14, 2013, they are in favor of the option to move to the Mound Road site. We were not able to discuss with leadership what circumstances and/or conditions have changed that has prompted them to elect the Mound Road site. Although the communication seems to imply that the determination has already been made; however, it does state details are to follow. **See page 150.**

Under the terms of the Construction Management Agreement (CMA), as of May 31, 2013, Walbridge-dck submitted a final Guaranteed Maximum Price (GMP) of \$267 million. It is represented by Walbridge-dck that the increase in the price was primarily due to scope and design changes. According AECOM the final GMP also included unsubstantiated extended construction schedule and associated General Condition costs.

According to AECOM officials, upon review, AECOM rejected the final GMP on July 3, 2013 and the Project Manager formally rejected it on July 4, 2013.

At a Committee of the Whole Meeting on June 11, 2013, the Wayne County Chief of Staff informed the Wayne County Commission that the CEO is recommending a temporary suspension of the Project for 60 days, effective June 6, 2013. **See page 28.**

Effective August 15, 2003, the WCBA terminated all construction contracts by exercising the “termination for convenience” clause in the each contract.

Summary of Significant Issues

As noted in the appendix of this report, there are three classifications of findings as defined by auditing standards which are ranked in terms of seriousness: material weakness (high risk), significant deficiency (medium risk), and control deficiency (low risk).

There were seven objectives for this examination that resulted in 27 findings and recommendations; 9 are considered a material weakness, 5 are considered to be significant deficiencies, and 13 are considered to be operational control deficiencies.

We have provided a brief overview of our objectives, findings, and recommendations in the executive summary. Additional detail to support our review can be found in the Report Detail.

**Final Draft
For Review and Discussion Purposes Only**

EXECUTIVE SUMMARY

Management agreed or partially agreed with 14 of the 27 recommendations.

CONFIDENTIAL

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Objective I – Evaluate Internal Controls - COSO

Review and evaluate the WCBA’s internal controls – control environment, risk management, control activities (processes), information and communication, and monitoring. This review of the internal controls was based on the Committee of Sponsoring Organizations (COSO) model.

Overall Conclusion- Internal Controls

As requested by the MOU we reviewed, the internal controls related to control environment, risk management, control processes, communication and information and monitoring we found material weaknesses and suggest these deficiencies be resolved before the construction suspension period is lifted. **See page 33 - 83.**

Control Environment

Control environment is very important because it sets the “tone at the top.” Because the control environment is referred to as a soft control and is subjective, it is generally very difficult to measure progress in this area. We found the current board members, which consist of five members, to be very focused and committed to doing a good job. We concluded the organizational structure of the parties responsible for monitoring and management of the construction of the jail facility could be strengthened. There also does not appear to be an overall strategic direction adopted by leadership. **See page 33 - 45.**

-Philosophy and Style-

It was noted that Michigan Public Act 31 allows board members of the WCBA to be compensated per-diem and mileage for attending meetings. This would require amending the by-laws and the approval of the Wayne County Commission. **See page 33 - 35.**

We found the current board members to be very focused and committed on doing a good job and getting paid was not one of their primary goals – it was to serve Wayne County and its stakeholders. In fact they have actually served for several years without any compensation and/or reimbursement for mileage.

We see the commitment and dedication by the board members we interviewed and we commend them on dedicating their time and service to such an important project without being compensated.

We noted that the board members consisted of two lawyers, two politicians, and one real estate broker/developer. These board members are appointed by the CEO and confirmed by the Wayne County Commission and their terms in office are staggered. **See page 33**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

We believe the board should request the Wayne County Commission for permission to be reasonably compensated such as a per-diem for and mileage for attending board meetings. This will provide a greater incentive to attract board members with the experience and qualifications to serve on the WCBA. **See page 33.**

-Administration Leadership-

Based on work performed, we determined the key administration team members who oversaw the Jail Project were: a former Deputy County Executive, a former Chief Development Officer, a former county employee that became the Owner's Representative, Chief Financial Officer/Chief Administrative Officer (CFO/CAO), Special Counsel to the WCBA, the County Executive Chief of Staff, and the Director of Building Services, as well as a few others. **See page 35 - 36.**

-Strategic Direction-

We concluded that did not appear to be an overall strategic direction adopted by leadership to accomplish the complex task being assigned to them. We did note the WCSO did utilize the National Institute of Correction (NIC) for input and guidance when needed, but there was no participation by other key decision makers in utilizing the various services offered by the NIC.

However, in general, we saw no effort being made by the leadership to embrace best practices to evaluate the advantages and disadvantages of utilizing an integrated system approach versus the conventional design/bid/build. We were informed the integrated system approach was used for the construction of this project. **See page 36 - 38.**

-Organizational Structure-

We concluded the current organizational structure of those parties responsible for the monitoring and management of the construction of the jail facility lacks adequate lines of reporting based on skill sets, qualifications, and experience. For example, based on the county's Project Manager's skill sets, knowledge and experience, he should report directly to the WCBA instead of to the county's Director of Building Services or the WCBA's Chief Administrative Officer (CAO).

We found the organizational structure to be the most troubling for the following reasons:

- No formal organizational chart was found to exist;
- We are proposing an organizational structure on page 33 of this report which we believe is a better alignment based on job description, skill sets, qualifications, and experience.

See page 38 - 42.

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For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

-Governance\Board Independency-

We believe the mission, goals and objectives of the board need to be better defined. We encountered numerous instances when the administration and not the board cancelled board meetings. It is being suggested that only the board chair and/or designee be allowed to authorize the cancelling of board meetings. **See page 42 - 45.**

Risk Management

Overall Conclusion- Risk Management

We found AECOM has an on-going risk analysis processes and the CMAR was required by State laws to provide a payment and performance bond security in the amount of \$11.5 million in the event of negative events occurring. We concluded risk management appeared to be adequate and sufficient. **See page 45 - 57.**

However, we found material weaknesses and possible improprieties which we referred to the Wayne County Prosecuting Attorney's Office (PAO) for further investigation and review. **See page 46.**

We have concluded that several high ranking administration officials and certain independent prime contractors withheld material facts from the approving bodies on two separate occasions as follows:

- ✓ There was a \$41 million funding gap related to the construction of the jail, when the Wayne County Commissioners approved the CMAR contract in September 2011 and subsequently approved by the WCBA on February 9, 2012. **See page 134.**
- ✓ We contend the failure of key county decision makers to notify the approving bodies in a timely manner cost the county \$96 million in unnecessary expenditures because the Project could have been halted in February 2012; however, an opportunity was not given to the approving bodies in September 2011 nor February 2012 to deliberate concerning the funding gap. **See page Error! Bookmark not defined..**

Due to the potential criminal nature of this action, we were required by the Wayne County Fraud Investigation Policy to refer this matter to the PAO for review. **See page 53.**

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For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Control Processes

Overall Conclusion- Control Processes

As requested by the MOU, we reviewed the internal controls related to control processes and found some deficiencies in the business process that we believe need to be addressed in the near term. **See page 57 - 73.**

We concluded the awarding of the CMAR contract by county evaluators may have been designed to provide an unfair advantage to certain bidders. **See page 58 - 63.**

We reviewed the WCBA's procurement policy and found it be comparable to the Wayne County procurement policies; therefore, we concluded it is sufficient. **See page 63.**

The WCBA is not using a purchase order system for goods and services and/or construction contracts. The purchase order system would prevent the contractor from exceeding the approved amount of each contract. **See page 63 - 65.**

We found Wayne County leadership, with the exception of the WCSO, failed to utilize and take advantage of the various best practice concepts, some of which at no cost, in the construction of the Project. **See page 65 - 72.**

We are strongly urging the administration to adopt some of the best practices as advocated by the NIC and used by the Detroit Regional Conventional Facility Authority (DRCFA) for the construction of the jail. **See page 69.**

Jail Design – Bed Capacity -

Overall Conclusion – Jail Bed Capacity

Given the current jail population, reducing the intended number of beds would not be effective in meeting the intent to consolidate the existing jails into one facility (Jail Divisions I, II, and III). county officials are exploring options to reduce overall construction costs, which could result in a reduction in the bed capacity and other design changes.

We thought it would be of interest to know that AECOM stated the jail bed capacity could be increased with double bunking of the general population single bed units under very restricted and controlled circumstances. The OAG calculated the expanded capacity to be 2,512 beds. **See page 72 - 73.**

From an operational point of view, we suggest as decisions are being made regarding the bed capacity for the new jail we all need to bear in mind that under rare emergency situations the

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

new jail will have the capacity to house at least 2,512, according to discussions with AECOM's Program Manager. [See page 72.](#)

Information and Communication

Overall Conclusion- Information and Communication

Information and communication is required in order to keep the key decision makers and the general public apprised as to the progress of public projects. [See page 73 - 78.](#)

We concluded there was no general public information such as a website, brochures and other literature pertaining to the progress of the construction of the jail Project.

In addition, we noted AECOM communicated verbally to the WCBA but, we did not see evidence of routine written status reports being provided to the board and/or the Wayne County Commission. [See page 73 - 78.](#)

-External Independent Review-

There is a dispute resolution clause in the Walbridge-dck contract which states at "the sole discretion of the owner they may elect arbitration of claims, and thereafter all claims, disputes and the conclusions shall be binding by all parties."⁴ However, Article 10 of the contract states "such meeting shall occur no earlier than 30 days after final completion or termination of the contract." [See page 73 - 75.](#)

We did not see evidence of an attempt to resolve any differences with Walbridge-dck before hiring an external architectural firm at a cost of \$73,306 for an independent review which still may lead to litigation. [See page 73 - 75.](#)

It also raises the questions in our mind if the cost considered reasonable and necessary in order to be paid from the bond proceeds. If not it could become a general fund expenditure.

We were also informed by AECOM that they were not given an opportunity to review and/or respond to the various issues being raised in the Independent Review Report of the Wayne County Consolidated Jail Project by Hubbell, Roth and Clark, Inc. (HRC). [See page 73.](#)

⁴ Walbridge-dck (CMAR) contract Article 10 – Dispute Resolution, page 23. .

**Final Draft
For Review and Discussion Purposes Only**

EXECUTIVE SUMMARY

-Monitoring-

Overall Conclusion- Monitoring

The purpose of monitoring is to provide supervision, management and oversight for the purpose of controlling the outcome of an objective.

There was inadequate monitoring of the Project by the Oversight Committee, who as a group lacked the necessary construction industry experience/expertise to adequately monitor the Project and work collaboratively with AECOM on the construction design to keep the Project within budget. **See page 78 - 83.**

Consequently, a failure to meet objectives resulted in the administration temporarily suspending the construction of the jail.

-Sheriff (User) Participation-

Overall Conclusion – Users Participation

The WCBA hired and the WCSO assigned individuals to serve as part of the Sheriff Transition Team (Transition Team), whose task was to assist with transition to the new jail including developing policies and procedures. The budgeted cost for the Transition Team was \$1.8 million and \$467,120 was spent through August 16, 2013. **See page 81 - 83.**

A seven member transition team was selected with the Chief of Jails overseeing the team. Three members are contractual employees of the WCBA and four members were WCSO employees assigned to the transition team. **See page 115 - 118.**

Based on cost incurred by the Transition Team and review of other documentation, we concluded there has been WCSO participation in the Project since its inception. **See page 81.**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Objective II – Compliance Testing

Review and evaluate compliance with the construction contract, the Davis Bacon Act, American Recovery & Reinvestment Act (ARRA) and the Bond Covenants to provide assurance that expenditures made for jail construction costs are allowable and eligible from bond proceeds.

Overall Conclusion – Compliance Testing

Based on our review, we found AECOM and the CMAR were generally in compliance with the construction contract, Davis Bacon Act, and ARRA requirements. **See page 83 - 118.**

The county has issued \$200 million in bonds pledging the good faith and credit of Wayne County. These are serial bonds maturing at various dates over the next 30 years. Based on the administration records, the payment of net principal and interest on these bonds over the next thirty years will amount to \$404 million.⁵

Of interest, is that the general fund will be hit with payments of \$31 million for the period June 2013 – June 2015, which we are informed by M&B personnel will be paid from the interest capitalization fund. **See page 83.**

Bond Issuance

According to M&B, debt service for the period June 2011 – December 2013 are to be paid from the interest capitalization fund in the amount of \$31.2 million.⁶

M&B also stated that once the December 2013 payment is made, this will deplete the interest capitalization fund. It is assumed at that point that all future debt service payments will have to be paid by the general fund in annual installments of \$14.5 million.

Based on our review of the amortization schedule, there is a total net debt of \$404 million that must be repaid over a 30-year period on the serial bonds issued. **See page 84.**

Contract Of Lease

In October 2010, the Contract of Lease was executed between the WCBA and the Charter County of Wayne, Michigan. This contract pertained to the Consolidated Jail Facility Project. Under the terms of the contract, the WCBA is authorized to issue bonds in excess of the authorized \$300 million, if necessary, to complete the construction of the consolidated jail. **See page 86 - 89.**

⁵ Per amortization schedule obtained from M&B personnel.

⁶ Per amortization schedule provided by M&B personnel.

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

We strongly suggest that the Wayne County Commission, WCBA and the administration consider amending the contract of lease to require commission approval before the WCBA exceeds the \$300 million authorized. **See page 86 - 89.**

However, based on discussion with legal counsel, it is unclear if any increases in the Walbridge-dck contract will require Wayne County Commission approval. **See page 86.**

Compliance with IRS Regulations

The WCBA does not have any employees but has entered into a contractual relationship with individuals. We noted at least three instances in which contracts totaling \$757,500 were entered into as personal service contracts and payments are being made to the contractors in their individual names; they are given 1099 forms at the end of year. **See page 92 - 95.**

If taxes are unpaid when submission of the 1099 form is made, the county could be at risk of being held liable for any unpaid taxes. Also, this practice could result in additional risk to the county if these individuals fail to report this income to the Internal Revenue Service.

We strongly suggest the WCBA refrain from entering into personal service contracts in the future; instead, either use lease employees and/or those that have correctly filed and established legal business entities.

Owner's Representative

Until the present program consultant/manager was hired, there was no one with the necessary expertise or experience to serve in the capacity as an owner's representative as suggested by best practices. This may have contributed to construction delays and large budget overruns.

Based on research performed, it is advocated that an owner's representative, or someone equivalent, is essential to completing a large construction project. In this case, the administration has hired a Project Manager to serve in this capacity for all intent and purpose.

It was stated by the CAO that the CMAR contract language that makes reference to the Owner's Representative will be replaced with a Project Manager, once the CMAR contract GMP is finalized.

We were informed by Walbridge-dck that there was no owner's representative during the peak construction season – June – September 2012, and it is generally believed that is when the cost of construction soared because construction drawings were due but not available. We also were informed it was during those periods of times that the Oversight Committee served as the Owner's Representative. **See page 96 - 104.**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

We concluded because of its importance, the county's Project Manager position should be required to report directly to the WCBA and/or the capital improvement sub-committee, if one is established. This will provide the necessary autonomy and responsibility directly under the control of the county's Project Manager and restores oversight control to the WCBA. **See page 96 - 104.**

No Bid Contracts

There were three instances where no bid contracts were issued: (1) AECOM in the amount of \$25 million awarded in August 2010; however, we were informed by Special Counsel, as well as AECOM, that the initial contract to construct a regional justice center in 2006 was based on a bid process and the administration believed it would be more cost effective to award the 2010 contract to AECOM since they had already performed architectural and design work on the regional justice center. (2) Parlovecchio Building Company, Inc. as a sub consultant to AECOM in the amount of \$2.0 million, executed February 23, 2011; and, (3) Parlovecchio Building Company, Inc. Owner's Representative contract with the WCBA, dated May 1, 2011. This contract amount was \$2.3 million, which included \$420,000 for information technology. The AECOM contract was also amended May 1, 2011 to remove the sub consulting agreement with Parlovecchio Building Company, Inc. **See page 104 - 108.**

Contract Elements

In our review of construction and legal contracts we noted instances where dates and signatures were missing. We also noted contracts had identical scope of services that covered different legal work. A lack of any of the required elements of a contract could lead to disputes, claims, and counter-claims between the contractual parties. Also, contractual performance may vary from what was intended.

We strongly recommend that all contracts executed on behalf of the WCBA be reviewed by Wayne County Corporation Counsel to provide assurance that all the elements of a contractual obligation exist that is necessary to legally bind each party. **See page 108 - 111.**

Contract Analysis

We determined there are two contracts with Walbridge-dck – one for the caisson in the amount of \$5,569,479 and the other for construction management at risk in the amount of \$219,536,154. However, we were not able to identify a “right to audit clause” for the owner/designee in either contract. Without identifying specifically who has the right to audit could be left to interpretation.

We spoke with Special Counsel to the WCBA regarding this matter and he stated that the clause could be found in several places in the CMAR contract; however, we believe it should

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

be uniform and consistent is each contract similar to the one found in AECOM's contract. [See page 111 - 115.](#)

Sheriff Transition Team-

The National Institute of Correction, an agency within the U.S. Department of Justice, Federal Bureau of Prisons, recommends the use of a transition team when constructing a new jail; in addition, there is a wealth of other information available to local correctional agencies. The WCSO utilized this agency to assist them in preparing for their transition to the new jail. [See page 115 - 118.](#)

Despite statements to the contrary, based on our review, we concluded there was participation and user involvement by the Sheriff Transition Team from the very inception of the Consolidated Jail Facility Project. [See page 81.](#)

However, as of June 2013, we have been informed by the WCSO leadership that the Sheriff's Transition Team has been disbanded during the construction suspension period, which is understandable; but the Sheriff Officials we spoke with stated they were not aware as to when or if they will re-activated at a later date. [See page 115.](#)

**Final Draft
For Review and Discussion Purposes Only**

EXECUTIVE SUMMARY

Objective III – Reconcile General Ledger Balances

Reconcile construction cost and cash balances recorded in the general ledger maintained in QuickBooks with the general ledger maintained by WCBA in JD Edwards.

Overall Conclusion- Reconcile General ledgers

As requested by the MOU, we were able to reconcile the general ledger and cash balances at June 30, 2013 and August 16, 2013. We noted a few differences as of June 30, 2013; but, the WCBA and PM&A personnel were able to readily make the necessary corrections.

We determined the total construction cost expended as of June 30, 2013 to be \$124 million and \$130 million as of August 16, 2013. **See page 118 - 124.**

We were able to satisfactorily determine the two bond proceed control ledger balances, as well as the WCTO cash balance, were all in agreement as of August 16, 2013, and the correct balance was \$73,921,810 at that time. **See page 118 - 124.**

Payment – Drawdown Schedule

Based on discussion with AECOM, the Program Manager stated the jail project is 35% complete as of June 30, 2013. **See page 122.**

It was also noted that the Walbridge-dck contract was 25% complete as of August 16, 2013, based on a computation prepared by the OAG staff. **See page 122.**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Objective IV – Substantive Testing

We performed substantive testing to validate construction cost through the use of statistical and judgment sampling from the inception of the Project through August 16, 2013. We determined that \$130 million in cost had been incurred.

Overall Conclusion- Substantive Testing

Based on work performed, we found some areas that could be strengthened within the approval of construction cost invoices and time reporting by persons working on the Project. **See page 124 - 153.**

Allowable Mark-Up not Formalized

During our sample testing, we found a subcontractor of the sub-consultant working for AECOM had marked up an invoice of \$1,700 by 5% for services performed; resulting in a payment of \$1,785. Based on discussion with AECOM, we were informed their contract with the sub-consultant allows a mark-up of 10% for such services. As a result of subsequent discussions with legal counsel it was mutually agreed the 10% mark-up would be reduced to 5%. **See page 128.**

Review of Payroll Processing Controls

We found several instances where procedures and controls related to payroll processing for individuals working on the Project could be strengthened. **See page 130 - 132.**

- ✓ Non-standard time reporting procedures.
- ✓ Untimely submission of time reports.
- ✓ Time sheets approved by a rubber stamp.

Factors Contributing to Budget Overruns

Based on most recent information submitted by AECOM, it was noted that the final estimated GMP for the Project was \$47 million over the initial budget of \$220 million; the overall project is \$91 million over the authorized funding amount of \$300 million. **See page 132 - 133.**

Of the \$91 million increase in estimated project costs for the jail facility, \$47 million is attributed to increased construction cost by the CMAR allegedly because of changes in design and/or scope and late issuance of design documents and \$44 million for other Project costs, such as land acquisition, site remediation, Transition Team cost, and legal/accounting fees that were not included in the original estimate for building the new jail facility. **See page 132 - 133.**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Initial Budget Challenges

As of August 25, 2011, it became apparent that the initial budget would be over by \$41 million in additional cost when certain cost such as land acquisition and site remediation of \$19 million, Sheriff transition team, legal and accounting, and other Project related cost of \$22 million were included. **See page 133.**

Lack of Segregation of Functions

There existed a failure to segregate functions for a period of six months. AECOM served as the Designer, Architect, Program Manager, and Owner's Representative for the period December 2011 – May 30, 2012. This created an incompatible relationship and may have contributed to some of the problems encountered with the construction of the jail. **See page 138.**

Architect, Designer, Program Manager

AECOM was awarded a contract August 1, 2010 to serve as the Architect, Designer, and Program Manager for the construction for the jail in the amount of \$25 million. In addition, they also served with no additional compensation for approximately six months as the Owner's Representative. **See page 138 - 140.**

The WCBA recently hired the engineering firm of Hubbell, Roth and Clark (HRC) to review the proposed change orders to determine if there has in fact been a change in design and/or scope. Their contract was for \$73,306. **See page 73 - 75.**

Based on our review of the HRC report they identified \$42 million in cost associated with potential change orders related to changes in design and/or scope. According to AECOM the \$42 million includes unsubstantiated extended construction schedule and associated General Condition costs. Of the \$42 million change orders the report stated they identified \$12 million directly related to owner changes and price increases by subcontractors, no change orders that increased the initial GMP were issued. **See page 73 - 75.**

However, we were informed by AECOM that they have not had been afforded the opportunity to review the report; therefore, they were not able to comment nor permitted any input to respond to issues on what was stated in the report. **See page 73-75.**

CMAR

Walbridge-dck a joint venture construction company was awarded a contract by the WCBA in February 2012 to serve as the Construction Manager At Risk (CMAR) for the building of the jail. The amount of their contract was for \$219,535,000. This same contract had been previously approved by the Wayne County Commission approximately five months earlier. **See page 140 - 142.**

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Legal Fees

It was noted that the scope of legal services written in each contract for all three law firms were identical. In fact, we were only able to identify what each firm's scope of services was by reviewing the WCBA minutes. **See page 142 - 145.**

We found a contract was not executed by the WCBA for the bond counsel that was paid \$229,000 in accordance with the county's voucher policy. These costs also were not included in the total estimated Project cost for legal services. **See page 142.**

Accounting Fees

A contract extension in the amount of \$250,000 was executed in June 2013 for Pierce, Monroe and Associates increasing the contract amount to \$1.2 million and terms until January 1, 2016.

Based on accounting fees paid through August 16, 2013, the firm has been paid a monthly average of \$45,409. Extending the average payment from July 1, 2013 through Jan. 1, 2016, we estimate additional accounting fees could amount to \$1.4 million. Therefore, unless adjustments are made regarding time being charged, this firm could exceed its budget by \$200,000 by the end of the contract period. **See page 145 - 147.**

Cost During Suspension Period

According to the county's Project Manager responsible for overseeing the Project, suspension costs could range from \$2-5 million per month. Based on this estimated range, we calculated the daily per-diem over the 60-day suspension period would range from approximately \$67,000 up to \$167,000 per day. **See page 147 - 150.**

We found it problematic that the county administration was not able to reasonably estimate the cost per diem during the construction suspension period. **See page 147.**

An AECOM representative stated that the Project is 35% complete as of June 30, 2013.

It was stated the percentage was determined based on observations and inspection by AECOM which they believe is customary in the industry. **See page 147.**

Options on Construction of Jail

The administration presented at least three options to the Wayne County Commission – Committee of the Whole on August 14, 2013⁷. The administration expressed a preference to go with option 1. **See page 150 - 153.**

⁷E Communication from the CEO dated August 14, 2013

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

The three options are as follows:

1. First option - sell the 14 acres parcels in downtown Detroit to a private developer and move the county's criminal justice center to a different site such as the State of Michigan's Mound Road Facility;
2. Second option – negotiate a public-private partnership that would complete the Project on the current site with a 2,000 bed capacity. The private sector partner would provide financing, construction and maintenance on the facility and a long term use agreement with the county;
3. Third option – continue with a downsized facility at the current site. However, the diminished capacity compromises the functionality severely enough that the county has ruled out this option.

OAG Site Preference

The OAG has not been privileged to review the details of the three options discussed above and the determination as to the best alternative was not included in the Agreed-Upon Procedures engagement. However, because some critical decisions will be made by leadership over the next 60 days we felt it necessary to express our viewpoint and the reasons why.⁸

Like most projects, best management practices dictate that one begins with an objective and make determinations as to how the objective (goal) can be best accomplished. In short, the WCBA objective for the Project was to build a 2,000 bed capacity jail for a price of \$300 million or less.

The administration presented at least three options to the Wayne County Commission – Committee of the Whole on August 14, 2013⁹. The administration expressed a preference to go with option 1. **See page 150.**

We believe good economic sense should prevail and be the determinate factor in deciding the best course of action county leadership should take going forward.

The Commission and the WCBA should encourage the administration to perform a financial feasibility study in order to explore other means to finance the construction of the jail. This would allow for the Project to be completed at its existing site and avoid the necessity to abandon the Project where over \$533 hundred million tax payers dollars are already invested and obligated over the next thirty years. The \$533 million consists of the following: \$129 million related to construction cost incurred through August 16, 2013, and the remaining \$404 million is related to debt service on the bonds which are to be paid over the next 30 years. The external

⁸ E Communication from the CEO dated August 14, 2013

⁹E Communication from the CEO dated August 14, 2013

**Final Draft
For Review and Discussion Purposes Only**

EXECUTIVE SUMMARY

auditors have expressed some concerns regarding the impairment of the jail construction cost of \$130 million if the project is abandoned. [See page 150.](#)

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**Final Draft
For Review and Discussion Purposes Only**

EXECUTIVE SUMMARY

Objective V – Review of Documents to Support the Authorization and Approval of Change Orders

Performed procedures designed to determine if change orders were properly reviewed and approved. Also, determine the impact of the change orders on the cost of the construction Project.

- Overall Conclusion - Change Orders-

Although the AECOM and Walbridge-dck contracts make reference to a change order process, we believe it would streamline the processing of change orders if the process is expanded to include the requirement for specific supporting documentation. We also believe no work in connection with a change order should be started until each one is formally approved or rejected in writing and adjustments are made to the contract if it results in changes to design or scope. **See page 153 - 157.**

It is to be noted there was only one approved change order approved by the owner as of August 16, 2013, and according to discussions with AECOM's Program Manager, that change order did not impact the GMP. **See page 153.**

Potential change orders upon review can be grouped into change requests. These change requests, upon review, could become change orders. According to discussions with the county's Project Manager, there are 450 possible change orders that were not formally rejected by AECOM.

It is AECOM's contention that since there are no documents to support a potential change order; therefore, no written rejection notification is required. **See page 153**

According to AECOM officials, they did not review or reject the potential change orders because they lacked detail information required for the review.

Change Orders

Only one change order, which according to the county's Project Manager did not change the scope, design, or cost, was approved by the owner.

The Hubbell, Roth and Clark, Inc. (HRC) report states: "Through our research there appear to be approximately \$4 million of owner direct changes to the Project that have been implemented, for which no change order to the initial GMP was issued."

Also, the report stated there are \$8 million in change orders acknowledged by WCBA pertaining to subcontracted related cost increases within the construction documents, for which no change

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For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

order to the initial GMP was issued. This raises the initial GMP from \$220M to \$232M over the last 17 months.¹⁰ [See page 153](#)

We reviewed the AECOM and Walbridge-dck contracts, noting there was a provision in each contract pertaining to change orders and each required the owner and/or the Owner's Representative approval.

Approval of Change Orders

The WCBA's CAO approved the one change order that has been submitted to date. We found the change order was properly signed by the CAO and only initialed by the county's Project Manager. However, there was no documented evidence that the county's Project Manager, hired to oversee the construction Project, reviewed the change order for design and scope changes or impact on the GMP. [See page 153 - 157.](#)

Further, we noted that there are no written policies and procedures and/or guidance pertaining to the processing of change orders by delegated WCBA representatives. [See page 153.](#)

¹⁰ Hubbell, Roth & Clark, Inc. dated August 5, 2013.

Final Draft
For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

Objective VI – Questionable Transactions

According to our MOU, we reviewed the books and records for questionable transactions and we found several instances in which direct costs were being incurred by Wayne County; but, there were no processes for the reimbursement of these costs.

-Overall Conclusion – Questionable Transaction

It is of great concern to us that the administration failed to develop an accounting mechanism to capture these costs and charge them to the Project on a consistent basis. The administration was not able to quantify the dollar amount of these costs since the inception of the Project to present. **See page 157 - 162.**

Cost Not Properly Allocated

We identified five county employees who have been an integral part of the jail construction Project from its inception. Three of the five county employees revealed that they do not capture their time spent servicing the WCBA. We also determined central service costs, for example accounting, personnel/human resource, etc. are not being allocated to the WCBA for services provided by the county. **See page 160 - 162**

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For Review and Discussion Purposes Only

EXECUTIVE SUMMARY

**Objective VII – Capital Improvement and General
Operating Fund Budgets**

According to the Michigan Department of Treasury Uniform Budget Manual the Capital Project Fund is not required to adopt an annual budget.

Although not required for capital projects we are suggesting, based on good business principles that a formal capital improvement budget be adopted for the construction of the jail.

Overall Conclusion – Budgeting

Based upon a review of the WCBA’s minutes, documentation from the Project’s contractors and county administration, we determined that a budget for the construction of the consolidated jail facility was never prepared, adopted and/or approved.

Although cost estimates have been provided, and revised on numerous occasions, a formal budget for the Project has never been prepared, adopted and/or approved.

In addition, we are suggesting that the WCBA adopt a budget for the \$213,000 of unrestricted funds in the general operating fund reflected in the government fund statement as of September 30, 2012. Some of the funds could be used for board training, per-diem stipend and reimbursement for mileage for attending meetings, providing the WCBA can obtain approval from the Wayne County Commission. **See page 162 - 165.**

Executive Summary Conclusion

Since this is a blended component unit of Wayne County, a corrective action plan will be required within 30 days after this report is received and filed by the Wayne County Commission. **See page 165.**

This report is intended solely for the Wayne County Building Authority, the County Commission and other stakeholders. This restriction is not intended to limit distribution of the report, which is a matter of public record. ■

REPORT DETAIL

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REPORT DETAIL

-PURPOSE/OBJECTIVES-

The Wayne County Building Authority Board of Commissioners (WCBA), requested the Office of Legislative Auditor General (OAG) to perform a Agreed-Upon Procedures Engagement which included a review of expenditures for the Wayne County Consolidated Jail Project (Project) construction cost through June 30, 2013. The OAG and the representative of the board of commissioners entered into a Memorandum of Understanding (MOU) as to what work will be performed in completing this engagement.

The engagement was conducted in accordance with applicable Generally Accepted Auditing Standards issued by the American Institute of Certified Public Accountants and Government Auditing Standards issued by the Comptroller General of the United States.

The MOU contained specific procedures to assess the objectives identified below:

- I. We agreed to review and evaluate the WCBA's internal controls – control environment, risk management, control activities, information and communication, and monitoring.
- II. We agreed to review and evaluate compliance with the construction contract, the Davis Bacon Act, American Recovery & Reinvestment Act (ARRA) compliance, and the bond covenants to provide assurance that expenditures made for jail construction costs are allowable and eligible costs from bond proceeds.
- III. We agreed to reconcile construction cost and cash balances recorded in the general ledger maintained in QuickBooks with the general ledger maintained by the WCBA in JD Edwards.
- IV. We agreed to perform substantive testing to verify construction costs incurred through June 30, 2013, are eligible for constructing the new jail and approved by the WCBA's Chief Administrative Officer (CAO).
- V. We also agreed to perform procedures designed to identify unusual and/or questionable transactions.
- VI. We agreed to review documents to support the authorization and approval of all change orders by the Project owners.
- VII. We agreed to review minutes and other supporting documents to verify the adoption and approval of the total Project budgeted cost adopted by the WCBA.

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-SCOPE-

The agreed-upon procedures performed by the OAG were limited to construction cost incurred from inception through June 30, 2013. The agreed-upon procedures engagement was conducted in accordance with Generally Accepted Government Auditing Standards issued by the American Institute of Certified Public Accountants and Government Auditing Standards issued by the Comptroller General of the United States.

We were not requested to and did not conduct an audit, the objective of which would be the expression of an opinion on the propriety of change orders resulting in design or scope changes, the advantages and disadvantages of the decision to continue with construction on the existing site, and any cost savings measures that may be employed to reduce construction cost.

It is our understanding that leadership plans to engage others to perform these objectives. 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.

-METHODOLOGY-

The agreed-upon procedures included performing certain procedures, on a test basis, to assess the assertions made by the WCBA officials and selected vendors. It was determined statistically that we needed a sample size of 32 vendor packages from a total population of 432 vendor packages. In addition, we randomly selected another 7 packages for a total of 39. With this selection method, every item in the population has equal probability of being selected.

The agreed-upon procedures also involved reviewing, assessing, and observing certain processes performed by the consulting firm of Pierce, Monroe and Associates to gain an understanding of the transaction processes and the existing controls to mitigate the risk of non-allowable expenses being paid from the bond proceeds to construct this jail.

