

Office of the Inspector General

Miami-Dade County

FINAL Audit Report

Performing Arts Center

Construction Management Services

An audit conducted by the Office of the Inspector General of the Performing Arts Center Builders' performance under its contract with Miami-Dade County to provide construction management services during the building of the Performing Arts Center of Greater Miami.

March 3, 2003

Office of the Inspector General
Performing Arts Center – Construction Management Services

FINAL AUDIT REPORT

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This report was initially furnished in draft form to representatives from the Performing Arts Center Management Office and the Performing Arts Center Builders accompanied by a request for their written responses. The written responses received from these representatives are appended to this report. The OIG elects not to comment on the responses received. The OIG auditors also had met with these representatives to discuss the contents of this report prior to issuing it in draft form. The OIG auditors are prepared to meet again with these representatives to discuss their written responses should they request a meeting.

I. INTRODUCTION AND RESULTS SUMMARY

Since August 2002, the Miami-Dade Office of the Inspector General (OIG) has been auditing selected aspects of the Performing Arts Center Builders' (PACB) performance under its contract with the County to provide construction management services during the building of the Performing Arts Center of Greater Miami. The OIG, pursuant to section 2-1076 of the Code of Miami-Dade County Ordinance, is charged with conducting audits of County contracts, including monitoring an existing project concerning whether the project is on time, within budget, and in strict accordance with the contract documents and applicable law.

PACB's Financial Position and Project Costs To-date

As of November 30, 2002, PACB projects an overall positive cash flow and a profit of approximately \$12 million. This projection includes PACB's forecast that the project will be delayed approximately seven (7) months and that PACB will be reimbursed approximately \$25.5 million for 575 *Potential Change Orders* (PCO) and related "Z" items. The amounts presented above are those presented by PACB management. They have not been audited by the OIG to determine whether they are completely and accurately stated or whether they are authorized, allowable and allocable costs of this project.

As of this writing, the Performing Arts Center Management Office (PACMO) has not accepted PACB's entitlement to the asserted change conditions or its quantification of the change amounts and/or schedule impacts reflected in the listed PCOs. Notwithstanding, PACB senior project officials have told the OIG that they believe that all PCOs represent valid project costs.

PACB, in its most recent application for payment, Payment No. 15 for November 2002, reported that the project's *Total Completed and Stored To Date* amount was \$48,096,467, or 19% of the GMP amount. As of this reporting period, approximately 37% of the 1,097-calendar day contract time has elapsed. PACB states in its most recent *Construction Progress Report - November 15 to December 16, 2002* that:

“The project is currently behind -223 calendar days (-154 working days) in the Ballet Opera House and -217 calendar days (-151 working days) at the Concert Hall.”

PACMO has accepted PACB’s construction schedule but with qualifications asserting that it has concerns about the schedule’s methodology, as well as the accuracy and completeness of the data presented. PACMO has not accepted, in any part, the delay days shown in the schedule. PACMO and PACB are currently negotiating a resolution to their schedule dispute.

PACB’s General Conditions Costs

The General Conditions Costs are fixed at a lump-sum amount of \$22,129,495 per the contract agreement between Miami-Dade County and PACB. The general conditions costs encompass the construction manager daily administrative operation, which include costs for administrative payroll, staff travel, relocation, office equipment, office supplies and other items.

As of November 30, 2002, total general conditions cost amounted to \$8,480,888 dating from the notice to proceed date of October 15, 2001. The OIG auditors calculated average monthly general conditions costs to be \$652,376. If PACB continues to spend at that rate over the original thirty-six months of the contract period, PACB will likely overspend its GMP lump-sum general conditions costs contract line item amount by \$1,356,040.

PACB’s Contract Required Record Keeping and Reporting

OIG auditors evaluated three reporting requirements mandated by the amended agreement between Miami-Dade County and the Performing Arts Center Builders. Reporting requirements analyzed were (1) superintendents’ daily reports timely submitted to Owner, (2) payments to both non-CSBE subcontractors, and (3) CSBE subcontractors and community small business enterprise requirements (CSBE).

Superintendents’ Daily Reports

The following results were noted:

- No reports were received within the agreed-upon five to seven-day calendar period.
- Delays ranged from three to fifty-two calendar days.
- The average delay was sixteen days, which is more than two weeks past due.
- The reports were complete in that all criteria were noted.

PACMO personnel stated that these issues with delayed daily reports have been addressed to PACB and the architect during meetings and by memoranda. They are currently working with PACB on resolving the issues.

Payments to Non-CSBE Subcontractors

Article 6 Section 3 of the amended agreement between Miami-Dade County and PACB requires that payments to non-CSBE subcontractors comply with Miami-Dade County's Administrative Order No. 3-19 and the prompt payment provisions of Miami-Dade County Ordinance No. 94-40. The OIG auditors observed that PACB is both effective and efficient in processing subcontractor payments. The OIG auditors reviewed subcontractor invoices as well as PACB's disbursement files for the seventeen payments tested. The auditors determined that only one payment of the seventeen payments tested was not made timely in accordance with Miami-Dade County's administrative order No. 3-19, and was made seventeen days late. The OIG auditors noted that PACB's disbursement files were well organized and included subcontractor invoices, copies of checks and release of lien as appropriate to each individual payment.

Payments to CSBE Subcontractors

Article 6 Section 3 of the amended agreement between Miami-Dade County and PACB requires PACB to make payments to CSBE subcontractors pursuant to the CSBE participation provisions of the Miami-Dade County Administrative Order 3-22 and the prompt payment provisions of Miami-Dade County Ordinance No. 97-52. OIG auditors documented that all twelve payments tested were paid to the CSBE construction management subcontractors before PACB received payment from the County for the time frame during which the CSBE Construction Management subcontractors provided services to PACB.

