

OFFICE OF AUDITOR GENERAL



Capital Projects
Audit Report

December 15, 2008



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Capital Projects Executive Summary

OBJECTIVE

To assess the District's operating control environment related to capital improvement projects through review of the capital project processes.

BACKGROUND

In recent years, spending for capital projects has come under increasing scrutiny from the State Comptroller, as well as the Rochester Board of Education. The District invests millions of dollars annually in its Capital Improvement Program (CIP), generally through the use of contractual agreements with outside vendors. The amount of spending for capital renovations has been in decline for the last decade. According to the latest CIP, no known dangerous conditions exist; however, declining investment means that there is a growing backlog of renovation and maintenance projects that must be balanced against educational and student population changes.

In addition, significant funding is planned to be invested in RCSD facilities under the Facilities Modernization Program (FMP). A new Rochester Joint School Construction Board was established to monitor the activities associated with FMP upgrades. With this program, a process to procure, manage construction and disburse FMP funding will need to be established.

SCOPE

We documented operational processes based on management assertions and then evaluated management's controls within those processes for compliance. We reviewed the 2007-2008 Franklin and Douglass projects and supplemented additional controls testing where necessary with other projects. As part of our testing, design and operating effectiveness were assessed. This review focused on capital activities such as work selection, design consultant selection, job specifications, bidding, awards, change orders, work progress, payments and project closure.



Capital Projects Executive Summary

CONCLUSION

While the District has successfully conducted capital projects with minor changes to existing processes, attention should be focused on the improvement of controls and monitoring. Operational procedures, while practiced, are not formalized. Policies and procedures should be documented for the entire construction process from work selection through to project close. In addition, operating procedures must be consistently followed by all employees. Processes should be formalized for changes to design specifications and estimates. Timely Board communication and reporting does not occur throughout the construction process. Although management is concerned about delays in the construction process, a number of the communication & reporting recommendations in this report would not impact the timing of projects. In fact, it would improve the transparency of capital spending between the facilities organization and the Board. Overall, the Board's visibility to capital project status, including scope adjustments and change orders should be improved.

We recognize the need for some judgment is required to select a design consultant; however, measurable and objective selection criteria should be established and documented for the Design Consultant selection process. Formalized criteria should also be established for granting Minority and Women-Owned Business Enterprise (MWBE) waivers. Bidding and awarding activities are performed routinely, but increased vigilance will avoid risk and the perception of impropriety.

Change order procedures should be improved and documented with timely reporting. Additional monitoring and communication would facilitate Board understanding and acceptance of change orders. Change orders should be tracked and trended to identify recurring issues to improve planning and construction procedures.

The District should also establish a formal process to evaluate contractor performance and utilize available legal provisions to discontinue relationships with poor performers. Predefined inspection checklists for key construction activities should be created and utilized to ensure critical activities are consistently reviewed prior to job completion and payment.



Capital Projects Summary of Recommendations

Rec#	Recommendations
1	<i>Document the process for determining capital project demand and how priorities are set. Specifically, include communication requirements for when changes are made to the original CIP proposals.</i>
2	<i>Provide variance reporting to the Board to identify changes in project cost estimates and/or scope after the initial CIP approval but prior to awarding contracts.</i>
3	<i>Develop, document and implement an objective Design Consultant selection process which has defined measurable criteria. At a minimum, the process should be one that can be independently corroborated.</i>
4	<i>Formalize the acceptance process for when changes in design specifications and estimates occur.</i>
5	<i>Certify the tabulation of bids by Purchasing prior to submission to the Design Group for selection.</i>
6	<i>Develop written policies for awarding contracts to consultants/contractors for capital projects.</i>
7	<i>Retain date and time information for all bids (including awarded bids) to substantiate the sealed bidding process.</i>
8	<i>Define good faith effort criteria for contractor MWBE participation in the bidding process prior to allowing a waiver to occur. Specifically, identify the number of MWBE certified subcontractor quotes needed prior to the waiver being issued. Implement formal reporting to Management and the Board that identifies MWBE participation and the number of waivers issued. Evaluate trends in waivers issued and develop strategies to increase participation.</i>
9	<i>Develop written procedures for change orders.</i>
10	<i>Develop a process to trend change orders by contractor, consultant and reason. Evaluate the frequency of recurring issues for the creation of change orders. Minimize the occurrence of preventable change orders.</i>