We reviewed board meeting minutes and emails prepared by the WCBA, the commission, and Project leaders pertaining to the construction of this facility in order to gain an understanding as to oversight and monitoring being provided.

In addition, we met and engaged in discussions with the Special Counsel to the WCBA, project consultant, AECOM, and the CAO for this construction Project.

Finally, upon completion of the report, we met with key officials to discuss the draft report in detail and have incorporated their comments and concerns into the final report that is included in Appendix B.

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-BACKGROUND AND OVERVIEW-

-Historical Overview-

According to a recent presentation made by the Wayne County Chief of Staff to the Wayne County Commission, it was stated in 2006 the county issued an RFP to obtain a program manager for a new Wayne County Regional Justice Center, which was spearheaded by the former Chief Operating Officer (COO). In 2006, AECOM was selected by competitive bid. A feasibility study was conducted by AECOM and presented to the commission in 2008. A review of this analysis suggested the regional justice center should remain in downtown Detroit for economic reasons.¹¹ It was decided at the time the county could not afford to construct the regional justice center which would include the jail, Juvenile Detention Facility and courthouse.

According to the Chief of Staff, in 2010, AECOM presented an idea that the county could save approximately \$30 million on an annual basis by building a consolidated jail complex. Meetings and discussions with key decision makers were held from August 2010 through January 2011.

In October 2010, the commission issued a resolution approving the issuance of up to \$300 million in bonds for the construction of the jail. In December 2010, AECOM met with the commission and presented financial data regarding the cost of issuing the bonds, the proposed cost of up to \$220 million for construction and finally affirming a total Project cost of \$300 million, including both hard construction and soft costs such as design, project management and professional services.¹²

County leadership agreed to an integrated system approach to constructing the jail. Under this arrangement, the contractor, selected team members of the prime subcontractors and the design team would design the jail for a Guaranteed Maximum Price (GMP).

On June 11, 2013, because of construction project overruns, the Chief of Staff stated: “the CEO is recommending a temporary suspension on the Project for 60 days.”

¹¹ Presentation to the commission by the CEO Chief of Staff dated, June 11, 2013.

¹² Presentation to the commission by the CEO Chief of Staff, June 11, 2013

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**Architectural Conceptual Design
Wayne County Consolidated Jail Facility**



WAYNE COUNTY CONSOLIDATED JAIL FACILITY



Based on this presentation, the commission authorized the issuance of \$300 million in bonds, pledging the good faith and credit of Wayne County as collateral for the bonds.

In September 2011, the county presented a contract to the commission recommending Walbridge-dck as the Construction Manager At Risk (CMAR) for this Project in the amount of \$220 million.

The terms of the contract required the county and Walbridge-dck to agree to a final GMP amount after AECOM had presented Walbridge-dck with the design documents. Walbridge-dck signed a contract in February 2012 with an initial GMP of \$220 million.

The consolidated jail was originally designed to be a 2,192 bed facility with 2,000 beds for the Wayne County Sheriff's Office (WCSO) prisoners and 192 beds for housing city of Detroit prisoners. The city of Detroit opted out of its option to participate and the county reduced the capacity to 2,000 beds. The OAG was unable to independently quantify a reduction in construction cost resulting from a reduction in bed capacity.

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In November 2012, a review of the Project led the county to anticipate that Walbridge-dck would exceed the \$220 million; unofficially, it was estimated that the construction cost would be approximately \$265 million.

Under the terms of the Construction Management Agreement (CMA), as of May 31, 2013, Walbridge-dck submitted a final GMP of \$267 million. It is represented by Walbridge-dck that the increase in the price is primarily due to scope and design changes and the issuance of construction documents one year late.

-Ownership-

The Wayne County Commission passed a resolution in December 2010 conveying the construction of the new consolidated jail to the WCBA. It was agreed that the WCBA would issue the bonds which are backed by the good faith and credit of the county.

The bonds were issued for the purpose of acquiring, constructing, furnishing and equipping a consolidated jail. The consolidated jail will be owned by the WCBA and leased back to the county.

Since the WCBA has no revenue stream, the contract of lease between the county and the WCBA states this will be a net lease arrangement with lease payments equal to the debt service cost being paid to the WCBA. The WCSO, through general fund support, would be responsible for all maintenance and operating costs of the jail. The county's plan was to generate WCSO operation savings from the consolidation of the three jails by modernization of the new facility and the elimination of the duplicity of functions.

The bonds are Recovery Zone Economic Development Bonds which are eligible to receive an interest subsidy from the federal government of 45%. The interest subsidy is \$169 million over the 30 year life of the bonds; with a net debt service payment of \$385 million.

The total Project cost including furniture, fixtures and information technology was projected to be \$300 million; therefore, the commission authorized the WCBA to issue bonds up to that amount. Two hundred million dollars was issued in December 2010; however, the issuance of the additional \$100 million will not be accompanied with an interest subsidy provision; therefore, making the cost of borrowing more expensive. More importantly, according to the contract of lease, the WCBA is also authorized to issue additional bonds over the \$300 million without commission approval to cover any additional construction costs, if needed.

-Alternate Site-

AECOM, at the request of the WCBA and the CEO, performed an in-depth analysis of the Mound Road facility and concluded in a memorandum dated January 10, 2012, that "based on our preliminary review of the Mound Road facility, we do not believe that occupying this facility is a viable alternative to new construction for three primary reasons:¹³

¹³ Memorandum from AECOM dated January 10, 2012 to the Authority and CEO.

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- ✓ The physical configuration of the facility as a campus and “dry cells” does not respond to the classification, security and programmatic needs identified for the new facility.
- ✓ The new facility is projected to result in decreased operational costs, our review of the existing facility suggests that total operating costs would in fact increase over current base line conditions.
- ✓ Finally, retaining and renovating Division 1 or 2 in order to meet projected system capacity requirements would continue the use of antiquated facilities with relatively high staff-to-inmate ratios and a physical environment that is not conducive to security or staff and inmate safety.

Although some would point out that the jail facilities, as well as police headquarters, were both there long before the Greek Town casino was built.

-Board Viewpoints-

We spoke to certain WCBA board members whose general thought was the jail needed to be close to the court for safety reasons. The proposed plan included an underground tunnel from the jail to the court which would also reduce transportation cost.

It was further stated that maintaining a downtown location would continue to spur economic growth in the Greektown district. In order to fit into the locale, the outward appearance of the jail is being designed to look like a hotel.

It is important to understand that the intent of our engagement is not to evaluate the merits of the Mound facilities and/or the downtown location to house prisoners. That is beyond the scope of this engagement and our MOU with the WCBA.

AGREED-UPON PROCEDURES PERFORMED

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I – EVALUATE INTERNAL CONTROLS – COSO

Internal control is a process, affected by an entity’s board of directors, management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting and compliance.

As recommended by the American Institute of Certified Public Accountants (AICPA), we used the Committee of Sponsoring Organizations of the Treadway Commission (COSO) model to review and evaluate internal controls which consist of the: Control Environment, Risk Management, Control Activities, Information and Communication, and Monitoring.¹⁴

-CONTROL ENVIRONMENT-

The control environment is the set of standards, processes, and structures that provide the basis for carrying out internal control across the organization. The board of directors and senior management establish the “tone at the top” regarding the importance of internal control including expected standards of conduct. The control environment we evaluated included philosophy and style, leadership, strategic direction, organizational structure, and governance.

-Philosophy and Style-

Management philosophy and operating style encompass a broad range of characteristics applicable to both the board and executive management. Such characteristics may include the approach to taking and monitoring business risks; attitudes and actions toward financial reporting; use of policies and procedures; and emphasis on planning and meeting budget and other financial and operating goals. These characteristics have a significant influence on the control environment, particularly when the board of directors or management is controlled by one or a few individuals.

We found the current board members, which consist of five members, to be very focused and committed to doing a good job and getting paid was not one of their primary goals – it was to serve Wayne County and its stakeholders. In fact, they have actually served for several years without any compensation and/or reimbursement for mileage.

The two board members we met with on more than one occasion were fully cooperative and expressed a concern and willingness to address any concerns that were being raised by the OAG regarding the WCBA.

¹⁴ COSO - Internal Control – Integrated Framework

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We see the commitment and dedication by the board members we interviewed and we commend them on dedicating their time and service to such an important project without receiving any compensation for neither attending board meetings or being reimbursement for mileage.

Work Performed:

1. Discuss with board members their philosophy and style as it relates to integrity and ethical values.
2. Determine if the board demonstrates independence from management and exercises oversight over the Project.
3. Determine if the board structure, hierarchy for reporting, and appropriate WCBA responsibilities are aligned with the functions delegated to them.
4. Review the credentials and experience of key board members, as well as their respective terms of office.

Results of Work Performed:

1. We were informed by Special Counsel to the WCBA that the board has adopted the ethics policy enacted by Wayne County. We are familiar with the Wayne County ethics policy and believe it adequately addresses ethical issues.
2. We were told board members are not compensated and do not receive training. Based on information derived from a recent newspaper article a board member stated: “It’s really just a thumbs up and thumbs down board – the county brings us suggestions. It’s almost like we’re a committee for the county. We’re more of a vehicle to get financing and bonding. In truth, it’s the county’s selection.”

Building Authorities are established under Michigan Public Act 31 and are primarily used as a financing mechanism for the construction of public capital improvement projects. However, Public Act 31 also states: “It [WCBA] shall possess all the powers necessary to carry out the purposes of its incorporation and those incidental thereof.”

It further states that board members can be compensated, as such per-diem and mileage for attending meetings, as may be provided by the WCBA with the approval of the Wayne County Commission.

3. We reviewed the hierarchy of reporting to see if it was aligned with key decision makers’ responsibilities. The county’s Project Manager is currently reporting to the Director of Buildings, a licensed architect, but lacks jail construction experience. In addition, the Director, due to other time constraints, was not able to oversee the construction site on a daily basis.

The current county’s Project Manager is performing duties and responsibilities similar to those of an Owner’s Representative. More importantly, he possesses the skill set and expertise that is needed to manage all aspects of the activities needed to complete the Project. He can be on the construction site on a daily basis, if required.

Final Draft
For Review and Discussion Purposes Only

The reporting structure can be improved by aligning those who report to the board with each individual's responsibilities and delegated functions.

We noted a lack of segregation of functions for approximately six months (December 2011 through May 2012) when AECOM served as both the Program Manager and the Owner's Representative.

Also, it is important to note that there was no Owner's Representative from June 2012 until October 2012. We were informed that the Director of Building Services would sign off on payment application; and was not on-site on a daily basis to manage construction activity.

4. We inquired into the credentials and experience of each board member, as well as their terms elected to serve in office. It was determined that one board member is a real estate broker\developer; two are lawyers, and two are career politicians. Their terms of office are staggered.

- Administration Leadership-

Leadership establishes and effectively communicates written policies and procedures, a code of ethics and standards of conduct. It is ethical behavior in leadership that creates positive "tone at the top" and requires the same standard of conduct from everyone in the organization.

Work Performed:

1. Determine the key team members who led the Project.
2. Review the key team members' resumes to determine their experience.
3. Determine each member's responsibilities.
4. Obtain and review the contract with the Owner's Representative.

Results of Work Performed:

1. We determined the key administration team members who oversaw the Project were: a former Deputy County Executive, a former Chief Development Officer, a former county employee that became the Owner's Representative, Chief Financial Officer/Chief Administrative Officer (CFO/CAO), Special Counsel to the WCBA, and the County Executive Chief of Staff.

A county Project Manager was hired in October 2012. The CFO of Wayne County is designated as the WCBA's Chief Administrative Officer (CAO).

1. We reviewed the current team members' resumes for construction experience and specific responsibilities as it related to the construction of the jail. It was noted that one was an architect, but the others had little or no construction experience.

The former Chief Development Officer left the county in September 2011 for other employment and the former Deputy CEO resigned in November 2011; therefore, we were not able to review their resumes to determine their level of construction experience.

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For Review and Discussion Purposes Only

2. The former Deputy CEO and former Chief Development Officer were originally in charge of the Project and responsible for the day-to-day decisions related to the planning and construction of the jail, along with the Owner's Representative up until they left county employment.

Prior to the hiring of the current county Project Manager, the Project was overseen by an oversight committee for the period June 1, 2012 to October 8, 2012, which consisted of: the CAO, Special Counsel, Chief of Staff, Director of Building Services, and a member of the Sheriff's Transition Team (Transition Team).

3. Parlovecchio Building Company, Inc. (owned by a former county employee) was hired on February 23, 2011, five days after leaving county employment, by AECOM as a sub-consultant to be the Owner's Representative for the WCBA for the Project. Although in the AECOM contract, Parlovecchio Building Company, Inc. invoiced and was paid directly by the WCBA

It was Owner's Representative's responsibility to make sure the contractors completed the jail construction within budget and on schedule.

In May 2011, the WCBA hired Parlovecchio Building Company, Inc. to be the Owner's Representative with a no-bid contract of \$2.4 million. Included in this contract was \$420,000 for an Information Technology sub-contractor.

However the Owner's Representative contract was terminated in December 2011 by the WCBA. Parlovecchio Building Company, Inc. is currently suing the county for breach of contract.

-Strategic Direction-

Strategic direction is identified as "a combination of the organization's vision, mission, strategies, and its core values. Without clarity and specificity, organizations will struggle to make strategic decisions, allocate resources effectively, and align their employees' efforts and measure performance and progress against targets."¹⁵

Work Performed:

1. Review minutes, emails and reports prepared by various parties involved in the Project, to determine whether adequate thought and planning went into the construction of the jail.
2. Determine if there was evidence of planning and implementation of best practices.
3. Assess whether the projected generated savings through the construction of the new consolidated jail would be able to pay the debt service payments with no new taxes or fees imposed on Wayne County taxpayers, as stated in the goals and objectives.

¹⁵ Defining and developing a strategic direction for your business unit.

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For Review and Discussion Purposes Only

Results of Work Performed:

1. We reviewed minutes and correspondence between AECOM and the county in the early stages regarding the construction of the jail.

During the early development stages, the Project was being led by the former Deputy CEO and former Chief Development Officer from the county and AECOM as the architect and designers.

A narrative from AECOM stated: “under the auspices of the county executive, a feasibility study was undertaken to replace downtown divisional jails I and II. The focus was to determine if the replacement of the existing facilities would result in operational savings equal to or in excess of the capital cost of replacement. During the course of the study, the Wayne County Sheriff’s Office (WCSO) suggested that the consolidation include all three jails (Division I & II downtown and Division III in Hamtramck) in order to reduce duplicative services and transportation thereby increasing operational savings.”¹⁶

The narrative goes on to state that numerous budgets were prepared and reviewed by county staff. The final budget was based on an upper limit of \$300 million for bonding purposes. The county entered the market for bonds in November 2010.

We were informed by Special Counsel to the WCBA the “integrated system” approach was used to design the Project and this method required full cooperation between the contractor, architect/designer, and the owner.

In addition, Special Counsel to the WCBA stated: “an integrated system is where we will send out an RFP for the contract manager, we will then select the team and the subcontractors and the prime subs along with our design, and they would all enter a room for about three weeks, and they will design the entire thing and come up with the gross maximum price. It goes on to state it is not a design, bid, build and it is not design build – it is called an integrated system.”¹⁷

However, since the conventional design/bid/build method was not used, the GMP to build the jail, in this instance, was not determined until May 31, 2013; two and one-half years after the bonds were issued. According to reliable sources, the delays in determining the final GMP were primarily the result of substantive changes, along with the late delivery of construction documents, among other things.

2. We were able to verify through the review of documentation and inquiries that the WCSO did employ best practices as recommended by the National Institution of Corrections (NIC) in the area of establishing a Transition Team.

¹⁶ AECOM/Gharafi narrative dated September 12, 2012.

¹⁷ Authority board minutes dated April 7, 2011.

Final Draft
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An email sent to us by WCSO leadership stated: “The Sheriff’s Office did request and received technical assistance (TA) and training from the NIC on jail design and construction. The CEO, AECOM, and the commissioners were invited, but did not participate in the TA and training.”¹⁸

We believe there should have been more reliance placed on best practices when constructing such a large complex capital improvement project. If nothing else, it would have alerted leadership to the many challenges and obstacles they may face in the construction of the jail and led them to implement safeguards to mitigate the risk of costly delays and budget overruns.

3. The goal was to generate savings by eliminating the duplicity of services and reduce transportation cost by building a consolidated jail facility. However, we were not able to examine detailed documentation to support how the savings, projected to range between \$20-30 million annually, would be achieved.

Until a decision is made regarding the final disposition of the Project, ultimate savings from building the consolidated jail facility cannot be sufficiently determined.

-Organizational Structure-

Organizational structure provides the overall framework for the internal control needed to ensure effective planning, directing, and controlling of operations. Organizational structure should provide the framework for the assignment of the WCBA and responsibility within an organization in an appropriate manner.

Work Performed:

1. Determine the current organizational structure of the Project.
2. Assess whether the current organizational structure is appropriate.

Results of Work Performed:

1. The WCBA is comprised of five board members appointed by the CEO and approved by the Wayne County Commission.

The Chief Administrative Officer (CAO) of the WCBA reports to the WCBA board. For the Project, the county’s Project Manager and the Oversight Committee report to the CAO.

The Construction Manager at Risk (CMAR) reports to the Wayne County Building Authority through the Owner’s Representative or the county’s Project Manager who is providing the similar services. The CMAR is to work with AECOM and notify the Owner’s Representative and AECOM whenever it appears the Project will fall behind and the approved schedule. AECOM reports to the county’s Project Manager. All the administrative

¹⁸ Email from high ranking official at WCSO.

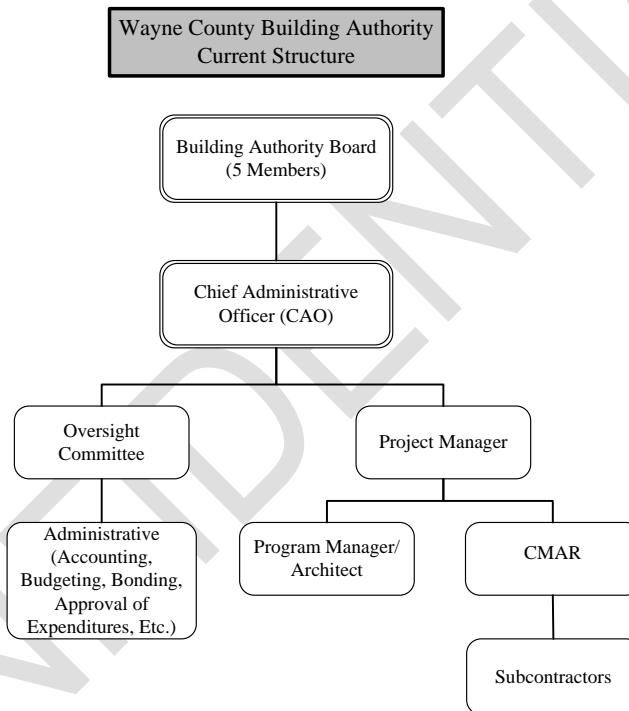
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functions including accounting, budgeting, bonding, and approval of expenditures report to the Oversight Committee.

All the construction sub-contractors report to the CMAR.

2. We reviewed the organizational structure and determined the oversight of the construction of the jail lacks adequate lines of reporting for accountability and responsibilities as depicted below.

CURRENT ORGANIZATIONAL STRUCTURE

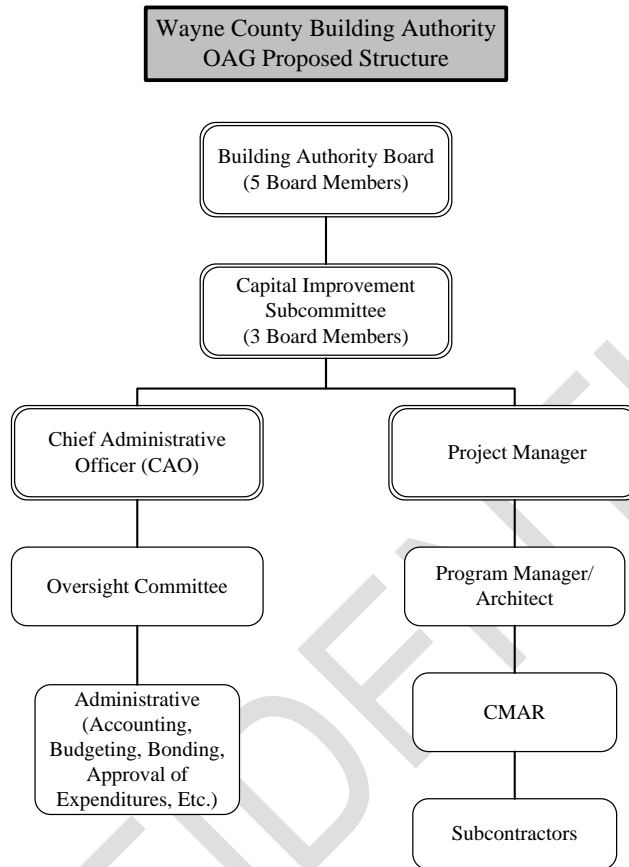


Note: This organizational chart is based on oral communication and discussions with the Project Manager, Program Manager, and the Chief Administrative Officer. The Program Manager indicated that based on their interpretation the CMAR reports directly to the Project Manager.

Based on our review of the contract we agree with this assessment. However, in our proposed organizational chart we believe the CMAR and Subcontractors should report to the Program Manager who in turn reports to the Project Manager.

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PROPOSED ORGANIZATIONAL STRUCTURE



Note: Based on best practices and the Detroit Regional Convention Facility Authority Cobo Hall Renovation Program.

-Observations-

We suggest the WCBA consider a revision to their organizational structure to operate similar to the organizational structure being used by the Detroit Regional Convention Facility Authority (DRCFA). The DRCFA's structure consists of a sub-committee of three board members with construction experience and their primary committee function is to perform oversight functions over the COBO Hall construction project.

Based on the above work performed, it is our opinion that there are material weaknesses that need to be addressed by WCBA and county administration as noted in our finding below and suggested improvement.

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For Review and Discussion Purposes Only

Condition

The current structure of the parties responsible for the oversight of the construction of the jail facility does not have adequate lines of reporting responsibilities. The WCBA does not have a sub-committee that can serve as a point of contact for oversight of capital improvement projects and the county's Project Manager does not report directly to the board; but instead reports to the CAO, who is capable in performing financial function; but, lacks construction experience.

The administration was not able to produce an organizational chart as it relates to the Project. The OAG created one (which is being reflected in this report as the current structure above) from emails with them.

The WCBA currently operates under an Oversight Committee structure; but, the members of this committee are all county employees and lack overall real development experience.

We also noted board members are not compensated per diem for board meeting, mileage, and/or parking.

Criteria

A sound organizational structure should provide clearly defined roles in order to ensure accountability and responsibility for decisions being made.

Best practice generally dictates individuals be aligned according to their skill set and experience because authority, responsibility and accountability all work in concert with each other.

We have been informed by Special Counsel that in order for WCBA to have sub-committees they must amend their by-laws and must have more than one sub-committee.

Further, we noted Public Act 31 allows board members to be compensated, such as per-diem and mileage for attending meetings, as may be provided by the WCBA with the approval of the Wayne County Commission.

Cause

Due to a lack of complex construction experience, the administration failed to establish a functional organizational structure based on job descriptions, qualifications and experience.

Consequence

The current organizational structure does not provide adequate lines for accountability/decision making.

Recommendation 2013 – 01 – Material Weakness

In order to provide adequate lines for accountability/decision making, we recommend the WCBA assess their current structure and consider revising roles and responsibilities as illustrated above in the proposed revised organizational chart.

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- A. Consider amending the by-laws after receiving permission from the primary government unit to: provide for compensation on a per diem basis and re-imbursement for parking expenses.
- B. Adopt a resolution to amend the by-laws to allow for sub-committees with one being the capital improvement sub-committee with board members preferably with real estate development experience.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

-Governance/Board Independency-

Michigan Public Act 31 of 1948 allows, the WCBA to acquire, operate and maintain buildings for the use of the county.

Work Performed:

- 1. Review the provisions of the *Open Meetings Act 267 of 1976 (OMA)* regarding the requirements to scheduled and hold meetings of a public body and compared this to the practices of the Wayne County Building Authority.

Results of Work Performed:

- 1. We noted that six of the eight scheduled board meetings between October 2012 and May 2013 were cancelled by the county administration.

We inquired who authorized the cancellation of the six meetings that were not held by the WCBA. We were informed that a team of county officials – comprised of senior officials from the Office of the County Executive, Management & Budget, and Corporation Counsel – would determine if there were any agenda items that would require approval by the WCBA. If not, the respective meeting was cancelled by the county administration.

At the June 19, 2013, WCBA Board meeting, a Board Commissioner stated for the public record: “Well, just to be clear, I want to make sure this is clear for the record, that this body, the Building Authority, has never cancelled a single meeting. So I just don’t want to give the impression that we cancelled any Building Authority meetings, because we did not.”

We found guidance provided by the State of Michigan Attorney General stated the board is free to cancel and reschedule meetings. However, we found it was the county administration that cancelled the meetings.

-Observations-

We believe it is an acceptable and common practice for the administration to prepare the agenda for each meeting; however, final approval of the agenda should be made by the chair of the board and/or its designee.

Also, the administration can recommend the board chair to cancel a meeting, but should avoid cancelling a meeting without the chair’s expressed approval.

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Based on the above work performed, it is our opinion that there are control deficiencies that need to be addressed by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

In an email from the administration in response to an OAG question about “why were the meeting(s) cancelled.” The response was: “If you review the Stadium Authority, the Economic Development Corporation (EDC), or any other boards you will find the same pattern. Meetings are only held if there is an item which needs board approval. The meetings that were cancelled were due to the fact that there were no contracts that needed to be brought before the board for approval.”

The WCBA by-laws state: “One regular meeting of the commission will be held during the first full week of each month.” In addition, we did note that the board does adopt a schedule of all meetings to be held at the beginning of each fiscal year.

Criteria

The *Open Meetings Act Handbook*, published by Michigan State Attorney General, states: “At the first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board’s regular meetings for the coming year.”

The OMA does not require any particular number of meetings. The board’s schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meeting.”

Cause

The Wayne County Building Authority is a separate legal entity and is a blended component unit of the Charter County of Wayne, Michigan. As such it is included in the county’s annual CAFR. The WCBA, through a resolution of its Board of Commissioners, sets the dates, times, and places of its regular meetings for the coming year, in accordance with provisions of the *Open Meetings Act*. Since the WCBA establishes the regular meetings, it follows that only the WCBA can cancel a regularly scheduled meeting.

However, both the Wayne County Building Authority’s Articles of Incorporation, as well as its By-Laws, are silent as to which body has the WCBA to schedule and/or cancel board meetings.

Consequence

Due to the cancellation of the WCBA meetings, there was inadequate oversight of the Project. Therefore, the WCBA’s independence was impaired.

The WCBA’s Board of Commissioners implicitly delegated to Wayne County administrative personnel to schedule and/or cancel regular WCBA meetings. This practice could lead to the administration hindering the WCBA’s oversight abilities.

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Recommendation – 2013-02 –Significant Deficiency

In light of the fact the WCBA by-laws require one regular meeting to be held during the first week of each month – we recommend the WCBA consider revising its bylaws to restrict anyone other than the board chair or a board approved designee, in their absence, to establish and/or cancel meetings. This would provide full transparency for its deliberations as a public body that is independent of the Wayne County Administration and avoid any appearance of lacking independency.

-Views from Responsible Officials-

Responsible officials have concluded not to prepare a response.

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-RISK MANAGEMENT-

Every entity faces a variety of risks from external and internal sources. Risk is defined as the possibility that an event will occur and adversely affect the achievement of objectives. Risk assessment involves a dynamic and iterative process for identifying and assessing risks to the achievement of objectives. Risk assessment also requires management to consider the impact of possible changes in the external environment and within its own operations that may render internal control ineffective. Generally Accepted Government Auditing Standards require the assessment of risk related to fraud and to consider the assessment in designing our audit procedures.

Work Performed:

1. Determine whether a risk assessment was performed by AECOM related to the Project.
2. Determine if the type of construction contract will reduce the risk for the county.

Results of Work Performed:

1. AECOM has an on-going risk analysis process which includes Risk Logs which contain issues, project elements, the responsible party, and starting and completion dates that address the design effort. The Risk Logs are issued to the Oversight Committee.

AECOM also has a Non-Conformance Report (NCR) which their field staff issue as they identify non-conforming work in the field. These issues are brought to the contractor's attention and are tracked through to satisfactory resolution. They also have a Deficiency Log that is prepared by the contractor for issues discovered in the field which are tracked through to satisfactory resolution.

2. The WCBA entered into a contract with Walbridge-dck to construct the jail. They were designated as CMAR. A review of correspondence between the administration and the commission dated November 2010, stated "in large public construction projects it is intended that the contractor assumes the risk. Moreover, under Michigan law, the general contractors must have payment and performance bonds on large public projects." We verified that the CMAR provided a bid bond in the amount of \$11,250,000.

The payment and performance bond is a form of transferring risks and is required by Michigan law on large public projects.

We are reasonably satisfied the risk has been minimized by virtue of payment and performance bonds required for the Project.

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-Fraud-

Is generally defined in the law as an *intentional misrepresentation* of material existing fact made by one person to another with knowledge of its falsity and for inducing the other person to act, and upon which the other person relies *with resulting injury or damage*. Fraud may also be exhibited by an omission or purposeful failure to state material facts, for which nondisclosure makes other statements misleading.

Work Performed:

1. Conduct staff brainstorming sessions to discuss where areas of fraud, abuse and waste may be found.
2. Review the external accounting firm's transaction journals and internally prepared financial data reports along with the county's general ledger for unusual transactions.
3. Make inquires of key contractors and the WCBA if they were aware of instances of fraud, waste and abuse.
4. As part of our substantive testing, review contractor's payroll disbursements and material invoices to determine if they were being accurately prepared and properly approved.

Results of Work Performed:

1. The results of our brainstorming sessions concluded that the potential areas for fraud could include improper markups on material and unsupported labor charges, among other things.

We used statistical sampling to select vendor invoices for review to satisfy ourselves that improper charges did not exist between invoices for labor and material submitted from the subcontractor to the CMAR and/or AECOM. Based on the sample we tested, we found invoices being processed for payment by the WCBA generally did not include any additional markup over allowed percentages.

However, we did find a few exceptions described in more detail in the Substantive Testing section of this report. They did not relate to the CMAR or its subcontractors.

Also, in our brainstorming sessions, we recognize that there are opportunities for the general contractor, sub-contractors and others to improperly increase their prices and it is not cost beneficial to perform a 100% test. Therefore, we tested and reviewed WCBA processes performed by those responsible for approving invoices for payment and relied upon their control processes to detect improper billings.

2. We reviewed the general ledger and journal entries prepared by the external accountant for unusual transactions and did not note any disbursements that we consider unusual or questionable.
3. On different occasions, we met with key contractors, individual board members, and high ranking county employees and asked if each was personally aware of any fraud, abuse or

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waste related to the Project. Each person interviewed stated they were not aware of any fraud or improprieties as it relates to the Project.

4. Based on our review of AECOM contract, we noted that it allows for a 3.0 multiplier markup on base salary for home office staff and consultants, which is to cover overhead cost. Also, it stated there is 2.5 multiplier markup for on-site construction personnel and consultants for the same reason. Amendment #1 to the AECOM contract revised the method of payment from the above multiplier markup to a percentage of completion by major task.

- ✓ There is no such clause in the Walbridge-dck contract.
- ✓ Because it was beyond our scope, we did not test the payroll records of AECOM for compliance with the contract as it relates to payroll markup costs.

See compliance section of our report – we are preparing a recommendation that Piece, Monroe & Associates (PM&A) periodically perform testing of AECOM’s billings to determine if proper markup multiplier is being used.

-Failure to Disclose Material Facts-

It is a requirement of the American Institute of Certified Public Accountants and the Generally Accepted Government Auditing Standards for auditors to review communications and disclosures made to the governing body in order to determine if the information being provided is credible and can be relied upon to assist them in their decision making processes.

Work Performed:

1. Obtain and review the WCBA’s board minutes and other written documentation to gain an understanding as to the process used to communicate with the board regarding the Project.
2. Obtain and review records to determine if there is a requirement and process for decision makers to communicate material information to the WCBA.
3. Obtain and assess the organizational chart to determine who is responsible for reporting material facts to the WCBA.

Results of Work Performed:

1. We were informed by key decision makers that verbal updates were provided to the board on a regular basis. We reviewed board minutes and validated that verbal updates were provided on a consistent basis.
2. We concluded that a material fact was not disclosed to the Wayne County Commission when the CMAR contract was approved by the Wayne County Commission on September 1, 2011. The Wayne County Commission authorized a total contract not to exceed \$220 million for the CMAR contract which included an approved contract in the amount of \$220,000 for pre-construction services. Also, on the same day the WCBA approved a contract for pre-construction and construction services for an amount not to exceed \$220 million. Also, at the WCBA board meeting held on February 9, 2012, the board approved a Guaranteed Maximum Price contract not to exceed \$219,536,154 for the CMAR.

Final Draft
For Review and Discussion Purposes Only

We determined from documentation provided to us that the Project was being projected at approximately \$342 million thereby exceeding the \$300 million that was originally set aside for this capital improvement project.

No formal policies and procedures existed to provide guidance as to when material information should be communicated to the WCBA and Wayne County Commission.