Monthly Utilization Reports (MURs)--CSBE Construction Services and Construction Management Services MURs

The OIG auditors noted that while data reported to DBD on the CSBE Services and the Construction Management Monthly Utilization Reports was incorrect, this is a reporting problem and the monthly MURs do not adequately reflect actual amounts paid to CSBE Construction Management subcontractors. Nothing came to our attention to indicate that CSBE Construction Management subcontractors were not being paid both timely and satisfactorily the correct amounts owed to them.

PACB's Current Status Towards Meeting CSBE Goals

PACB's goal for CSBE Construction Management Services was set at \$3,754,941. PACB has awarded \$4,568,008 or 122% of its original goal to CSBE Construction Management Services. PACB has paid through September 2002 a total of \$1,186,074, which represents 26% of the awarded amount of \$4,568,008. PACB's goal for CSBE Construction Services mandated by contract is \$41,487,922. PACB has awarded \$27,559,584 or 66% of its mandated goal, leaving \$13,928,338 to be awarded.

Comprehensive Employment Strategy Agreement (CESA)

Miami-Dade County and the City of Miami entered into an agreement to ensure that PACB and its subcontractors utilize to the greatest extent possible both unemployed and underemployed individuals residing in designated priority zones. A total of four zones were designated with permanent residents of priority zone number one receiving priority to be recruited by PACB and/or its subcontractors for working on the project. Priority zone number one consists of the Central Business District & Seaport Neighborhood and the Overtown neighborhood.

Based on our review, PACB has made strides to increase the number of employees recruited from priority zone number one; however, a 9% recruitment rate and PACB's inability to provide requested documentation reveals that PACB has not implemented prudent and adequate policies to either inform residents of priority zone number one of potential jobs at the project site, and has not effectively educated its subcontractors of CESA requirements.

II. BACKGROUND

The Miami-Dade Board of County Commissioners passed Resolution No. 1073-01, on September 25, 2001, approving a \$254,650,000 Amended At-Risk Construction Management Guaranteed Maximum Price (GMP) contract between PACB and Miami-Dade County (the County) to construct the Performing Arts Center of Greater Miami. The County's representative, PACMO, issued the Notice to Proceed for this project on October 15, 2001.

The project's Guaranteed Maximum Price (GMP) is \$254.65 million comprised of the following cost items:

Construction Manager's Fee	\$ 15,419,915
General Conditions	22,129,495
Preconstruction Service	2,000,000
Construction Manager's Contingency	7,000,000
Owner's Controlled Insurance Program	(5,151,731)
Sales Tax Savings Allowance	(2,680,000)
Insurance and Bonds	5,161,505
Credit for Deleted Work	(591,289)
Building Savings Options	(2,024,109)
Cost of Work	<u>213,386,214</u>
Total	<u>\$254,650,000</u>

III. AUDIT SCOPE AND OBJECTIVES

The scope of the audit of the Performing Arts Center (PAC) and the Performing Arts Center Builders Joint Venture (PACB) encompasses the period from the notice to proceed date of October 15, 2001 to the current period of November 30, 2002.

The objectives of the OIG's review are:

1. To determine if PACB is financially capable of continuing to perform on contract by focusing on their future cash flows and projections and whether PACB will be able to cover its operating costs and make appropriate payments on its liabilities in the future.
2. To review general conditions costs charged to the contract to determine whether such costs are reasonable, applicable to contract, determined under generally accepted accounting principles, and not prohibited by the contract, statutes, regulation or by previous agreement between parties.
3. To review PACB's compliance with contract reporting and notice requirements, such as, whether subcontractors are paid timely, reports are completed and forward to the Performing Arts Center Management Office (PACMO) on a timely basis, and review of monthly utilization reports and the comprehensive employment strategy agreement requirements.

IV. CURRENT PROJECT STATUS

As of November 30, 2002, PACB projects an overall positive cash flow and a profit of approximately \$12 million. This projection includes PACB's forecast that the project will be delayed approximately seven (7) months and that PACB will be reimbursed approximately \$25.5 million for 575 *Potential Change Orders* (PCO) and related "Z" items.¹ See the table, on the following page, for a more detailed breakdown of these items.

As of this writing, PACMO has not accepted PACB's entitlement to the asserted change conditions or its quantification of the change amounts and/or schedule impacts reflected in the listed PCOs. Notwithstanding, PACB senior project officials have told the OIG that they believe that all PCOs represent valid project costs.

¹ For control purposes, PACB assigns a PCO number to all change items. Change items are categorized as: *Change Proposal Requests* (CPR), *Change Order Requests* (COR), *Potential Change Orders*, and *Internal Change Orders* (ITCO), and "Z" items. Certain items may have one or more designation, such as a PCO that is also a CPR and a COR.

Table of Potential Change Orders

CORs Submitted			
CPRs	36	\$2,383,208.07	
RFIs	37	33,416.91	
Other	<u>24</u>	<u>2,141,664.41</u>	
			97 \$ 4,558,289.39
CPRs Under Review			44 3,160,557.80
PCOs Under Review			<u>236</u> <u>14,280,021.78</u>
Subtotal—PCOs to Owner			377 \$21,998,868.97
ITCOs	55	\$2,893,946.57	
“Z”/ITCOs	<u>84</u>	<u>625,972.47</u>	
Subtotal—Internal PCOs			139 \$ 3,519,919.04
Closed			<u>59</u> \$ _____ 0.00
Total PCOs			<u>575</u> <u>\$25,518,788.01</u>

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“The project is currently behind -223 calendar days (-154 working days) in the Ballet Opera House and -217 calendar days (-151 working days) at the Concert Hall.”