Capital Projects Summary of Recommendations

Rec#	Recommendations
11	<i>Develop periodic reporting to the Board that provides the status of existing projects including the nature and related cost of change orders. Include in the reporting the status on available funds by source for their review.</i>
12	<i>Implement an approval process which incorporates a dollar threshold for the approval levels. Obtain Board agreement for the authorization of change orders.</i>
13	<i>Develop and comply with a policy requiring significant discretionary change orders, to be competitively bid. The policy should be evaluated and subject to Board approval.</i>
14	<i>Develop and implement predefined inspection check lists for key construction activities prior to commencement of construction to ensure critical activities are reviewed. Maintain signed and dated check lists.</i>
15	<i>Develop a process to periodically meet with contractors to review their performance and escalate poor performance evaluations to senior management of both parties. Work with the specialized legal support to identify contract language to protect the District in future bid projects when a pattern of poor performance has been established.</i>
16	<i>Develop formal approval standards for capital payments. Designate an alternate person to review and approve payments applications if the District Architect is the Architect of Record or the Inspector.</i>
17	<i>Establish and implement standard templates for required construction certifications to ensure all requiring verbiage is received. Require that all consultants comply with completion of the standard forms.</i>
18	<i>Obtain the Board's approval for the President's, Superintendent's standing signatures authorizing and delegating their signature authority for the respective forms to the people they choose. Update signing authority upon turnover of involved personnel.</i>
19	<i>Establish a timely interval for reporting total project costs. At a minimum, communicate project cost reports and any related variances within the same fiscal year as the final payment.</i>
20	<i>Develop a process to reconcile State Aid requested for Capital projects to the amount of State Aid actually received.</i>



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #1

Work Selection

Procedures for determining capital project priorities are not formalized. There is an informal process that weighs specific factors based on importance; however, the process is somewhat subjective. Capital project requests are assembled from multiple sources of information, some of which is well documented and some loosely documented. Priorities for project selection were described to include health and safety issues, codes and regulations, and health environmental issues. Additional influencing factors are obtained from Principals, Plant Security, Plant Maintenance, IT, Health Department and District administration operating concerns are identified, although much of this documentation is not well organized. Ultimately, this information results in recommendations made by Facilities management in the form of a 5-Y ear Capital Improvement Plan (CIP). Documenting this process would clarify how priorities were set, and would also clarify information retention requirements when projects change from original CIP proposals.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Document the process for determining capital project demand and how priorities are set. Specifically, include communication requirements when changes are made to the original CIP proposals.

Management Responses: Agree — Management will develop a selection criteria document along with a semi-annual status report for CIP.

OAG Response: Selection criteria are only part of the process. The recommendation is to document the process for determining capital project demand and priorities. Management's response does not address the process, priorities or communication requirements. A status report does not specifically identify changes.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #2

Changes to the Approved CIP Estimates

Changing project cost scope and estimates after the Capital Improvement Plan (CIP) is approved are not visible to the Board prior to approving contracts. The CIP is created from estimates for key activities which can include construction, mechanical, plumbing, electrical, and asbestos work. There is a 10% contingency cost built in to the budget to cover change orders and a 20% cost factor to cover soft costs. Estimates are sometimes higher or lower than originally planned due to required modifications prior to bidding.

The Board re-approves the project budget when the prime contractor bid is approved. The 10% contingency and 20% soft costs are recalculated against the contractor award to establish the revised project budget. While brief descriptive project information accompanies the packet for the Board, it does not detail what changes have transpired since the original CIP estimates were approved.

Changes to the project scope or estimates after the CIP is approved should accompany contractor and architect information going to the Board Finance Committee for review. This would identify changes in scope cost estimates changes and after the original CIP approval but before contractor bids are approved. Management indicated that while some projects may be higher, some are lower and all projects stay within the comprehensive CIP budget.

Changes to Board approved projects prior to bidding should be transparent and reported.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Provide variance reporting to the Board to identify changes in project cost estimates and/or scope after the initial CIP approval but prior to awarding contracts.

Management Responses: Agree — Management will develop a quarterly report to communicate change order activity to Board.

OAG Response: The observation/ recommendation address changes that are made to the scope and estimates of the project after the Board has approved the CIP, but before any work has been performed on the projects. Detailed changes to the approved CIP are not provided to the Board before contractors are selected. The Board is concerned that they don't know what has changed from the approved CIP. Providing this level of detail should not hinder getting a project completed on time because the project has not yet begun.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect **Due Date:** June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #3

Design Consultant

Measurable Objective Selection Criteria

The Design Consultant selection process lacks specific defined criteria necessary to ensure an objective selection. The current process is performed exclusively by the District Architect. Although the District is not required to competitively bid consulting services, the District's Architect prepares a Request for Proposals (RFP) but limits the architects that can be included. On average, RFPs are sent to 2-4 architects per project, as a result, the process is not open to all architects or engineers.

