



Maricopa County

Internal Audit Department

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To: Andrew Kunasek, Chairman, Board of Supervisors
Fulton Brock, Supervisor, District I
Don Stapley, Supervisor, District II
Max W. Wilson, Supervisor, District IV
Mary Rose Wilcox, Supervisor, District V

From: Ross L. Tate, County Auditor 

Subject: Examination of Two Construction Contracts

Date: August 5, 2008

This memo summarizes the results of examining two Maricopa County construction contracts, one with Austin Commercial for the Animal Healthcare Center and the other with D.L. Withers Construction Company for the Buckeye Hills Shooting Park.

The examination was initiated by Maricopa County Facilities Management Department and performed by Jefferson Wells International, a specialized construction consultant. Internal Audit provided administrative oversight for the engagement. The Board of Supervisors approved this review as part of our annual audit plan. The purpose of the review was to determine if construction contractors billed the County in accordance with contractual terms and conditions.

Executive Summary

Jefferson Wells determined that the construction contractors potentially overcharged Maricopa County \$1,245,363, as shown below.

Area Examined	Contractor	Potential Dollar Finding
Billings in Excess of Actual Costs	Austin Commercial	\$ 201,471
	D.L. Withers	714,739
Questioned Costs	Austin Commercial	30,854
	D.L. Withers	31,226
Unsupported Costs	Austin Commercial	10,200
Inaccurate Fee Calculations	Austin Commercial	234,373
Liquidated Damages	Austin Commercial	22,500
Total Due to Maricopa County	Austin Commercial	499,398
	D.L. Withers	<u>745,965</u>
	Total	\$ 1,245,363

In addition, the County should assess liquidated damages to Austin Commercial for late project completion.

Jefferson Wells also determined that Austin Commercial purchased various assets. Because Maricopa County paid for the assets, they should revert to the County at contract close-out or a credit should be issued to the contract.

We recommend that Facilities Management:

- A. Recover monies or obtain contract credit from the construction contractors for payments which were not billed in accordance with contract terms and conditions, and assess liquidated damages where warranted.
- B. Enhance internal invoice review procedures to identify unsupported charges.

Background

Both construction contracts were Guaranteed Maximum Price type agreements. Austin Commercial (Austin) was the Construction Manager for the Animal Healthcare Center, and D.L. Withers Construction Company (Withers) was the Construction Manager for Buckeye Hills Shooting Park. The table below summarizes current contract values.

Contractor	Contract Value	Amount
Austin Commercial	Original Guaranteed Maximum Price	\$ 13,519,000
	Change Order #1	<u>291,859</u>
	Current Total Value	\$ 13,810,859
D.L. Withers	Original Guaranteed Maximum Price #1	\$ 3,477,697
	Guaranteed Maximum Price #2	10,517,742
	Change Order #1	<u>377,990</u>
	Current Total Value	\$ 14,373,429

The audit scope was from the start of construction through spring 2008 and included:

- All costs incurred
- Development of the Guaranteed Maximum Price
- An assessment of monthly payment applications

Criteria

Guaranteed Maximum Price (GMP) contracts should protect the project owner from excessive, unnecessary, or unanticipated construction costs, while allowing the contractor a reasonable profit on his work. Among other provisions, County GMP contracts state the contractor is paid only for work completed. Allowable costs charged to the owner are based on actual cost. The contractor should receive a five

percent fee on all subcontractors' costs. Work performed by the contractor's own workforce is subject to a 15 percent fee.

To encourage timely performance, the contract also provides liquidated damages of \$500/day for every day the project is not completed by the substantial completion date.

Condition

The auditors observed billings in excess of cost, questioned costs, unsupported costs, and inaccurate fee calculations.

Billings in Excess of Actual Costs

We found that Austin invoiced \$13,629,682, which included fees of \$884,151. However, Austin's job cost records showed \$12,879,238 of incurred costs, a total that included \$335,178 of non-reimbursable costs. This resulted in \$201,470 of potential overbilling.

Austin Commercial Documentation	Costs	
Austin Invoices	\$ 13,629,682	
Less: Fees	<u>884,151</u>	12,745,531
Austin Job Cost Records	12,879,238	
Less: Non-reimbursable Costs	<u>335,178</u>	12,544,060
Potential Overbilling		\$ 201,471



Maricopa County Animal Care and Control Animal Healthcare Center

Similarly, Withers invoiced \$12,034,350, which included a fee of \$604,331. Therefore, Withers had \$11,430,019 of invoiced costs. However, Withers' job cost records showed \$10,715,280 of incurred costs. This resulted in \$714,739 of potential overbilling.

Withers Construction Documentation	Costs	
Withers Invoices	\$ 12,034,350	
Less: Fees	<u>604,331</u>	11,430,019
Withers Job Cost Records		10,715,280
Potential Overbilling		\$ 714,739



Buckeye Hills Shooting Park

Questioned Costs

Austin purchased various assets that included items such as filing cabinets, a copy machine, tables, and video equipment. They also incurred various unallowable costs summarized below.