PACMO has accepted PACB’s construction schedule but with qualifications asserting that it has concerns about the schedule’s methodology, as well as the accuracy and completeness of the data presented. PACMO has not accepted, in any part, the delay days shown in the schedule. PACMO and PACB are currently negotiating a resolution to their schedule dispute.

The OIG mentions these circumstances because of the potential cost impact to the Owner and its representatives and/or to PACB and its subcontractors should some or all of this delay be determined valid and attributable, in part or entirely, to either the Owner or PACB.

In fact, projected costs attributable to the alleged delays are a significant portion of PACB's *Potential Change Order* amount.²

Notwithstanding, PACB has not submitted to PACMO a written request for a change order inclusive of a *Request for an Authorized Extension of the Contract Time* that includes a showing of compensable costs for the alleged delays and supporting documentation. Moreover, PACB also has not submitted to PACMO a *Notice of Claim* in writing of the cause or causes of such delay, disruption, interference, or hindrance that includes a statement on the probable impact of such delay to construction progress and other such information required by the contract to support its claim.

Cash Flow Forecasts and Potential Change Orders

PACB projects an overall positive cash flow and profit of approximately \$12 million. This projection includes PACB's forecast that the project will be delayed for seven months and that PACB will be reimbursed approximately \$25.5 million in additional costs for Potential Change Orders and related costs.

Cash Flow Forecasts

The basis of the review of the cash flow forecast is to determine whether there will be enough cash flow through the contract period to cover all valid and appropriate obligations incurred by PACB. The cash flow forecast is based on cash flow projections and construction schedule data provided by PACB. According to the most current data made available to OIG auditors, PACB expects an overall positive cash flow and profit of approximately \$12 million. Also, the original contract period will have an overall delay period of seven months. At present, the construction period is scheduled to be completed in May 2005 instead of October 2004.

The cash flow forecast schedule consists of cash inflows (receipts) and cash outflows (payments) comprised of the following items:

- *Inflows from Jobsites*, relate to cash received or will be received from the Owner, Miami-Dade County.
- *Inflows from Partnership* is for joint venture partners' contributions for working capital noted at the beginning of the project.
- *Other Inflows* relate to interest revenues and miscellaneous receipts, such as reimbursements received from employees for expenses paid by PACB that do not relate to the construction project.
- *Outflows from Jobsites* relate to payments issued for work or services provided to the construction project.

² PACB is entitled, under the contract, to be paid \$14,250 for every day of Owner-authorized time extensions, including Owner-caused delays.

- *Outflows from Partnership* is for the reimbursement to joint venture partners for working capital contributions.
- *Other Outflows* relate to miscellaneous payments made.

Analysis of Cash Inflows And Outflows (millions)

	<u>As of</u> <u>10/31/02</u>	<u>Nov. and</u> <u>Dec. 2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>Total</u> <u>Cash Flow</u>
Cash Inflows	\$36.7	\$5.1	\$49.7	\$72.3	\$90.0	\$255.0
Cash Outflows	\$33.7	\$4.4	\$48.3	\$71.2	\$85.2	\$243.0
Net Inflows	\$3.0	\$0.7	\$1.4	\$1.1	\$5.7	\$12.0

As of October 2002, PACB has received \$36.7 million in cash inflows from the County and spent \$33.7 million in cash outflows. They expect \$0.7 million in net cash flow for November and December 2002. PACB expects additional receipts (cash inflows) throughout the project of \$49.7 million in 2003, \$72.3 million in 2004 and \$90.9 million in 2005. They also expect cash outflows of \$48.3 million in 2003, \$71.2 million in 2004, and \$85.2 million in 2005. The expected \$12 million in profit from the Joint Venture will be split 45%, 45% & 10% among Odebrecht Construction Inc., The Haskell Company, and EllisDon Construction Inc., respectively at the completion of the project.

V. ADDITIONAL COST ITEMS

Since the project's *Notice to Proceed* date of October 15, 2001, there have been a number of events impacting the project's total Guaranteed Maximum Price (GMP). Many of these events will either require additional funding from outside the GMP, or will be internally provided for within the GMP. Some events may decrease the GMP or individual cost elements therein. To date, there has been no formal increase to the original total GMP, although both parties, PACMO and PACB, have agreed and disagreed on some changes to cost elements within the original total price. The causes for such changes include, but are not limited to:

- Owner requested changes, and
- PACB's recognition of certain items that it believes were not provided for in its contract with the County or in its subcontracts.

Change Orders

To date, there are 48 pending change orders, which are in various processing stages and should receive County or Miami-Dade County Board of County Commissioners approval shortly. There are:

- Twenty-seven (27) change orders totaling \$(26,673,984.33) that are “deduct” (credit) change orders the result of the Owner direct/tax-exempt purchase program operating at this project. These deduct change orders are not reflected in the amounts earlier shown in the table.
- Nine (9) change orders, totaling \$89,868, that are “no cost” change orders, which are for items considered to be additional cost of work deductions. Monies for these and similar items have already been applied to the GMP in the *Credit for Deleted Work* amount shown earlier.
- Nine (9) relatively small change orders, in total, valued at \$115,823 are the result of Owner approved changes adding to the original GMP work scope. PACMO’s \$18 million Contingency, which contains moneys outside the GMP, will fund these GMP increases.
- Two (2) large dollar amount change orders totaling \$1,431,767, including one change order valued at \$1,184,015 adds back to the Ballet Opera House scope “compensating lifts” and “stage wagons” and another totaling \$247,752 to pay for enhancements to the “donor” wall locations. Most of the money to pay for these items will come from the Performing Arts Center Trust.
- One other proposed change order will move \$6 million from the Owner’s Contingency of \$18 million to within the GMP to pay for *Change Authorizations*. This transfer of funds will facilitate PACMO’s paying for change orders by using moneys within the GMP. This proposed change is not in the cited PCO item/amount totals. This change will need to be submitted to the Miami-Dade County Board of County Commissioners for their approval.