When the District receives the proposals from the architects, the District Architect performs a weighted average evaluation based on qualifications, project understanding and the not to exceed fee. The weighted score is reduced based on the District Architect's assessment of the architect's proposal. There is no specific criterion to objectively identify how proposals are scored in the weighted average assessment. [REDACTED]

The Design Consultant selection process should minimize subjective criteria. The selection process should be objective enough to prevent the appearance of bias. Policies and procedures should be documented and implemented in the Design Consultant selection process to ensure objectivity. Segregation of duties should exist to eliminate one person having complete control over the entire Design Consultant selection process.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop, document and implement an objective Design Consultant selection process which has defined measurable criteria. At a minimum, the process should be one that can be independently corroborated.

Management Responses: Agree — [REDACTED] — Management will examine American Institute of Architect (AIA) selection process and make recommendation.

OAG Response: [REDACTED] — Segregation of duties should exist to eliminate one person having complete control over this process. The recommendation has not been addressed. We are asking for the development of measurable criteria. [REDACTED]

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect **Due Date:** June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #4

Job Specification

Formalized Acceptance

Design Consultant changes to design specifications are not completely reviewed by the RCSD Design Group. Review of the bid contract document is performed based on meetings with the Design Consultant in lieu of a detailed documentation review. In the Franklin project, the District Architect acknowledged discrepancies in design and resulting estimates between the Design Consultant and the bids. The District Architect acknowledged that prior to the bid, specs are sometimes changed by addendum directed by the State Education Department (SED), the District, or the Design Consultant. Design Consultant estimates and specifications should be reviewed in detail by the District Architect. Review and approval of changes to specification documents should go through a formal acceptance process. Incomplete review of the specifications document after changes are made can result in a contractual commitment. Such specifications are usually voluminous. A lack of dated formal acceptance of the specifications does not align ownership of review nor support acknowledgement of changes made.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Formalize the acceptance process for when changes in design specifications and estimates occur.

Management Responses: Disagree - Consultants do not make changes to the scope and the budget of a project. Proposals changes are reviewed for approval at design review meetings with both the Facilities Department and the school Principals. Construction drawings are reviewed, in detail, along with itemized cost estimates; minutes documenting progress and approved changes. All consultants are directed to use the District's standards and master specifications.

OAG Response: [REDACTED] - This recommendation is about the formal, written acceptance of the specification documents including estimates and changes. Design consultants are responsible for both the minutes of meeting decisions and contractual documents provided, which is not adequate segregation. Management appropriately states that we request that our standards are followed, but communication without review to ensure compliance falls short of RCSD review.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: Date Required



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #5

Bidding

Certification of Bids

The Director of Procurement does not certify compliance with the sealed bidding process or the acceptance of all bids prior to the Design Groups awarding process. Capital projects are bid utilizing a sealed bidding process. Bids are received by the time specified in the advertisement and opened by the Director of Procurement at a designated time. There is no certification by the Director of Procurement of all bids received. A Design Group representative creates a summary (tabulation of bids) of all bids received for the Design Group to perform the award selection process. Verification of this summary by the Director of Procurement for accuracy and completeness ensures all bidders should be included in the process prior to the awarding process.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Certify the tabulation of bids by Purchasing prior to submission to the Design Group for selection.

Management Responses: Disagree – “Certificate of all bids accepted” should be differentiated from “certification of the bid tabulation”. The bid forms are reviewed the next day after the bid opening, to verify the accuracy of the “pencil” tab prior to the formal tabulation.

OAG Response: [REDACTED] Bid forms are reviewed the next day after the bid opening to verify the pencil tab, but this is done by the design group, not the person opening the bid at the time of the public opening and reading.

Responsibility: Joyce Martelli, Comptroller; Gary Smith, Director of Procurement and Supply; Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: Date Required.



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #6

Awards

Policies and Procedures

Written policies and procedures for awarding contractors for capital projects do not exist. Policies regarding the evaluation of the lowest qualified bidder, as well as procedures identifying when the need exists to evaluate the statement of bidder's qualifications or when references should be obtained, do not exist.