3. From May 1, 2011 to December 1, 2011, the Owner's Representative reported directly to the WCBA. From December 2011 to May 31, 2012, AECOM served as both Program Manager and Owner's Representative. After February 9, 2012, the CFO was designated as the CAO of the WCBA and reported directly to the WCBA. After December 2011, AECOM was also serving as the Owner's Representative and was also reporting directly to the Oversight Committee.

We are concerned that AECOM (who reported directly to the Oversight Committee) served in the capacity of Program Manager and Owner's Representative for the period December 2011 through May 31, 2012. We believe serving in both positions is a conflict because it fails to create a segregation of functions.

We were not able to review any documents that suggest when and how material facts should be reported to the approving bodies; however, this is generally based on duties and responsibilities of that individual and a matter of judgment, as well as the degree of reliance being placed upon an individual in a position of authority.

-Observations-

We reviewed the WCBA board minutes from a meeting held on March 8, 2012, and noted Chairperson stated: "transparency is extremely important to this board."

We find the failure to convey this information to the WCBA and Wayne County Commission at some point while deliberating on the approval of the CMAR contract was material to decisions being made by both bodies at the time.

Having attended at least two hundred full board meetings over the last eight and a half years, the Auditor General is comfortable saying with an assured degree of certainty that the full commission would have tabled this contract until alternative funding for the gap of \$42 million could be identified by the administration.

This conclusion is further supported by evidence that when each individual commissioner was approached in August 2012 by the administration, seeking a \$65 million increase in funding, there was not enough support for the increase.¹⁹

We reviewed documentation to determine the Project budgeted cost as of the point in time when the CMAR contract was being presented first to the Wayne County Commission and WCBA in September 2011 and subsequent approval by the WCBA Guaranteed Maximum Price

¹⁹ Detroit Free Press article dated August 29, 2012

Final Draft
For Review and Discussion Purposes Only

Construction Management Agreement in February 2012. We concluded using all known data as of that date, the estimated cost for the Project was projected to be \$342 million; in other words, a funding gap of \$42 million.

The funding gap difference of \$42 million is material to the entire Project because it represents 14 percent of the total Project budget of \$300 million. [See chart on page 134](#)[Error! Bookmark not defined.](#).

The estimated total Project cost is \$342 million based on our calculation. As of September 30, 2012, the total assets (less cost of jail construction in process) are \$200 million. Because the Jail Project is budgeted at \$300 million, this amount exceeds the total assets as of September 30, 2012 by \$100 million and would be considered material.

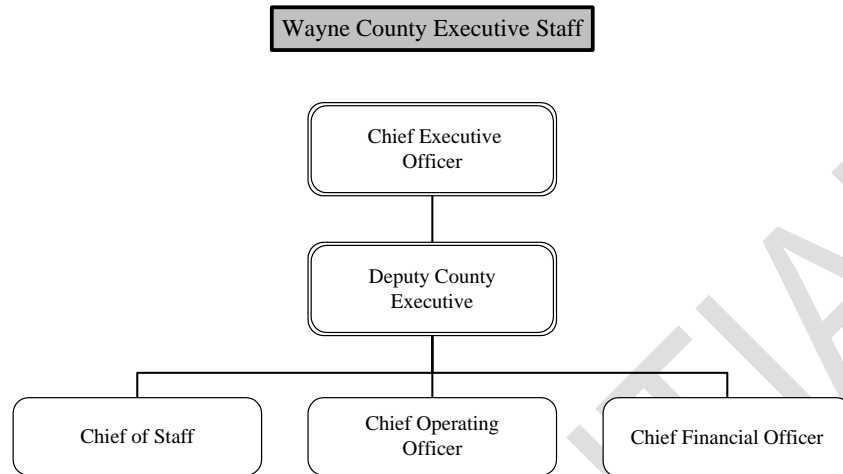
It became apparent to us while reviewing the proposed cost projections prepared by AECOM and county staff on August 25, 2011, that the original budget did not include nearly \$20 million of cost associated with the purchase of the land and the remediation of site preparation, among other costs not included, and there would be a funding gap that would cause the Project to possibly exceed the projected budget of \$300 million. Yet, no one felt it necessary to disclose this critical information to the approving bodies.

-Roles of Responsibility-

Below is a description of each major participant and their role:

- ✓ The former Deputy CEO, former Executive Director of EDGE and Parlovecchio Building Company, Inc as Owner's Representative;
- ✓ AECOM also served in the capacity as Owner's Representative at the request of the county (December 11, 2011 – May 30, 2012) and had a responsibility to notify the WCBA about any material facts. According to AECOM, they had a responsibility to report to the Oversight Committee rather than the WCBA;
- ✓ CAO became the Chief Administrative Officer for the WCBA in February 2012 and was a trusted advisor who reported directly to the WCBA; also, it was noted by Special Counsel to the WCBA that the Wayne County Charter empowers the CFO as the CAO of the WCBA. However, we could find no such reference in the charter;
- ✓ Special Counsel was a trusted legal advisor and was integrally involved in the business affairs of the WCBA; also, in the WCBA board minutes dated February 22, 2011, we noted Special Counsel discussion regarding the declaration of full disclosure.
- ✓ Other members of the Oversight Committee;
- ✓ The Chief of Staff and CFO report directly to the Deputy CEO; and,
- ✓ The CEO and Deputy CEO exercised control through the Oversight Committee.

Final Draft
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Note: Based on our review of the Wayne County Budget Book and the County Internet. We were unable to confirm with county officials that there is a current formal structure.

-Chronological Order of the Events-

The following is a timeline of dates and events from November 2010 leading up to February 9, 2012:

- **November of 2010** – Budget History document stating the initial Project budget was developed by AECOM in conjunction with County Executive staff for bonding in November 2010, and estimates the total Project cost at \$300 million. (Source: Bob Newtown, county’s Project Manager)

WCBA/County Official(s) Overseeing the Project:

Former Chief Development Officer and Deputy County Executive

- **December 22, 2010** – Certificate of Program Manager signed by AECOM in connection with the issuance and sale by the WCBA of \$200 million Building Authority Bonds (Federally Taxable – Recovery Zone Economic Development Bonds). Included also is a statement of Probable Project Cost supplemental schedule Division I listing a total (hard and soft costs) Project cost of \$267,794,812 (this does not include bond costs and the Project at that time was to be located on county owned property).

WCBA/County Official(s) Overseeing the Project:

Former Chief Development Officer and Deputy County Executive

- **May 17, 2011** – ,AECOM email to Anthony Parlovechio and Special Counsel which identified budget at \$338 million;

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For Review and Discussion Purposes Only

WCBA/County Official(s) Overseeing the Project:

Former Chief Development Officer, Former Deputy County Executive and Owner's Representative – Anthony Parlovecchio

- **August 25, 2011** – a narrative and budget listing from AECOM that listed the estimated Project at **\$342 million** was discussed with Tony Parlovecchio but there was no formal documentation.

WCBA/County Official(s) Overseeing the Project:

Former Chief Development Officer, Former Deputy County Executive and Owner's Representative – Anthony Parlovecchio

- **September 1, 2011** – the Wayne County Commission authorized a contract between the county and Walbridge, Inc. not to exceed \$220 million to act as the Construction Manager at Risk (CMAR). The 15 member Commission awarded the contract by 14 years and 1 excused.

In addition, the WCBA also approved the Walbridge contract for an amount not to exceed \$220 million.

WCBA/County Official(s) Overseeing the Project:

Former Chief Development Officer (terminated employment September 3, 2011), Azzam Elder (terminated employment November 3, 2011) and Owner's Representative – Anthony Parlovecchio (contract terminated December 1, 2011)

-
- **October 1, 2011** – Oversight Committee formed and key members of that committee (CFO and CEO Chief of Staff) reported directly to the CEO, WCBA board minutes state the CEO requested the WCBA terminate the Parlovecchio Building Company, Inc., contract because it was not competitively bid.

We were informed by the CAO the Oversight Committee consist of the following: CFO, Chief of Staff for the CEO, Special Counsel to the WCBA, Director of Building Services, and a Transition Team member.

According to the CAO, the Oversight Committee was an ad-hoc committee and there were no minutes and/or notes taken of the subject matters discussed at those meetings.

In a regular WCBA board meeting in May 2012 a key CEO employee stated the administration had no plans to hire an Owner's Representative.

We were informed through a communication dated May 22, 2012 that when an Owner's Representative was not hired, the CMAR met with key county officials to lodge a complaint regarding a lack of Owner's Representative on the Project.²⁰

²⁰ Letter from Walbridge-dck dated May 22, 2012.

**Final Draft
For Review and Discussion Purposes Only**

Subsequent to that meeting, a county's Project Manager was hired in October 2012.

We have concluded the Project was principally being controlled and directions were being given by the CEO through the Oversight Committee.

- **February 2012** – a narrative and budget of \$342 million was reviewed with the Oversight Committee but there is no formal documentation.
WCBA/County Official(s) Overseeing the Project:
AECOM-Owner's Representative, and Oversight Committee
- **February 9, 2012** – The WCBA approved the Guaranteed Maximum Price Construction Agreement with Walbridge-dck Joint Venture for \$219.5 million. The contract was approved unanimously by the Board.
- **WCBA/County Official(s) Overseeing the Project:**
AECOM-Owner's Representative, Oversight Committee
- **September 1, 2011 – CMAR Contract Approved:**
Leading up to the presentation of the CMAR contract to the Wayne County Commission on September 1, 2011, the Deputy CEO, the Director of EDGE, and the Owner's representative as leaders of the Project all had an ethical and fiduciary responsibility and obligation to inform the approving body that the projected budget for the construction of the jail had a funding gap of \$42 million.
- **February 9, 2012 – Approval by WCBA:**
The CMAR contract was presented and approved by the WCBA board on February 9, 2012; unanimously.

Based on our review of the board minutes, we did not note any discussion regarding the Project budget possibly exceeding the \$300 million previously projected at the outset of this Project.

We believe those in charge of the Project at this point had an ethical and fiduciary obligation to inform the WCBA. These were the CEO, CAO, other members of the Oversight Committee, and AECOM during the period serving as Owner's Representative

We inquired of AECOM personnel whether the county's Chief Financial Officer and County Executive's Chief of Staff attended the Oversight Committee meetings. His response was: "[CFO] and [Chief of Staff] were members of the Oversight Committee and attended most, if not all, of those meetings. The budget was discussed at almost every

Final Draft
For Review and Discussion Purposes Only

Oversight Committee meeting. We are not aware of any other verbal or written conversations with either of them, other than what we have sent you.”²¹

CMAR asserts that, although the CMAR was responsible for reporting on budget related to the physical construction of the jail, the CMAR’s contracts did not impose any obligation upon the CMAR to analyze or report on the overall budget or for matters outside of CMAR’s scope of work, such as land acquisition, design costs, and site remediation.

-Negligence/Misfeasance-

Black’s Law Dictionary defines negligence as “the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully in disregard of others rights.”

We believe the failure to notify the Wayne County Commission and the WCBA of a material fact by those in a position of trust was poor judgment and derelict; therefore, resulting in negligence to fulfill their fiduciary responsibility to the Wayne County Commission and the WCBA.

We found no evidence of an “intentional misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.”

However, we believe that an act of negligence/misfeasance occurred by those in a position of trust because they failed to exercise a duty of care in carrying out their responsibilities.

Due to the preponderance of evidence as to a clear failure to disclose material facts to the approving bodies on three separate occasions, we are duty bound to comply with the Wayne County Fraud Investigative Ordinance.

The Wayne County Fraud Investigative Ordinance requires all county employees to report all cases of work-related suspected wrongdoing of a criminal nature to the Wayne County Fraud and Corruption Investigation Unit within the Office of the Prosecuting Attorney (PAO). Therefore, we are complying with this Ordinance and referring this matter to them for review.

²¹ Email from Associate Vice President - Construction Services, dated August 2, 2013

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Schedule of Total Project Cost
ESTIMATED COSTS AT CMAR AWARD
(February 2012)
(rounded to nearest thousand)

Major Budget Category	Projected Estimated Project Costs April 2011	Cost Increase / (Decrease) from April 2011	Estimated Project Cost @ August 25, 2011	Adjusted Estimated Project Cost @ CMAR Award Feb. 2012
CMAR Building Construction Costs	\$203,880,000	\$16,120,000	\$220,000,000	\$219,536,000
Demolition of Existing Facilities	6,620,000	(6,620,000)	0	0
Site Acquisition		14,500,000	14,500,000	14,500,000
Site Remediation		4,621,000	4,621,000	5,828,000
Geotech Survey & Testing (Misc. Consulting)	1,000,000	(591,000)	409,000	442,000
Owner's PM/Rep	1,000,000	1,522,000	2,522,000	2,420,000
PM/Design Fees	28,530,000	(4,555,000)	23,975,000	24,210,000
Insurance – (incl. CCIP)		6,130,000	6,130,000	2,474,000
Legal – Audit		2,500,000	2,500,000	2,500,000
FFE Basic	7,500,000	511,000	8,011,000	7,500,000
IT Basic				
Sheriff's Transition Team – Basic		1,800,000	1,800,000	1,800,000
Financing (incl. 2 nd Bond Cost)	33,000,000	6,000,000	39,000,000	39,000,000
Project Contingencies	17,520,000	(4,291,000)	13,229,000	19,835,000
Other Project Related Costs		5,050,000	5,050,000	2,153,000
Training				
Temporary Staff Relocation	1,750,000			
Total Estimated Project Costs	\$300,800,000	\$40,947,000	\$341,747,000	\$342,198,000

Source: AECOM

-Observations-

As of August 25, 2011, we believe responsible officials had a fiduciary responsibility to notify the approving body that the construction cost estimates for the Project would exceed the budgeted amount by \$42 million.

Final Draft
For Review and Discussion Purposes Only

A review of a RFP from a reputable construction company stated in July 2011 stated they would have to reduce the square footage of the Project by 100,000 square feet in order to build a facility on a budget of \$220 million.²²

We also found that the \$42 million gap was consistent with the AECOM budget prepared on August 25, 2011, a week before the vote by the Wayne County Commission.

We conclude the approving body should have been presented with a total Project budget to construct the jail before being requested to approve the CMAR contract on September 1, 2011.

Based on the above work performed, it is our opinion that there are material weaknesses that need to be addressed by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

AECOM's correspondence identified the updated Project budget in February 2012 at "Best Case at \$320 million and Worst Case at \$349 million."²³

The CMAR contract was deliberated by both the Wayne County Commission and the WCBA (approving bodies) was for \$220 million on September 1, 2011, which represented approximately, 65% (220/ 300) of the total estimated Project cost at that time. However, this fact was not disclosed to the approving bodies by the CAO, Owner's Representative or the general contractor at the time of approval.

In fact, as of September 1, 2011, the Wayne County Commission entered into a pre-construction service contract for \$220,000 with CMAR stating: "pre-construction services shall consist of consulting, advising, assisting and recommending to the Owner's Representative all aspects of the planning for the construction Project....."²⁴

Based on our review of correspondence from AECOM, "The initial Project budget was developed by AECOM/Ghafari in conjunction with county executive staff for bonding in November of 2010."²⁵

Leading up to the presentation of the CMAR contract to the Wayne County Commission on September 1, 2011, the former Deputy CEO, the former Director of EDGE, and the Owner's Representative as leaders of the Project all had an ethical and fiduciary reasonability and obligation to inform the approving body that the projected budget for the construction of the jail had a funding gap of \$42 million.

²² July 2011 RFP from Brinker, P.J.Dick, Barton Malow, a Joint Venture

²³ AECOM narrative on the history of Wayne County Detention Center – November 2010 – March 2012

²⁴ CMAR - Pre-construction service contract.

²⁵ AECOM narrative on the history of Wayne County Detention Center – November 2010 – March 2012

Final Draft
For Review and Discussion Purposes Only

Criteria

Basic construction principles and best business practices suggest when venturing into a major capital improvement Project that all sources of funding gaps should be secured before authorizing construction.

Also, ethical business practices dictate the necessity for key decision makers to notify the approving bodies of any material information before decisions of this magnitude are made.

We made inquiries of our external auditor as to if this matter was subject to reporting under SAS 99 – “Consideration of Fraud in a Financial Statement Audit” and was assured that this is an operational matter and not a financial reporting issue; therefore, this audit standard does not apply.

Cause

Perhaps there were thoughts that the funding gap could be filled by reductions in the overall construction cost for this Project to be identified at a later date and prior to the completion of the construction Project.

Consequences

If the Wayne County Commissioners and the WCBA had known that there was a \$42 million funding gap related to the construction of the jail, the commission may not have approved the Project until the shortfall was fully addressed. Consequently, the WCBA would not have incurred construction cost for the period – February 10, 2012 – August 16, 2013 in the amount of \$96 million (\$130 – \$33 million), if the Project was not approved to go forward.

We believe the failure of key decision makers to notify the approving bodies in a timely manner cost the county \$96 million in unnecessary expenditures if the Project was stopped until the funding gap was fully rectified.

Consequently, we believe the failure to disclose a material fact to the approving bodies resulted in negligence by certain key officials and officers.

Recommendation 2013-03 – Material Weakness

We recommend the Wayne County Commission and the WCBA amend their respective procurement policies to require the submission of a budget when a contract(s) represents 25% or more of the total Project costs at the time the contract is being presented to the approving body for approval.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

Final Draft
For Review and Discussion Purposes Only

-CONTROL ACTIVITIES (PROCESSES)-

Control activities are the actions established through policies and procedures that help ensure that management's directives to mitigate risk to the achievement of objectives are carried out. Control activities are performed at all levels of the entity, at various stages within business processes, and over the technology environment. They may be preventive or detective in nature.

-Observation-

We were informed that the WCBA board did not adopt their own procurement policy until February 9, 2012; instead, the WCBA elected to follow the Wayne County Procurement Ordinance for the awarding of contracts. Since this contract represented 73 percent of the total construction budget for this Project, we reviewed the selection process used to determine if it complied with the procurement ordinance being followed.

Work Performed:

1. Obtain and review the Request for Proposal (RFP), and subsequent amendments, issued for the construction of the consolidated jail facility.
Obtain and review relevant information used for the RFP evaluation process from the purchasing division.
2. Obtain and assess the responses from purchasing officials related to criteria used for the RFP evaluation committee.
3. Evaluate the RFP process to determine if it was fair and competitive in selecting the CMAR.
4. Determine if the CMAR contract received commission and WCBA approval.

Results of Work Performed:

1. According to the Purchasing Director, the evaluation committee was selected based on their expertise; however, it does not appear that the voting members of the evaluation committee had the construction expertise to evaluate public construction projects of this size. While there were members of the Project management team in advisory roles including AECOM, the Program Manager, and its sub consultant (Ghafari), these individuals did not have a voting role. More importantly, no one from the WCBA was on the selection committee and/or in an advisory capacity even though they are the owners of the Project.

According to the Purchasing Director, "the role of purchasing was to ensure that the process was transparent, objective, and impartial." He further stated: "in all procurement, Purchasing works with the various departments (since they have the technical and industry knowledge) to draft the RFP. Purchasing reviews the RFP to determine whether the specifications are impartial and do not limit competition."

2. The respondents were only required to provide a certified statement agreeing that they would construct the Project for an amount not to exceed \$220 million and a bid security either as a bid bond in the amount of \$11,250,000 or a certified check or letter of credit in the amount of \$3,000,000. No pricing information was to be included in the proposal. According to responses provided in Amendment #5, the selection was based on qualifications and picking

Final Draft
For Review and Discussion Purposes Only

the best team. If cost data or dollar estimates related to the GMP, final cost of construction, or direct costs were included, the committee could disqualify the respondent from further consideration.²⁶

3. While the second and third place proposals were ranked relatively close, the selection committee gave Walbridge-dck a score of 485.4 out of a possible 500 points, some 137 points more than the second place proposal. In addition, two voting members on the selection committee gave Walbridge-dck the maximum score of 100.

We had difficulty understanding the criteria used by the selection committee in the evaluation of the proposals. We also see little or no construction experience or expertise with two voting members of the selection committee including the Chief Information Officer, and the Deputy Director of EDGE.

-Price Eliminated as a Factor-

4. According to the current Purchasing Director, “an RFP is done when the county is requesting the vendor to propose a ‘solution’ and there are other factors, other than price, to determine which vendor is the ‘most responsive and responsible.’ He further stated: “The other factors include experience and qualifications, solution, work plan and price.”²⁷

The Purchasing Director stated: “To select the CMAR, the county utilized the RFP approach since this was the most comprehensive approach.”

We noted in our review of the RFP, and subsequent amendments, a question posed by a committee member was whether a general contractor could propose a lower GMP than stipulated in the RFP. The response to this question was “no.” The response further stated: “... The CMAR is only required to provide a certified statement agreeing that it will construct the Project for an amount not to exceed the guaranteed maximum price of \$220 million. It is the Team’s intention to ultimately drive this number down. No pricing information should be included in the submission. This is related to the GMP, final cost of construction, Direct Costs be included, the selection committee reserves the right to disqualify the respondent from further consideration.”

According to the recently hired county Project Manager, “With construction projects, it is generally understood without being noted that price is a consideration, but not necessarily the most important consideration. There can be other factors, such as schedule, financial strength and experience of bidders, means and methods for execution, etc. Further, many invitations to bid include the notation that the owner is not obligated to accept the low bid and the owner has the exclusive right to accept or reject any and all bids.” He further stated: “...all bidders were advised that the cost to be bid was \$220 million based upon documents provided. This is an unusual method for bidding...”

²⁶ RFP dated May 23, 2011, Amendment #5 issued on July 8, 2011

²⁷ RFP dated May 23, 2011, Amendment #5 issued on July 8, 2011

Final Draft
For Review and Discussion Purposes Only

It is problematic when “price” is not a factor in a competitive bid process. Price is an important ingredient of any large public Project and one of the primary benefits is to obtain a fair and competitive cost for any major capital improvement project.

It was noted that another reputable contractor stated in their RFP dated July 2011 that in order to build a jail facility with this type of budget it would have to reduce the square footage by 100,000 feet.²⁸

Further, we believe it is unusual when a RFP disqualifies a respondent for including price in their proposal. We believe this is counterproductive to the purpose of a competitive bid process and exposes the WCBA to the risk of the process being manipulated by key decision makers.

5. We obtained and reviewed the resolutions from both the commission and the WCBA approving the contract with Walbridge-dck. However, we noted the analysis provided to the commission by Policy, Research and Analysis stated that price was one of the factors. We followed up and determined it was an oversight in the analysis and concluded that price was not a factor as stated by them in error.

Therefore, based on the various reasons stated below, it is our contention that the appointment of the evaluation committee members and the RFP method used by Wayne County did not allow for a fair and competitive bid process. Consequently, we believe the awarding of the CMAR contract by county evaluators may be designed to provide an unfair advantage to certain bidders; however, WCBA did follow the Wayne County Procurement Ordinance to award the CMAR contract on February 9, 2012.²⁹

There are several factors that have led us to this conclusion:

- ✓ According to the Purchasing Director, the former Chief Development Officer of EDGE selected the members for the Evaluation Committee – this is usually done in collaboration with the Purchasing Director; however, the members should have been selected by M&B, the department responsible for the WCBA.
- ✓ The Evaluation Committee members had no experience or expertise related to the construction of a jail; however, there was an architect and other county employees who worked in the county’s Building Department who were not considered to be on the Evaluation Committee. Also, there is at least one WCBA board member who is a real estate developer who was not consulted and/or considered to serve on the selection committee. However, given the nature of the Project we question whether any county employee had the necessary experience.
- ✓ Since the bid was solely based on qualification and experience, and price was prohibited from being submitted, this eliminated the possibility of receiving a lower price bid.

²⁹ July 2011, RFP from Brinker, P.J. Dick, Barton Malow, a Joint Venture

Final Draft
For Review and Discussion Purposes Only

- ✓ RFP from another reputable construction company stated in July 2011 that the square footage would have to be reduced by 100,000 square feet in order to build the Project based on the budget of \$220 million.³⁰
- ✓ It was discovered later, the former Chief Development Officer of EDGE, who was an advisor to the committee, may have had a conflict of interest that should have been disclosed;
 - Supervised an employee who was a voting committee member which could give the appearance of undue influence being exercised over this person.
 - The selection of a voting member who was a known confidant and friend of the Chief Development Officer and the Deputy CEO.

-Observations-

Based on the above work performed, it is the opinion of the OAG that there are material weaknesses that need to be addressed by the WCBA and county administration as noted in our finding below.

Condition

On May 23, 2011, on behalf of the WCBA, the Purchasing Division solicited responses for construction services for the new Consolidated Jail Facility. A Request For Proposal (RFP) was issued for a construction manager “at risk”. There were eight amendments to the original RFP including a change in the “not to exceed” price from \$225 million to \$220 million. The response deadline was also extended to July 13, 2011.

The amended RFP stated that the price for the construction was not to exceed \$220 million with a targeted completion date of June 2014. As stated in the RFP, the consolidated jail facility would be located on a 7.175 acre site, the current construction site.

According to Purchasing documents, 33 solicitation notices were sent and 6 proposals were received. The proposals were evaluated by an Evaluation Committee comprised of representatives from the Departments of EDGE, Health & Human Services, Information Technology, Management & Budget, and the WCSO as voting members. Representatives from both AECOM and Ghafari, Parlovecchio Building Company, Inc., and the former Chief Development Officer of EDGE served in an advisory role. Special Counsel to the WCBA was also a non-voting designee for Corporation Counsel.

We were informed the members comprising the selection committee were all selected by the former Chief Development Officer of EDGE based on their expertise. We noted Section 120-35(i) of the RFP states that the evaluation committee will be selected by the Purchasing Director. The Purchasing Director stated: “the departments always make recommendations to Purchasing of potential evaluators. The Purchasing Director or designee reviews the list to determine if it meets the requirement of the Procurement Ordinance. Thus, the recommendations were made by

³⁰ RFP From Brinker, P.J. Dick, Barton Malow, a Joint Venture

**Final Draft
For Review and Discussion Purposes Only**

the former Chief Development Officer. Purchasing reviewed and approved the Evaluation Committee. This is a courtesy given to each and every department.”

The Evaluation Committee interviewed all of the respondents. Following the interviews, the committee discussed the merits of the proposals for the purpose of short listing firms that had met the minimum requirements and submitted the necessary documentation. Only three respondents met the short list:

- ✓ Michigan First Construction, LLC
- ✓ Tooles Gilbane & Associates
- ✓ Walbridge-dck Joint Venture

The five member evaluation committee analyzed the proposals using the following two evaluation criteria:

- ✓ General Information and Qualification – 40 points.
- ✓ Technical and Specifications – 60 points.

The RFP stated that the price for the construction was not to exceed \$220 million; therefore, price was not a factor in submitting a proposal. This was contrary to Section 120.43(a) of the Procurement Ordinance which requires a contractor to submit cost or pricing data when submitting a bid over \$200,000. Section 120.43(b) states submission of cost or pricing data is not required if it meets one of the three exceptions or a written waiver is submitted stating the reasons why and this item is provided to the Wayne County Commission. The Purchasing Director stated that a waiver was not required according to section 120-43(b)(2) which states that contract price is based on catalogue or market prices. The Purchasing Director further stated market prices and industry standards to complete a 2,100 bed jail facility were used. We weren't able to validate the support.

The results of the evaluation resulted in the highest number of points being awarded to the Walbridge-dck Joint Venture as shown in the table below:

**Evaluation Committee Analysis of Proposals
Construction Manager At Risk**

Respondent	Individual Scores					Initial Score	Bonus Points			Final Score
	A	B	C	D	E		Wayne County**	TGC*	Total Bonus	
Walbridge-dck Joint Venture	100	92	95	90	100	477	7	1.4	8.4	485.4
Tooles Gilbane & Associates	30	86	82	70	80	348	4	.8	4.8	352.8
Michigan First Construction LLC	40	82	91	57	60	330	2.5	.5	3	333

*Targeted Growth Community Enterprise (TGC) maximum point (2)

**Wayne County Business maximum points (10)

Final Draft
For Review and Discussion Purposes Only

Criteria

Best business practices guide governing bodies in their efforts to competitively bid contracts for services. These best practices strongly favor evaluation by a group referred to as an Evaluation Committee. The committee ensures an unbiased evaluation of the strengths and weaknesses of a proposal. Some recommendations in the selection of an Evaluation Committee include:³¹

- ✓ Early selection of the members to help develop the evaluation criteria and gain greater familiarity with the procurement.
- ✓ Members of the Evaluation Committee must be sufficiently qualified to evaluate the strengths and weaknesses of the proposal submitted.
- ✓ Use of non-voting advisors may be appropriate.
- ✓ Committee members are to be familiar with the need for the services to be performed.
- ✓ Committee members must be truly impartial and have no personal interest, financial or familial, in any of the vendors or principals thereof.
- ✓ Committee members, both voting and non-voting, should be screened meticulously for conflicts of interest such as signing a certification attesting that the member is not aware of any financial, familial or other potential conflicts that would inappropriately influence their decision.

Section 120-43(a) Required submissions relating to the award of contracts A contractor shall submit cost or pricing data when the contract is expected to exceed \$200,000.

Section 120-43 (b) Exceptions The submission of cost or pricing data relating to the award of a contract is not required when: “4. The Purchasing Director determines that the requirements of section 120-43(a) (cost of pricing data; required submissions relating to the award of contracts) may be waived and states the reasons in writing. The Purchasing Director shall provide a copy of each such written waiver to the Wayne County Commission.

The RFP for the Project stated in the general information section that respondents would be evaluated based upon their experience, demonstrated past performance, and track record. Additional minimum requirements included:

- ✓ Vendor must have completed two detention and corrections projects valued over \$50 million within the last 10 years.
- ✓ Vendor must identify up to 10 projects, at least two of which included a value of over \$30 million in Wayne, Washtenaw, Macomb, and/or Oakland counties.
- ✓ Certified financial statements for calendar/fiscal year 2010.

Cause

Because the WCBA did not have its own procurement policy in place (one was adopted in February 2012), it utilized the county’s Purchasing Division to process the RFP. The county’s Procurement Ordinance states that: “all requests for proposals shall be reviewed and evaluated by an Evaluation Committee selected by the Purchasing Director.” The former Director of EDGE solely selected the Evaluation Committee, which was not in accordance with the county’s

³¹ State of New Jersey Office of the State Comptroller, Best Practices for Awarding Service Contracts

**Final Draft
For Review and Discussion Purposes Only**

Procurement Ordinance. In addition, the county did not enact an ethics ordinance until April 2012.

Consequence

Not ensuring that individuals selected for the evaluation committee of major construction projects have the expertise could result in the best proposal not being selected. Also, not having a process in place to ensure that all individuals involved in the selection of a vendor have disclosed all potential conflicts of interest could result in favoritism.

In addition, not including price as a consideration in the evaluation of the proposals could result in not obtaining a fair and competitive bid.

Recommendation 2013-04 – Material Weakness

We recommend to the Purchasing Director:

- A. Evaluation committees should be comprised of individuals with the expertise to allow them to make informed decisions.
- B. Consider amending the Procurement Ordinance to allow ad hoc evaluation committee to include non-county employees with expertise for capital project procurement.
- C. All appearances of conflict of interest issues are fully disclosed and avoidance of the appearances of any ethical violations in order to promote a fair and competitive procurement process.
- D. All future WCBA projects follow the Procurement Policy and include price as an important factor when considering the evaluation of proposals.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

-WCBA Procurement Policy-

The WCBA adopted a procurement policy on February 9, 2012. We reviewed the procurement policy to determine if it was adequate and included processes and procedures similar to the Wayne County Procurement Ordinance.

Work performed:

1. Determine if the Procurement Policy adopted by the WCBA is sufficient.

Results of Work Performed:

1. A detailed review of the WCBA's adopted Procurement Policy lead us to believe the policy is adequate and no additional suggestion for improvement is necessary at this time.

Prior to February 2012 the WCBA did not have a Procurement Policy, which included the period the WCBA awarded contracts to AECOM and Parlovecchio Building Company, Inc. without bid. However, the contract awarded to AECOM in 2006 was competitively bid. According to AECOM officials, the county requested that the contract with Parlovecchio

Final Draft
For Review and Discussion Purposes Only

Building Company, Inc. as the Owner's Representative be included in the AECOM contract during contract negotiations. Although in the AECOM contract, Parlovecchio Building Company, Inc. invoiced and was paid directly by the WCBA.

The WCBA did follow the Wayne County Procurement Ordinance in issuing an RFP for the CMAR contract. On September 1, 2011 both the Wayne County Commission and the WCBA approved the CMAR contract for Walbridge-dck. On February 9, 2012, the WCBA awarded the Guaranteed Maximum Price Construction Management Agreement to Walbridge-dck.

-Observations-

The WCBA adopted a procurement policy on February 9, 2012. Based on our review of that policy, it was noted that it did not require a purchase order system to be used for expenditures over a certain dollar amount.

Condition

We inquired with the WCBA personnel if they used purchase orders for the expenditures related to the Consolidated Jail Facility. Their response was that the WCBA did not issue purchase orders. We also reviewed the WCBA Procurement Policy and noted that there was no language included which required the issuance of purchase orders on contracts for goods, services, and/or construction.

Criteria

Best business practices indicate that an initiation of a requisition for purchase should include purchase orders to account for all costs related to a contract and ensure the contract amount is not overspent.

Cause

The WCBA failed to include within their Procurement Policy a section requiring the initiation of purchases through purchase orders.

Consequences

Not requiring purchase orders on all costs related to a construction contract could lead to overspending on the contract.

Recommendation 2013-05 Significant Deficiency

We recommend that the WCBA include a section within their Procurement Policy that requires purchases to be initiated by a purchase order for all goods, services and/or construction related costs over a certain dollar amount or the WCBA may be able to use a voucher system for purchasing of goods and services of \$100 or less.