Change Proposal Requests (CPR)

PACB records show that there are 44 CPRs totaling approximately \$3.1 million, pending final pricing reviews. A CPR is an Owner-generated request to PACB for pricing information on a specified change in work scope that either adds to or subtracts from the GMP. PACB will return these to PACMO as Change Order Requests (COR). Thereafter, PACMO will generate change orders revising the GMP. Moneys to pay for these scope changes will come from the \$18 million Owner’s Contingency outside of the GMP. However, if the above-mentioned \$6 million change order is approved, these 44 CPRs may eventually be paid using these funds, which, at that time, will be funds within the GMP.

Change Order Requests (COR)

Concurrently, there are 61 PACB-initiated CORs, totaling approximately \$2.2 million. A COR, in this case, is a PACB-initiated request for change order caused by what it believes to be an Owner caused impact to the work scope. Certain of these CORs may be accepted by PACMO as changes to the contract documents, while others may be rejected. Later, PACB may elect to submit these items to a Dispute Resolution Board, it may elect to file a claim in an effort to recoup the costs, or it may chose to absorb the costs itself. The OIG cannot make any determinations, predictions, or the like regarding the disposition of these items. These 61 items are included in the cited PCO item/amount totals.

Potential Change Orders—Internal Change Orders/"Z" items

PACB has submitted or will be submitting in the future 139 PCOs to PACMO, totaling approximately \$3.5 million. These PCOs typically are used by PACB to pay for work items not already provided for in its subcontracts. Funding for these items will come from within the GMP.

Potential Change Orders—Under Review

These PCOs are less formal and less authoritative, in terms of stating a change item's cost and/or schedule impact, than a PACB initiated COR. As earlier shown on the table, PACB records show that there are 236 "pending" PCOs valued at about \$14.3 million. Not all of these PCOs have been submitted to PACMO, as of this date. There are many reasons that would cause PACB to initiate a PCO listing, including

- Changed work scope/conditions due to Owner representative responses to *Requests for Information*,
- *Architectural Site Instructions, Field Orders, or Site Confirming Memos*, or
- PACB's need to pay for items not already provided for in its subcontracts.

A major PCO not yet submitted to PACMO is for what PACB's asserts are the consequences of "design geometry deficiencies" and the listed amount reflects PACB's and certain of its subcontractors' resultant "delay" costs totaling over \$10.3 million.

PACMO has not accepted PACB's entitlement to the asserted change conditions or its quantification of the change amounts and/or schedule impacts. PACMO representatives are currently evaluating the submitted PCOs to determine whether PACB may be entitled to be paid for the item. If PACMO representatives make a PACB-favorable determination, PACB will be requested to provide additional information, including costs, for the designated items. Should PACMO representatives make an unfavorable determination, PACB will have the

same options described above in the Change Order section. PACMO representatives will perform a similar review upon their receipt of the not yet submitted PCOs.

Notwithstanding, PACB senior project officials have told the OIG that they believe that all PCOs represent valid project costs. PACB, when it believes it to be appropriate, will look to available GMP funds, such as the *Construction Manager's Savings Account*, the *Construction Manager's Contingency*, or back charges to its subcontractors to pay for some PCOs. For the others, PACB will attempt to collect moneys from the Owner via a Change Order Request.

VI. FUNDING

As of this writing, PACMO/PACB have at their disposal, over \$10 million within the GMP to pay for additional project costs. Most of these funds are contained in the \$7 million *Construction Manager Contingency Account*.

Under the contract, there is a *Construction Manager's Savings Account*. An element of the *Savings Account* will result from the cost differential between the GMP's *Schedule of Value* line item amounts and the actual, corresponding subcontract amounts negotiated by PACB with its subcontractors. As of November 30, 2002, the most recent date reported by PACB, the *Savings Account* held an approximate \$3.7 million favorable variance. That is, PACB successfully negotiated contracts with its subcontractors for less money than stated in its GMP. Currently, PACB reports that it has awarded subcontracts valued at \$204,270,423, or approximately 96% of the GMP *Cost of Work* amount of \$213,386,214.

Other *Savings Account* amounts will include favorable variances in the GMP's *Owner's Controlled Insurance Program* and *Sales Tax Savings Allowance*. To date, there are no surpluses in these two other accounts. Furthermore, PACMO has \$18 million in its own contingency account set-aside outside the GMP to pay for additional project costs.

VII. GENERAL CONDITIONS COSTS

The General Conditions Costs are fixed at a lump-sum amount of \$22,129,495 per the contract agreement between Miami-Dade County and PACB. The general conditions costs encompass the construction manager daily administrative operation, which include costs for administrative payroll, staff travel, relocation, office equipment, office supplies and other items.