Also, there is no deadline for when an executable contract must be in place after the Board awards the project to a contractor. The lack of formality surrounding contract deadlines also applies to the Design Consultants. Lack of a deadline for the execution of contracts ultimately impacts the creation of the purchase order and payments due to the consultant/contractor.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop written policies for awarding contracts to consultants/contractors for capital projects. The policies should include, but not be limited to:

- *Evaluation of lowest qualified bidder*
- *Evaluation of statement of bidder's qualifications*
- *References*
- *Execution of the contract*
- *Notification to contractor of lowest bid*

Management Responses: (Facilities) Agree — Management will develop a regulation for awarding contracts to consultants/contractors for capital projects.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



**Capital Projects
Observations, Recommendations and Action Plans**

Management Responses: (Legal)



Responsibility: Charles Johnson, District Counsel

Due Date: August 31, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #7

Receipt Date and Time

Bids that were awarded showed no evidence of the date and time received. All awarded bids including the date/time stamped envelope are forwarded to ICS. The envelope affixed with the date and time stamp proving receipt is not retained [REDACTED]

[REDACTED] Additionally, the stamp machine was recording the incorrect date for an unknown period of time, which was estimated at a number of weeks per the Design Group. This was acknowledged by the Design Group; but the Purchasing Department was not aware of the issue.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Retain receipt date and time information for all bids (including awarded bids) to substantiate the sealed bidding process.

Management Responses: (Facilities) Disagree - All bids are received in the Purchasing Department and are date stamped upon arrival. The dated and time-stamped envelopes are retained by the Design Group. The envelope for the successful bidder is attached to the bid bond and forwarded to Internal Control Standards for contract execution. The remainder of the bids (and envelopes) is kept on file in the Design Group. Immediately upon discovery of the incorrect date produced by the stamp machine, Design Group notified the Purchasing Department for correction. Date stamp was immediately repaired and has been good working order.

Management Responses: (Legal) [REDACTED]

Responsibility: Chuck Johnson; District Counsel

Due Date: March 31, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #8

MWBE Waiver Criteria

Defined criteria to obtain Minority & Women Owned Business Enterprise (MWBE) contractor/consultant participation in the bidding process does not exist. For MWBE contractor/consultant participation, there are two types of waivers that can be obtained; the Section 00850 waiver and the Discretionary waiver. In both cases, there is no defined criterion to objectively assess efforts to comply with MWBE Participation requirements. Waivers can be obtained for the following reasons:

- Unavailability of MWBE subcontractors
- Receiving noncompetitive bids from MWBE subcontractors when compared to non-MWBE Contractors
- Waivers obtained at the discretion of the Comptroller

Contractors do not have guidelines to stipulate the level of effort required before their participation can be waived. There is also a lack of reporting to identify contractors that are requesting frequent waivers. For example, when MWBE vendors are deemed unavailable, it is based on a lack of responses to quotes; however, it is not defined how many quotes they are required to obtain or attempt to obtain before this can occur. There is also no review to ensure that the same MWBE vendors that do not provide quotes are re-utilized to qualify a contractor for a waiver.

Lastly, with the addition of an MWBE Officer at the District, responsibility for monitoring waivers and related participation should occur by the MWBE officer.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Define good faith effort criteria for contractor MWBE participation in the bidding process prior to allowing a waiver to occur. Specifically, identify the number of MWBE certified subcontractor quotes needed prior to the waiver being issued.

Management Responses: The current District practice is to grant requests for waivers at the discretion of the Comptroller/CFO/Deputy Superintendent of Administration or due to M/WBE non-availability or non-competitiveness. In order to request a waiver based on M/WBE non-availability or non-competitiveness bidders are asked to submit forms detailing the M/WBEs that were invited to submit quotes and their response to the invitation (M/WBE Form D: Invitation to Quote, M/WBE Form E: Unavailability Certification, M/WBE Form G: Noncompetitive Certification, M/WBE Form H: Non M/WBE Subcontractor Quote Certification). These forms do not clearly articulate criterion to assess the Good Faith Effort of bidders. Additionally, bidders are not



Capital Projects Observations, Recommendations and Action Plans

required to submit these forms and instead are allowed to provide supplemental information such as facsimile logs and other forms commonly used to communicate subcontracting opportunities.