Final Draft
For Review and Discussion Purposes Only

-Best Practices-

We gained a better understanding of how the construction of the WCBA's Consolidated Jail Facility compares to other projects across the county. There are numerous resources and best practices that are available to assist the WCBA leadership in constructing a new jail, some of which are at a nominal cost, such as the National Institute of Corrections.

Work Performed:

1. Determine if the process used was the most efficient, effective, and accountable for construction of the Consolidated Jail Facility. Review various websites on the internet including architectural and construction organizations along with governmental websites outlining best practices for construction projects.

Results of Work Performed

Delivery Method

1. Our research stressed the point how a project is designed, constructed or the project delivery method is one of the most important decisions prior to the beginning of a construction project. Every owner responsible for a construction project must make an early and important decision regarding the methods by which the project will be designed and constructed. There are a variety of management and delivery methods available today in the design and construction industry including Design-Bid-Build, Construction Management At Risk, Design-Build, and Integrated Project Delivery.³²
 - Design-Bid-Build – The traditional delivery method, which customarily involves three sequential phases: design, procurement, construction.
 - Design-Build – A delivery method that combines architectural and engineering design services with construction performance under one contract.
 - Construction Management At Risk - Delivery method where the construction manager acts as a consultant to the owner in the development and design phase but assumes the risk for construction performance as the equivalent of a general contractor holding all trade subcontracts during the construction phase.
 - Integrated Project Delivery – Delivery method that requires collaboration among the primary parties – owner, designer, and builder so that the risk, responsibility, and liability for project delivery are collectively managed and appropriately shared.

In the CMAR delivery system, the contractor assumes a great deal of the risk. They are in control of the work and subcontractors execute contractual agreements with them. Some examples of risk would include performance and financial stability of subcontractors, fluctuation of material prices, scheduled adherence, weather, construction means and material. Using the

³² An Owner's Guide to Project Delivery Methods, Construction Management Association of America

Final Draft
For Review and Discussion Purposes Only

Construction Manager At Risk delivery method typically requires the owner to be more involved in the design, cost evaluation and construction proposal phase.³³

However, it was noted that one of the primary disadvantages in the CMAR system is the contractual relationship among the designer, CMAR and the owner once the price is fixed. The CMAR then converts from an advisory role of construction manager to the contractual role of general contractor.

Tensions over construction quality, completeness of the design, and impacts to schedule and budget can arise. While GMP are supposed to address the remaining unfinished aspects of the design, it can lead to disputes over assumptions of what remaining features had not been anticipated at the time of the negotiated bid.³⁴

The WCBA contracted with Walbridge-dck as a Construction Manager At Risk using the integrated product delivery method. However, using an integrated product delivery method requires risk to be shared by the primary parties – owner, designer and builder.

This approach appears contradictory to the Construction Manager at Risk delivery method which typically requires the owner to be more involved in the design, cost evaluation and construction proposal phase. We question how involved the WCBA and/or its Owner Representative was involved in design, cost evaluation, construction phase and whether they possessed the expertise.

Budget/Risk Assessment/Schedule – Best Practices

Best practices state some key considerations that will influence the selection of project delivery method include:³⁵

- Budget – Determining a realistic budget before design to evaluate project feasibility, to secure financing, to evaluate risk, and as a tool to choose alternative designs and site locations.
- Design – Importance to the owner is that the desired facility functions as envisioned. The design team should be well qualified in the type of facility being designed.
- Schedule – A realistic assessment of project duration and sequencing needs to be performed early in the planning phase. The schedule must then be monitored and updated throughout the design, construction and pre-occupancy phases. Schedule-driven projects can negatively impact the bid process, inflate the contractor’s estimate, reduce the quality of, or eliminate entirely the owner’s validation of the estimate, adversely impact the quality of design, result in schedule issues, and serve as a need for change orders.
- Risk Assessment – Issues of risk are closely tied to the status of local construction market, on-site safety, schedule and budget. The owner requires the understanding of the

³³ Recommended Best Practices Handbook for Construction Manager at Risk

³⁴ Owner’s Guide Project Delivery Methods, Construction Managers Association of America

³⁵ Owner’s Guide to Project Delivery Methods, Construction Managers Association of America

Final Draft
For Review and Discussion Purposes Only

risks involved in construction and should make a conscientious decision regarding the allocation of risks among the project participants, so that all areas of exposure are properly understood. The owner should assign risks to those parties that can best exercise control over those aspects.

- Owner's Level of Expertise – The owner's familiarity with the construction process and level of in-house management capability has a large influence over the amount of outside assistance required during the process and may guide toward the type of delivery method.

-Observations-

It does not appear that the Jail Project had a realistic approved budget. Early on an initial Project budget was developed by AECOM in conjunction with the county executive staff to support the bond issue. This budget estimated the total cost at \$300 million, of which hard (brick and mortar) constructions costs were not to exceed \$220 million. When the request for proposals was issued the amount not to exceed was \$225 million. However, we noted in the request for proposal that the construction site was included but the land had not been purchased. As the Project progressed items not included or envisioned in the original budget were added, including the land and site remediation, among other things, but the initial budget was not amended to reflect these changes. Therefore, it does not appear that the Project had a realistic budget to start.

Guaranteed Maximum Price (GMP)

GMP is an arrangement in which the owner contracts with an entity to perform a fixed scope of work in exchange for a price that is guaranteed not to exceed a stated maximum price. The GMP will typically include base costs along with several allowances and contingencies that depending on their ultimate use, may result in a final cost below the stated GMP. These savings may fall to the owner or may be shared with the entity providing the GMP

The agreed upon GMP is the maximum price an owner intends to pay for the Project as defined in the contract documents. The owner pays the CMAR for the actual cost of the work plus a fee, not to exceed the GMP. The scope of work in the contract documents is important when the GMP is used because scope variations, change in conditions, owner caused delays, revisions to contract documents and/or systems will often require a revision to the GMP.³⁶

Guaranteed Maximum Price is usually used on large projects, where the project nature is complex with unknowns and is coupled with a concurrent design process. The benefits are that establishing a not to exceed price enables the owner to benefit from value added engineering, price reductions, and well managed procurement. It enables the owner to select and contract with the contractor while still designing the facility.

However the disadvantages are: it requires a more complex contract that specifies as much as possible; burdens the owner with more project management and administration; and, project complexity leads to more opportunity for aggressive or abusive behavior.³⁷

³⁶ Recommended Best Practices Handbook for Construction Manager At Risk, CEFPI Gulf Coast Chapter

³⁷ Baker Tilly Construction Lifecycle: Contracting Determining Contract Type Presentation

Final Draft
For Review and Discussion Purposes Only

We are strongly urging the administration to adopt some of the best practices as advocated by the National Institution of Correction (NIC) and used by the Detroit Regional Conventional Facility Authority (DRCFA) for the construction of the jail.

Condition

The WCBA and the CMAR agreed to a Guaranteed Maximum Price construction agreement. The GMP was to include an initial GMP developed within 30 days of completion of the design development drawings. The initial GMP was not to exceed the budget of \$220 million. The final GMP was to be provided once 90 percent of the subcontracts were issued. According to AECOM, this was in October 2012. The construction documents were issued November 30, 2012. However, the final revised design documents were not issued until May 1, 2013, as a result of owner directed reductions in scope which resulted in the final GMP being issued on May 31, 2013, some 8 months later but not yet approved by the owner.

Oversight – Best Practices

A construction project is a complex and risky undertaking. Best practices indicate you can reduce the owner's exposure to risk by instituting workable procedures for project oversight and record keeping at the beginning of the project. Further, all project participants should understand the limits of the ability to make decisions on behalf of the owner. The Owner contracting out the design and construction of the project does not absolve the Owner from the responsibility and accountability of the project.

To protect the owner's interests, it is essential that you plan and provide for sufficient and effective supervision and oversight of the project by experienced staff and/or consultants at every stage of the project. Reliance on a temporary or permanent volunteer committee to oversee a project design and construction may be unrealistic in that they may not have the time or expertise to provide the necessary oversight functions.³⁸

One way to provide the necessary oversight is through an Owner's Representative. The Owner's Representative bridges the gap between ownership and all the other entities involved with a project. A true owner's representative is well versed in development, design, and construction.³⁹

Best practices state that the owner's representative facilitates communication across the team of the architect, contractor, legal and accounting. The owner's representative will do the heavy lifting related to a project.⁴⁰ One of the advantages of an owner's representative is to provide experienced labor, tools, industry knowledge, and experience of capital projects without the expense of managing the project in-house. The owner's representative provides conflict and problem resolution whenever issues arise.⁴¹

³⁸ Office of the Inspector General, Public Construction in Massachusetts

³⁹ Article on Owner's Rep in Real Estate Development: Instrumental in Project Success

⁴⁰ Article – 11 Reasons Why You Should Hire an Owner's Representative (www.wemberinc.com)

⁴¹ Article – What is an Owner's Representative (www.reliatch.info/owners-rep.html)

Final Draft
For Review and Discussion Purposes Only

Condition

It does not appear from the beginning that the county had adequate oversight over the Project. Specifically, the WCBA was not involved in decisions related to the Project; the Owner's Representative that was initially hired by the WCBA did not have the large construction experience; and, for many months there was only an Oversight Committee with very limited experience with a project of this size. Not following this best practice could have contributed to the current problems with the Project not being within the \$220 million for construction.

-Benchmarking – Similar Projects-

Detroit Regional Convention Facility Authority⁴²

On September 15, 2009, operational control of Cobo Hall transferred to the Detroit Regional Convention Facility Authority (DRCFA) under a collaborative agreement with the Michigan State Legislature, the City of Detroit, and Wayne, Oakland, and Macomb Counties. Beginning in 2011 and concluding in 2014, Cobo Hall will undergo a major renovation costing \$279 million. Phases I and II were completed on time and within budget. According to the Authority chairman, the remaining project is on time and within budget.

The Authority hired a Construction Manager to serve as the Owner's Representative with a background in major construction projects in the state. The five member DRCFA Board meets every two weeks for updates on the progress of the construction, schedule, and the amount of money spent. In the weeks the DRCFA does not meet, three members of the capital improvement subcommittee meet. Each of the members of the DRCFA have experience with business, financial, or professional operation of a corporation or convention facility as required by the act.

The DRCFA also has a website (www.drcfa.org) which includes all pertinent information on the DRCFA, including background information on the DRCFA and its members, status information on the renovations, board meeting minutes, request for proposals, and contact information.

Condition

When compared to the oversight structure for the DRCFA Cobo Hall renovation program, we noted significant differences in the oversight function over the Project. Specifically, the DRCFA board meets twice a month and the weeks when the board is not meeting, a capital improvement subcommittee is meeting. The WCBA responsible for the oversight had not met since February 2013. Another significant item noted was that the DRCFA hired an individual as an Owner's Representative with a wealth of knowledge in the construction industry. This individual is responsible for the daily management oversight of all design and construction activities taking place. This could be a major contributing factor as to why the Cobo Hall renovation project is on schedule and within budget.

⁴² Detroit Free Press article dated

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Other Available Resources - National Institute of Corrections

The National Institute of Corrections (NIC) is an agency within the U.S. Department of Justice, Federal Bureau of Prisons, headed by a director appointed by the U.S. Attorney General. The NIC provides training, technical assistance, information services, and policy program development assistance to federal, state, and local correction agencies. The agency has a technical assistance program that responds directly to the needs, problems, and individual requirements of state and local correctional agencies. When appropriate, NIC may cover the costs of user visits to other agencies to observe effective practices. Some of the assistance listed on their website (www.nicic.gov) that related to the construction of the jail include: new jail transition, county jail design, construction cost, site selection, etc. A listing of the technical assistance the NIC provide related to facilities is shown below:

National Institute of Corrections
Website of Topics for Technical Assistance
(Sample of Topics)

- **Architectural Services**
- **County Jail Design**
- **Facility Contracting**
- **Requests for Proposals**
- **Construction Costs**
- **Direct Supervision**
- **Facility Construction**
- **Facility Design Planning**
- **Facility Planning Checklists**
- **Site Selection**

Condition

The National Institute of Corrections is a valuable resource with a wealth of information available to local correctional agencies. We confirmed with WCSO officials that they formally contacted the NIC back in April 2011 for on-site assistance in the area of Managing Jail Design and Construction, and in December 2011 for Training on Transition into the new facility. The NIC provided technical assistance at no cost and was funded by the Jails Division of the NIC.

In response to the request, the NIC provided a two day session in June 2011, Managing Jail Design and Construction; a four day training in August 2012 in which the CEO, AECOM, and commissioners were invited along with Oversight Committee members for the introductory session. However, no one attended. In addition, in June 2012, the NIC had a training session for Direct Supervision Jails, which four members of the WCSO attended.

We also confirmed that the WCSO was concerned in May 2011 that the CEO was meeting with AECOM regarding the jail design and construction without participation from the

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Sheriff or designee who ultimately would be the end users for the facility. According to discussions with AECOM, WCSO officials attended various meetings related to design and construction of the jail and were active participants.

Overall Results

We found that the WCSO consulted regularly and often with the NIC and adopted some of their best practices related to the layout and design of the jail and their concepts regarding transition to a new state of the art facility.

Based on the work performed, we have concluded that the jail construction could benefit from some of the best practices that are currently available, and utilized by the NIC, DRCFA, and others.

Criteria

There are numerous resources and best practices that are available to assist the WCBA leadership in constructing a new jail, some of which are at a nominal cost, such as the NIC.

Cause

Until the recent hiring of the county's current Project Manager, there was a lack of skill sets by leadership to address the complexity of the various issues that are encountered on a regular basis in managing the construction of the jail.

Consequences

Failure to utilize best practices and the possession of the experience and technical expertise could result in cost overruns and failure of the project.

Recommendation – 2013-06 – Significant Deficiency

We recommend:

- A. The WCBA prior to beginning a major construction project, stakeholders understand and use recognized best practices in the construction industry including delivery method, type of contract, realistic budget, and proper oversight.
- B. Leadership place greater reliance on organizations that understand the needs, problems and individual requirements of local correction agencies such as the National Institute of Corrections.
- C. The WCBA considers developing a website similar to the one being used by the Detroit Regional Convention Facility Authority (DRCFA).

=Views of Responsible Officials=

Responsible officials have concluded not to provide a response.

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--Jail Design – Bed Capacity--

-Observations-

Based on work performed, it is our opinion that there are significant deficiencies that should be addressed by WCBA and county administration as noted in our finding below and suggested improvement.

Condition

County officials are exploring options to reduce overall construction costs, which could include reducing the number of jail beds (Detroit News.com June 19, 2013).

However, recent communication from AECOM stated the jail bed capacity could be expanded with the double bunking of the general population single bed units. The OAG calculated this could result in expanded capacity of 2,512 beds.

Criteria

A Request for Proposal, dated May 23, 2011, for the Construction Manager at Risk (CMAR) contract, stated the approximate total capacity of the jail to be 2,192 beds which we have been told by Special Counsel to the WCBA includes 2,000 beds for the WCSO jail operations and 192 beds for the city of Detroit at a cost of \$30 million.

Cause

Due to the recent estimated Project cost of \$391 million which exceeds the bond funding levels by \$91 million, county officials are exploring options to reduce overall construction costs, and other considerations.

According to AECOM officials, the county informed them 3-4 months ago that, the city of Detroit would no longer be part of the Consolidated Jail Facility.

Consequence

The WCSO officials have indicated, given the current jail population, reducing the intended number of beds would not be effective in meeting the intent to consolidate the existing jails into one facility (Jail Divisions I, II, and III).

Recommendation – 2013-07 – Operating Deficiency

We recommend the WCBA take into consideration the possibility of expanding the number of jail population beds to 2,512 when reaching a decision regarding the future of this Project.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-INFORMATION AND COMMUNICATION-

Information is necessary for an entity to carry out internal control responsibilities to support the achievement of its objectives. Management obtains or generates and uses relevant and quality information from both internal and external sources to support the functioning of components of internal control. Communication is the continual, iterative process of providing, sharing, and obtaining necessary information.

-External Architectural\Design Review-

The WCBA entered into a contract with an independent consulting engineering firm to provide professional engineering and architectural services to perform a review of claims for additional costs (potential change orders) related to the partial construction of the jail.

Work Performed:

1. Obtain and review the external architectural review report prepared by Hubbell, Roth and Clark, Inc. (HRC) to determine if there was information that may impact the factual contents and conclusions reached in our report.
2. Inquire if the report concluded that there were changes in design and scope of the construction of the jail.

Results of Work Performed:

1. The WCBA requested HRC to perform a review for the purpose: of providing professional engineering and architectural services to perform an independent review of claims for additional costs relating to the partial construction of the Wayne County Consolidated Jail Project.⁴³ The proposal stated these services were to be completed by July 26, 2013, at a cost of \$73,306.04.

We were able to obtain a copy of the report. Also, we did meet with the county's Project Manager who provided a verbal overview of the report's contents. Based on the verbal overview, we did not find any inconsistencies between the report and our work.

2. Based on discussions with the county's Project Manager, the report concluded that AECOM made a change in scope after the initial drawings were submitted. These changes in scope resulted in cost increases of \$42 million related to the construction of the jail.⁴⁴ According to AECOM officials, the \$42 million includes unsubstantiated extended construction schedule and associated General Condition costs. In addition they stated, they have not seen the HRC report and therefore cannot provide any comments.

AECOM provided us with a summary schedule of Potential Change Order (PCO) and Change Request (CR). The total amount of \$48 million in potential change orders, it was stated they agreed to \$4 million in change requests (they can only make recommendations

⁴³HRC proposal dated June 28, 2013

⁴⁴ Meeting the Project Manager on July 30, 2013.

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For Review and Discussion Purposes Only

but have no authority to agree to approve), the; \$17 million in change requests were reviewed and rejected; \$14 million in change requests still open; and \$13 million in PCO were not reviewed as of August 16, 2013.

We were informed by AECOM that they were not given an opportunity to review and/or respond to the various issues being raised in the HRC report.

-Observation-

There is a dispute resolution clause in the Walbridge-dck contract which states at “the sole discretion of the owner they may elect arbitration of claims, and thereafter all claims, disputes and the conclusions shall be binding by all parties.”⁴⁵ However, Article 10 of the contract states “such meeting shall occur no earlier than 30 days after final completion or termination of the contract.”

Condition

The WCBA elected to issue an RFP in June 2013 to hire a professional engineering and architectural firm to perform an independent review of the claims for additional costs related to the jail. However, we noted there is a dispute resolution clause in the CMAR contract under Article 10 which allows the owner at its own discretion to elect to go to arbitration over claims, disputes, or other matters in question, etc.⁴⁶

However, Article 10 of the contract further states: “such meeting shall occur no earlier than 30 days after final completion or termination of the contract.”

Criteria

In retrospect, good management would dictate that the contract should have been constructed to allow arbitration at any point in time as opposed to 30 days after the completion and/or termination of the contract.

Cause

We believe the dispute resolution clause in the contract could have crafted to allow the owner more flexibility as to when they could go to arbitration.

Consequence

Contracting for an external engineering and architectural services review is costly and time consuming. The WCBA entered into a contract for \$73,306 for such services. Although the report is useful, there is a question as to if this cost could have been avoided if the contract had a provision to address these issues.

⁴⁵ Walbridge-dck (CMAR) contract Article 10 – Dispute Resolution, page 23.

⁴⁶ HRC communication dated June 28, 2013.

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Recommendation – 2013 – 08 Material Weakness

The WCBA and the administration should explore the legal possibility of requiring dispute resolution clause to allow the owner the right to go to arbitration at their sole discretion when there is a disagreement/dispute and not have it predicated on work actually performance and a claim filed.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

-Status Reports-

Due to the size and complexity of the construction project, there exists a need for periodic written status reports to be provided to the WCBA to assist them in performing their oversight function, as well as for public reviewing and inspection.

Work Performed:

1. Inquire of both the WCBA as well as county administration officials what procedures are in place to provide periodic status reports regarding the progress of the construction of the Project.
2. Determine how the WCBA communicated with the general public about the progress of the Project.

Results of Work Performed:

1. We were informed by the administration that there were verbal presentations made to the WCBA on the status of the Project; however, no written reports were provided. Special Counsel to the WCBA suggested that monthly reports be provided to the WCBA and periodically to the Wayne County Commission. We were not able to validate how the WCBA and the administration communicated on the progress and status of the Project. We found instances where we believe information and communication regarding the Project could be strengthened in order to improve transparency and accountability as outlined below.
2. We found no evidence that the WCBA issued any public communications on the status of the Project via news releases, brochures or internet access.

-Observation-

Based on the above work performed, it is our opinion that there are control deficiencies that need to be addressed by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

Owner's Representative

There was an Owner's Representative hired by the WCBA on May 1, 2011 to provide Project oversight. We reviewed minutes of WCBA Board meetings and noted that this individual only provided verbal reports to the WCBA at the September 15, 2011, October 13, 2011, and November 3, 2011 board meetings. His contract was terminated effective December 1, 2011.

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AECOM - Program Manager

We did note that AECOM only provided verbal reports on a monthly basis to the WCBA. Based on discussions with them, it is our understanding that AECOM provided written reports to the Oversight Committee on a regular basis.

Oversight Committee

The Oversight Committee was established in October 2011 after the departure of two key county administrators who had initially been responsible for the Consolidated Jail Facility Project. This committee reports to the WCBA.

- It was stated that the committee does not submit written reports to the WCBA.
- We were informed that WCBA members are kept abreast of the status of the jail through informal meetings and telephone calls. This is an inefficient method to keep the WCBA members adequately informed. The WCBA should be informed as a body, so that informed discussions and decisions can occur.
- This practice could be viewed as a way to circumvent the requirements of The Open Meetings Act.

Wayne County Building Authority Board of Commissioners

At the February 22, 2011 WCBA board meeting, the Special Counsel to the WCBA stated: “We believe it is important on a monthly basis a progress report be given to the [Wayne County] commission....so the recommendation to the WCBA is to allow a monthly progress report to go forward to the commission...” It does not appear that the WCBA board authorized the monthly progress reports.

Criteria

Best business practices dictate that periodic, written communication between all parties involved with the construction project be provided. This will help prevent miscommunications, misunderstandings and delays in making critical decisions.

The Special Counsel to the WCBA recommended that written reports be completed monthly. These reports were to be completed and given to both the WCBA and the Wayne County Commission. This would ensure that without formal meetings at least information was flowing regarding issues on the Project.

Cause

There was failure by the administration to implement a formal, written communication process.

Consequence

Failure to provide formal written status reports prevented adequate reporting/sharing of critical information which prevented crucial decisions to be made on a timely basis.

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Recommendation – 2013-09 – Control Deficiency

We recommend the WCBA prepare monthly written status reports as a matter of public record to assist board members in carrying out their oversight responsibilities. Also, we suggest a presentation be made, and a status report filed, with the Wayne County Commission on a semi-annual basis since Wayne County is the guarantor on the bonds.

In addition, we suggest that the WCBA develop informational material for public distribution and consult with the Department of Technology to develop a website similar to the one being used by The Cobo Hall Regional Authority.

-Views from Responsible Officials-

Responsible officials have concluded not to prepare a response

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-MONITORING-

Ongoing evaluations, separate evaluations, or some combination of the two are used to ascertain whether each of the five components of internal control, including controls to affect the principles within each component is present and functioning.

Work Performed:

1. Inquire of both the WCBA as well as county administration officials determine what procedures were in place to provide adequate monitoring of the
2. Evaluate the effectiveness of oversight being performed by the WCBA and county administration.

Results of Work Performed:

1. Based on inquires, observations, and review of various documents we were able to conclude that the control processes over the monitoring of the Project could be strengthened by both the WCBA and the administration.

Based on our review of the WCBA's board minutes, we noted numerous pleas by board commissioners to hire an Owner's Representative. Specifically, in a board meeting held on May 3, 2012, an official from the Office of the County Executive stated: "I think the critical piece that we need to focus on is the nature of an Owner's Representative making decisions on behalf of the WCBA. I think that is what we're essentially trying to get away from."

This statement is an illustration of the differences of opinion regarding the importance of an Owner's Representative; the WCBA felt it was important to have an Owner's Representative, and senior county administration officials felt it was better to monitor the Project by committee.

In addition, we recently received a response from the CMAR to questions posed about concerns about the Project. Their response was "...contract documents contained over 300 references to 'Owner's Representative'. AECOM served as Owner's Representative from December 14, 2011 until May 30, 2012. After that date, no one served in the official role of Owner's Representative until October 2012...The gate keeping function of an Owner's Representative in a Project such as this is critical. AECOM does not appear to have received any pressure to maintain the Project schedule and budget. Notices were communicated to [high level] county representatives directly...more than a year ago...that the Project, as then designed, could not be done for \$219 million unless major scope reductions were implemented..."

2. We reviewed a communication between the CMAR and the WCBA dated May 22, 2012. This communication contained the following: "nevertheless, without an Owner's Representative providing direction, no one is monitoring the status of the design to ensure it is promptly completed in accordance with the contract to enable us to timely construct the

Final Draft
For Review and Discussion Purposes Only

Project.” The communication also stated the following: “...on May 4, we were advised ‘the Building Authority decided to proceed with the Project without an Owner’s Representative.’ While we are told that a ‘construction consultant’ is to be named sometime in the future (at least 3 weeks from now), a construction consultant does not serve the purpose of providing leadership and direction to the team. Moreover, while the Oversight Committee clearly serves an important function, it is not providing the day-to-day Project interface to address the myriad of issues that may arise during a project of this complexity, such as late issuance of construction drawings and whether our pricing is conditioned upon certain value engineering efforts that the owner’s team must conduct to avoid the expense of more costly cranes.”

-Observations-

It is evident to us that the Oversight Committee did not possess the experience or expertise to oversee a project of this complexity. Also, by not having an Owner’s Representative during the period the Oversight Committee was acting in this capacity, along with delays in design drawings and potential scope changes, the Project is running significantly over budget.

The Project will not be completed until nine months past the original completion date of September 2014 and according to the Project Manager the “this requires the CMAR to make a claim and support it through the critical path of the schedule – AECOM claims the time is much shorter, but also have not detailed their counter position - there will be a cost and will likely be a negotiated settlement.”⁴⁷ According to AECOM officials, they have challenged the CMAR’s schedule extension with a marked up schedule but has received no response from the CMAR.

In general, there appeared to be a lack of awareness of the necessity to hire someone capable to act in the capacity as an Owner’s Representative for several months during the critical phases in the construction of the jail from June – September 2012, although the CMAR had formally expressed its concerns about the lack of an Owner’s Representative to county officials in a letter dated May 22, 2012 and at subsequent meetings with county officials.

However, the administration did eventually hire a Project Manager on October 9, 2012, who appears to have the experience and expertise to complete the Project by the new extended date of June 15, 2015.

In retrospect, we believe the outcome of this Project could have been different if a qualified Owner’s Representative with the experience and expertise had been hired immediately after termination of the contract with Parlovecchio Building Company, Inc.

⁴⁷ According to email from Project Manager dated August 9, 2013.

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Condition

There was inadequate monitoring of the Project as evidenced by the following:

Wayne County Building Authority Board of Commissioners

The WCBA is the owner of the Consolidated Jail Facility Project. As such, the Board of Commissioners has ultimate monitoring responsibilities. It was publicly reported, and we confirmed, that between October 2012 and May 2013, the WCBA board held only two of eight scheduled public board meetings. The other six meetings were cancelled by Wayne County Administration personnel.

Owner's Representative

At the inception of the Project there was an Owner's Representative that provided project oversight. This function was provided via an agreement for sub-consulting services between AECOM and Parlovecchio Building, Inc. that was executed on February 23, 2011. This function then was provided via a contract between the Wayne County Building Authority and Parlovecchio Building Company, Inc. The contract was executed on May 1, 2011, and terminated on December 1, 2011. According to our review of the board minutes, the WCBA was requested by Special Counsel to send out a new Request for Proposal (RFP) for an Owner's Representative.

During the interim, the WCBA entered into an agreement with AECOM to assume the duties and responsibilities of the Owner's Representative for the period December 14, 2011 through May 30, 2012, at no additional cost.

Oversight Committee

The Oversight Committee was formed in October 2011 after the departure of two key county administrators who had initially been responsible for the Consolidated Jail Facility Project. This committee reports to the Wayne County Building Authority Board.

This committee assumed the duties of an Owner's Representative from May 16, 2012 through October 9, 2012.

Several WCBA members repeatedly asked the county administration when an Owner's Representative would be hired through the RFP process. An RFP was issued and responses were received. However, on May 3, 2012, at the request of an independent evaluation committee comprised of county employees representing the Wayne County Sheriff's Office, the Department of Management and Budget, and the Division of Buildings, the WCBA Board passed a resolution canceling the RFP for an Owner's Representative. Reasons for cancellation were that "...the proposals are not in the best interest of the WCBA...based on the knowledge that such services would not add significant value to the process currently in place for the construction of the new facility..."

Also, at the May 3, 2012 meeting, the WCBA Board passed a resolution approving the recommendation to hire a Construction Consultant

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On October 9, 2012, Wayne County hired an experienced Project Manager/Consultant, whose job duties are, in some respects, similar to an Owner's Representative. This individual is an employee of the county. The WCBA reimburses the county at \$16,000 per month for his services.

Criteria

A WCBA board member, who has an extensive background in the construction industry stated, in a board meeting: "I feel strongly that an independent party from a construction standpoint on a day-to-day basis should be overseeing this Project....It's an absolute industry standard to have a person such as this that is overseeing the Project."

Cause

The county administration made a conscious decision to monitor the Project by committee, in spite of urgings from several WCBA Board members and CMAR to the contrary. A senior executive within the Office of the County Executive stated at a board meeting "I think the critical piece that we need to focus on is the nature of an Owner's Representative making decisions on behalf of the Building Authority. I think that is what we're essentially trying to get away from."

Consequence

There was inadequate monitoring of the Project by the committee, who as a group, lacked the necessary construction industry experience/expertise to adequately monitor the Project and work collaboratively with AECOM on the construction design to keep the Project on budget.

Recommendation – 2013 -10 – Material Weakness

We recommend that monitoring of the Consolidated Jail Facility Project be entrusted to an Owner's Representative or its equivalent, who should be an independent third party that represents, and reports directly to, the WCBA.

-Views of Responsible Officials-

Management has concluded not to prepare a response.

-Sheriff (User) Participation-

The WCBA hired and the WCSO assigned individuals to serve as part of the Transition Team, whose task was to assist with transition to the new jail including developing policies and procedures. The budgeted cost for the Transition Team was \$1.8 million and has spent \$467,110 through August 16, 2013.

Work Performed:

1. Assess the Transition Team's participation in the oversight of the Project.

Results of Work Performed:

1. We inquired of the Chief of Jails and obtained and reviewed documents related to the Transition Team and noted the following:

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- i. There was a WCSO representative on the Oversight Committee.
- ii. The WCBA had personal service contracts with three former WCSO employees who participated in the planning of the new jail facility, including the IT infrastructure. We noted these personal service contracts are in the individual's name and 1099 forms are being issued by Wayne County. See recommendation 2013-12 regarding this matter and our concerns.
- iii. The Transition Team was recently disbanded by the county. However, one of the former WCSO employees is still providing services as a liaison between the Sheriff and County Executive's office.

We also reviewed documentation provided by the Purchasing Division related to the election committee that evaluated the proposals submitted for the CMAR. We noted that the WCSO Chief of Jails was a voting member of the selection committee.

We determined that expenditures in the amount of \$467,110 were made related to work performed by the Sheriff Transition Team as of August 16, 2013.

Therefore, based on our review there was participation by the Transition Team for the Consolidated Jail Facility Project.

**II - COMPLIANCE WITH THE CONSTRUCTION CONTRACT,
THE DAVIS BACON ACT, ARRA COMPLIANCE, AND THE BOND
COVENANTS**

-BOND ISSUANCE AND COVENANTS-

In December 2010, the Wayne County Building Authority issued \$200 million general obligation – limited tax bonds. We performed certain agreed upon procedures to determine if the WCBA was in compliance with the conditions associated with the bonds issued.

Work Performed:

Make inquiries of the Chief Administrative Officer (CAO) of the WCBA as well as management officials within the Department of Management & Budget in order to gain an understanding regarding:

1. Rationale for the initial \$200 million bond issuance;
2. Direct pay interest credit from the United States Treasury; and,
3. Expected impact on the county's General Fund for debt service payments over the 30 year life of the bonds.

Results of Work Performed:

-Rationale for \$200 Million Bond Issuance-

1. The WCBA, and the Wayne County Commission, approved the issuance of \$300 million in bonds to fund the Project. In December of 2010 bonds for \$200 million were issued. We inquired why the entire \$300 million was not issued. We were informed the amount of bonds issued was based on the schedule of construction payout and Arbitrage Rules.

-Arbitrage Rules-

“The purposes of the arbitrage rules was enacted to minimize the arbitrage benefits from investing gross proceeds of tax-exempt bonds in higher yielding Investments and to remove the arbitrage incentives to issue more bonds, to issue bonds earlier, or to leave bonds outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes for which the bonds were issued.”⁴⁸

⁴⁸ The First Book of Arbitrage by Debra Kawecki.

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-State of Michigan Approval Required-⁴⁹

We were informed by the CAO that “under the Municipal Finance Act (Michigan Public Act 34 of 2001), before a municipality may issue bonds, it must have either applied for and received “Qualified Status” from the Michigan Department of Treasury or received Treasury approval to issue a specific series of bonds. This requirement also exists for the second series of jail construction bonds.”

-Interest Credit-

2. According to the administration, original interest subsidy over the life of the bonds was \$177.3 million. Due to the Federal Government Sequester the interest subsidy was reduced by \$8.3 million. The revised total interest subsidy is \$169 million.