The OIG reviewed a sample of general conditions costs expensed by PACB up to July 31, 2002. As of July 31, 2002, the total dollar amount of general conditions costs expensed was \$6,046,203. The OIG tested \$1,701,023, which represents 28% of the amount expensed through July 31, 2002. These disbursements were tested based on

several criteria, such as, disbursements should be properly supported by an original invoice, properly approved for payment, posted to the correct account, applicable to contract, county ordinance, state statutes, paid on a timely basis and agreed to cancelled checks. Some of the general conditions costs tested include administration, staff travel, relocation and subsistence, security, trailer rental and setup, office equipment and supplies, project vehicles, trash removal and temporary fencing and lighting.

From the OIG review, we noted that some disbursements from joint venture companies were not properly supported. For example, some disbursements were supported by photocopies instead of the original invoices, some payroll transactions were supported by monthly general ledger distributions, and some travel expenses for airline and hotel reservations were supported by on-line confirmation or copies of credit card statements. The OIG auditors requested and received proper support for some of these charges. Also, PACB's travel and relocation policies and procedures were vague in that they did not specify per diem and allowance limits.³

Several instances were noted where a PACB employee personally paid PACB expenses amounting to \$6,372, and was later reimbursed by PACB. Some of these expenses were for cellular telephone charges for \$2,309, office furniture for \$1,529, a Department of Environmental Resources Management (DERM) permit for \$720, and payment for services from two off duty police officers for \$156. Some of these amounts exceeded the established petty cash balance. This practice circumvents proper accounting procedures. According to PACB's management, these instances are no longer occurring.

Also, one instance was noted where PACB was overcharged \$1,186 by one of its partners for three vacation days taken by an employee. Vacation days are already included in the overhead burden cost charged to payroll and should not be billed for separately in general conditions costs. The overhead burden is charged to payroll as a percentage of payroll cost. It comprises of federal taxes, workman compensation, health benefits, employee leave and severance.

As of November 30, 2002, total general conditions cost amounted to \$8,480,888 dating from the notice to proceed date of October 15, 2001. (See table on following page.) The OIG auditors calculated average monthly general conditions costs to be \$652,376. If PACB continues to spend at that rate over the original thirty-six months of the contract period,

³ While PACB is a private entity, interpretation of the Florida Statute 112.061(e)(2) and the Miami-Dade County Administrative Order No. 6-1 may be required to determine if PACB employees are considered authorized persons. During this project's preconstruction phase, when PACB General Conditions Costs were considered specifically reimbursable items, PACMO withheld from PACB payment requests over \$100,000 in similar costs. Now these costs are indirectly compensated for as part of a monthly lump-sum amount paid to PACB.

PACB will likely overspend its GMP lump-sum general conditions costs contract line item amount by \$1,356,040.

**Table of PACB General Conditions Costs
October 15, 2001 – November 30, 2002**

Account #	Description	YTD Actual November 2002
AO.010.01.00	PROJECT STAFF	\$5,853,208
AO.010.02.00	STAFF EXPENSE/ TRAVEL/RELOCATION	\$316,570
AO.010.03.00	SECURITY & SAFETY	\$394,048
AO.010.04.00	SITE & PARKING DEVELOPMENT	\$202,889
AO.010.05.00	OFFICE FURNITURE & APPLIANCES	\$39,134
AO.010.06.00	COMPUTER SETUP & INSTALLATION	\$11,123
AO.010.07.00	OFFICE ELECTRONICS	\$167,443
AO.010.08.00	COMPUTER SOFTWARES	\$19,199
AO.010.09.00	MONTHLY SERVICES & RENTAL	\$262,920
AO.010.10.00	INTERNET COMMUNICATIONS COST	\$43,669
AO.010.11.00	MAINTENANCE & SERV AGREEMENTS	\$69,270
AO.010.12.00	OFFICE SUPPLIES	\$165,821
AO.010.13.00	JOBSITE PHOTOS	\$7,016
AO.010.14.00	VEHICLES	\$54,459
AO.010.15.00	PROJECT SIGN	\$4,765
AO.010.16.00	PROFESSIONAL SERVICES	\$224,340
AO.010.17.00	LICENSE & FEES	\$586
AO.010.18.00	PRINTING/REPRODUCTION	\$117,361
AO.010.19.00	INSURANCE	\$18,580
AO.011.10.00	SITE UTILITIES	\$157,735
AO.011.11.00	SITE CLEAN UP	\$202,750
AO.011.12.00	TOOLS/STORAGE/MATERIAL HNDLNG	\$52,504
AO.011.13.00	MOT	\$81,236
AO.011.14.00	TEMP. PROTECTION SEARS TOWER	\$8,594
AO.011.15.00	TEMP. ROAD	\$5,666
AO.011.16.00	FINAL CLEAN UP	\$0
		\$8,480,888

Overall, the OIG did not observe any deficiencies or unallowable costs within the scope of the contract agreement for the general conditions costs. General conditions costs were otherwise reasonable, applicable to the contract, determined under generally accepted accounting principles, and not prohibited by contract, statutes, and regulations or by previous agreement between parties.

General Conditions Costs Summary

As noted above, as of November 30, 2002, PACB has average monthly general conditions costs of \$652,376. If PACB continues to spend at that rate over the original thirty-six months of the contract period, PACB will likely overspend in its GMP lump-sum general conditions costs contract line item amount by \$1,356,040 with the seven month delay period not included.

The seven months delay period will result in additional general conditions costs of approximately \$3,178,000 (\$14,250/day x 223 days). As noted in PACB's *November 15 to December 16, 2002 Construction Progress Report*, the project is currently 223 calendar days behind schedule. The \$14,250 per day is a fixed cost per the contract agreement between Owner and PACB. Therefore, the Owner or PACB could potentially incur additional general conditions costs amounting to \$4.6 million above the contract lump-sum amount. The seven months delay for general conditions costs is already accounted for in the potential change orders for \$25.5 million.