Going forward, the Office of M/WBE Development will be responsible for monitoring and granting waivers. In doing so, the Office will amend the current forms to better define criteria to demonstrate that bidders have exercised Good Faith Efforts. The amended form will require bidders to verify the following:

1. The contract has been divided into economically feasible segments that can be performed by subcontractors.
 - o Required Documentation: Copy of Cost Estimate or Take-off Sheet or Itemization of Services and Material Necessary for the Project (based on bid price).
2. The bidder has contacted the Office of M/WBE Development to request assistance to meet the established goal for the project at least five (5) business days before the bid/proposal due date.
 - o Required Documentation: Copy of any correspondence sent to the Office of M/WBE Development and a Copy of any response received from the Office of M/WBE Development.
3. The bidder has delivered written notice to at least three (3) New York State certified or certifiable M/WBEs for each potential subcontracting opportunity for this contract at least five (5) business days before the bid/proposal due date. Written notice must include comprehensive information as to the availability of plans, specifications, relevant terms and conditions of the contract, bonding requirements, and the last date and time for the receipt of price quotations.
 - o Required Documentation: Copy of the dated letter sent to each M/WBE.

NOTE: If there are less than three (3) New York State certified M/WBEs for a particular subcontracting opportunity, the bidder must contact the entire list of New York State certified M/WBEs to demonstrate Good Faith Effort.

4. The bidder has provided a written explanation for rejection of any potential M/WBE subcontractor, including the name and contact information of the M/WBE proposed to be awarded the subcontract for services for that portion of the project.
 - o Required Documentation: Copy of the dated price quotes from all who expressed an interest in providing services or materials for that portion of the project and a list on the bidder's letterhead of all M/WBEs rejected including the contact and phone number, and the bidder's reason for rejecting the M/WBE.



Capital Projects Observations, Recommendations and Action Plans

The amended forms will be created by the Office of M/WBE Development, reviewed by Jim Fenton, Director of District Operations, approved by the Deputy Superintendent of Administration, and added to the Project Manual (bid specifications) for Spring/Summer 2010 Capital Improvement Program projects and subsequent years. Bidders will have the burden of correctly and accurately preparing and submitting the required documentation. Bidders may submit a narrative in addition to the mandatory actions or documentation, but not in lieu of, to explain any extenuating circumstances. Failure to prepare and submit the required documentation in its entirety will result in the bid being considered non-responsive to bid specifications.

Responsibility: Shanai Lee, MWBE Officer

Due Date: August 30, 2010

RECOMMENDATIONS and MANAGEMENT RESPONSES

Implement formal reporting to Management and the Board that identifies MWBE participation and the number of waivers issued. Evaluate trends in waivers issued and develop strategies to increase participation.

Management Responses: The Office of M/WBE Development will present the Superintendent and the Board of Education with an annual report of M/WBE participation and waiver activity by the Department of Educational Facilities.

In doing so, the Office will collect data to evaluate M/WBE participation in the District's public works projects to ensure that the Superintendent's interests are aligned with the Board's in remedying discrimination in the procurement practices of the District. The Office will distribute the first annual report on M/WBE participation and waiver activity by the Department of Educational Facilities in March 2009, which is the end of the District's school construction bidding season. This report will detail the level of participation on a project basis and the number and types of waivers requested and granted.

Responsibility: Shanai Lee, MWBE Officer

Due Date: August 30, 2010



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #9

Change Orders

Policy and Procedures

A documented process does not exist for change orders. It is the practice of the Inspector or the contractor on the project to identify the need for a change order. The contractor provides the District with a proposal for the work to be performed and the Inspector negotiates price and obtains approval from the District Architect, the Director of Facilities and the Supervising Director of District Operations prior to commencement of the change order work. It was noted in our testing that on occasion, change order work commenced prior to obtaining the appropriate level of approval.

Although change order procedures exist, they are not completely documented nor consistently practiced. Written change order procedures should exist for the entire process. District Management should ensure that these procedures have been communicated to appropriate personnel and that adherence to these procedures is mandatory. Documentation of these procedures will assist in eliminating confusion regarding change orders. Lack of clarity without written procedures can also result in interpretation and reporting inaccuracy, inconsistent adoption, and inability to conform to management expectations.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop written procedures for change orders including, but not limited to:

- 1. Defining the different types of change orders.*
- 2. Defining when a change order is warranted.*
- 3. Identifying who has the authority to execute the change order.*
- 4. Communicating to contractors the required authorization for change orders.*
- 5. Establishing approval levels and monetary thresholds for change orders.*
- 6. Defining Board reporting requirements for change orders.*
- 7. Communicating and enforcing that change order work should not be commenced prior to approval being obtained.*
- 8. Establishing procedures for documenting when change order work is performed.*
- 9. Designating approval authority for change orders at the various levels with an assigned alternate approver in the absence of the designated approver.*



Capital Projects Observations, Recommendations and Action Plans

Management Responses: Agree — [REDACTED]. SEE OBSERVATION 2 - Management will develop a quarterly report to communicate change order activity to Board.