Total interest paid on bonds from June 1, 2011 through June 30, 2013 \$47,114,690.80; less total interest rebate \$21,201,610.87 = \$25,913,079.93 (net) interest payments through June 30, 2013.

-Impact on General Fund-

3. We understand that these are serial bonds with various interest rates and staggering maturity dates over a 30 year period. The Administration was able to provide a revised amortization schedule that reflects the dollar impact due to the reduction in the subsidy in the amount of \$8 million and the first net debt service payment of \$5.6 million due on the bonds as of June 1, 2013.

Capitalized Interest

According to M&B, debt service for the period June 2013 – June 2015 will be \$31 million and will be paid from the interest capitalization fund. It was stated the net subsidy amount for the construction for the period from June 2011 – December 1, 2013 is \$24,944,093.17.⁵⁰

M&B stated that once the December 2013 payment is made this will deplete the interest capitalization fund. The OAG assumes all future debt service payments of approximately \$14.5 million annually will have to be paid by the general fund.

Total Debt

Principal and interest payments on the Project bonds are accounted for in the Wayne County Building Authority’s Debt Service Fund. The total net principal and interest payments required on these bonds over the 30 year period are \$404,484,097.

The WCBA will need to issue another \$100 million with the full faith and credit of the county as collateral in the very near future. However, due to the present economic

⁴⁹ Email communication received from the CAO representative on July 8, 2013.

⁵⁰ Per amortization schedule provided by M&B personnel.

Final Draft
For Review and Discussion Purposes Only

climate in Southeast Michigan it is becoming increasingly difficult to issue general obligation bonds.⁵¹

We were informed by the CAO that it is planned to issue \$100 million Series 2 bonds in the first quarter of 2014. However, it was stated “the result of the analyses re: the jail work suspension period will likely affect the determination of the timing and the amount.”

The CAO went on to state: “it is believed the county continues to have access to the municipal market. For the proposed Series 2 bonds, the CEO recommended a budget for FY 2013 - 2014 using an assumed interest rate of 6.5%. The Build America Bond program expired on December 31, 2010. There are no interest subsidies available for bonds issued after that date.”

-Bond Issuances-

Bonds designated as Recovery Zone Economic Development Bonds are eligible to receive a direct pay interest credit from the United States Treasury equal to 45% of the stated interest paid on the bonds.

- Bonds issued as follows:
 - \$11,390,000 Serial Bonds
 - 2014 maturity -- \$3,665,000 – 6.220% interest rate
 - 2015 maturity -- \$3,790,000 – 6.820% interest rate
 - 2016 maturity -- \$3,935,000 – 7.326% interest rate
 - \$188,610,000 Term Bonds
 - \$45,280,000 9.25% Term Bond maturing December 31, 2025
 - \$143,330,000 10.00% Term Bond maturing December 31, 2040

- Uses of Bonds
 - Deposit to Construction Fund - \$167,257,211.58
 - Capitalized Interest \$ 31,219,512.68
 - Underwriters' Discount \$ 956,364.74
 - Estimated Cost of Issuance \$ 566,911.00
 - Total Uses \$200,000,000.00

-Bond Rating Issues-

Due to further decline in the bond rating it will become more difficult to issue the additional \$100 million in bonds and/or they will be even more expensive due to increase in the interest rate. Most recently the Wayne County bond rating was downgraded by Fitch on some bonds to junk status. Last week Moody's lowered the bond rating to one level above junk bond status.

The decline in the bonding rating by Fitch was attributed to continued increases in the county's accumulated deficits. The article goes on to state “lower bond ratings usually lead to investors demanding a higher rate when buying the bonds.”⁵²

⁵¹ Detroit Free Press article, August 8, 2013.

Final Draft
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-CONTRACT OF LEASE-

In October 2010, a contract of lease was executed between the Wayne County Building Authority and the Charter County of Wayne, Michigan. This contract pertained solely to the Consolidated Jail Facility Project.

Work Performed:

1. Obtain and review the Limited Tax Full Faith and Credit General Obligation Contract of Lease (Contract) executed between the Wayne County Building Authority and the Charter County of Wayne, Michigan, noting any areas that may pose risk to the county. Review this document in its entirety and engage in discussions with Special and Commission Counsel for clarity of understanding.
2. There appears to be conflict between the contract of lease and the requirement for the Wayne County Commission to approve Walbridge-dck contract if it exceeds the \$220 million.

Results of Work Performed:

1. We noted two areas in the contract that we believe need to be amended to mitigate risk to the county:
 - Section 11 which allows the WCBA to borrow beyond the approved \$300 million; if there are insufficient funds to complete the Project; and
 - The lack of an Intergovernmental Agreement (IGA) which outlines certain terms and conditions between the two governmental units.
2. Based on inquiries and discussions with legal counsel, we were not able to satisfactorily determine if the Walbridge-dck contract exceeded the approved amount of \$220 million if it would require Wayne County Commission approval.

-Observations-

Based on the above work performed, it is our opinion that there is a material weakness that needs to be addressed by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

In October 2010, the contract was executed between the WCBA and the Charter County of Wayne, Michigan. This contract pertained to the Consolidated Jail Facility Project.

Section 11 of the Contract of Lease states:“In the event such determination of insufficient funds should be made after the letting of contracts for construction of the Project, but before completion thereof, the Authority shall be authorized, on its own motion, to issue such additional bonds as may be necessary to provide sufficient funds to complete the Project or to make necessary repairs, replacements or alterations therein, and the Cash Rental to be paid by the

⁵² Detroit News article dated August 13, 2014.

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county shall automatically be increased by an amount fully sufficient to pay all principal of and interest on the bonds herein referred to and such additional bonds when due....”

Criteria

The preambles to the Contract contained, in part, the following:

“WHEREAS, the county desires to design, acquire, construct, improve, furnish and equip new county criminal justice facilities, including, but not limited to, land acquisition, related site improvements and ancillary facilities such as arraignment courtrooms, a tunnel or bridge connection to the adjacent Frank Murphy Hall of Justice, and other ancillary and capital improvements and demolish certain existing detention facilities and related improvements (the “Project”), and the Authority is willing to acquire the Project and lease the same to the county; and;

“WHEREAS, the total cost of the Project is estimated to be in the sum not to exceed Three Hundred Million Dollars (\$300,000,000), which will include architects’ fees, legal and financing costs, and contingencies,...”

The county has agreed to pay the WCBA cash rentals in the amount of the debt service requirements on the bonds. Within the Contract of Lease, under section 6, it states “annually before finalizing its budget for the next fiscal year, the county has to prepare and submit to the Authority a statement of the monies to be included in its budget for payment of all costs of the Project.”

Best governmental practices would require an IGA, such as that between the Wayne County Land Bank Corporation and the Treasurer of Wayne County. This intergovernmental agreement would include, but not be limited to, the following:

- Purpose;
- General Powers of the Authority;
- Specific Powers of the Authority;
- Responsibilities of the Authority including, but not limited to;
- Adopting policies and procedures for contracting and procurement;
- Taking such other actions and steps necessary or advisable to accomplish the purposes of the agreement;
- Establishing fiduciary responsibilities of the WCBA.

Cause

According to the administration, this clause was written into the agreement by a nationally recognized bond Counsel, however, commission leadership failed to mitigate the risk by allowing the inclusion of this clause in the contract. However, we were able to review communication cautioning them as to the risk associated with this provision in the contract of lease.⁵³

⁵³ Legal analysis performed by the Commission Counsel dated November 2010.

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Consequence

The Authority is authorized to unilaterally issue additional bonds if there are insufficient funds to complete, repair, replace or alter the facility, without Commission consent. In addition, the county's cash rental payments can automatically increase. As cautioned by commission counsel in correspondence written at the time, this could potentially amount to millions of dollars being expended without commission approval.

Recommendation – 2013 -11 – Material Weakness

We recommend:

- A. Section 11 of the current Contract of Lease be amended to mitigate this perceived risk to Wayne County.
- B. In addition, an IGA should be established between the WCBA and the County of Wayne to reduce risk and provide clarity and understanding between the two local governmental units.

-Views of Responsible Officials-

Responsible officials have concluded not to prepare a response.

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-DAVIS BACON ACT – COMPLIANCE-

The Davis-Bacon Act specifies wage requirements for any contracts in excess of \$2,000 for the construction of public buildings, property, or works.

Work Performed:

1. Review payments remitted to contractors and review for compliance with the Davis-Bacon Act.

Results of Work Performed:

1. We relied upon the work performed by Piece, Monroe & Associates (PM&A), the external accountants. Based upon our limited testing of their work, we did not note any non-compliance to Davis-Bacon Act.

As part of PM&A's scope of services on the new Jail Project, They ensure compliance was met for the Davis-Bacon and Related Acts and the American Recovery and Reinvestment Act of 2009. For the Davis-Bacon and Related Acts, the Office of Legislative Auditor General relied upon the work of PM&A. They verified that the contractor certified payrolls are at or above the combined prevailing wages and fringe rates as established by the U.S. Department of Labor Wage and Hour Administration. If there are any discrepancies with the wage and/or fringe rates, PM&A contacts the Construction Manager At Risk (CMAR) designee to discuss the discrepancies and note them on the PM&A compliance payroll spreadsheet. The subcontractor also includes a statement (non-notarized) attesting to correctness of the wages and fringes being paid. They indicate in the invoice package that subcontractor's values schedule is correct on their voucher package checklist.

The Davis-Bacon Act specifies wage requirements for any contracts in excess of \$2,000 for the construction of public buildings, property, or works. Specifically, the wage requirements include the following:

➤ **Wages Based on Prevailing Wage**

- The minimum wages shall be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the work is performed.

➤ **Stipulations Required in Contract**

- The contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of work, at least once a week, the full amounts due computed at wage rates not less than those stated in the advertised specifications.
- The contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of work.
- Overtime pay is based on the regular or basic hourly rate of pay.

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-AMERICAN RECOVERY & REINVESTMENT ACT (ARRA)-

The American Recovery & Reinvestment Act (ARRA) was enacted under President Obama's administration for the purpose of stimulating the development of public projects. The bonds issued by the WCBA are Economic Development Recovery Zone bonds which carry a 45% interest rebate on interest paid on these bonds.

Work Performed:

1. Review compliance with the provisions of the American Recovery & Reinvestment Act (ARRA) in the following areas:
 - Payments remitted to contractors, and,
 - Spending requirements

Results of Work Performed:

1. We relied upon the work performed by PM&A for the Buy American requirement and also the contractual stipulations in the contract.

Also, we relied upon representations from Management & Budget regarding compliance with the spending requirements. Based upon our limited testing of their work, we did not note any ARRA non-compliance issues.

As part of PM&A's scope of services on the Project, they ensure compliance was met for the American Recovery and Reinvestment Act of 2009. For the American Recovery and Reinvestment Act of 2009, PM&A reviews the construction invoices to ensure that there is no repair (rework) work being performed on the billings. Per PM&A, repair (rework) is not permitted under the American Recovery and Reinvestment Act of 2009; only capital construction cost. The contractor includes a notarized "Application and Certification for Payment" in the voucher package attesting to the work performed. They indicate the invoice package meets ARRA compliance on their voucher package checklist.

We reviewed a statistical sample of invoices that were submitted to PM&A, and noted a review of compliance with ARRA was performed.

The American Recovery & Reinvestment Act (ARRA) includes the following requirements:

- **Buy American (Use of American Iron, Steel, and Manufactured Goods)**

None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work.
- **Stipulations Required in Contract**

The contractor or subcontractor shall pay all mechanics and laborers employed directly on the site of work, at least once a week, the full amounts due computed at wage rates not less than those stated in the advertised specifications.

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The contractor will post the scale of wages to be paid in a prominent and easily accessible place at the site of work. Overtime pay is based on the regular or basic hourly rate of pay.

➤ **Spending Requirements**

Binding commitment to spend at least 5 percent of the bond proceeds within 6 months of issuance and must spend 100 percent of the proceeds within three years or get an extension.

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-COMPLIANCE WITH IRS REGULATIONS-

The Internal Revenue Service has strict regulations pertaining to compensation being paid to individuals who are performing services as an independent contractor. If these individuals are set up as a business, they generally are required to provide to the employer a federal identification number. The individuals must also offer the same or similar services to the general public. Customarily, these businesses are generally set up and established as sole proprietors, partnerships, LLC, or corporations.

Work Performed:

1. Verify the propriety of 1099 forms being issued to certain individuals for compensation received for services rendered for compliance with the Internal Revenue Service Code.
2. Review the 8038-CP form titled “Return for Credit Payments to Issuers of Qualified Bonds” to determine the form is being properly prepared and filed with the Internal Revenue Service on a timely basis.

Results of Work Performed:

1. The WCBA entered into personal service contracts with individuals in their own name.

1099 Forms

The 1099 Miscellaneous Income form is generally issued to an individual who receives more than \$600 in income. Some examples include a sole proprietor, attorney, certified public accountant, real estate agents, etc.

We requested and received a sample of the 1099 forms from Management & Budget in order to verify the payor’s Federal Identification Number (FIN) being used. We noted there were several 1099 forms issued for the calendar year 2012 where the county’s FIN was being used instead of the WCBA’s. We were informed this was because the WCBA did not have its own FIN.

We believe the practice of issuing 1099 for personal service contracts should be discontinued because this exposes the county to additional undue risk.

8038-CP

2. The form 8038-CP (Return for Credit [Interest] Payments to Issuers of Qualified Bonds) is required to be filed 45 days before interest payment is made. This form is titled “Return for Credit Payments to Issuers of Qualified Bonds.” The filing of this form is necessary to receive the interest subsidy payments on the ARRA bonds.

We also obtained and reviewed the form 8038 – CP. Based on our review we noted the form included the county’s Employer Identification Number (EIN) and not a separate number for the WCBA. We verified with the M&B representative that the county’s EIN was the only one used. We also confirmed with WCBA representatives as well as a bond counsel attorney from Miller Canfield that the WCBA does not have its own EIN and uses the county’s.

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The attorney also stated that the use of the county's EIN for the 8038-CP form was acceptable based on the fact that the WCBA was created for the specific purpose of serving as a finance vehicle.

Based on our discussions with the bond attorney we understand this is an acceptable practice and concluded no additional work is required.

-Observations-

Based on the above work performed, it is our opinion that there are material weaknesses that should be addressed immediately by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

The WCBA does not have any employees but has entered into contractual relationship with individuals. We noted at least three instances in which contracts totaling \$757,500 were entered into as personal service contracts and payments are being made to them in their individual names; they are given 1099 forms at the end of year.

In the calendar year 2012, the county issued three 1099 forms totaling \$146,076 in the name of individuals for work they performed on behalf of the WCBA.

Based on discussions with WCBA representatives and through confirmation from the bond counsel it was confirmed that the county assigns its own number to all tax forms for the WCBA because they do not have their own separate EIN/FIN.

Criteria

According to the Internal Revenue Service guidelines any entity that operates their business as a corporation or a partnership should have their own EIN.

Cause

Management indicated that they have always used the county's EIN/FIN for the WCBA's 1099s. A county representative also indicated that based on the Chief Administrative Officer's discussion with bond counsel that the WCBA could use the county's EIN/FIN.

Consequence

If taxes are unpaid when submission of the 1099 form is made, the county could be at risk of being held liable for any unpaid taxes. Also, this practice could result in additional risk to the county if these individuals fail to report this income to the Internal Revenue Service.

In addition, it could expose the county to undue risk for worker compensation claims and other cost associated with being erroneously classified as county employees.

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Recommendation – 2013 -12 – Material Weakness

The board should refrain from entering into personal service contracts, unless it is with an individual that is registered as a company, because it could expose the WCBA to unnecessary risk of incurring severe penalties if those individuals fail to file tax returns for the compensation received in any given year.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-RECORD RETENTION – CONTRACTORS-

All contracts should contain a clause mandating the retention of all books and records for an identified period of time to be inspected by the client.

Work Performed:

Review the three major contracts with the WCBA related to the construction of the Project to verify the record retention clause is included in the contracts for all designs, engineering drawing, books and records maintained.

Results of Work Performed:

Below is a table showing the results of our review and identifying the contractor and the required time period for record retention.

Contractor	Retention Clause Exists	Period of Retention
Walbridge-dck Joint Venture	Yes	6 years from final completion of project
AECOM Services	Yes	3 years after contract termination
Pierce Monroe & Assoc.	Yes	3 years after contract termination

Examination of Records

We verified that all three contractors: Walbridge-dck Joint Venture; AECOM Services; and, Pierce Monroe & Associates included sections in their contracts mandating the retention of all books and records for an identified period of time to be inspected by the client. The Walbridge-dck joint venture contract mandates that the contractor maintain records for a period of six years after final completion of the project. AECOM Services contract stipulates that the Program Manager/Architect and its sub-consultants shall maintain all documents pertaining to the agreement for a period of three years from the date each receives final payment. Pierce Monroe & Associates contract mandates that Contractor must keep records according to generally accepted accounting practices for a minimum of three years after the contracts completion. There were no exceptions based on our review.

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-OWNER'S REPRESENTATIVE-

Based on research performed, it is advocated that an owner's representative, or someone equivalent, is essential to completing a large construction project. In this case the administration has hired a Project Manager to serve in this capacity for all intent and purpose.

Work Performed:

1. Review the various entities/individuals that acted in the capacity of an Owner's Representative for the WCBA and ascertain if they acted in accordance with their respective contracts and/or best practices.
2. Review the construction timeline to determine when the Project was without an Owner's Representative for the purpose of determining what impact, if any, it may have had on the success or failure of the Project.

Results of Work Performed:

1. We were able to determine that there was an Owner's Representative from February 2011 until December 2011; it was noted by AECOM in board minutes that this company had performed extremely well.
2. We reviewed a graphic representation of the Project's timeline, as shown below, and were able to identify both: (a) the time an Owner's Representative was actively engaged on the Project; and, (b) the time when there was no Owner's Representative on the Project.

We noted there existed for a six month period of time where AECOM served as the Designer, Architect, Program Manager, and Owner's Representative. We believe this an incompatible relationship and may have contributed to some of the problems encountered with ht construction of this Project.

Agreement for Sub Consulting Services (Parlovecchio Building Company, Inc. and AECOM Services of Michigan, Inc.)

- Agreement was entered into on February 23, 2011.
- The Statement of Work stated: "It is understood that Sub consultant was recommended by Owner and agreed to by AECOM for the convenience of the Client. The Parties acknowledge that this arrangement is solely for the benefit of the Owner...." This is not an accurate statement.
 - The "Owner" of the Project is the Wayne County Building Authority. This body did not recommend Parlovecchio Building Company, Inc. as the Owner's Representative to AECOM.
 - At the February 22, 2011 Wayne County Building Authority Board meeting, the Special Counsel to the WCBA stated: "...AECOM and Ghafari through negotiations...has agreed to hire Parlovecchio Building as an Owner's Representative on behalf of the Authority and you will see as Exhibit D of the AECOM contract that there is a contract in there with Parlovecchio Building."

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- Parlovecchio Building Company, Inc., acting as the Owner's Representative, reviewed AECOM's work. However, he was a contractual employee (sub consultant) of AECOM. According to AECOM officials, the county requested that the contract with Parlovecchio Building Company, Inc. as the Owner's Representative be included in the AECOM contract during contract negotiations. Although in the AECOM contract, Parlovecchio Building Company, Inc. invoiced and was paid directly by the WCBA.

Owner's Representative Contract Between Wayne County Building Authority and Parlovecchio Building Company, Inc.

- Agreement entered into on May 1, 2011 in the amount of \$2.3 million.
- Parlovecchio Building Company, Inc.'s agreement included provisions to subcontract with an IT specialist for a sum not to exceed \$420,000.
- Contract terminated December 1, 2011.
 - Terminated because contract was awarded without competitive bid.
 - The WCBA Board was requested to send out a new RFP for an Owner's Representative contract.

No Owner's Representative – December 1, 2011 through December 14, 2011

Parlovecchio Building Company, Inc. contract was terminated by the CEO effective December 1, 2011.

Letter of Understanding Regarding AECOM Assumption of Owner's Representative Duties

- Letter dated December 14, 2011:
 - "The Authority, on behalf of the Charter County of Wayne, is in the process of selecting an Owner's Representative for the Project."
 - "AECOM and the Authority agree that completion of the selection of a new Owner's Representative shall occur within the next ninety (90) days."
 - AECOM and the Authority agree that until the selection of the Owner's Representative has been completed, that AECOM shall operate and perform the necessary duties of an Owner's Representative."
- There were two Letters of Understanding that remained enforceable from December 14, 2011 through May 30, 2012 or until the WCBA passed a resolution approving an Owner's Representative.
- AECOM was not to be paid additional compensation for any and all services regarding this temporary scope of services.
- There was no Owner's Representative from June 1, 2012 through October 9, 2012; the date a Project Manager was hired.

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Wayne County Oversight Committee – October 2011 through June 6, 2013

This committee was formed in October of 2011 due to the departure from the county of two key administrators who were initially responsible for the Project.

We were informed that there are four core members of the committee who are considered experts in their field and have the necessary skills and experience to monitor the Project. These members are:

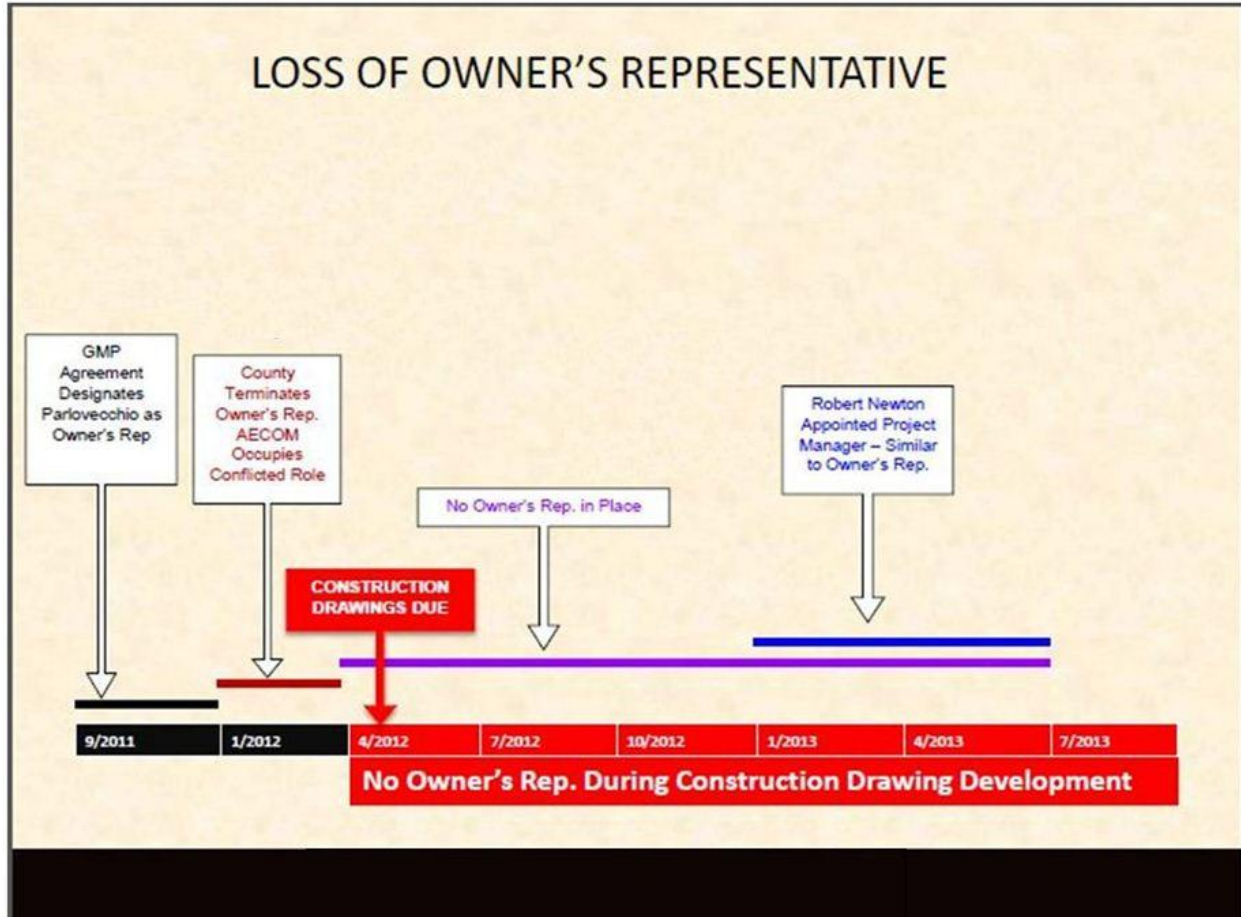
- The county's Chief of Staff, representing the Office of the County Executive.
- The county's Chief Financial Officer who is also the WCBA's Chief Administrative Officer (CAO).
- Corporation Counsel (Special Counsel) to the WCBA.
- A representative from the Office of the Wayne County Sheriff.

Other personnel who attended the Oversight Committee meetings included:

- An M&B Project Consultant.
- AECOM – Program Manager.
- The clerk for the WCBA.
- Transition Team.
- The Director of Buildings

We were also informed that the Oversight Committee reports to the WCBA, although written reports are not provided. Board members are kept abreast of the Project's status through informal meetings and telephone calls.

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Source: Walbridge-dck

As can be seen from the above timelines, there has been no one who has served continuously as the Owner's Representative for the Consolidated Jail Project.

During the period December 2011 through May 2012, AECOM also served as Owner's Representative. It was stated that was only meant to be a short term arrangement until another Owner's Representative could be hired. That relationship was terminated as of May 2012.

From June 2012 through October 2012, the Oversight Committee served in the capacity as the Owner's Representative. We were informed by AECOM and Walbridge-dck that during this period the Director of Buildings Division signed off on payment applications but was not on the construction site every day to manage the Project. It is our understanding that the Director of Buildings Division also served as a member on the Oversight Committee. However, due to inconsistencies in statements received from the administration, we were not able to conclusively verify that the Director of the Buildings Division was in fact an Oversight Committee member or served in an advisory capacity.

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However, during that time the estimated Project cost had already exceeded the original budget of \$300 million by \$38 million due to two factors: (1) initial failure to include land acquisition and site remediation cost of \$20 million, legal and accounting fees of \$4 million and other costs; and, (2) the inclusion of \$30 million in expected revenue from the city of Detroit, when in fact there were on-going negotiations, but no agreement with the city to participate in the Jail Project.

We were informed that upon hiring of the current county Project Manager there were several problems discovered regarding the Project: AECOM Representatives charging travel time to the Project; termination of a contract manager due to dissatisfaction with oversight, a smoke evacuation system was not included in the design drawings, and security electronic equipment cost understated by \$6 million, etc. AECOM officials stated: "It should be noted that the staffing plan in the AECOM contract required the Principal-In-Charge be involved in the Project 20%-30% of the time. Currently, the county's Project Manager wants the Principal-In-Charge involved 100% of the time. The smoke evacuation system was identified in the Design Development documents and further developed in the Construction Documents."

Judging from what has been accomplished since the new county Project Manager was hired, one would have to conclude that having someone as an owner's representative with the skill set and level of experience is essential for the success of a complex construction of a 2,000 bed jail.

However, based on the current organizational structure, the county's Project Manager appears to have the responsibilities of an Owner's Representative; but reports to the county administration. This is problematic and could result in decisions being made by individuals without the skill set or expertise.

We believe the county's Project Manager should serve in the capacity as an owner's rep with a formal job description and duties and report directly to the WCBA board; in addition, all construction related entities should be required to report directly to this individual.

On June 6, 2013, the County Executive's Office suspended the construction of the Jail Project⁵⁴.

We were not able to conclusively identify how the absence of a qualified owner's representative may have impacted this Project; but we can conclude that there may have been a period of time from June 2012 thru October 2012 when there existed little, if any, daily site supervision. AECOM officials stated: "It should be noted having an Owner's Representative for site supervision was not an issue; the Program Manager [AECOM] has full time staff at the site, but lack overall project direction from the county without an Owner's Representative."

Further, we have been informed through discussions and communications, that Walbridge-dck and AECOM both support the necessity for a owner's rep for this Jail Project.

⁵⁴ Presentation by Wayne County CEO Chief of Staff to COW June 11, 2013.

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-Observations-

We have prepared a time line below for events that led up to the hiring of someone to serve in the capacity of an owner's representative.

In our opinion, until the present county Project Manager was hired, there was no one with the necessary expertise or experience to serve in the capacity as an owner's representative as suggested by the industry's best practices. This is unfortunate. Based upon our review of the WCBA board minutes there were lengthy discussions requesting the hiring of someone to serve in that capacity.

In February 2011 the WCBA board hired AECOM under a no bid contract and in turn AECOM hired Parlovecchio Building Company Inc. as a sub-consultant without bid.

In May 2011, Special Counsel asked the board to remove Parlovecchio Building Company Inc. from the Program Manager's contract and that they contract directly with Parlovecchio Building Company Inc.. The recommended action was approved by the board and a contract was awarded without bid.

In December 2011, the CEO recommended that the WCBA terminate the Parlovecchio Building Company Inc. contract and the board approved the termination.

Walbridge-dck pointed out that the contract called for an owner's representative and that the CMAR contract made over 300 references to the owner's representative.⁵⁵

Condition

Until the present program consultant/manager was hired, there was no one with the necessary expertise or experience to serve in the capacity as an owner's representative as suggested by industry best practices.

On March 4, 2013, the CAO issued a letter to Walbridge-dck giving notice that the county's current Project Manager was authorized to make decisions on behalf of Wayne County regarding the Project. It further stated the authority is no longer employing or funding an owner's representative position. It concluded by stating "upon finalizing the CMAR agreement the Authority will acknowledge that the Project Manger has many responsibilities of a current Owner's Representative position, including authorization to make decisions on the Project."⁵⁶

Criteria

According to best practices and industry guides, the advantage of employing an owner's representative includes, but is not limited to, the following:

- **Communication:** An owner's representative facilitates communication between the various parties involved in the construction project by preventing delays and

⁵⁵ Correspondence from Walbridge-dck dated May 22, 2012.

⁵⁶ Letter from the CAO to Walbridge-dck dated March 4, 2013.

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miscommunications.

- **Cost Savings:** Employing an owner's representative can result in savings. They should ensure that the project is following industry protocols thereby reducing risk.
- **Software and Information:** A reputable owner's representative will have implemented project management software that allows the exchange of information and filing of records. An owner's representative will manage countless documents on the owner's behalf.
- **Translators:** The architecture and construction industry uses acronyms and terminology that is industry related. An owner's representative can assist the owners in continually reviewing the goals of the project and walking them through the drawings and specifications as needed.
- **Scope Identification:** There are many tasks that have to be completed by the owner. These can include, but are not limited to, IT management, security, contracts, and more. An owner's representative will work to make sure these items are not overlooked.
- **Relationships:** An owner's representative should have solid relationships in the industry.
- **Hiring:** A project may require miscellaneous consultants to meet its goals. An owner's representative will work to generate the RFP, interview (if necessary), and negotiate the required contracts.
- **Budget:** An owner's representative will be in charge of a comprehensive project budget that includes hard and soft costs. An established owner's representative should have a solid master budget complete with lessons learned. The owner's representative will generate the master budget and track expenses related to the project.
 - **Schedule:** An owner's representative will work to build a master schedule and track it. The master budget should include details related to critical path and deliverables from all parties.
 - **Quality:** The owner's representative should have extensive knowledge regarding industry standards and review construction documentation for accuracy, timeliness, and quality.

Cause

There has been considerable turnover in project oversight that should have been the responsibility of a competent owner's representative. The Oversight Committee, though they may be experts in their respective areas of expertise, does not have experience or expertise to manage major complex construction projects.

The Administration also delayed for a number of months the hiring of an owner's representative, despite repeated requests from the WCBA Board, due to ongoing litigation with Parlovecchio Building Company, Inc. Eventually, a Project Manager/Consultant was hired (as a county employee) to function in the capacity as the owner's representative.

Consequence

The turmoil in oversight of the Project has resulted in construction delays and large budget overruns.

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- Parlovecchio Building Company, Inc.'s contract as the owner's representative was for approximately \$2.5 million dollars, including an IT allowance of \$420,000.
- Parlovecchio Building Company, Inc. was paid \$439,287 under this contract through June 30, 2013, the county's current Project Manager, has a monthly salary of \$16,000 (with no benefits).

Recommendation – 2013 –13 - Material Weakness

The Wayne County Building Authority Board should consider the following:

- A. Have the current county Project Manager become a leased employee from Wayne County to the WCBA with specific job descriptions, duties and responsibilities that are typical of those of an owner's representative; or
 - Issue a Request for Proposal (RFP) for an owner's representative who would be independent and report directly to the WCBA Board.
- B. In addition, the WCBA Chair should form a capital improvement sub-committee of board members, similar to the COBO Hall Expansion Project. The CAO and Owner's Representative would report to the sub-committee and in turn will report to the WCBA board on a monthly basis.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-NO BID CONTRACTS-

There were three instances where no bid contracts were issued: (1) AECOM in the amount of \$25 million awarded in August 2010; however, we were informed by Special Counsel, as well as AECOM, that the initial contract to construct a regional justice center in 2006 was based on a bid process and the administration believed it would be more cost effective to award the 2010 contract to AECOM since they had already performed architectural and design work on the regional justice center. (2) Parlovecchio Building Company, Inc. as a sub consultant to AECOM in the amount of \$2.0 million, executed February 23, 2011; and, (3) Parlovecchio Building Company, Inc. Owner's Representative contract with the WCBA, dated May 1, 2011. This contract amount was \$2.3 million, which included \$420,000 for information technology. The AECOM contract was also amended May 1, 2011 to remove the sub consulting agreement with Parlovecchio Building Company, Inc.