PACB projects an overall positive cash flow through the extended contract period. However, additional cost from the potential change orders, the seven months delay period and other unforeseen costs may affect their profit margin.

VIII. CONTRACT REPORTING AND NOTICE REQUIREMENTS

As part of the Inspector General's audit of the Performing Arts Center Builders' (PACB), OIG auditors conducted a compliance audit to ascertain if PACB has complied with contract reporting and notice requirements. OIG auditors evaluated three reporting requirements mandated by the amended agreement between Miami-Dade County and the Performing Arts Center Builders. Reporting requirements analyzed were (1) superintendents' daily reports timely submitted to Owner, (2) payments to both non-CSBE subcontractors, and (3) CSBE subcontractors and community small business enterprise requirements.

Superintendents' Daily Reports

A sample of Superintendents' Daily Reports from June 1, 2002 through November 29, 2002 revealed that none of these reports were submitted within the agreed-upon one-week period.

As noted in Article 3.6.1(18) of the contract agreement, the Construction Manager shall keep a daily log containing a record of the weather, separate contractors' and subcontractors' work on project, number of workers, work accomplished, problems encountered, and other similar relevant data as the Owner may require, and the log should be available to the Owner and the Architect.

The contract stipulates that daily logs should be available to the Owner and the Architect; however, the contract does not state when these logs should be available. According to the Performing Arts Center Management Office (PACMO), a verbal agreement was made between PACMO and PACB for PACB to submit these daily reports to PACMO and the Architect within five to seven days after the last day that the reporting period covers. The weekly reporting period covers from Saturday to Friday.

The daily reports consist of the superintendent's (PACB) and its subcontractors' daily reports. The superintendents' reports are a summary of the subcontractors' reports. Per PACMO personnel, both PACB and its subcontractors forward these daily reports to the PACMO office. The superintendents' daily reports are due weekly and should be accompanied by a cover page that summarizes the reporting period. If the daily reports are faxed, the fax date is used as the receipt date. If the daily reports are hand-delivered, the cover page is stamped-dated by PACMO upon receipt. The superintendents' daily reports are copied and distributed to the PACMO project managers.

The OIG auditors reviewed daily reports covering a period of twenty-six weeks. The period ranged from June 1, 2002 through November 29, 2002. Since the superintendents' reports are the only dated reports, they were used to determine the Owner's receipt date. The delayed period is calculated as of the next day after the due date. The following results were noted:

- No reports were received within the agreed-upon five to seven-day calendar period.
- Delays ranged from three to fifty-two calendar days.
- The average delay was sixteen days, which is more than two weeks past due.
- The reports were complete in that all criteria were noted.

The deficiency with these reports is that there is a contractual obligation for these daily reports to be accurately completed and available to the Owner. If these reports are not timely and consistently available then they are considered useless to track the progress of the construction project.

The OIG auditors spoke with several personnel of PACMO, Mr. Byron Dowell, Assistance Project Director, Mr. Ola Aluko, Senior Project Manager, and Mr. Shannon Crowell, Senior Project Manager, to determine if the current delays are being discussed with PACB and the Architect. They all agreed that there is a problem with the daily reports not being timely or consistent. If these daily reports are received after the due date then the daily reports objective is not accomplished. PACMO personnel also stated that these issues with delayed daily reports have been addressed to PACB and the architect during meetings and by memoranda. They are currently working with PACB on resolving the issues. PACMO has provided documented support to the OIG auditors that confirmed that superintendents' daily reports delays were addressed with PACB.

Payments to Non-CSBE Subcontractors

Article 6 Section 3 of the amended agreement between Miami-Dade County and PACB requires that payments to non-CSBE subcontractors comply with Miami-Dade County's Administrative Order No. 3-19 and the prompt payment provisions of Miami-Dade County Ordinance No. 94-40.

The OIG auditors reviewed a sample of seventeen (17) payments made to PACB's non-CSBE subcontractors garnered from PACB payment application numbers eight, nine, ten and eleven. The OIG auditors observed that PACB is both effective and efficient in processing subcontractor payments. The OIG auditors reviewed subcontractor invoices as well as PACB's disbursement files for the seventeen payments tested. The auditors determined that only one payment of the seventeen payments tested was not made timely in accordance with Miami-Dade County's administrative order No. 3-19, and was made seventeen days late.

Payments to subcontractors must be based on the receipt of proper invoices and satisfactory performance of contract terms. The OIG auditors noted that PACB's disbursement files were well organized and included subcontractor invoices, copies of checks and release of lien as appropriate to each individual payment.

Payments to CSBE Subcontractors

Article 6 Section 3 of the amended agreement between Miami-Dade County and PACB requires PACB to make payments to CSBE subcontractors pursuant to the CSBE participation provisions of the Miami-Dade County Administrative Order 3-22 and the prompt payment provisions of Miami-Dade County Ordinance No. 97-52.

The OIG auditors reviewed a sample of twelve payments made to CSBE Construction Management subcontractors garnered from PACB disbursement files. CSBE Construction Management subcontractors submit invoices monthly to PACB and are paid directly by PACB through general conditions as part of the GMP; therefore, amounts billed by CSBE Construction Management subcontractors do not appear on monthly payment applications. OIG auditors documented that all twelve payments tested were paid to the CSBE construction management subcontractors before PACB received payment from the County for the time frame during which the CSBE Construction Management subcontractors provided services to PACB.