OAG Response: [REDACTED] This is a significant concern with the BOE. This observation and recommendation deals with the lack of a written change order policies. [REDACTED]

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #10

Trending Change Orders

Change orders are not monitored or trended beyond the scope of each specific project. As a result, the District is unable to identify and benefit from change order trends by contractors or consultants to determine the frequency of recurring issues. The Design Group tracks change orders while a project is in progress, but does not compile all change orders for every project and analyze them by contractor, consultant or reason to determine the rate of recurrence of issues. For example, without trending change orders, the District is unable to see if there are contractors who are frequent offenders of bidding low and making up the difference through change orders. The District is unable to see which consultants frequently have omissions on their drawings or how many unforeseen conditions existed at a school/district site to determine the accuracy of (as-built) documents.

Some change order items could have been prevented if more detailed review of specifications and requirements occurred. Approximately one-third of change orders for projects sampled were for changes that were inadvertently omitted or were required due to code, or potentially could have been detected prior to construction activity.

The Design Group should monitor change orders over time and across projects. The change orders should be trended by contractor, consultant, and reason (i.e. error, omission, unforeseen, discretionary). The trending should be used to aid in the determination of how adequately contractors and consultants are performing their work.

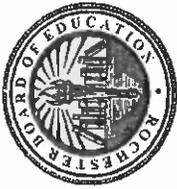
RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop a process to trend change orders by contractor, consultant and reason. Evaluate the frequency of recurring issues for the creation of change orders. Minimize the occurrence of preventable change orders.

Management Responses: Agree — [REDACTED]. The facilities department will prepare a report to track the trends and patterns of change orders.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #11

Status Reporting

Communication of change orders is not provided to the Board until the final payment application is submitted for approval. There could be a considerable amount of time between when the work was performed and when the Board approves the change. Although the Board approves the 10% contingency cost when the contractor is approved, the communication about change orders throughout the project is not provided to the Board. Discretionary change orders, as well as required change orders in excess of the 10% contingency cost are not approved prior to the commencement of work, nor are they communicated to the Board until final payment is due.

The Board does not receive a periodic report communicating the status on outstanding capital projects, including change orders. A report should be submitted on a regular basis to the Finance Committee and the Board documenting the status of each project, including contract amounts, change orders, soft costs, contingency costs, variance of projected costs to actual, and status of completion until a Capital Project has been completed.

RECOMMENDATIONS and MANAGEMENT RESPONSES

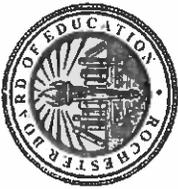
Develop periodic reporting to the Board that provides the status of existing projects including the nature and related cost of change orders. Include in the reporting the status on available funds by source for their review.

Management Responses: Agree – [REDACTED]. See Response to Observation 2 and 9. Management will develop a quarterly report to communicate change order activity to Board.

OAG Response: [REDACTED] The Board should agree on the content and timing of the status reporting. This recommendation is for status reporting not just change orders.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #12

Dollar Threshold for Approvals

The current approval process allows change order authorization based on percentage of the consultant contract and whether the change order is required or discretionary. If the change order work is necessary to complete the job, then the change order is a "required" change order. Required change orders within the 10% contingency cost must be approved by the District Architect and the Director of Facilities. Required change orders above the 10% contingency must be approved by the District Architect, the Director of Facilities, and the Supervising Director of District Operations. If the change order was not a part of the original plan and the end product is different from what the District originally agreed upon, this would be a "discretionary" change order. Discretionary change orders must be approved by the District Architect, the Director of Facilities and the Supervising Director of District Operations regardless of the dollar amount or percentage of the 10% contingency cost.

While all change orders tested were approved in accordance with current approval guidelines, the guidelines lack a monetary threshold (dollar limit), as well as Board approval. Understanding that the Board only meets once a month, any requirement to obtain Board authorization for change order spending could jeopardize project completion timelines. On the other hand, monetary limits should be established for change order approval.

RECOMMENDATIONS and MANAGEMENT RESPONSES

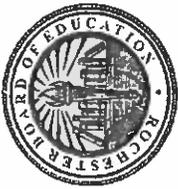
Implement an approval process which incorporates a dollar threshold for the approval levels. Obtain Board agreement for the authorization of change orders.