Work Performed:

1. Obtain and review: (a) the Owner/Architect Agreement between the WCBA and AECOM Services of Michigan, Inc. for Program Management and Architectural Services for the Creation of a New Wayne County Justice Center; (b) the Agreement for sub consulting Services – Parlovecchio Building Company, Inc. (with AECOM); and, (c) the Owner's Representative Contract between the WCBA and Parlovecchio Building Company, Inc. to determine the process used to award them.
2. Review the WCBA's procurement policy which was adopted on February 9, 2012, and compare it to the Wayne County procurement ordinance for benchmarking purposes.

Results of Work Performed:

1. AECOM was awarded a \$25 million no-bid contract in August 1, 2010. According to communications with Special Counsel for the WCBA "a new contract was executed in 2011 and it was based on the original contract in 2006."⁵⁷

Parlovecchio Building Company, Inc. was awarded without bid an owner's representative contract for a forty month period in the amount of \$2 million on February 23, 2011. The contract was subsequently amended on May 1, 2011 for a 30 month period to include an IT specialist for \$420,000.

We also noted that Parlovecchio Building Company, Inc.'s CEO was a former employee of Wayne County and reported directly to the executive director of EDGE who was heavily involved in managing the Jail Construction Project.

2. We noted that the WCBA's procurement policy requires all procurements be competitively bid.

⁵⁷ Per email from Special Counsel for WCBA

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3. A review of the Walbridge-dck contract awarded in February 2012 by the Wayne County Commission for \$219.5 million does contain various audit clauses that are non specific to who can perform the audit.

-Observations-

We find it suspect and questionable that the CEO of Parlovecchio Building Company, Inc. was a former employee of Wayne County – EDGE who was being compensated at an annual salary of \$105,000 and he terminated his employment with Wayne County on February 18, 2011, and was awarded a contract five days later for a period of 40 months at a rate of \$50,063 per month, on February 23, 2011.

If Mr. Parlovecchio possessed the necessary skill sets to serve in the capacity as an owner's rep then why not reassign him to the Jail Project to serve in that position at the same annual rate of pay, \$105,000?

Based upon our review of the agreement between the WCBA and AECOM, and the WCBA's Procurement Policy, we noted areas that could be strengthened within the procurement process.

Condition

All three of the agreements/contracts were approved by the Wayne County Building Authority (WCBA) without obtaining competitive bids. However, the Owner's Representative Contract between the Wayne County Building Authority and Parlovecchio Building Company, Inc. was cancelled by the WCBA, at the request of the Office of the County Executive, in December 2011. Corporation Counsel (Special Counsel) stated that the contract was cancelled because it had been awarded without being competitively bid.

AECOM was awarded a no bid contract by the WCBA in the amount of \$25 million in August 2010 to provide architectural, design and program management services for the construction of the jail. According to Special Counsel the contract did not have to go out for bid due to the fact it was awarded under a previous contract. It was acknowledged by Special Counsel that the AECOM contract was for a change in scope of services and resulted in a new contract which was let in August 2010.

Further, as previously noted, the AECOM contract for \$25 million also included a sub-consulting service contract with Parlovecchio Building Company, Inc. as the owner's representative for \$2.2 million, which included \$420 thousand for Strategic Business Partners to serve as an information technology consultant.

At the February 22, 2011, Wayne County Building Authority Board meeting, the Special Counsel to the WCBA explained the reasons for seeking approval of a no-bid contract for AECOM.

- In 2006 the county hired a firm named DMJM (a subsidiary entity of AECOM) to do studies regarding a regional justice center.

Final Draft
For Review and Discussion Purposes Only

- The county at that time did not pursue building a new regional justice center.
- In 2010 the county decided to build a consolidated jail facility "...and one of the things we had to consider was should this type of contract for a program manager go out to bid and we could not make...that recommendation. It became apparent to us if we decided to bid a contract, we would be doing a redundancy of services, services that we've already bought through AECOM and that the cost would be another two to three million dollars to go forward with the second company.

"So we began negotiations directly with AECOM not only to do the program management of the new facility, but to take you all the way through complete design and we were able to look at what the industry standard were for complete design and how much they would charge per the construction and we were able to effectively negotiate with AECOM and Ghafari to bring those down. ***"It is our position that taking the direct contract with AECOM will save the Authority and the county six to seven million dollars versus going out to bid. So that is why we come today to you with the recommendation to go directly with AECOM and go forward."*** (Emphasis added.)

At the same WCBA Board meeting the Special Counsel stated: "The second thing was as the county looked at the structure of what was occurring, it is very typical that you would hire an owner's rep and an owner's rep would be the one entity corporation who would then be the county's face for AECOM and a general contractor.

"...it came to our attention that Mr. Parlovecchio had worked with the county for several years. He also indicated to us several weeks ago that it was his decision to terminate his employment with Wayne County....At the same time, we had a lot of confidence and so did the team of AECOM and Ghafari in utilizing him as an owner's rep on the Project. So AECOM and Ghafari through negotiations...has agreed to hire Parlovecchio Building as an owner's rep on behalf of the Authority....

"We think it's important to disclose that for you because Mr. Parlovecchio was an employee of the county...so we want everything aboveboard. We want to make sure the record reflects that he's being hired by AECOM, that AECOM is going forward with the Authority and that there's been complete disclosure on everything that is going on...."

On May 5, 2011, the Special Counsel to the WCBA requested that "...the Building Authority contract directly with Parlovecchio Building..." to become the owner's representative.

The following questions were posed to the Special Counsel to the WCBA. His answers are also included.

1. Both AECOM and Parlovecchio Building Company, Inc. were awarded no-bid contracts in early 2011.

Answer: *AECOM was bid in 2006 with an expiration of 2011. A new contract based on change of scope was executed in 2011. It was based on the original bid. When the*

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For Review and Discussion Purposes Only

Administration approached the Commission in 2010, it was based on the contract it had with AECOM. AECOM provided the presentation answers and was certified as the architect for the IRS in the Bond issuance.

2. In December 2011 the Administration requested the WCBA Board terminate the contract with Parlovecchio Building Company, Inc. because it had been awarded without a competitive bid.

Answer: Correct. The administration reviewed the decisions that had been made by previous administrators and determined that they did not want to award an Owner's Rep contract based on a comparative source. They wanted a competitive bid.

3. AECOM's contract was also not competitively bid, but was not revisited by the Administration. Why the inconsistency in the treatment of these two contracts?

Answer: AECOM was competitively bid. It was bid in 2006. It took three months of bidding, four days of interviews and an additional 2 months of negotiation. It was a long process.

The OAG was informed by Special Counsel that there was a termination clause in the contract with Parlovecchio Building Company, Inc. The WCBA was sued by Parlovecchio Building Company, Inc. for breach of contract. Special Counsel informed us that the WCBA won the lawsuit but it is currently in the court of appeals.

Criteria

A procurement policy should be in place to ensure contracts are awarded in a fair and competitive manner similar to the Wayne County procurement ordinance which requires contracts in excess of \$50 thousand to be competitively bid. In the absence of the adoption of a procurement policy we believe the WCBA was required to exercise prudent judgment in approving contracts over certain dollar amounts.

Cause

The Wayne County Building Authority did not adopt a procurement policy until February 2012, and these contracts were awarded in 2011. Prior to the adoption of the procurement policy, the WCBA relied upon direction and guidance from the Wayne County Administration.

Consequence

Contracts were awarded without requesting competitive bids. Thus, the WCBA may not have received the best possible price/terms for each contract and may be subject to criticism for not engaging in open and fair procurement practices for a public project of this magnitude.

Recommendation – 2013 -14 – Significant Deficiency

The WCBA should amend the procurement policy to establish a clear threshold as to the dollar amount when contracts are required to be competitively bid.

-Views from Responsible Officials-

Responsible officials have concluded not to prepare a response.

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-CONTRACT ELEMENTS-

Contracts should contain clearly defined scope of services, terms and conditions, and be properly executed as to date and signed by all parties.

Work Performed:

1. Review contracts, and contract amendments, executed between the Wayne County Building Authority and various contractors to assess for clearly defined scope of services, terms and conditions, and proper execution as to date and signed by all parties.

Results of Work Performed:

1. We obtained contracts for various services to be provided and reviewed each of them for clarity of scope of services, terms and conditions and properly executed date and signed by all parties.

We found instances in which the contracting process for the WCBA was lacking and could be strengthened.

-Observations-

Based on work performed, it is our opinion that there are significant deficiencies that should be addressed by the WCBA and county administration, as noted in our finding below and suggested improvement.

Condition

Based on our review we noted the following:

- Missing dates:
 - The **Addendum to Pre-Construction Services Agreement – Walbridge-dck Joint Venture Construction Manager at Risk** did not contain the date the addendum was signed nor was the date spelled out in the addendum.
 - The **Pre-Construction Services Agreement with Walbridge-dck Joint Venture Construction Manager at Risk** did not contain the date the agreement was signed and was vague as to the date of the agreement; (“...entered into as of the ___ day of August, 2011...”)
 - The **Construction Manager at Risk (CMAR) contract with Walbridge-dck** contained an execution date of September 1, 2011 per Wayne County Commission Resolution No. 2011-400. However, the agreement itself was vague as to the date of the agreement; (“...entered into as of the ___ day of August, 2011...”)

The following legal contracts contained generic Scope of Services:

Final Draft
For Review and Discussion Purposes Only

Dawda, Mann, Mulcahy & Sadler, PLC (Specialty in Real Estate matters)

Scope of Services

Included in the Services are any meetings with the Building Authority staff required to accomplish the purpose of this agreement as well as attendance at any Building Authority's Commission meeting related to the purpose of this Agreement. The Firm shall not make an initial contact with any Building Authority staff or any elected official or Building Authority personnel until the attorney designated by the Corporation Counsel has advised the Firm it is cleared to make the contact with the client. This will avoid confusion of the clients.

The Firm must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal Building Authority preparatory meetings for the proceeding, in order to assist the Building Authority in any matter for the Jail Project.

This firm helped with the RFP and writing the Construction Management Contract.

Kotz, Sangster, Wysocki and Berg, P.C.

William M. Wolfson, PLLC

Scope of Services

Included in the Services are any meetings with the Building Authority staff required to accomplish the purpose of this agreement as well as attendance at any Building Authority's Commission meeting related to the purpose of this Agreement. The Firm shall not make an initial contact with any Building Authority staff or any elected official or Building Authority personnel until the attorney designated by the Corporation Counsel has advised the Firm it is cleared to make the contact with the client. This will avoid confusion of the clients.

The Firm must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal Building Authority preparatory meetings for the proceeding, in order to assist the Building Authority in any matter relating to the purpose or outcome of this agreement.

Contract for both firms contained the identical scope of services.

- Kotz, Sangster, Wysocki and Berg, P.C. handled all the construction contracts.
- William M. Wolfson, PLLC handled negotiations with the City of Detroit regarding their participation in the Jail Construction Project

Criteria

A written legal contract is an agreement between two or more individuals. In order for a contract to be considered lawfully binding, it should be signed by each person to whom the contract applies. Usually the signatures are located at the very end of the document, along with the date it was executed. Anything omitted could be left open to interpretation for a judge to decide later.

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For Review and Discussion Purposes Only

In addition, the scope of services is the most important part of the contract. It clearly states the work to be performed. The absence of a clear and comprehensive scope of services could lead to disputes, claims and counter-claims between the contractual parties.

Cause

The contracts/amendments were not adequately reviewed to ensure all pertinent elements were present.

Consequence

A lack of any of the required elements of a contract could lead to disputes, claims, and counter-claims between the contractual parties. Also, contractual performance may vary from what was intended.

Recommendation – 2013-15 – Significant Deficiency

The WCBA, as well as the Wayne County Commission, should ensure that all required elements of a contract are present before approval is granted to execute the contract. In addition, a well defined scope of services is a critical element of a contract.

In addition, we strongly recommend that all contracts executed on behalf of WCBA be reviewed by Wayne County Corporation Counsel to provide assurance that all the elements of a contractual obligation exist that is necessary to legally bind each party.

-Views from Responsible Officials-

Responsible officials have concluded not to prepare a response.

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-CONTRACT ANALYSIS-

The WCBA has exceeded various contracts for the construction of the jail. We reviewed each of the major contracts to obtain an understanding of the terms and conditions of each.

Work Performed:

Review the two major contracts with AECOM and Walbridge-dck to gain an understanding and clarity as to the scope of services and terms and conditions in order to assess any perceived risk to the WCBA and county stakeholders.

Results of Work Performed:

We obtained the AECOM contract, noting the following:

AECOM Contract (Program Management and Architectural Services)

Contract executed August 1, 2010

Basic Services will be accomplished in five phases:

1. Programming and schematic design phase
2. Design development phase
3. Construction documents phase
4. Bidding or negotiation phase
5. Administration of the construction contract phase

Owner's Responsibilities

- ✓ Owner's responsibilities will be completed by the Owner's Representative.
- ✓ Owner shall establish and may periodically update an overall budget for the Project.
- ✓ Owner will render decisions in a timely manner pertaining to documents submitted by AECOM to avoid unreasonable delays.

Basis of Compensation

• Not to Exceed price	\$13,463,555
• Program Management Services	\$ 8,906,625
• Consultant Allowances	<u>\$ 2,587,500</u>
Total Compensation	<u>\$24,957,680</u>

Right to Audit

- The contract contains a specific right to audit clause.

We obtained an understanding as to the general scope of services, terms and conditions of the AECOM contract as well as any perceived risk to WCBA. This contract is to provide architectural design, engineering and program management, among other things, for a fee of approximately \$25 million.

Final Draft
For Review and Discussion Purposes Only

Based on our review and synopsis of this contract we did not note any unusual risk to WCBA operations.

Guaranteed Maximum Price Construction Management Agreement Walbridge-dck-Joint Venture (For Caissons)

- Contract executed January 5, 2012, (Concrete material and labor)
- Construction Team
 - ✓ CMAR
 - ✓ Owner, through Owner's Representative
 - ✓ Architect/Program Manager
- CMAR's Responsibilities
 - ✓ Scheduling and Contract Time
 - Substantial completion – no later than April 23, 2012
 - Final completion – no later than May 23, 2012
 - ✓ Progress Reports
 - Progress reports shall be prepared and submitted monthly to the A/E and Owner's Representative
 - ✓ Daily Reports
 - Shall be provided by each subcontractor to the CMAR and by the CMAR for self performed work
 - ✓ Summary Status Reports
 - CMAR prepares monthly for submittal to A/E and Owner's Representative
 - ✓ Ensure compliance with Davis-Bacon Act
 - ✓ Change Orders
 - Develop and implement a system for the preparation, review, and processing of Change Orders
 - ✓ Compliance with Laws
 - Buy American
 - Davis-Bacon Act
- Owner's Responsibilities
 - ✓ Only Owner can increase GMP or extend date of substantial completion.
 - ✓ Owner's rep has authority to execute Change Orders that do not extend date of substantial completion or increase GMP.
- Guaranteed Maximum Price (GMP)
 - ✓ GMP is \$5,569,469.
 - ✓ If CMAR is awarded contract to serve as CMAR, cost paid under this contract (including CMAR's fee) will be deducted from Project's GMP.
- CMAR's Fee
 - ✓ Fee is 3.2% of GMP, which is \$156,997.
- Right to Audit Clause
 - ✓ *According to a communication received from the Special Counsel to the Authority the*

Final Draft
For Review and Discussion Purposes Only

contract contains the following provisions "...these costs shall be subject to audit..." it is vague as to who has the right to audit these costs.

Guaranteed Maximum Price Construction Management Agreement
Walbridge-dck Joint Venture

- Contract executed February 9, 2012 – As Construction Manager at Risk (CMAR)
- CMAR's Responsibilities
 - ✓ Scheduling and Contract Time
 - Substantial completion – no later than June 30, 2014
 - Final completion – no later than August 31, 2014
 - ✓ Progress Reports
 - Progress reports shall be prepared and submitted monthly to the A/E and Owner's Representative
 - ✓ Daily Reports
 - Shall be provided by each subcontractor to the CMAR and by the CMAR for self performed work
 - ✓ Summary Status Reports
 - CMAR prepares monthly for submittal to A/E and Owner's Representative
 - ✓ Ensure compliance with Davis-Bacon Act
 - ✓ Change Orders
 - Develop and implement a system for the preparation, review, and processing of Change Orders
- Owner's Responsibilities
 - ✓ Only Owner can increase GMP or extend date of substantial completion.
 - ✓ Owner's rep has authority to execute change orders that do not **extend** date of substantial completion or increase GMP.
- Guaranteed Maximum Price (GMP)
 - ✓ GMP is \$219,536,154
 - ✓ GMP includes \$220,000 paid to CMAR for Pre-construction services.
 - ✓ CMAR will provide a Final GMP once 90% of subcontracts have been issued (subcontractor buyout).
 - ✓ GMP will not exceed Initial GMP except to the extent of any scope changes requested in writing by Owner.
 - ✓ Once final GMP is set, CMAR may not seek reimbursement for any amount in excess of final GMP, unless otherwise specifically provided under the contract documents.
- Value Engineering and Shared Savings
 - ✓ 14% to CMAR for first \$12,000,000 in savings
 - ✓ 24.5% for next \$8,000,000 in savings
 - ✓ 35% for any additional savings under \$200,000,000.
- If Substantial Completion Date is not achieved as originally scheduled (only if extended by actions or omission of Owner, Owner's Representative or A/E), shared

Final Draft
For Review and Discussion Purposes Only

savings are as follow:

- ✓ 7% to CMAR for first \$12,000,000 in savings
 - ✓ 12.5% for next \$8,000,000 in savings
 - ✓ 17.5% for any additional savings under \$200,000,000.
- If Substantial Completion is not achieved within 90 calendar days of the originally scheduled Substantial Completion Date (only if extended by actions or omission of Owner, Owner's Representative or A/E), Gross Savings payable to CMAR will be eliminated and 100% shall be retained by Owner.
- Right to Audit Clause
- ✓ *Although the contract contains provisions such as "...these costs shall be subject to audit..." it is vague as to who has the right to audit these costs.*

Observation

Based on work performed, it is our opinion that there is a material weakness that should be addressed by the WCBA and county administration as noted in our finding below and suggested improvement.

Condition

We determined there are two contracts with Walbridge-dck – one for the caisson in the amount of \$5,569,479 and the other for construction management at risk in the amount of \$219,536,154. However, we were not able to identify a specific "right to audit clause" for the owner/designee in either contract.

Criteria

Since compensation for this contract is based on a certain percentage over cost it is critical that a right to audit clause be written into the contract.

Cause

According to Special Counsel to the WCBA both contracts contain various [generic] rights to audit clauses.

Consequences

Without identifying who has the right to audit could be left to interpretation.

Recommendation – 2013 – 16 – Material Weakness

We recommend the Wayne County Building Authority amend the Walbridge-dck contract, as well as all other contracts associated with the Consolidated Jail Project, to specifically include a clause granting the owner or their representative the right to audit.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

Final Draft
For Review and Discussion Purposes Only

-SHERIFF TRANSITION TEAM-

The National Institute of Correction (NIC), an agency within the U.S. Department of Justice, Federal Bureau of Prisons, recommends the use of a transition team when constructing a new jail; in addition, there is a wealth of other information available to local correctional agencies. The WCSO utilized this agency to assist them in preparing for their transition to the new jail.

Work Performed:

1. Inquire of Sheriff Officials the purpose for the transition team.
2. Obtain and review relevant information related to the transition team for transitioning into the jail including job descriptions and duties and monthly status reports.
3. Review the information provided on the National Institute of Corrections (NIC) website related to opening new jails along with the information provided by NIC to Sheriff Officials.

Results of Work Performed:

1. According to Sheriff Officials best business practices suggest that “experts” be used to facilitate a large scale transition to a new jail. The Sheriff’s Office contacted the National Institute of Corrections in early 2011 requesting technical assistance to provide on-site instruction in both the design and construction of a new jail along with transitioning to a new jail.
2. We confirmed that the NIC provided the technical assistance at no cost to the Project as it was funded by the Jails Division of the NIC. The NIC provided a two day session in June 2011, Managing Jail Design and Construction, a four day training in August 2012, and a training session for Direct Supervision of the Jail which four members of the Sheriff’s Office attended. All training provided by NIC was at no cost to the Sheriff’s Office.

A seven member transition team was selected with the Chief of Jails overseeing the team. Three members were contracted by the Building Authority and four members were Sheriff employees assigned to the transition team. Below is a breakdown of each of the members with their job title and allocation of time:

Final Draft
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Sheriff's Transition Team

Job Title	Brief Job Responsibilities	Allocation of Time	Employee or Contractor
Transition Coordinator	Organizes the transition team. Develops timelines, supervises overall progress of tasks.	100%	Contractor
Staffing & Work Flow Coordinator	Developing and updating staff analysis for the new facility.	100%	Contractor
Jail Information System Specialist	Technology implementation. Will coordinate the implementation of Jail Management System and integration with existing security systems.	100%	Contractor
Furniture, Fixtures & Equipment Coordinator	Define items needed, budget from which they will be purchased. Evaluate and test and make recommendation for selection.	50%	Sheriff Employee
Training Coordinator	Involved in the coordination of all training activity.	100%	Sheriff Employee
Policy & Certification Coordinator	Gather relative MDOC compliance standards and ACA accreditation and/or Certification requirements. Review all RFP's and gathers information relative to policies and procedures.	60%	Sheriff Employee
Administrative Assistant	Manage meeting schedules, coordinate, organize and file transition materials, prepare documents.	50%	Sheriff Employee

According to WCSO Officials, the employees were selected based on job postings and an interview process of which the Jail Oversight Committee participated in. According to the officials, the employees chosen for these positions possessed a high level of skill, knowledge, and experience in the respective areas. The cost of WCSO employees working on the transition team costs are captured as part of the WCSO payroll process and allocations are made to the Jail Project based on allocations of services performed were subsequently approved by the Deputy Chief of Jails. The three contract employees' invoices are approved by the Chief Administrative Officer.

In August 2012 NIC provided training on "How to Open a New Institution." Some of the recommendations from the training for the transition team included:

- Development of Master Plan for Transition Process which includes complete listing of all scenarios and policies and procedures that needs to be written;
- Appointment of Transition Coordinator;
- Verification of All Posts to Be Needed;
- Retraining Groups of Officers in Direct Supervision Trainings;
- Establish Task Forces for Various Areas including Medical, Food Services, and Program Staff;
- Representative From Transition Team Included in the Construction Meetings with the Architect and Contractor; and,

Final Draft
For Review and Discussion Purposes Only

- Develop a Comprehensive Training Plan for the Move into the New Jail.

The final GMP overall Project budget dated June 6, 2013 provided by AECOM included \$1.8 million for Sheriff Transitional Team Costs of which \$450,000 was spent through June 30, 2013. In addition, \$7.5 million was budgeted for transition including FF&E and technology costs of which the Sheriff indicated they had no involvement. According to Sheriff Officials “the \$7.5 million was underestimated and the true cost was about \$25-\$30 million.” According to AECOM officials, the original FF&E and IT budget anticipated the reuse of various existing furniture and IT equipment not the purchase of all new.

3. The Sheriff’s Office used best practices by contacting the NIC for technical assistance with the transition. The assistance provided by NIC appeared to be very valuable for the Sheriff’s Office. However as discussed in another section of the report, it does not appear that those responsible for the design and construction attended the training offered to the Sheriff’s office by NIC related to the managing design and construction of a jail.

Based on our discussion, it appears that Sheriff Officials had several concerns regarding the jail construction which were voiced to the leadership team in the beginning, to the Oversight Committee, and has continued to do so in ongoing communication.

We requested, but were not able to obtain, the spreadsheet which identifies the \$25-30 million in costs the Sheriff officials believed they needed to complete the transition.

We have concluded based on our research that use of a transition team is best practice and is required in order to develop a smooth transition to a state of the art facility since they will be the primary users of the new jail.

However, as of June 2013, we have been informed that the Sheriff’s transition team has been disbanded during the construction suspension period, which is understandable; but the Sheriff Officials we spoke with stated they were not aware as to when or if they will be re-activated at a later date.

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III - RECONCILE CONSTRUCTION COST AND CASH BALANCES
RECORDED IN THE GENERAL LEDGER

There are two sets of accounting records maintained by the administration for the recording of transactions related to the construction of the Jail Project. One set is being maintained on JD Edward by WCBA personnel and the other is maintained on Quick Books by the accounting/consulting firm of Pierce, Monroe and Associates.

Our MOU with WCBA requires us to verify that the two general ledger balances are the same as of a certain point in time. In addition, we were required to confirm the bond proceed balance as of a certain point in time with the WCTO, the custodian of all bonds proceeds.

Work Performed:

1. Select test months of May 2012, December 2012, June 30, 2013, and August 16, 2013 to determine if the control ledger balances for bond proceeds agreed to the ledger balances reflected by WCTO, WCBA and Quick Books maintained by PM&A.
2. Reconcile total expenditures paid from bond proceeds from inception to the county's general ledger balances.

Results of Work Performed:

1. We traced the cash balance recorded by the accounting firm in QuickBooks to the WCBA's general ledger (maintained by the county). For the months of May 2012, December 2012, and August 16, 2013 balances for bond proceeds agreed to the ledger balances reflected by the WCTO, WCBA, and Quick Books maintained by PM&A. As of June 30, 2013, the WCBA's general ledger had a cash balance of \$79,019,222 compared to the QuickBooks cash balance of \$78,891,336, a difference of \$127,886.

The difference between the WCBA's general ledger and the QuickBooks cash balance of \$127,886 was related to an outstanding fund transfer for Sheriff Employees' charges that had been recorded in QuickBooks, but had not been recorded on the WCBA's general ledger as of June 30, 2013. This reconciling item is classified as an outstanding transaction as of June 30, 2013. Therefore, the correct balance of bond proceeds as of June 30, 2013 is \$78,891,336.

We were able to confirm with M&B personnel that the outstanding transfer of \$127,886 was recorded in the WCBA's general ledger on July 23, 2013.

We received from the WCTO their bond proceeds control ledger information for the month of June 2013 and traced the cash balance to QuickBooks and the WCBA's general ledger.

After taking into consideration the outstanding transfer in the amount of \$127,886, we were able to satisfactorily determine the two bond proceed control ledger balances, as well as the

Final Draft
For Review and Discussion Purposes Only

WCTO cash balance, were all in agreement as of June 30, 2013, and the correct balance was \$78,891,336.

We traced interest income of \$3,133,415 for the period October 1, 2010 to June 30, 2013 from the WCBA's general ledger to QuickBooks without exception.

2. We traced total Project costs recorded by the accounting firm in QuickBooks in the amount of \$129,287,407 to the WCBA's general ledger for the period October 1, 2010 to August 16, 2013. We found a difference of \$46,214 related to fiscal year 2012 due to an entry for the Sheriff Transition Team expenses that had been recorded twice in the WCBA's general ledger by WCBA personnel.

We subsequently determined an adjusting journal entry of \$46,214 was recorded in the WCBA's general ledger on July 23, 2013. Including the \$46,214 adjustment, total jail bond expenditures as of August 16, 2013 are \$129,287,407.

Based on discussion with the Deputy Treasurer of Financial Services, a monthly reconciliation between general ledger (JDE) and RESIQ is performed by M&B and the WCTO. The WCTO Cash Accounting Supervisor verifies the cash account balances agree between JDE and RESIQ.

-Observations-

We confirmed with the WCTO and the administration that the bond proceeds cash balance was \$73,921,704 as of August 16, 2013.

Based on work performed, we generally concluded the recording of transactions and the maintaining of the QuickBooks general ledger to be reliable. However, there exists a need for someone to be delegated the responsibility of making sure at the end of each month that the balances in the QuickBooks general ledger agrees with the balances being maintained by the WCBA and the WCTO.

Therefore we noted instances in which we believe the reconciling controls over the bond proceeds ledger balance and the general ledger can be strengthened.

Conditions

The WCBA hired the consulting firm of Pierce, Monroe & Associates, LLC in September 2011 to maintain books and records pertaining to construction costs for the Jail Project and assist with the processing of payments to contractors from bond proceeds, among other things. As of August 16, 2013, total Project cost expended to date totaled \$129.3 million. The external consulting firm utilizes QuickBooks accounting software to record construction cost transactions and prepare financial reports.

Final Draft
For Review and Discussion Purposes Only

We determined PM&A does not request from the WCTO a cash balance confirmation on a monthly basis that reconciles back to the cash balance maintained in the QuickBooks general ledger.

Since the WCBA maintains a separate set of accounting records, we found instances in which the QuickBooks general ledger did not agree with the WCBA's general ledger balances as of June 30, 2013.

Criteria

Good bookkeeping and accounting practices require bond proceeds ledger balances to be reconciled on a monthly basis with a third party if they are the custodian of those funds.

Bank Reconciliations & General Ledger Balances

The WCTO maintains through an electronic system, RESIQ2, the financial activities of all investment accounts, including the Building Portfolio, which includes the jail bond proceeds. This system records cash and interest for the new Jail Project in the RESIQ2 system. The bond interest is recorded on a monthly basis by the WCTO.

The WCBA maintains a separate set of books; therefore, good bookkeeping requires the two general ledgers balances to be reconciled to each other on a monthly basis. .

Cause

PM&A relies on the WCBA's general ledger system to agree the jail bond proceeds cash balance for the month and does not agree their bond proceeds control ledger balance to the WCTO ledger balance at the end of each month.

Also, there is no documented procedure requiring the three ledger balances between QuickBooks, the WCBA, and WCTO reconcile to each other at the end of each month.

Consequences

As a result of the WCBA not agreeing the control ledger balances between the two sets of books, the \$46,000 adjusting journal entry went undetected for fiscal year 2012, until July 19, 2013.

In addition, QuickBooks and the WCBA's general ledger were reflecting a difference in total bond proceeds in the amount of \$127, 886 as of June 30, 2013.

Recommendation 2013-17 – Control Deficiency

We recommend that PM&A and the WCBA's accounting personnel independently verify their respective bond proceeds control ledger balances with the WCTO cash sub-ledger report on a monthly basis and maintain a copy of that information in their files as part of their books and records. This will validate the bond proceeds control ledger balances are in agreement with the ledger balances being carried by the Treasurer.

Final Draft
For Review and Discussion Purposes Only

In addition, the QuickBooks general ledger should be reconciled to the WCBA's general ledger on a monthly basis and any adjustments be identified and corrected each month on a timely basis.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-PAYMENT – DRAWDOWN SCHEDULE-

The payments to contractors are based on a projection of the cost incurred to date as compared to the total Project budget. This is simple and it provides a rough idea as to how much work has been completed and the percentage left based on the total Project budget.

Best practice advocates the use of “Earned Value Management (EVM)” to determine the percentage of Project completion which includes a combination of scope, scheduling and costs.

“Earned value is defined as the physical work accomplished plus the authorized budget for this work. The sum of the approved cost estimates (which included overhead) for tasks completed during a given period.”⁵⁸

Work Performed:

1. Inquire of the county Project Manager how the percentage of completion billings received from AECOM are validated and approved.
2. Calculate the percentage of draw downs by the CMAR as of June 30, 2013.

Results of Work Performed:

1. Based on communication received from the county’s Project Manager, the AECOM - Program Manager provided a schedule of cash flow that lists forecasted cash draw downs over the life of the construction Project. The schedule lists completion percentages by tasks performed along with allocated amounts for each task. These amounts are billed to the county.

According to AECOM prior to Amendment #1 to the contract, effective August 8, 2011, they utilized an actual hourly rate times a multiplier for Home Office and On-site workers and consultants. After the amendment, the draw-down schedule was reviewed by the county owner’s representative and has been utilized for the monthly pay applications.

In a separate communication AECOM stated the overall Project is 35% complete as of June 6, 2013.

Based on work performed, it appears the risk associated with validating the percentage of completion billings by AECOM can be verified with the draw-down schedule by the county’s Project Manager and the WCBA accounting firm for accuracy and reliability.

2. We determined the amount of draw-down received by the CMAR by reviewing the Quick Books general ledger payments to the CMAR up to August 16, 2013 (\$56 million), and

⁵⁸ “Using Earned Value Management for Improving Processes” by Cynthia K. West

**Final Draft
For Review and Discussion Purposes Only**

divided that number by the amount of the contract amount awarded that amount calculated to be 25% in draw-down through August 16, 2013.⁵⁹

However, because it was beyond the scope of our engagement we did not use the earned value management (EVM) technique objective to arrive at % completed to- date as advocated by best practice.

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⁵⁹ QuickBooks cost to date as of August 16, 2013.

Final Draft
For Review and Discussion Purposes Only

IV - SUBSTANTIVE TESTING TO VERIFY CONSTRUCTION COST
INCURRED THROUGH AUGUST 16, 2013

We assessed the payment validation process by Pierce, Monroe and Associates (PM&A) and the Wayne County Building Authority (WCBA) for the new Jail Project.

Our objective was to validate and substantiate invoices submitted for payment for the new jail construction. The payment transactions tested were processed via checks and Automated Clearing House (ACH). Other payments were made via interfund transfers to other Wayne County departments.

Based on discussions with PM&A, the OAG determined invoices related to the new jail construction fall into nine cost categories: The most significant ones are Construction Manager at Risk (CMAR), AECOM, Sheriff Transition Team, Attorney Invoices, etc.