The OIG auditors also reviewed a sample of four payments made to CSBE construction services subcontractors garnered from PACB payment application numbers ten and eleven. As of September 30, 2002, only three first tier CSBE construction services subcontractors who are in direct privity with PACB had performed any work on the project, as such our sample for construction services was limited to four payments.

Again the OIG auditors documented that PACB is both effective and efficient in processing CSBE subcontractor payments. All four payments tested revealed that checks used to pay the CSBE construction services subcontractors were deposited or negotiated by the subcontractor either before or on the same day PACB received payment from the County.

Community Small Business Enterprise (CSBE) Participation Goals

Article 6 Section 4 of the amended agreement between Miami-Dade County and PACB includes goals for the participation of CSBE entities based on a percentage of the total estimated cost of the project. The CSBE participation goal for construction manager services was set at 10% of the Construction Manager's Fee and general conditions costs totaling \$3,754,941. The CSBE participation goal for construction services was set at 19.11% of the Contract sum minus the Construction manager's fee and general conditions totaling \$41,487,922.

The Department of Business Development administers the CSBE program and has a full time representative present at the Performing Arts Center site.

Monthly Utilization Reports (MURs)

Two Monthly Utilization Reports (MURs) are submitted on a monthly basis to the Department of Business Development (DBD). One is for Construction Management Services and the other is for CSBE Construction Services. Per Miami-Dade County Ordinance No. 97-52 and Miami-Dade County Administrative Order 3-22, the Construction Manager is required to submit the required MURs to the DBD representative on or before the tenth working day following the end of the month the report covers.

The OIG auditors sampled thirteen MURs for CSBE Construction Management Services and twelve MURs for CSBE Construction Services submitted by PACB to DBD, representing all MURs generated by PACB and submitted to DBD since inception of the project through September 30, 2002. One MUR for CSBE Construction Management Services was submitted covering the pre-construction period, and no MUR was submitted for the month of November for CSBE Construction Services. Finally, two MURs were submitted for both CSBE Construction Management Services and CSBE Construction Services for the month of May 2002.

Analysis of CSBE Construction Management Services MURs

The OIG auditors' analysis revealed that all thirteen or 100% of the MURs tested were not submitted timely per county ordinance. The number of days MURs representing Construction Management Services were submitted late ranged from six days to seventy-four days including the MUR representing the pre-construction period. However, in June of 2002, the on site DBD representative entered into a verbal agreement to allow PACB to submit their Construction Management Services MURs at the same time the payment applications were submitted to PACMO. This was done so that amounts requisitioned on the MURs would correspond to those amounts

appearing in the payment applications; while the CSBE Construction Management Services subcontractors are not included in the payment application, amounts paid to CSBE Construction Management Services subcontractors are not available until the payment application is prepared. Therefore, the July 2002, August 2002 and September 2002 MURs, while technically late per county ordinance, were submitted in accordance with the verbal agreement provided by DBD.

Further analysis revealed that eight of the thirteen MURs for CSBE Construction Management Services contained amounts different from the actual amounts requisitioned per subcontractor invoices and disbursements by PACB. The OIG auditor review revealed that both untimely and incorrect data was used when preparing the MURs representing activity for CSBE Construction Management Services resulting in an underreporting of the amount paid to date by PACB to DBD in the amount of \$31,490 through September 2002. OIG auditors noted that amounts requisitioned and paid to CSBE Construction Management subcontractors were omitted from the MURs.

The OIG auditors noted that while data reported to DBD on the CSBE Construction Management Monthly Utilization Reports was incorrect, this is a reporting problem and the monthly MURs do not adequately reflect actual amounts paid to CSBE Construction Management subcontractors. Nothing came to our attention to indicate that CSBE Construction Management subcontractors were not being paid both timely and satisfactorily the correct amounts owed to them.

Analysis of CSBE Construction Services MURs

The OIG auditors' analysis revealed that eleven of the twelve MURs tested were not submitted timely per county ordinance. The number of days MURs representing Construction Services were submitted late ranged from four days to forty days. However, in June of 2002, the on site DBD representative entered into a verbal agreement to allow PACB to submit their Construction Services MURs at the same time the Payment Applications were submitted to PACMO. This was done so that amounts requisitioned on the MURs would correspond to those amounts appearing in the payment applications. Therefore, the July 2002, August 2002 and September 2002 MURs, while technically late per county ordinance, were submitted in accordance with the verbal agreement provided by DBD.

Further analysis revealed that nine of the twelve MURs for CSBE Construction Services contained amounts different from the actual amounts requisitioned per PACB's payment applications. The OIG auditors review revealed that both untimely and incorrect data was used when preparing the MURs representing activity for CSBE Construction Services resulting in an underreporting of the amount requisitioned by PACB's CSBE Construction Services subcontractors to DBD in the amount of \$61,583 through September 2002. The OIG auditors noted that amounts requisitioned and paid to CSBE Construction Management subcontractors were omitted from the MURs. PACB experienced difficulties in obtaining accurate data for compiling Construction Services MUR reports. This is of concern to the Inspector General as this data was relatively simple to account for and should have been readily available for reporting purposes.

The OIG auditors noted that while data reported to DBD on the CSBE Construction Services Monthly Utilization Reports was incorrect, this is a reporting problem and the monthly MURs do not adequately reflect actual amounts paid to CSBE Construction Management subcontractors. Nothing came to our attention to indicate that CSBE Construction Management subcontractors were not being paid both timely and satisfactorily the correct amounts owed to them.