Management Responses: Disagree. Project completion timelines could be jeopardized as well as increased market pricing. Cash-flow is the "lifeblood" of the construction business and delays in project construction equates to higher costs and compromised performance.

OAG Response: [REDACTED] We are recommending that a dollar threshold for approval be established and obtain Board agreement for these levels. We did not recommend getting Board approval for change orders.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: Date Required



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #13

Discretionary Changes

Discretionary change orders are not always within the original scope of the project and are not competitively bid. A determination is made by the Supervising Director of District Operations regarding when the change order should be performed. If it is determined that work is going to be completed and it varies from the original plan, the additional work does not go out for bid.

According to Municipal Law, change orders may be issued without competitive bidding for minor aspects of a public project. It also states that no important, general change may be made which varies from original plan or is of such importance as to constitute a new undertaking. Competitive bidding provisions do not apply where changes involved are merely incidental to the original contract. Bidding should occur for discretionary changes to comply with Municipal Law.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop and comply with a policy requiring significant discretionary change orders, to be competitively bid. The policy should be evaluated and subject to Board approval.

Management Responses: Agree — [REDACTED]. A recommendation for defining and re-bidding discretionary change orders will be developed by management.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #14

Work Progress

Inspections

Proof of inspection does not exist for critical construction tasks that may or may not be visible to the eye. Inspectors do not use a checklist when inspecting construction progress, nor do they maintain formal notes about what was inspected. Based on our discussion with them, documentation at this level was deemed as too cumbersome to be practical. Currently, the best source of documentation is the meeting minutes, although they are more progress related. Dated checklists with inspector signatures for pre-defined key construction tasks would require inspector involvement and documentation to support their review. Inspectors should date and sign documentation, such as a checklist for key activities that may be difficult to review after completion. District inspectors are not on-site all of the time and [REDACTED]—This has been noted in construction activities at another District.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop and implement predefined inspection check lists for key construction activities prior to commencement of construction to ensure critical activities are reviewed. Maintain signed and dated check lists.

Management Responses: Agree — [REDACTED]. The meeting minute's format indicating project status will be modified to accommodate this suggestion.

OAG Response: [REDACTED]. Although the response suggests that the recommendation will be implemented, in practice, an inspection checklist would need to occur at the construction site.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #15

Contractor Performance

Poor contractor performance on capital projects has no direct impact on a contractor's ability to bid on future projects with the District. As a result, there is no formal process to disallow a contractor from bidding. Contractor evaluations are provided at the time of each payment. There is no formal process to discuss contractor quality or repercussions for poor work. While some contractor evaluations can be unsatisfactory in some or all areas, and while contract provisions suggest that financial implications could occur through liquidated damages, withholding payments, or additional charges, it is not clear what long term ramifications exist for poor performance. In addition, it is not clear what escalation process exists through senior management of either party.

The District should formally meet with contractors to review their evaluations periodically. Negative or poor evaluations should be escalated to senior management of both parties to improve outcomes. A process should be developed which includes long-term ramifications associated with poor performance, including disallowance from future bid opportunities.

General Municipal law §103 governs the bidding process and provides a framework for selection of a Responsible Bidder. Any concerns during the pending of a contract are brought, and are expected to be brought, to the attention of the Department of Law.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop a process to periodically meet with contractors to review their performance and escalate poor performance evaluations to senior management of both parties. Work with the specialized legal support to identify contract language to protect the District in future bid projects when a pattern of poor performance has been established.

Management Responses: Agree to recommendation as stated — [REDACTED]

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



**Capital Projects
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Management Responses:

[Redacted content]

Responsibility: Charles Johnson, District Counsel

Due Date: August 31, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #16

Payments

Approval of Payments

The approval documentation required for Capital payments is not defined. In addition, a lack of segregation of duties exists for the approval of payment applications in instances where the District Architect is also the Inspector and/or the Design Consultant. Up to four approval signatures can be obtained for payment applications which include the Inspector, District Architect, Director of Facilities and the Design Consultant. In some cases, the District Architect is assigned as the Inspector on a project. The District Architect may also be the Architect of record if a third party Design Consultant was not considered necessary. The role of the District Architect in the approval process is to review the job information and approve the payment. Currently, there is no defined process for the Architect's review. Documentation of the attributes being reviewed would clarify the completeness of the payment process. In addition, in instances when the District Architect is the Architect of Record and/or the Inspector, an independent person should be responsible for reviewing the project before payment occurs. Defining the process ensures a consistent independent review.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop formal approval standards for capital payments. Designate an alternate person to review and approve payments applications if the District Architect is the Architect of Record or the Inspector.