While the OAG performed a combination of statistical and judgmental sample testing of invoices, we also relied upon AECOM and CMAR to ensure invoices for jail construction, which included payments to sub-contractors, had been validated and properly approved prior to being submitted to PM&A for their own independent assessment and review of those invoices.

We also relied upon PM&A's independent review and assessment. The OAG noted that PM&A's review is performed prior to submitting the new Jail Project invoices for payment approval by the WCBA's Chief Administrative Officer.

Work Performed:

1. Obtain payment voucher packages from PM&A and select a test sample of invoices submitted for payment from October 2010 through June 30, 2013.
2. Using attribute statistical sampling select samples that were deemed to be representative of the total population using a 95% confidence level with an error rate of 5%. Also use judgmental sampling to capture any invoices that were not represented in the statistical sample selected in order to place reliance on the payment approval process from inception through June 30, 2013.
3. Review and assess the payment approval process by PM&A to validate the contractors' payments submitted for work performed on the Project.
4. Assess the process used by PM&A to ensure compliance with the Davis Bacon Act and ARRA, including determining whether the WCBA has a timekeeping policy requiring compliance with the Davis Bacon Act, and ARRA.
5. Determine if there was formal adoption of the Wayne County Payroll policy and procedures by the WCBA.
6. Trace contractor payments to QuickBooks and the WCBA's general ledger (JD Edward System), noting any exceptions.

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For Review and Discussion Purposes Only

Results of Work Performed:

1. We determined our total population consisted of 432 voucher packages or payment transactions for the nine categories of payments.
2. Using both statistical and judgmental sampling, a sample of 39 voucher packages, or 9% of total population of 432, was selected for testing.
 - Using statistical attribute sampling, a sample size of 32 payments was selected. Judgmentally we selected another seven (7) voucher packages that were not represented in the statistical sample in order to test each category of invoices submitted for payment.
3. We assessed the 39 voucher packages to validate that supporting documentation for payment was provided as well authorized approvals and signatures were evident from the respective construction Project officials that were submitting the invoices for payment.
4. We reviewed checklists prepared and utilized by PM&A to test for compliance with American Recovery and Reinvestment Act (ARRA) bond requirements and the Davis – Bacon Act.
5. According to M&B the WCBA does not have a timekeeping policy. However, we were informed that they follow the payroll policies and procedures of Wayne County. However, we were not able to confirm in writing that WCBA had formally adopted Wayne County’s payroll policies and procedures.
6. We reviewed the accounting process for transferring transactions from the QuickBooks system maintained by PM&A to the WCBA’s general ledger. The inter-fund transfer of funds are primarily performed by the preparation of a monthly journal entry by M&B personnel and submitted to PM&A for input into their general ledger.

Based on approval of expenditures by both the county’s Project Manager and the CAO, PM&A submits the vouchers to the WCTO for payment processing. We determined based on our review of the approval flow chart that payments are sent from the WCTO to the various vendors.

We traced all sample payments to the accounting firm’s QuickBooks general ledger as well as the WCBA’s general ledgers for accuracy and completeness without exception.

Based on our review of the process and work performed, we believe the recording of transactions in the two general ledgers can be relied upon and are in agreement, with the exceptions of certain reconciling differences identified under section III of our report.

-Observation-

According to M&B the WCBA does not have a timekeeping policy. However, we were informed that they follow the payroll policies and procedures of Wayne County. We were not able to confirm in writing that WCBA had formally adopted Wayne County’s payroll policies and

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procedures. We believe the adoption of Wayne County's payroll policies and procedures should be similar to action taken at the February 9, 2012 board meeting when the WCBA adopted Wayne County's Ethic Ordinance.

Pierce, Monroe and Associates (PM&A) was hired by the WCBA to provide accounting and compliance services for the administration of the WCBA's Consolidated Jail Project. A portion of their scope of service includes reviewing contracts and invoices for compliance with The American Recovery and Reinvestment Act (ARRA) and The Davis – Bacon Act, invoice validation for allowable cost, and validating documentation of the payment process.

In addition, PM&A has prepared an Invoice Approval Routing and Payment flow chart delineating the responsibilities of Project officials in the processing and approval of the various types of requests for payment of invoices.

Best practices would indicate a need to monitor all requests for payments or invoices presented which require signature approval from specific officials.

Based on work performed, we found some areas that could be strengthened within the approval of construction cost invoices and time reporting by persons working on the Project.

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-NO AUTHORIZED SIGNATURES-

-Observation-

Based on statistical sampling we found two separate instances in which invoices lacked authorized signatures.

Condition

During the course of our review, we noted two instances where invoices were not properly signed.

- One invoice paid to AECOM for design fees totaling \$65,236 was not signed by the WCBA's Chief Administrative Officer (CAO), and;
- One \$63,143 invoice for legal services was not signed by the WCBA's Special Counsel.

The grand total of these invoices were \$128,379.

Based on work performed, it appears these were valid expenditures and the lack of signing the invoices was due to an oversight by the CAO and the county's Project Manager.

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For Review and Discussion Purposes Only

-ALLOWABLE MARK-UP NOT FORMALIZED-

-Observation-

Based on statistical sampling we found instances in which an invoice was being marked up but was not in compliance with the amount stated in the contract.

Condition

During our sample testing, we found a subcontractor of the sub-consultant working for AECOM had marked up an invoice of \$1,700 by 5% for services performed; resulting in a payment of \$1,785.

Based on discussion with AECOM, we were informed their contract with the sub-consultant allows a mark-up of 10% for such services. As a result of subsequent discussions with legal counsel to the WCBA it was mutually agreed to reduce the 10% markup to 5%.

Criteria

In accordance with the First Amendment to the contract between AECOM and its sub-consultants, allowances are to be invoiced at actual cost plus 10% for management and administration of these services, and may vary within the total amount established in allowances.

Cause

Based on discussion with AECOM, they agreed the new mark-up allowance of 5% should be formalized in writing in the contractual agreement.

Consequence

By not formalizing the change to the mark-up percentage in the agreement, on a go-forward basis, invoices submitted with a 10% mark-up could be interpreted as being in accordance with the terms of the existing contractual agreement.

Recommendation 2013-18 – Operating Deficiency

We recommend the WCBA immediately execute an amendment to the agreement between the sub-consultant and AECOM to ensure all allowable mark-ups for sub-contractors are in accordance with the amended contract.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-INVOICES PROCESSED PRIOR TO PM&A-

-Observation-

We were informed by PM&A that they were hired in October 2011 and that they did not review invoices from December 2010 – September 2011. Due to perceived risk, the OAG used judgment sampling to test invoices approved and paid from bond proceeds during the period PM&A were not under contract with the WCBA.

Condition

We specifically indentified and reviewed invoices for the period prior to PM&A being contracted by the WCBA to assess the invoice approval process and review the propriety of the transactions, amongst other things.

From our statistical and judgmental samples, we reviewed expenditures for the period December 2010 through October 2011, the beginning of the PM&A contract.

Of five payments selected, we found one instance in which an invoice remitted by AECOM dated September 2, 2011, was signed by the Owner's Representative but not by the CAO. The payment totaled \$171,059.

In comparison to the existing invoice approval process documented by PM&A, the Owner's Representative/County's Project Manager and the CAO are required to sign-off on construction related costs.

Based on work performed, it appears these were valid expenditures and the lack of signing the invoice was due to an oversight by the CAO.

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For Review and Discussion Purposes Only

-REVIEW OF PAYROLL PROCESSING CONTROLS-

-Observation-

We found several instances where procedures and controls related to payroll processing for individuals working on the Project could be strengthened.

Conditions

- a. On separate occasions, a payroll authorization request was sent from Corporation Counsel for two law clerk interns working on the Jail Project. Their working hours on the Jail Project were itemized in an e-mail and sent to the WCBA. These two requests totaled \$1,035 and \$405, respectively, for a grand total of \$1,440.
- b. We found all four (4) Sheriff Transition Team members did not submit time reports to the WCBA in a timely manner. Journal entries recording hours worked on the Jail Project were recorded in QuickBooks for a six month period. Also, we noted one member's time reports, covering the periods of April 2012 through September 2012, were signed-off and approved on two separate days in November 2012.
- c. In addition, we noted a Sheriff official approving timesheets submitted by the Sheriff Transition Team members used a rubber signature stamp when approving the timesheets.

Cause

There appears to be a lack of a formalized time reporting policy and procedures over the payroll approval process that contributed to the conditions found. We were informed by accounting personnel they only perform a clerical accuracy check which includes reviewing overtime and leave time, on time reports and rely on respective county departments and/or independent contractors to validate the actual hours worked.

Consequences

By not having established formalized time reporting procedures and time reports, payments could be made that are not authorized, validated and substantiated. Further, by recording journal entries every six months for hours worked by the Sheriff Transition Team members, the General Fund expenditures are not being reduced in a timely manner.

Recommendation – 2013 –19- Significant Deficiency

We recommend that WCBA:

- A. Adopt Wayne County payroll policy and procedures to standardize time reporting by all independent contractors and employees working on the Jail Construction Project.
- B. Enhance procedures for the accounting firm when validating requests for payment and payroll expenditures so that additional reliability can be placed on Jail Construction Project costs recorded. We recommend the procedures include, but not be limited to:

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For Review and Discussion Purposes Only

- Ensure payroll expenditures are in accordance with allowable percentages of annual wages that can be charged against jail bond proceeds;
- Ensure a written signature be utilized by all supervisors approving time activity sheets, and that pay rates be reviewed before time activity reports are approved for payment; and,
- Establish a time reporting requirement for the submission of time reports from individuals and independent contractors working on the Jail Construction Project.

Views of Responsible Officials

Responsible officials have concluded not to provide a response.

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Final Draft
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-FACTORS CONTRIBUTING TO BUDGET OVERRUNS-

The Wayne County Commission approved funding of \$300 million for a new jail facility in December 2010. As of June 6, 2013, the estimated Project cost submitted by AECOM totaled \$391 million. As a result, county administration suspended the Jail Construction Project for 60-days to evaluate alternative options for the Project.

Enumerated below are various factors that we believe contributed to increasing the estimated cost to construct the jail:

Work Performed:

1. Assess Original Estimated Jail Facility Project cost (February 2012) to determine if the budget was realistic and supportable before it was approved by the Commission.
2. Discuss with the contractors the reason for cost overruns and why certain costs are not included in the adopted budget in February 2012 prior to the WCBA approving the Walbridge-dck contract.
3. Inquire of leadership what caused the delay in preparation of the GMP, and if it was a contributing factor in increasing the Project's cost.

Results of Work Performed:

1. We prepared a comparative analysis to identify variances from the original estimate presented to construct the new jail facility (See table below).
2. We also discussed with the contractors why certain cost was not included in the adopted budget in February 2012. The WCBA approved the Walbridge-dck contract in February 2012.

We understand that AECOM was the preparer of the budget and along the WCBA had the responsibility to prepare and adjust the budget as needed. Costs such as land acquisition, site remediation, legal and accounting fees, construction insurance cost, training, etc. were excluded from the budget. The following costs were not reflected in the initial budget used to obtain approval from the financial institutions and approving bodies for the issuance of the bonds.

AECOM stated the county represented to them that costs not included that costs not included in the budget were being paid from other funding sources. The OAG staff was not able to verify that the other funding sources actually materialized.

3. The CMAR contract required Walbridge-dck to “provide an initial guaranteed maximum price (initial GMP) based on design development documents (DDs).” It further stated the DD generally show the intent of the Project and detail in terms of architectural, electrical, mechanical, and the structural systems.

Walbridge-dck stated the DDs were supposed to be received by them on October 31, 2011, and Walbridge would have 30 days to submit its GMP. However, the DDs were actually

Final Draft
For Review and Discussion Purposes Only

posted by AECOM on November 16, 2011, and the GMP was delivered by Walbridge-dck on December 16, 2011. Consequently, it stated the GMP was delayed by AECOM's late issuance and revisions to the construction drawings.⁶⁰

We were not able to quantify the dollar amount of the impact on the late issuance of the DD and the subsequent revisions and it was concluded it was beyond the scope of our engagement to do so.

-The Initial Budget Challenges-

According to the narrative provided to us by AECOM, the initial budget in November 2010 prepared by them with the assistance of county personnel was for \$300 million for the purpose of issuing bonds. This budget was later refined several times and resulted in a line item budget as of April 2011 as reflected below.⁶¹

As of August 25, 2011, it is apparent that \$41 million in additional cost when certain cost such as land acquisition and site remediation of \$19 million, and sheriff transition team, legal and accounting, and other Project related costs of \$22 million were included.

⁶⁰ Walbridge-dck Communication to the OAG dated July 25, 2013

⁶¹ Narrative from AECOM dated September 12, 2012

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For Review and Discussion Purposes Only

Schedule of Total Project Cost
ESTIMATED COSTS AT CMAR AWARD
(February 2012)
(rounded to nearest thousand)

Major Budget Category	Projected Estimated Project Costs April 2011	Cost Increase / (Decrease) from April 2011	Estimated Project Cost @ August 25, 2011	Adjusted Estimated Project Cost @ CMAR Award Feb. 2012
CMAR Building Construction Costs	\$203,880,000	\$16,120,000	\$220,000,000	\$219,536,000
Demolition of Existing Facilities	6,620,000	(6,620,000)	0	0
Site Acquisition		14,500,000	14,500,000	14,500,000
Site Remediation		4,621,000	4,621,000	5,828,000
Geotech Survey & Testing (Misc. Consulting)	1,000,000	(591,000)	409,000	442,000
Owner's PM/Rep	1,000,000	1,522,000	2,522,000	2,420,000
PM/Design Fees	28,530,000	(4,555,000)	23,975,000	24,210,000
Insurance – (incl. CCIP)		6,130,000	6,130,000	2,474,000
Legal – Audit		2,500,000	2,500,000	2,500,000
FFE Basic	7,500,000	511,000	8,011,000	7,500,000
IT Basic				
Sheriff's Transition Team – Basic		1,800,000	1,800,000	1,800,000
Financing (incl. 2 nd Bond Cost)	33,000,000	6,000,000	39,000,000	39,000,000
Project Contingencies	17,520,000	(4,291,000)	13,229,000	19,835,000
Other Project Related Costs		5,050,000	5,050,000	2,153,000
Training				
Temporary Staff Relocation	1,750,000			
Total Estimated Project Costs	\$300,800,000	\$40,947,000	\$341,747,000	\$342,198,000

Source: AECOM

As of August 25, 2011, we believe responsible officials had a fiduciary responsibility to notify the approving body that the construction cost estimates for the Jail Project would exceed the budgeted amount by \$41 million.

We also found that the \$41 million gap was consistent with the AECOM projected cost estimate prepared on August 25, 2011, a week before the vote by the Wayne County Commission.

We conclude the approving body should have been presented with a total Project budget to construct the jail before being requested to approve the CMAR contract on September 1, 2011.

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For Review and Discussion Purposes Only

Below are explanations of cost that was not included in the construction budget at the time the CMAR contract was approved - February 2012:

Demolition of Existing Facilities

- According to documents reviewed, it was assumed that the new jail would be developed on the existing Sheriff Administration Building or a combination of this site along with Division I and other county properties. However, at the time, the county was in discussions with the owners of the present jail site
- Demolition of the existing facilities was removed from the budget with the understanding that this activity would be funded from a different source, a reduction of \$6.6 million.
- However, site remediation cost of \$6.0 million was offset by the demolition of existing building cost since there were not existing properties to tear down.

Site Acquisition

The Project was originally to be built on county owned land; therefore, because land acquisition cost was not budgeted – it increased the budget by \$14.5 million.

Site Remediation

This item was not included in the original budget because there were no plans to acquire properties. All costs associated with the remediation of the acquired land increased the current estimated budget by \$6.0 million.

Insurance – CCIP

Contractor Controlled Insurance Program (CCIP) was not determined in the original 2010 budget. The insurance costs would have been included in the estimated construction costs with each sub-contractor including their own insurance costs in their individual prices. However, the Program Manager estimated the cost of the CCIP Insurance Program at \$2.5 million.

Legal – Audit

Estimated costs for legal fees of \$1.1 million, accounting fees of \$1.1 million and \$375,000 for audit were not included in the adopted budget, resulting in an increase of \$2.5 million.

Sheriff's Transition Team – Basic

Estimated Project cost for the Sheriff's transition team was not in the original budget resulting in a \$1.8 million increase. Best Practice has shown training and policy establishment is required when a new correctional facility is constructed.

Other Project Related Costs

Other Project related costs in the amount of \$2.1 million that were originally not budgeted include \$1 million for the owners county staffing and \$1.1 million that included material testing, site security fencing, and caisson inspection.

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For Review and Discussion Purposes Only

-Observation-

The responsible officials failed to notify the commission and the WCBA that the Project was projected to exceed the original estimate of \$300 million by at least \$41 million, if not more.

Conditions

The Final GMP for the Jail Construction Project is \$91 million over the authorized funding amount of \$300 million.

Of the \$91 million increase in estimated Project costs for the jail facility, \$47 million is attributed to increased construction cost and \$44 million for other Project costs, such as land acquisition, site remediation, Sheriff Transition cost, and legal/accounting fees that were not included in the original estimate for building the new jail facility.

Criteria

Construction Managers Association of America state:

- A realistic budget should be determined before design to evaluate project feasibility, for securing financing, to evaluate risk, and for use as a tool to choose alternative designs and site locations.
- Design is important to the owner so that the desired facility functions as envisioned. The design team should be well qualified in the type of facility being designed, and
- The Owner's level of expertise and familiarity with the construction process and level of in-house management capability has a large influence over the amount of outside assistance required during the construction process.

Cause

Failure to obtain more reliable estimated project costs to design and build the jail should have been obtained during the planning and design phases of the Project.

More importantly, it appears neither the Commission nor the WCBA were made fully aware that the additional construction cost would bring the cost of the Project up to \$342 million at the time they voted to approve the contract.

Consequence

At the time of the approval of the capital improvement project, responsible officials knew the Project cost would exceed the \$300 million budget by 14%; but this fact was not disclosed and it lead the approving body to believe the Project could be built for \$300 million opposed to the projected cost of \$342 million. The failure to disclose this material fact may have resulted in delays and additional unplanned cost.

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Recommendation 2013-20 – Control Deficiency

The approving boards should refraining from approving major capital improvement contracts without requiring a budget be presented to construct the entire project, not just brick and mortar cost.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-ARCHITECT, DESIGNER, PROGRAM MANAGER-

-Observation-

AECOM is the designer, architect and program managers for the construction of the jail and was awarded a contract by the WCBA effective August 1, 2010 in the amount of \$25 million for a five year period.

Work Performed:

1. Identify the nature and scope of services being performed for this Project and the total contract price.
2. Inquire into their role as owner's representative and if this was perceived as a conflict of interest.
3. Inquire during the period AECOM was the Owner's Representative if there was a responsibility to make the owners aware of any material facts.
4. Determine the percentage of completion for this Project as of June 30, 2013.
5. Ascertain why the design and development drawings for the initial GMP were more than six weeks late. Due October 2011 and issued in December 2011.

Result of Work Performed:

1. AECOM entered into an agreement to perform architectural design, engineering and program management for the construction of the Jail Project with a sub consultant. Their contract was for \$24 million for a five year period. It was stated that AECOM, along with the county administration, developed the initial budget for this Project in November 2010 to secure bonding and have continued to prepare budget updates periodically.
2. AECOM became the owner's representative when Parlovecchio Building Company Inc.'s contract was terminated in December 2011 and remained in that position until May 2012. It was stated the county approached them and asked if they would temporarily serve in that capacity until an owner's rep was hired. They received no additional compensation for these extra duties.

This created an incompatible arrangement and resulted in failing to maintain a segregation of functions which is a violation of good internal control principles. AECOM was in a position where they were serving in two capacities – one as program manager and the other representing the owner's best interest.

3. We noted during their tenure as the owner's rep the Walbridge-dck contract was brought to the approving bodies for approval in the amount of \$220 million. In February 2012, it was estimated the Project, if built based on the design drawing, would cost the WCBA \$342 million or more.

Based on documentation obtained from AECOM officials, as the Owner's Representative, they held discussions with the Oversight Committee on the progress and cost of the jail project. However, we believe AECOM had a fiduciary responsible as the Owner's

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Representative to tell the WCBA that if this Project was built based on the current drawings it would be \$42 million or more over budget.

AECOM further stated they followed communication protocol by participating in regular status meetings with the Oversight Committee and relied upon the CFO to keep other decision makers informed.

4. An AECOM representative stated that this Project is 35% complete as of June 30, 2013. It was stated the percentage was determined based on observations and inspection by the program manager which they believe is customary in the industry.
5. According to Walbridge-dck the Design and Development drawings for the initial GMP were more than six weeks late – due October 2011 and issued in December 2011. According to AECOM, the design development drawings were due October 31, 2011 and posted to Project Wise for the CMAR's use on November 16, 2011 and therefore not six weeks late.

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-CONSTRUCTION MANAGER AT RISK -

-Observation-

Walbrige-dck is the Construction Manager At Risk (CMAR) and was awarded a contract on February 9, 2012 in the amount not to exceed \$220 million.

Work Performed:

1. Inquire of the CMAR what factors and conditions can be attributed to the increased cost in the Jail Construction Project and the delay in the date of completion.

Results of Work Performed:

1. We posed a series of questions to the Construction Manager at Risk (CMAR) regarding factors leading to the increased estimated cost projections and extended date of completion for the WCBA Jail Facility Construction Project. We obtained responses from the CMAR on July 26, 2013.

Below we have summarized their responses regarding some of the factors that attributed to the increased Project cost and delays in completing the Project.

CMAR Response:

The CMAR stated their commitment to build the jail for \$219.5 million was subject to, and contingent upon, important design and scheduling commitments made by the county and AECOM per section 5.1.1 of the GMP Agreement.

Delays in receiving design documents and construction documents well after the agreed upon and targeted dates, as well as a scope increase to the Project, caused the Project to exceed the original budget of \$220 million.

More specifically, identified factors include the increased scope related to the addition and subsequent deletion of cells in Area D that was to be used by the County in which a Stop Work Notice related to this occurred on September 25, 2012. Also, conditions related to post-subcontract award design revisions, flood of the excavation and foundation areas on June 6, 2012 which delayed the Project 1-year, were factors that were identified by the CMAR that added an additional \$35.2 million to the Project.

The CMAR stated they notified AECOM and, when possible the county of Project delays on several occasions from February 2012 through May 30, 2012. Further, as documented in Owner, Architect, and Contractor meeting minutes of June 13, 2012, the CMAR notified the county and AECOM that the Project as then designed could not be done for \$219 million unless major scope reductions were implemented.

Final Draft
For Review and Discussion Purposes Only

ESTIMATED PROJECT COST AS OF FINAL GMP
(June 2013)
(rounded to nearest thousand)

Major Budget Category	Adjusted Estimated Project Cost @ CMAR Award Feb. 2012	Cost Increase / (Decrease) from Feb 2012	Project Estimated Cost @ Final GMP June 2013
CMAR Building Construction Costs	\$219,536,000	\$50,931,000	\$270,467,000
Site Acquisition	14,500,000	51,000	14,551,000
Site Remediation	5,828,000	755,000	6,583,000
Geotech Survey & Testing (Misc. Consulting)	442,000	501,000	943,000
Owner's PM/Rep	2,420,000	(19,000)	2,401,000
PM/Design Fees	24,210,000	2,950,000	27,160,000
Insurance – CCIP	2,474,000	633,000	3,107,000
Legal – Audit	2,500,000	1,575,000	4,075,000
FFE Basic	7,500,000	(2,448,000)	5,052,000
IT Basic		3,092,000	3,092,000
Sheriff's Transition Team – Basic	1,800,000		1,800,000
Financing (2 nd Bond Cost)	39,000,000	(3,261,000)	35,739,000
Project Contingencies	19,835,000	(12,199,000)	7,636,000
Other Project Related Costs	2,153,000	1,751,000	3,904,000
Training		2,895,000	2,895,000
Temporary Staff Relocation		1,750,000	1,750,000
Misc. Project Cost Enhanced			
Total Estimated Project Costs	\$342,198,000	\$48,957,000	\$391,155,000

Source: AECOM

According to the CMAR, a letter was presented in a meeting on or around September 20, 2012 recommending that the county stop the Project until the scope and budget were aligned.

Other issues that the CMAR felt were contributing to the delay and change in scope was the fact the Owner (WCBA) had no Owner's Rep from late December 2011, when Parlovecchio Building Company, Inc. was terminated, until October 2012 when the current county Project Manager was hired by the county. The CMAR stated it did not appear that anyone at the county was expressly charged with providing a design that would keep the Project within the \$220 GMP cap.

We were informed that the delayed issuance of the designs by AECOM led to the time delays in Walbridge-dck submitting the Initial GMP in October 2012 and the final GMP not being issued until May 2013.

Final Draft
For Review and Discussion Purposes Only

-LEGAL FEES-

The WCBA contracted with three legal firms to provide services related to the Jail Construction Project. However these costs were not included in the initial estimated cost of the Project.

Work Performed:

1. Ascertain the names of legal firms providing services to the WCBA, review their scope of services, terms, and amount of contractual agreement.
2. Calculate total legal services fees paid with jail bond proceeds through June 30, 2013 and assess against budgeted amounts.
3. Evaluate whether there appears to be a duplication of services.

Results of Work Performed:

1. During 2011, the WCBA contracted with three law firms to provide the following legal services:
 - **Kotz, Sangster, Wysocki and Berg, P.C. (KSW&B)** - handle all of the construction contracts, drafting Request for Proposals (RFP), and all of the construction litigation.
 - **Terms:** Jan. 1, 2011 – Dec. 31, 2013 (includes three renewals)
 - **Amount:** \$600,000 **Est. Project Cost:** \$800,000
 - **Dawda, Mann, Mulcahy & Sadler, PLC (DMM&S)** - wrote the agreement for the Program Manager, writing RFPs, and wrote the Construction Management Contract.
 - **Terms:** Jan. 1, 2011 – Dec. 31, 2013 (includes two renewals)
 - **Amount:** \$200,000 **Est. Project Cost:** \$300,000
 - **William M. Wolfson, PLLC** – assisted the WCBA in its negotiations with the City of Detroit, City Council, and Planning Commission as it relates to the city being a partner in the construction of the new jail facility.
 - **Terms:** July 1, 2011 – June 30, 2012
 - **Amount:** \$40,000 **Est. Project Cost:** \$0
 - **Other Legal Services:**
 - **Miller, Canfield, Paddock & Stone, P.L.C. (MCPS)** - served as Bond Counsel for the ARRA Bonds. However, no contract was executed for services provided.
 - A Principal Attorney within the Department of Corporation Counsel has served as Special Counsel to the WCBA; however, personnel costs related to his services are not being reimbursed by the WCBA.
2. From January 1, 2011 through June 30, 2013, the WCBA has paid nearly \$557,000 in legal fees, of the \$1.1 million in anticipated projected costs for legal services, or approximately 51%.

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Attorney Fees Paid from Jan. 1, 2011 – June 30, 2013

Firm Name	Fees Paid thru 6/30/13	Estimated Project Cost	% of Budget
KSW&B	\$397,594	\$800,000	50%
DMM&S	180,329	300,000	46%
W. Wolfson	21,300	0	
Total	\$556,756	1,100,000	51%

3. There did not appear to be any duplication of services as it appears all three law firms were contracted to provide distinct legal services related to the Jail Construction Project. However, we found the scope of services were generic and non descriptive and it was difficult to readily identify what services they were contracted to perform.

-Observation-

Based on our review of the legal contracts the scope of services was not specific for work to be performed.

Condition

We found the scope of services written in each contract for all three law firms were identical. We were only able to identify what each firm's scope of services was by reviewing the WCBA board minutes.

Although within their total projected cost estimate for the Project, two of the three law firms utilized 50% of their anticipated cost of the Project.

However, we determined, by dividing expenditures incurred through June 30 in the amount of \$53.5 million over the CMAR contract award of \$219.5 million, that the percentage of work completed on the project by the CMAR is 24% as of June 2013. According to AECOM, overall, the jail construction project is 35% complete as of June 30, 2013.

In addition, a law firm, paid \$21,300 for negotiating with the city of Detroit, however it was not included in the original estimated Project cost for legal services.

We found a contract was not executed by the WCBA for the bond counsel that was paid \$229,000 in accordance with the county's voucher policy. These costs also were not included in the total estimated Project cost for legal services.

Criteria

A critical element of a contract is to define the scope of services and work to be performed to alleviate any misinterpretation of expectation between the parties executing the contract.

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For Review and Discussion Purposes Only

Determining a realistic budget and the identification of all construction costs, both hard and soft, to be incurred throughout the various stages of the Project increases the probability of meeting budget projections.

The Wayne County Voucher Policy, revised as of April 9, 2010, states certain component units that receives funding primarily from the county and/or use county employees in their operations are subject to the payment policies and procedures set forth by the CFO.

The Voucher Policy states “the expenses for financial advisory and bond counsel services *in connection with a specific bond resolution* (emphasis added) may be paid on a voucher. A contract to retain a firm for general financial and bond advisory consulting services must be procured as specified in the Ordinance [Wayne County Procurement Ordinance].”

When executing a contract, a purchase order is issued and when services are rendered they are charged against the purchase order.

Cause

Although management knew bond counsel would be required, the costs associated with the legal fees were omitted from the jail construction estimated Project costs.

Legal counsel drafting the law firms’ contracts for the WCBA appears to be using a template to write the contract.

Consequence

By not executing a contract with the bond counsel law firm, the WCBA has no scope of services to assess against invoices received nor can cost be contained. Further, contracts mitigate misinterpretations of services to be performed and compensation to be received.

Incurring unbudgeted construction cost could lead to overruns and could require additional funding if costs cannot be paid from other contingencies or sources.

Recommendation 2013 – 21 – Operating Deficiency

We recommend the WCBA execute a contract for all legal service to ensure the scope of services is specific to services to be performed and billed. Also, a purchase order should be issued for all services rendered and charges be made against it.

-View of Responsible Officials-

Responsible officials have concluded not to prepare a response.

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-ACCOUNTING FEES-

It was noted the accounting contract and scope of services these costs were not included in the initial budget for the cost of the Project.

Work Performed:

1. Review the accounting firm's scope of services, contract terms and compensation.
2. Calculate total accounting services fees paid with jail bond proceeds through June 30, 2013 and assess against budgeted amounts.

Results of Work Performed:

1. During 2011, the WCBA contracted with the consulting firm of Pierce, Monroe and Associates to provide accounting services for the Jail Facility Construction Project:
 - **Pierce, Monroe and Associates**
 - **Terms:** Sept.1, 2011 – Jan. 1, 2016 (one amendment)
 - **Amount:** Not to Exceed \$1,150,000 (current contract)
 - **Total Estimated Project Cost for these services:** \$2.6 million
 - **Scope of Service**
 - Provide accounting and compliance services for the administration of the Consolidated Jail Facility.
 - Review for compliance with Davis – Bacon and the American Recovery and Reinvestment Act (ARRA).
 - Perform invoice validation and disburse payments.
 - Prepare monthly project reports, budget to actual variance reports; and maintain financial statements and reporting of construction cost.
2. From September 2011 through June 30, 2013, the WCBA has paid nearly \$1 million in accounting fees of \$2.6 million in total estimated costs for accounting, or approximately 38 percent of estimated costs.

-Observation-

Based on our review of the accounting contract and scope of services the WCBA will need to consider cost saving measures related to services being provided.

Condition

A contract extension in the amount of \$250,000 was executed in June 2013, increasing the contract amount to \$1.2 million and terms until January 1, 2016.

Based on accounting fees paid thru June 30, 2013, the firm has been paid a monthly average of \$45,409. Extending the average payment from July 1, 2013 through Jan. 1, 2016, we estimate additional accounting fees could amount to \$1.4 million.

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For Review and Discussion Purposes Only

From September 2011 to the end of October 2012, there were three full time equivalent employees (FTE's) on the new Jail Project engagement. The FTE's consisted of a project manager (\$150/hr) and two team members (\$110/hr). Even though the OAG did not review all billings from September 2011 to current, PM&A is currently performing their functions with two FTE's.

Since the 60-day suspension period began, the existing team (project manager and team member) job responsibilities have not changed, per discussion with PM&A.

According to PM&A the billings for the suspension period will be the same as the non-suspension period. At this time, we cannot validate this statement. As of July 22, 2013, AECOM believes the Project should be closed out within 6 months after the Project completion.

Criteria

The original contract was for an amount not to exceed \$900,000 with terms from Sept. 1, 2011 thru Jan. 1, 2015 (40 months). A monthly average payment would have been \$22,500.

Total estimated accounting fees included in the jail facility construction budget is \$2.6 million. At the current rate, we estimate the projected accounting cost to complete this Project will approximate \$2.4 million.

Cause

The Chief Administrative Officer has indicated she intends to limit the number of hours the accounting firms works.

Consequence

We estimate at the current rate of billing it will cost approximately \$2.4 million to complete this Project.

Recommendation 2013 – 22 – Operating Deficiency

We recommend the WCBA's Chief Administrative Officer consider executing a flat fee contractual arrangement for service contracts related to the Jail Facility Construction Project in order to better control costs.

-View of Responsible Official-

Responsible official have concluded that they will not prepare a response.

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-COST DURING SUSPENSION PERIOD-

The construction of the consolidated jail was suspended by the County Executive on June 6, 2013, for the purpose of re-evaluating the costs because construction costs are projected to exceed the budget by a significant amount.



Source: AECOM

Work Performed:

1. Ascertain the amount of construction costs and actions taken during the suspension period.
2. Determine whether suspension costs are eligible to be paid with jail bond proceeds.