Austin Commercial	Questioned Costs
Assets Purchased	\$ 26,149
T-shirts, Tools, Hats	2,917
Paintball and Pizza Outing	1,214
Business Cards	289
Fred Pryor Seminar	285
Total	\$ 30,854

Similarly, Withers charged the County \$31,226 for “Guarant & Callback – Acctg,” a cost category under General Conditions. This is not an actual cost, but an accrual for a potential future cost, which may not be incurred.

Unsupported Costs

The auditors reviewed two months of time cards for Austin's workforce who charged time on the project and noted the following:

November 2007

- Payroll register shows 13 hours more in regular hours than the timesheets
- Payroll register shows 3 hours more in overtime hours than the timesheets

February 2008

- Payroll register shows 10 hours more in regular hours than the timesheets

Jefferson Wells calculated the potential overbilling pertaining to the unsupported labor and then estimated the potential overbilling for the life of the project as \$10,200.

Inaccurate Fee Calculations

Based on payment application #11, Austin invoiced \$884,151 for their fee. The auditors recalculated the fee based on the cost reported from the job cost records and calculated a fee of \$651,831 for a potential overcharge of \$232,320. This computation takes into consideration the billings in excess of cost. When we also apply the five percent fee on the unallowable costs (questioned and unsupported costs), the result is a potential overbilling of \$2,053.

Austin Commercial	Overcharges
Austin Invoice - Fee	\$ 884,151
Auditor's Fee Calculation	<u>651,831</u>
Fee Overcharge	232,320
Fee on Unallowable Costs	2,053
Total	\$ 234,373

Liquidated Damages

Finally, the original Austin contract substantial completion date was stated as February 15, 2008. A change order was submitted to extend this date by 14 days, due to inclement weather, to February 29, 2008.

The actual substantial completion date was April 14, 2008 with no corresponding change order. The contract indicates the County is allowed liquidated damages of \$500/day if the substantial completion date is not met. The auditors calculated the liquidated damages to be \$22,500.

Effect

Weak internal controls over contract administration exposed the County to \$1.25 million in potential overcharges by construction contractors.

Cause

The contractors did not have effective internal procedures to ensure that invoices were in accordance with contract terms and conditions. The Facilities Management Department did not have effective internal controls in place to detect noncompliance with contract terms.

Recommendations

Facilities Management should:

- A. Recover monies or obtain contract credit from the construction contractors for those payments which were not billed in accordance with contract terms and conditions, and assess liquidated damages where warranted.
- B. Enhance internal invoice review procedures to identify unsupported charges.

We reviewed this information with Facilities Management leadership and attached their response to this memo. If you have any questions or wish to discuss the information presented in this memo, please contact Richard Chard at 506-7539.

C: David Smith, County Manager
Kenny Harris, Assistant County Manager, Public Works
Janet Palacino, Director, Facilities Management Department

Date: July 28, 2008

Subject: Facilities Management Department Audit Response – FY 08 Construction Audits

In response to your audit report of July 11, 2008, the Facilities Management Department submits the following responses:

Issue 1:

Construction contractors potentially overcharged Maricopa County \$1,245,363.

Recommendation A: Initiate recovery or contract credit from the construction contractors for those payments made which were not billed in accordance with contract terms and conditions, as well as assess liquidated damages where warranted.

Response: Concur—will implement immediately. Please see specific responses below;

Billings in Excess of Actual Costs - FMD staff have met with the contractors and resolved the majority of billing discrepancies. The majority of the identified amounts result from timing difference between the date of your audit and the submission of sub-contractors billings to the contractors. As a result of the audit we have requested County Counsel to make changes to our CM@R contracts whereby the County will not pay the contractor until the contractor has been invoiced by sub-contractors, this will eliminate this timing difference in the future. To date we have resolved all amounts with the exception of \$114,791. We will resolve the rest of the disputed balance prior to the close-out of the contracts.

Questioned Costs - All of the costs were approved by the project manager with the exception of \$584, which the contractor has been asked to remit to Maricopa County. All assets identified in the audit were previously returned to Maricopa County.

Unsupported Cost- We asked the vendor to provide documentation to support the \$10,200 in charges. Once reviewed we will make a determination as to the validity of the charges.

Fee - We have reviewed the fee calculations and taken into account the up-to-date contractor costs and believe that the fee is reflective of the contract document. No additional review is necessary.

Liquidate Damages - A change order was approved that extended the time frame for the contract. No liquidated damages are due Maricopa County.

Target Completion Date: 12/31/08

Benefits/Costs: Increased control over accountability and accuracy.

Recommendation B: Enhance internal invoice review procedures to identify potentially erroneous charges.

Response: Concur—will implement immediately. FMD is working on changes to the contract language to reflect that contractors are not permitted to bill the County for completed work until such time as they have been billed by sub-contractors. We will also require our project managers to more thoroughly review invoice detail to ensure that costs billed are not overhead costs that should not be billed, such as the \$584 identified under questioned costs.

Target Completion Date: 12/31/08

Benefits/Costs: Increased control over accuracy and accountability.

Approved By:	<u>Janet E. Palacino</u>	<u>7-29-08</u>
	Department Head	Date
	<u>Kenneth W. Hamlin</u>	<u>7.31.08</u>
	Assistant County Manager	Date
	<u>D. Smith</u>	<u>8/4/08</u>
	County Manager	Date