Management Responses: Agree to recommendation as stated – [REDACTED]

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #17

Project Close

Standard Certification Templates

Contractor certifications are required for completion of electrical and asbestos work. We noted that the certification process lacks consistency. For instance, we noted that there is not a standard format for the asbestos work. Without a standard format, it becomes more difficult to review contractor statements for completeness. We noted that different contractors included different language in their respective certifications. One asbestos certification which was typed in error noted that the contractor encountered or disturbed asbestos rather than stating they had not. When brought to their attention, Facilities Management verified no asbestos was in the area of concern. A standard template should be proposed within the specification documents for contractors to complete upon completion. This practice will simplify reviewing certifications and ensure compliance with required certification statements.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Establish and implement standard templates for required construction certifications to ensure all required verbiage is received. Require that all consultants comply with completion of the standard forms.

Management Responses: Agree — [REDACTED] — A checklist template will be developed to assure compliance with required closeout documentation.

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: June 30, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #18

Signing Authority

Signing authority for the Certificate of Substantial Completion did not appear to be properly authorized. Signing authority for the Certificate of Substantial Completion was signed by the Director of Educational Facilities, rather than the "undersigned Superintendent of Schools" as stated on the form. In addition, a letter was provided to the State delegating signing authority to the Director of Educational Facilities and the Supervising Director of District Operations for SED Capital Project Construction Forms. This letter was never approved by the Board for the Board President or the District Superintendent relinquishing their signing authority. This issue was noted in the prior audit of Capital Projects in 2007. The State has stated to OAG that signatures are not optional and Board approval is necessary should the Superintendent or Board President desire to delegate responsibility.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Obtain the Board's approval for the President's and Superintendent's standing signatures authorizing and delegating their signature authority for the respective forms to the people they choose. Update signing authority upon turnover of involved personnel.

Management Responses: Agree – Resolved December 15, 2008

Responsibility: Jim Fenton, Supervising Director of District Operations; Tom Keysa, Director of Facilities; Terry Costich, District Architect

Due Date: Completed December 15, 2008



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #19

Delayed Final Reporting

Reporting to communicate the final tabulation of total project costs is significantly delayed. One person in Accounting is responsible for producing the final project cost reports. The final building project reports were dated May 2008 for projects completed in 2005 and final contractor payments approved in 2006. This delay in reporting was also noted in the Capital Project audit of 2007. Board visibility to total project costs took approximately 2 years. Accounting communicated that the delay is related to lack of resources to complete these reports more timely.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Establish a timely interval for reporting total project costs. At a minimum, communicate project cost reports and any related variances within the same fiscal year as the final payment.

Management Responses: Effective January 2009, the Accounting Department allocated additional, existing resources to the production of the final project cost reports. All pending reports are targeted for completion prior to May 31, 2009 and will be submitted for Board approval as they are completed. All future reports will be completed within six months of the date of the Certificate of Substantial Completion for each project.

Responsibility: Joyce Martelli, Comptroller; Cerri Cupples, Interim Director of Accounting

Due Date: May 31, 2009



Capital Projects Observations, Recommendations and Action Plans

OBSERVATION #20

Reconciliation

State Aid requested for projects is not reconciled to aid received to ensure the District is receiving all appropriate aid. The State submits electronic aid payments to the District. The State does not provide a statement itemizing what the aid payments are for nor does the District determine what amount is associated with each project. The District does not reconcile how much aid was actually received for each project versus what was expected. The District should reconcile the State Aid deposits to determine how much aid is being received for each project and determine what amounts were disallowed by New York State. If reconciled, the District could better understand the impact of non-reimbursed aid on the District's cash position.

RECOMMENDATIONS and MANAGEMENT RESPONSES

Develop a process to reconcile State Aid requested for Capital Projects to the amount of State Aid actually received.

Management Responses: A capital project reconciliation between State Aid requested and the amount received is not possible at this time. According to the State Aid Office there are insufficient resources at the State level to provide the District with reports showing the itemization by project. This information is necessary in order to reconcile. This has been an existing problem for several years. The District will continue to investigate best practice processes from other Districts. We will develop a process based on current practices of the other Districts within the Big Five.

Responsibility: Joyce Martelli, Comptroller; Jim Fenton, Supervising Director of District Operations

Due Date: June 30, 2009