Results of Work Performed:

1. As of the date of our report, the accounting firm hired by the WCBA informed the OAG no invoices have been received from the CMAR or AECOM related to costs for services performed during the suspension period.

We were informed by county officials that costs could range between \$2 -\$5 million per month during the 60 day suspension period.

2. We also were informed by the county's debt manager, as well as bond counsel, those goods and/or services provided during the suspension period should be eligible to be paid from the jail bond proceeds. This assertion will also need to be confirmed by the external accounting firm.

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-Observation-

The county's Project Manager expressed to us a desire to keep a separate accounting of cost being incurred during construction suspension period in order to make sure this cost is all eligible for payments from the bond proceeds. Based on our discussions with PM&A personnel they at present, are not keeping a separate running balance on cost being incurred during the suspension period.

Condition

According to the county's Project Manager responsible for overseeing the Project, suspension costs could range from \$2-5 million per month. Based on this estimated range, we calculated the daily per-diem over the 60-day suspension period would range from approximately \$67,000 up to \$167,000 per day. According to discussion with county officials, the suspension costs would include, but not be limited to, the following:

- Security services; retention of primary sub-contractors and other key personnel; utilities, storage and equipment rental, etc.
- Because of the increase in projected construction Project cost from the initial estimate, the WCBA has hired an external architectural firm to perform an independent review of the cost increase and proposed changes to the Jail Facility Project. The cost associated with the independent review was awarded for an amount not to exceed \$73,306.

In addition, the WCBA entered into an Memorandum of Understanding (MOU) with the OAG to perform and complete a review of jail construction costs and compliance with contracts, laws and bond covenants before the expiration of the 60 day suspension period. This review is being performed at no cost to the WCBA.

Criteria

In 2010, the Wayne County Commission was requested by the Executive Branch to approve the issuance of up to \$300 million in ARRA bonds to complete the construction of a new jail facility. This would result in an estimated \$30 million annual operating savings for the Sheriff's Office.

The ARRA bonds would provide a 45% rebate to the county on interest paid on the debt service.

The interest rebate was originally projected to generate \$177 million over the 30 year life of the bonds. However, we have been informed by administration officials that this amount has been reduced to \$169 million due to federal government sequester action.

Cause

After receipt of the Proposed Final GMP from Walbridge-dck totaling \$267 million, and a draft projected budget of estimated costs from AECOM totaling \$391 million, the county executive's office has suspended the construction of the Project for 60 days.

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Consequence

For the 60 day suspension period, the total cost of the Jail Facility Construction Project could increase by \$4-\$10 million. If the suspension period is extended beyond 60 days, the per-diem cost for the county could range from \$67,000 to \$167,000 per day based on the estimate provided by the county's Project Manager.

Should bond counsel determine the cost for the architectural firm is not eligible to be paid with jail bond proceeds, the county's general fund could be negatively impacted.

The OAG has spent over 2,000 hours on this Agreed Upon Procedures engagement report. The reduction in the OAG staff has necessitated the OAG to divert its resources solely to this engagement thereby diverting work from other commission mandated engagements.

Also, during the suspension period PM&A charges will be approximately \$45,000 plus per month during the 60 day suspension period for a total cost of \$90,000 plus.

Recommendation – 2013 –23 – Operating Deficiency

The Jail Project is at a critical stage and we recommend going forward, that the WCBA, as Owner of the Project, require written reports on the status of the construction of the new jail facility, as well as participate as decision makers in any other proposed actions that are currently being considered by the executive branch.

Also, we are suggesting that a separate accounting be maintained of all cost incurred during the construction suspension period to determine if the cost is eligible to be paid from bond proceeds.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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-OPTIONS ON CONSTRUCTION OF JAIL-

The administration presented at least three options to the Wayne County Commission – Committee of the Whole on August 14, 2013⁶². The administration expressed a preference to go with option 1.

We believe good economic sense should prevail and be the determinate factor in deciding the best course of action county leadership should take going forward.

Condition

The administration is suggesting three options, they are as follows:

1. First option - sell the 14 acre parcels in downtown Detroit to a private developer and move the county's criminal justice center to a different site such as the State of Michigan's Mound Road Facility. This is the option preferred by the CEO according to communication received on August 14, 2013; but, there was no comparative and/or financial analysis provided to justify action being proposed.⁶³
2. Second option – negotiate a public-private partnership that would complete the Jail Project on the current site with a 2,000 bed capacity. The private sector partner would provide financing, construction and maintenance on the facility and a long term use agreement with the county;
3. Third option – continue with a downsized facility at the current site. However, the diminished capacity compromises the functionality severely enough that the county has ruled out this option.

Criteria

The OAG has not been privileged to review the details of the three options discussed above and the determination as to the best alternative was not included in the Agreed-Upon Procedures engagement. However, because some critical decisions will be made by leadership over the next 60 days we felt it necessary to express our view point and the reasons why.

Like most projects best management practices dictate that one begins with an objective and make determinations as to how the objective (goal) can be best accomplished. In short, the WCBA objective for this Project was to build a 2,000 bed capacity jail for a price of \$300 million or less.

It appears in this case, in order to achieve this objective, financing is the issue; therefore, this is what we believe we should be focusing on.

We believe option two is the best option for the county for the following reasons:

⁶²E Communication from the CEO dated August 14, 2013

⁶³ E Communication sent by CEO on August 14, 2013.

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For Review and Discussion Purposes Only

- We have spent more than \$129 million on the Project through August 16, 2013;
- Project is 35% complete according to statements obtained from AECOM program managers;
- The county currently has an investment of \$533 million committed to this Project over the next thirty years. It does not make economic sense to abandon the Project. We simply need to explore other ways to finance it. The \$533 million consists of the following: \$129 million related to construction cost incurred through August 16, 2013, and the remaining \$404 million is related to debt service on the bonds which are to be paid over the next 30 years. The external auditors have expressed some concerns regarding the impairment of the jail construction cost if the project is abandoned. It is stated there could be a possible impact on the government wide financial statements, which is prepared on the full accrual basis, from construction cost of \$129 million to a net realizable amount substantially less than this cost, if the jail project is not completed and the county is unable to recover full cost.
- Relocating to another site will add to construction cost being incurred – unless all that has been built to-date can be repurposed to the location.
- A public-private partnership would eliminate the need for the county to seek bonding beyond the \$200 million;
- The proximity of criminal court to the jail eliminates the need to transport prisoners and minimizes safety concerns;
- Also consider exploring the option of a sale lease back arrangement of the jail similar to the one used for the renovation of the 600 Randolph property;
- Entering into any financial arrangement with the city of Detroit is risky because they are in bankruptcy court and the outcome of transactions with them is subject to court approval;
- Based on discussion at the August 14, 2013 Committee of the Whole meeting, it came to our attention relocating the criminal court to another location is subject to court approval because of the consent agreement;
- According to a recent Detroit Free article CGL Companies, a Miami Group, was willing to help the county build a 2,600 bed facility was not considered. There appears to be an interest in attracting potential companies to complete the construction of the jail in a public-private – partnership arrangement. We believe this particular RFI should be re-evaluated if the administration decides to pursue this option.
- Based on information received from the Wayne County Assessor's Office, we are informed that the county jail and the other four properties in that area are located in the DDA district but no taxes are currently being captured by the DDA.

This would mean if the jail is sold to a for-profit entity and leased back to the county then the full measure of property taxes could be collected to assist the general fund.

- This option will allow the WCSO to occupy the jail no later than June 15, 2015 or earlier if construction goes well, among other things.

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Cause

In our opinion, the administration is wavering from the primary objective which is to build a 2,000 bed jail facility.

Consequences

To abandon this Project could result in embarrassment to Wayne County leadership, as well as cost the taxpayers over \$533 million (\$129 plus \$404 million) over the next thirty years.

Recommendation – 2013 –24 – Operating Deficiency

The Commission and the WCBA should encourage the administration to perform a financial feasibility study and in order to explore other means to finance the construction of the jail in order for the Project to be completed at its existing site and avoid the necessity to abandon the Project where over \$533 hundred million tax payers dollars are already invested and obligated over the next thirty years.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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**V - REVIEW DOCUMENTS TO SUPPORT THE AUTHORIZATION
AND APPROVAL OF ALL CHANGE ORDERS
BY THE PROJECT OWNERS**

-CHANGE ORDERS-

A critical component of any construction project relates to the owner's review and approval of change orders. A change order can increase or decrease scope, design, and cost of a project and generally requires an amendment to the contract.

Work Performed:

1. Review the authorization and approval process for change orders.
2. Assess the dollar impact of all approved Change Orders on the cost of construction.
3. Discuss with the county's Project Manager the impact, if any, of change orders on the scope and/or design on this Project.

Results of Work Performed:

1. The WCBA as owners of the Project have the responsibility to approve all proposed change orders by AECOM and/or the CMAR. We also noted that the change order process stated in the Walbridge-dck contract was quite comprehensive and could be adopted by the WCBA if they elect to draft a written policy since one does not currently exist.

Based on discussion with AECOM, the CMAR may identify additional work that may be required during construction. As a result, the CMAR will prepare a Potential Change Order (PCO) and log these costs as they are incurred during construction.

To formalize the PCO, the CMAR will prepare a Change Request (CR) and submit this request along with supporting documentation to the Program Manager for review and approval. The CR is required to contain all supporting documentation to justify the increased construction cost.

According to AECOM, they will assess the CR and the supporting documentation and may conclude in the following manner: (1) reject the CR; (2) send the CR back to the CMAR and request additional information is provided; or (3) accept the CR after validating the construction cost and determining the CMAR is entitled to the increase.

Once accepted, AECOM prepares a Change Order (CO) for the Owner who has the final decision for approving or rejecting the CO.

As of August 16, 2013, AECOM stated they have agreed to \$4.3 million in CR from the CMAR but no formal change orders have been prepared.

2. As of June 30, 2013, we were informed by the county's Project Manager that there has only been one change order submitted by the CMAR.

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For Review and Discussion Purposes Only

- a. The change order was dated December 18, 2012 and approved by the WCBA Chief Administrative Officer (CAO) on December 21, 2012.
 - b. We did note the change order was signed by the CAO and initialed and dated by the county's Project Manager.
 - c. We believe the county's Project Manager should formally sign and date all change orders in a similar manner as being done by the CAO.
3. Based on discussions with the county's Project Manager we were informed that the one approved change order had no impact on the scope, design, and cost to the Guaranteed Maximum Price (GMP) for constructing the jail facility.

According to the Program Manager, while cost were increased for change in work, decreases in other cost areas were also identified resulting in no dollar impact to the GMP. They further stated, there have been no additional changes orders issued as of August 16, 2013.

Based on a recent discussion with the county's Project Manager there are 450 proposed change orders that were not formally rejected by AECOM. He indicated the change orders should have been formally rejected in writing by AECOM.

We did not attempt to quantify the dollar impact of the proposed change orders because it was beyond the scope of our engagement.

However, due to our limited expertise, we could not determine if the change order resulted in a scope or design change which will require WCBA approval. In certain instances we have been informed by Special Counsel, it could require Wayne County Commission approval as well.

It was not formally documented by WCBA management as to when certain types of change orders, if any, would require Commission approval.

Also, the contracts state that change orders require the approval of the owners, no one else is mentioned.

Other than the contract themselves, we were not able to review a formal written process for change orders.

The Hubbell, Roth and Clark, Inc. (HRC) report states: "Through our research there appears to be approximately \$4M of owner directed changes to the Project that have been implemented, for which no change order to the initial GMP was issued.

Also, the report stated there is \$8M in change orders acknowledged by the WCBA pertaining to subcontracted related cost increases within the construction documents, for which no

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change order to the initial GMP was issued. This raises the initial GMP from \$220M to \$232M over the last 17 months.⁶⁴

AECOM stated a proposed change order has no documentation available to review until it is converted into a change request and therefore cannot be rejected. In addition, some proposed change orders never become change requests but are used by the contractor for internal tracking and again do not require rejection.

-Observation-

Walbridge-dck management stated, “Change Orders are generally understood in the construction industry to be formal amendments to the CMAR contract, adjusting scope, time of performance and/or price. There was only one change order to the CMAR’s contract. However, there were several design revisions that were provided to the CMAR which ultimately increased the scope of the CMAR’s work and the overall cost of the Project.”⁶⁵

Although the AECOM and Walbridge-dck contracts make reference to a change order process, we believe it would streamline the processing of change orders if the process is expanded to include the requirement for specific supporting documentation and that no work in connection with change orders is started until each one is formally approved or rejected in writing.

Condition

Only one change order, which according to the county’s Project Manager did not change the scope, design, or cost, was approved by the owner.

Potential change orders which upon review can be grouped into change requests. These change requests upon review become change orders. According to the county’s Project Manager there are 450 possible change orders that were not formally rejected by AECOM.

We reviewed the AECOM and Walbridge-dck contracts and neither of them appear to have a uniform and specific process for change orders.

Criteria

The WCBA contracts with AECOM and the CMAR require change orders to be submitted to the Owner for review and approval.

In addition, we have been informed by Special Counsel that certain changes in scope or design could require Wayne County Commission approval, as well.

Best business practices suggest that change orders be reviewed and approve by someone with the technical expertise to evaluate its necessity and its overall impact on the Project.

⁶⁴ Hubbell, Roth& Clark, Inc. dated August 5, 2013.

⁶⁵ Communication from Walbridge’s management dated August 14, 2013.

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For Review and Discussion Purposes Only

Cause

We noted that there is no identified process for rejection of change orders. According to AECOM officials, they do not review or reject potential change order because there is no detail information to review. They do review Change Requests which are either accepted or rejected by AECOM.

Consequence

Change orders are important and could result in a change in design and/or scope of the Project which could result in increased construction cost. Although, there has only been one change order approved through June 30, 2013, there are numerous proposed change orders under review. Unless the change orders are formally rejected within a specific time frame, the contractor may assume the work was approved and perform the work.

Recommendation – 2013 - 25- Control Deficiency

We recommend that formal change order policies and procedures be adopted by the WCBA to include, but not be limited to, those that may require Wayne County Commission approval before the change order is formally approved. Also, all change orders should be evaluated to determine the impact they have on the contract's price and, if any, the contract should be amended to reflect the change.

In addition, require that all change orders be signed jointly by the county's Project Manager and the CAO.

-Views of Responsible Officials-

Responsible officials have concluded not to prepare a response.

**VI - PERFORMANCE OF PROCEDURES DESIGNED TO
IDENTIFY UNUSUAL AND/OR QUESTIONABLE
TRANSACTIONS.**

In an effort to identify unusual or questionable transactions we obtained an understanding of the transaction process as well as tracing contractor payments to both the WCBA's and county's general ledgers.

Work Performed:

1. Review the accounting process for transferring transactions from the QuickBooks system maintained by PM&A to the county's general ledger.
2. Trace contractor payments to QuickBooks and the county's General Ledger.

Results of Work Performed:

1. The transfer of transactions are primarily performed by the preparation of a monthly journal entry by PM&A and submitting it to the county for input into their general ledger. We reviewed all transactions prior to the accounting firm being hired September 2011 for reasonableness.
2. Based on our review of the transaction process and work performed, we believe the recording of transactions in the general ledger can be relied upon and the two sets of books are in agreement due to the implemented levels of review and approval.

In addition, based on our understanding of the established review and approval process for construction costs, we relied upon the CMAR and Program Manager to verify and validate their sub-contractor's request for payments as valid construction costs incurred.

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-LITIGATION COST-

We were informed by Special Counsel that the prior owner's representative is in litigation with the county.

Work Performed:

1. Obtain copies of contracts with Parlovecchio Building Company, Inc. to perform the duties of an Owner's Representative, as well as a copy of a lawsuit filed by Parlovecchio Building Company, Inc. against the Wayne County Building Authority (WCBA) alleging breach of contract, and review it for potential impact on the WCBA.
2. Determine the amount of litigation cost associated with the Parlovecchio Building Company, Inc. lawsuit and who paid those legal fees.

Results of Work Performed:

1. On February 23, 2011, AECOM Services of Michigan, Inc. executed a no-bid sub consulting services agreement with Parlovecchio Building Company, Inc. to operate as an Owner's Representative on the Wayne County Consolidated Jail Facilities Project in the amount of \$2.2 million. This agreement was approved by the WCBA Board.
2. Based on our review of the board minutes, on May 5, 2011 the WCBA Board approved a no-bid contract between the Wayne County Building Authority and Parlovecchio Building Company, Inc. to operate as the Owner's Representative. At this time, the AECOM contract was amended removing the sub consulting services agreement with Parlovecchio Building Company, Inc.

Overview of Litigation Matter:

On December 1, 2011, at the request of the Wayne County Administration, the WCBA Board terminated its contract with Parlovecchio Building Company, Inc. The reason cited was a lack of transparency because the contract was awarded without going through the competitive bid process.

The WCBA terminated the contract under the Termination of Contract clause in the Owner's Representative contract; specifically termination for the convenience of the Owner. Parlovecchio Building Company, Inc. sued the Wayne County Building Authority, alleging breach of contract.

According to Special Counsel, the law suit was adjudicated in favor of the WCBA. Parlovecchio Building Company, Inc. has filed an appeal. Corporation Counsel is optimistic that the verdict in favor of the WCBA will be upheld on appeal. Special Counsel believes WCBA will prevail in Appeals Court.

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3. We verified that legal fees for outside counsel in the amount of \$42,467 were paid from the WCBA General Operating Fund. It was stated by M&B that WCBA collected parking lot fees in the amount of \$242,328 for the period July 14, 2011 through January 8, 2012. We were able to verify that all of these funds were deposited into the WCBA General Operating Fund.

Special Counsel also stated that these costs were paid from parking fees collected by the WCBA for the parking lot located on the site of the new jail construction. In addition, we were informed that the law firm of Dawda, Mann, Mulcahy & Sadler, PLC was counsel representing the WCBA in this litigation.

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-GENERAL FUND COST INCURRED NOT ALLOCATED-

It came to our attention there is certain Wayne County employees being paid from the general fund that provides services to the WCBA; however, costs for services are not being allocated to the WCBA. Due to a lack of records to support time being incurred the administration was not able to quantify the dollar amount of such cost for the period October 2010 – June 2013.

Work Performed:

1. Determine what services are being provided by county employees to the WCBA Jail Construction Project and the basis for the allocation of these costs to the Jail Project.
2. Review the propriety of costs being allocated from bond proceeds to determine if they were in compliance with OMB Circular A-87.⁶⁶

Results of Work Performed:

1. We noted five county administration employees are providing service to the Jail Project but are not being reimbursed by the WCBA. We also determined that one county employee charges 100% of her time to the WCBA and is being properly reimbursed by WCBA. A few WCSO personnel are charging an allocated percentage of time to the Jail Project.
2. We were not provided a detailed study to validate the percentages being allocated; therefore we were not able to determine if they were in compliance with OMB Circular A-87.⁶⁷

-Observation-

We identified costs related to services being performed by Wayne County that we believe should be allocated to the Jail Construction Project.

Condition

We identified five (5) county employees who have been an integral part of the Jail Construction Project from its inception. Specifically:

- The WCBA CAO, also the county's CFO, is a member of the Oversight Committee and also has been delegated by the Board to oversee the Jail Project and approve construction costs.
- A corporation counsel principal attorney is considered to be "Special Counsel" to the WCBA on legal matters, including those related to the construction Project.
- A M&B project consultant who had some responsibility in obtaining the ARRA bond proceeds for the Jail Facility Construction Project, administering debt service payments, filing compliance forms, and performed other bond related activities.
- Two other county employees, an Assistant CEO and the Director of Building Division, are also members of the Oversight Committee over the Jail Construction Project.

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For Review and Discussion Purposes Only

Our discussion with three of the five county employees revealed that they do not capture the time spent servicing the WCBA. We also were not able to review time records to justify how much time is being spent on WCBA matters as it relates to the construction of the jail.

We also determined central service costs, for example accounting, personnel/human resource, etc., are not being allocated to the WCBA for services provided by the county.

Criteria

OMB Circular A-87 requires cost be allocated based on benefit derived⁶⁸. Also, sound cost accounting principles recommend hours worked by county employees on capital projects and/or servicing component units be recorded and allocated as administrative cost to the Project or component unit based on benefit being derived.

Cause

It was stated by the CAO that they are well aware of our concerns because we have had this conversation in the past.

It appears there is a failure on the part of the administration to develop an accounting mechanism to capture these costs and charge them to the Jail Project on a consistent basis.

M&B management has stated starting in FY 2013, M&B will be reimbursed by WCBA for the accounting work related to the Department of Human Services (DHS) buildings once a year the WCBA receives 1% of the outstanding revenue bond related to the acquisition of the DHS buildings as a fee for the management of the bond issuance.

Consequence

Because the employees are not capturing and allocating the hours worked for the WCBA on the Jail Construction Project, their personnel costs are being charged to county business units as a chargeback. Jail bond proceeds could be utilized to reimburse the county for services provided, if their functions are deemed to be eligible cost that can be charged to the bonds.

However, due to a lack of information we were not able to quantify the dollar impact of failure to allocate costs for services performed.

Recommendation 2013 – 26 – Operating Deficiency

We recommend the Department of Management and Budget establish a policy that county employees working for the WCBA and on the Jail Facility Construction Project, record the hours worked and allocate their personnel cost to the WCBA in order to be in compliance with OMB Circular A-87.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

⁶⁸ OMB Circular A-87.

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VII – ADOPTION AND APPROVAL OF BUDGETS

-GENERAL OPERATING FUND-

The WCBA has a general operating fund, debt service fund and a capital fund, The debt service and capital project funds are both are restricted; but, the general operating fund is unrestricted and has a fund balance of \$213,000 as of September 30, 2012.

Best practices require that a realistic budget be completed and approved by the governing body in order to evaluate project feasibility, to secure financing, to evaluate risk, and as a tool to choose alternative designs and site locations.

In addition, the Uniform Budgeting and Accounting Act, Section 141.434(2) requires the Chief Administrative Officer of a local unit to prepare the recommended annual budget for the ensuing fiscal year. Section 141.422d(4)(i) states that an authority or organization of government established by law that may expend funds is a local unit. This applies to the WCBA general operating fund, but not the debt service and capital project funds.

Work Performed:

1. Determine if a formal adoption of a budget is required for the Capital Project Fund.
2. Obtain and review WCBA minutes and other supporting documentation to validate the adoption and approval by the WCBA of the Jail Facility Construction Project budget.

Results of Work Performed:

1. According to our research and consultation with Plante & Moran, our external auditors, the Capital Project Fund is not required to adopt a budget for capital projects and debt service; however, we were informed they are required to adopt a budget for general operating funds that are not classified as capital project improvement and/or debt service cost.
2. Although not required, based upon a review of the WCBA's Board minutes, documentation from the Project's contractors and county administration, we determined that a budget for the construction of the Jail Facility Construction Project was never adopted and/or approved by the WCBA.

-Observations-

According to the Michigan Department of Treasury Uniform Budget Manual the Capital Project Fund is not required to adopt an annual budget.

However, we noted the WCBA audited financial statement as of September 30, 2012 has a General Operating Fund has a total liabilities and fund balance of \$50 million; but, no budget was adopted. Of the \$50 million in general operating fund, it was noted in the audited financial statements that \$49.2 million is related to deferred revenue derived from future rental income to be used for payment of debt service. We consulted with the external auditors and they agree that under Public Act 2 of 1968 the adoption of the general fund operating budget would be required.

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It further stated “that perhaps these funds should be labeled capital project fund and, if any activity remains in a fund reported as a general fund should be budgeted in the future. The external auditors indicated they will discuss this with M&B at a planning meeting for the upcoming audit year.”⁶⁹

We reviewed minutes and other supporting documents to verify the adoption and approval of total Project budgeted costs by the WCBA. There was no documented evidence in the board minutes that they actually adopted the capital improvement budget of \$300 million for the construction of the jail.

Although not required for capital projects we are suggesting based on good business principles that a formal capital improvement budget be adopted for the construction of the jail.

In addition, we are suggesting that the WCBA board adopt a budget for the \$50 million in the general operating fund reflected in the government fund statement as of September 30, 2012. Some of the unrestricted funds could be used for board training, per diem stipends and reimbursement for mileage, providing the board can obtain approval from the Wayne County Commission.

Based upon the above work performed, it is our opinion that there is a material weakness that needs to be addressed by both the WCBA and county administration as noted in our finding below.

Condition

Although cost estimates have been provided, and revised on numerous occasions, a formal budget for the Jail Facility Construction Project has never been prepared, adopted and/or approved.

Criteria

Best practices require that a realistic budget be completed and approved by the governing body in order to evaluate project feasibility, to secure financing, to evaluate risk, and as a tool to choose alternative designs and site locations.

Based on our research there is no state requirement for the adoption of a capital project fund budget. We believe it make business sense to do so.

Cause

There is no State of Michigan Treasury requirement for a budget to be adopted for Capital Project Funds and Debt Service Funds.

⁶⁹ Email from P&M engagement partner, dated August 8, 2013.

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Consequences

Because there was not a formalized budget, it prevented the ability to monitor and manage the Jail Facility Construction Project in a fiscally sound manner. Therefore, it resulted in material facts not being fully disclosed to the governing body.

Recommendation 2013-27 – Control Deficiency

We recommend the WCBA:

- A. Require the administration to prepare a written budget for WCBA's general operating fund to be presented for adoption and approval by the board on an annual basis.
- B. Develop and adopt a realistic capital improvement budget for the construction of the jail and amend it whenever increases/decreases become known or prior to expenditures being made.
- C. Adopt policies and procedures that require a capital improvement budget be required for projects over a certain dollar threshold.

-Views of Responsible Officials-

Responsible officials have concluded not to provide a response.

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CONCLUSION

We performed the agreed-upon procedures described in detail on pages 25 - 165 of this report, which was agreed to by the WCBA related to the costs surrounding the construction of the new jail. Although all objectives were met successfully, we encourage the WCBA to implement the suggested recommendations.

The sufficiency of these procedures is solely the responsibility of the WCBA. Therefore, we make no assertion or opinion regarding the sufficiency of the procedures described for the purpose in which this report has been requested, or for any other purpose.

Since this is a blended component unit of Wayne County, a corrective action plan will be required within 30 days after this report is received and filed by the Wayne County Commission.

This report is intended solely for the Wayne County Building Authority, the County Commission and other stakeholders. This restriction is not intended to limit distribution of the report, which is a matter of public record. ■

Willie Mayo, CPA, CIA, CGAP, CGMA, CICA
Wayne County Auditor General

APPENDIX A

CLASSIFICATION OF FINDINGS

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CLASSIFICATION OF FINDINGS

Control Deficiency (low risk)

A control deficiency exists when the internal control design or operation does not allow management or employees, in the normal course of performing their assigned functions, to prevent, detect or correct errors in assertions made by management on a timely basis. A deficiency in design exists when (1) a control necessary to meet the control objective is missing or (2) an existing control is not properly designed is that, even if the control operates as designed, the control objective is not met.

A deficiency in operation exists when a properly designed control does not operate as intended, or when the person(s) performing the control does not possess the necessary authority or qualifications to perform the control effectively.

Significant Deficiency (medium risk)

A matter that, in the auditor's judgment, represents either an opportunity for improvement or significant deficiency in the management's ability to operate a program or department in an effective and efficient manner. A significant deficiency in internal control, or combination of deficiencies, that adversely affects the organization's ability to initiate, authorize, record, process or report data reliably in accordance with applicable criteria or framework such that is more than a remote likelihood that a misstatement of the subject matter that is more than inconsequential will not be prevented or detected.

Material Weakness Deficiency (high risk)

A significant deficiency that could impair the ability of management to operate the department in an effective and efficient manner and/or affect the judgment of an interested person concerning the effectiveness and efficiency of the department. A significant or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of subject matter will not be prevented or detected.

APPENDIX B

VIEWS FROM RESPONSIBLE OFFICIALS

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WAYNE COUNTY ADMINISTRATION

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AECOM

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WALBRIDGE-dck

WALBRIDGE-dck's RESPONSE TO INDEPENDENT AUDITOR'S REPORT

Walbridge-dck is in over-all agreement with the Independent Auditor's Report Draft Dated August 9, 2013 as it relates to Walbridge-dck's performance and provides this response in support. This response is in two parts:

Part 1 provides comment on the Auditor's findings that:

1. Cost overruns were due to:
 - Lack of an independent owner's representative and
 - Design changes for which Walbridge-dck was not responsible; and
2. Walbridge-dck acted properly.

Part 2 proposes corrections that do not change the substance of the Auditor's Report, but correct typographical errors and/or clarify what Walbridge-dck understands to be the intent of the Report.

PART 1: COMMENT ON REPORT'S FINDINGS

Walbridge-dck concurs with the Auditor's overall findings as they relate to Walbridge-dck's performance and believes the cost over-runs were due to the lack of an independent owner's representative and changes to the design for which Walbridge-dck was not responsible.

**1. CAUSE OF COST OVERRUNS --
LACK OF A FULL TIME, INDEPENDENT OWNER'S REPRESENTATIVE**

The Auditor's Report recognized the program documents contemplated a full time, independent owner's representative to provide "project oversight". (p. 57). Despite this requirement, there was no owner's representative in place from June 2012 until October, 2012. Moreover, when the design of the jail was being developed (December 2011 through May 2012) the designer, AECOM, acted as the owner's representative. This created a problem because AECOM (in its role as owner's representative) was not taking steps to ensure that it was developing a design that remained in budget, despite its contractual obligation to do so. The Auditor's findings on this matter are contained in the following direct quotes from the Report:

- *There existed a failure to segregate functions for a period for six months – The AECOM – Program Manager served as the designer, architect, program manager and owner's representative for the period December 2011 – May 30, 2012. This created an incompatible relationship and may have contributed to problems encountered with the construction of the jail (p. 4; See also pp. 38, 119).*
- *We received a communication between the CMAR and the WCBA dated May 22, 2012 . . . "without an Owner's Representative providing direction, no one is monitoring the status of the design to ensure it is promptly completed in accordance with the Contract." (p. 55)*
- *The county administration made a conscious decision to monitor the project by committee, in spite of urgings from several WCBA Board members and CMAR to the contrary. (p. 58)*

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- *Until the present program consultant/manager was hired, there was no one with the necessary expertise or experience to serve in the capacity as owner's representative as suggested by best practices. This may have contributed to construction delays and large budget overruns. (p. 7).*
- *We were informed that upon the hiring of the current Project Manager there were several problems discovered regarding the project: AECOM – Program Manger Representatives charging travel time to the project, termination of a contract manager due to dissatisfaction with oversight, a smoke evacuation system was not included in the design drawings and security [electronics] costs understated by \$6 million, etc. (p. 76).*

1. CAUSE OF COST OVERRUNS -- (continued): DESIGN CHANGES FOR WHICH WALBRIDGE-DCK IS NOT RESPONSIBLE

Walbridge-dck agreed to construct the jail for \$219.5 million based on specific design and scheduling commitments, including AECOM's agreement to design a project that could be built for \$220 million, as stated in § 5.1.1 of the GMP Agreement (p.121). Despite Walbridge-dck and AECOM agreeing to an initial design that Walbridge committed to construct for \$219.5 million, the final design was substantially revised and issued late, causing the overall project to increase to \$267 million. The Auditor's findings on this subject are contained in the following direct quotes from the Report:

- *[A]s documented in Owner, Architect and Contractor meeting minutes of June 13, 2012 [over one year ago] the CMAR notified the County and AECOM that the project as then designed could not be done for \$219 million unless major scope reductions were implemented. (p. 121).*
- *Based on discussions with the Project Manager, the [HRC] report concluded that AECOM made a change in scope after the initial drawings were submitted. These changes in scope resulted in cost increase of \$42 million related to the construction of the jail. (p. 52, see also p. 11).*
- *Under the terms of the Construction Management Agreement, as of May 31, 2013, Walbridge-dck submitted a final GMP of \$267 million. It is represented by Walbridge-dck that the increase in the price is primarily due to scope and design changes. (p. 21).*
- *There are 450 proposed change orders [more accurately described as design revisions] that were not formally rejected by the AECOM Program Manager. (p. 12).*
- *Unless the change orders are formally rejected within a specific time frame, the contractor [i.e., CMAR] may assume the work was approved and perform the work. (p. 132).*

2. WALBRIDGE-dck PROPERLY PERFORMED

As noted above, the Auditor's Recognizes Walbridge-dck expressed concerns to the County and AECOM regarding the lack of an owner's representative and concerns that the project could not be done for \$219 million unless major scope reductions were implemented. (p. 121). While not mentioned in the report, although presented to the Auditor, Walbridge-dck proposed over \$40 million of design revisions in September 2012 to bring the project back in budget.

As for Walbridge-dck's performance, the Report makes few references to Walbridge-dck's performance. It does not criticize or otherwise call into question Walbridge-dck's actions. In the limited areas where Walbridge-dck's actions were referenced, the Auditor concluded Walbridge-dck acted properly. The following are direct quotes from the report:

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- *WCBA did follow the Wayne County Procurement Ordinance to award the CMAR contract to Walbridge-dck on February 9, 2012. (p. 51).*
- *[I]mproper charges did not exist between invoices for labor and material submitted from the subcontractor to the CMAR and/or the AECOM Program Manager. Based on the sample we tested, we found invoices being processed by the WCBA generally did not include any additional markup over allowed percentages. (p. 37).*
- *We found the . . . CMAR [was] generally in compliance with the construction contract, Davis Bacon Act and ARRA requirements. (p. 6).*
- *We determined the amount of draw-down received by the CMAR . . . calculated to be 24% . . . through June 30, 2013 An AECOM representative stated that this project is 35% complete as of June 30, 2013. (pp. 104, 120).*

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PIERCE MONROE AND ASSOCIATES

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