PACB's Current Status Towards Meeting CSBE Goals

PACB's goal for CSBE Construction Management Services was set at \$3,754,941. PACB has awarded \$4,568,008 or 122% of its original goal to CSBE Construction Management Services. PACB has paid through September 2002 a total of \$1,186,074, which represents 26% of the awarded amount of \$4,568,008.

PACB's goal for CSBE Construction Services mandated by contract is \$41,487,922. PACB has awarded \$27,559,584 or 66% of its mandated goal, leaving \$13,928,338 to be awarded.

Volume 1 Section 00810 of the Performing Arts Center Project Manual provides for the inclusion of purchases ordered by a participating CSBE Construction Services firm, and executed by the Owner's (PACMO) direct materials purchases plan to be reported and counted as contributing towards the CSBE participation goals. PACMO has paid through September 2002 a total of \$887,263 in direct material purchases, and PACB has paid a total of \$1,534,515 to its CSBE Construction Services 1st tier subcontractors with whom it is in privity. Per the Department of Business Development, an additional \$548,719 has been paid by PACB to 2nd tier CSBE Construction Services subcontractors. The OIG auditors did not perform detailed tests to verify payments to 2nd tier CSBE construction services subcontractors, and as such has relied on information provided by DBD. A total amount of \$2,964,599 has been paid by PACB to its CSBE Construction Management subcontractors representing 7.1% of its mandated CSBE Construction Services goal as of September 30, 2002.

Comprehensive Employment Strategy Agreement (CESA)

Miami-Dade County and the City of Miami entered into an agreement to ensure that PACB and its subcontractors utilize to the greatest extent possible both unemployed and underemployed individuals residing in designated priority zones. A total of four zones were designated with permanent residents of priority zone number one receiving priority to be recruited by PACB and/or its subcontractors for working on the project. Priority zone number one consists of the Central Business District & Seaport Neighborhood and the Overtown neighborhood.

The OIG auditors attempted to determine what efforts PACB and its subcontractors have made to recruit additional workers from priority zone number one. We relied on information provided to us by PACB for the following:

- To assess the methods of communication used by PACB to reach out to and inform residents of priority zone number one.

- To assess the methods used by PACB to educate and communicate with its subcontractors regarding the hiring of residents from priority zone number one.
- To make a determination as to how effective PACB's efforts have been in attempting to reach residents of priority zone number one with regard to employment on the project.

PACB has reported that a total of nine out of ninety-six new hires or 9% were recruited from priority zone number one since inception of the project, and have worked on the project for a minimum duration of three (3) weeks or 120 hours.

The agreement between Miami-Dade County and the City of Miami instructed PACB and its subcontractors to utilize the City of Miami's Office of Workforce Development (OWD). In addition, PACB has entered into a verbal agreement with PAVE, an education and training center located near the Performing Arts Center.

In order to inform residents of priority zone number one of potential job opportunities, PACB sent letters to sixty-five individuals referred by Mr. Irby McKnight, a community activist. The letters encouraged the individuals to contact the City of Miami, Office of Workforce Development to be prescreened for employment. According to PACB twelve of the sixty-five or 18% of letters were returned by the postal service.

In a letter to the Project Director dated August 23, 2002, PACB stated that it has placed signs at the project site referring persons interested in working on the project to the Office of Workforce Development. OIG auditors walked around the entire perimeter of the project and observed one sign at the entrance to PACB's trailer office complex.

PACB verbally informed the OIG auditors that it has on a monthly basis sent out a general announcement to the County's job clearinghouse, and to the City of Miami's cable station. The OIG auditors requested copies of written communication between PACB and the above-mentioned governmental entities; however, PACB was not able to provide this documentation.

Documentation provided to the OIG auditors reveals that PACB has held seminars for its subcontractors to inform them of the Comprehensive Employment Strategy Agreement. Since inception of the construction project, a total of five seminars have been made available to PACB's subcontractors and attendance at the seminars is voluntary. The OIG auditors reviewed the attendance sheets to assess subcontractor exposed to the CESA contract requirements, and to verify that all subcontractors who have worked on the project or are currently working on the project have attended at least one seminar. A review indicates that only one subcontractor who has worked on the project did not attend a seminar.

PACB sent a Comprehensive Employment Strategy Agreement/Priority One letter to its subcontractors on August 23, 2002 encouraging the subcontractors to utilize the services of either the City of Miami Office of Workforce Development and/or PAVE to attract workers from priority zone number one, and requested an explanation of how each subcontractor intends to comply with the CESA. OIG auditors were provided with a copy of one subcontractor's response, which

failed to mention the use of either the Office of Workforce Development or PAVE, and also failed to address how the subcontractor intended to comply with CESA; however, the subcontractor indicated that it would be using a local union to obtain workers when needed. PACB instructed this particular subcontractor to forward a copy of its response to the union. No additional documentation was provided; therefore, we were unable to determine what percentage of subcontractors responded to PACB's CESA/Priority One letter dated August 23, 2002. The one response provided to the OIG auditors indicates a lack of adherence to the policies and procedures of the Comprehensive Employment Strategy Agreement.

Based on our review, PACB has made strides to increase the number of employees recruited from priority zone number one; however, a 9% recruitment rate and PACB's inability to provide requested documentation reveals that PACB has not implemented prudent and adequate policies to either inform residents of priority zone number one of potential jobs at the project site, and has not effectively educated its subcontractors of CESA requirements.

APPENDIX

1. Draft Notification Letter to Ms. Gail L. Thompson
Response to Draft received and attached.

2. Draft Notification Letter to Mr. Luis Simon
Response to Draft received and attached