CAPITAL PROGRAMS

CONTRACT MANAGEMENT

AUDIT REPORT #19-2101

Audit & Advisory Services

August 2019

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Background

In accordance with the Campus fiscal year 2018-19 audit plan, Audit & Advisory Services (A&AS) conducted an audit of internal controls and business practices over key contract management functions within the UCLA Capital Programs department.

*Capital Programs Overview*

The Capital Programs department is responsible for conceptualizing, planning, designing, and constructing major capital construction and renovation projects at UCLA. Projects having total costs of $1 million and above are considered major capital construction. Capital Programs develops financial strategies, obtains project approvals, reviews plans and specifications, completes environmental reviews, prepares and negotiates construction contracts, coordinates staging plans, and serves as a repository for project records and as-built plans.

The department’s mission is to create projects that “support the instruction and research mission of the University by providing a physical campus environment that fosters excellence, creativity, and a sense of community.” Capital projects are developed to take into account UCLA land use priorities, established physical designs, University policies and procedures, environmental and regulatory requirements, and community interests.

The Capital Programs department consists of the following two areas:

*Capital Planning and Finance* – responsible for planning, environmental assessment, project budgeting, and project financial services including contracts administration. This area is led by an Associate Vice Chancellor who reports to the Vice Chancellor and Chief Financial Officer.

*Design and Construction* – responsible for project design, engineering, permitting and inspection services, project management, and construction management activities. This area is led by an Associate Vice Chancellor who reports to the Vice Chancellor and Chief Financial Officer.

*Contract Management Services – Overview*

The primary objective of the Capital Programs contracts management function is to help ensure that the procurement of capital construction related services conform to the California Public Contract Code and University of California (UC) Facilities Manual. Although some campus departments, such as Facilities Management, Housing & Hospitality Services, and the UCLA Medical Center, have been delegated authority to conduct project management activities for capital construction projects up to their delegation limit, all bidding and awarding requirements are handled by the Contracts & Records Management unit within the Capital Programs department.

Pre-award responsibilities include reviewing all contract-related documents such as prequalification questionnaires, bid documents, “best value” selection criteria, bid advertisements, receiving and opening bids, verifying that all required items are submitted by bidders, reviewing bid protests, posting bid results, and coordinating the execution of contracts. Post-award responsibilities include verifying all required insurance and bonds are obtained to cover construction projects, handling requests for subcontractor substitutions, and reviewing payroll records for prevailing wages. This area is led by the Director of Contracts & Records Management, who reports to the Associate Vice Chancellor of Capital Planning and Finance.

Purpose and Scope

The primary purpose of the review was to ensure that the Capital Programs organizational structure and controls surrounding its contract management processes are conducive to accomplishing its business objectives. Where applicable, compliance with campus and University requirements were also evaluated. The scope of the audit focused on the following areas:

* Bidding and Contracts Administration
* Licenses, Insurance, and Bonds
* Substitution of Subcontractors
* Professional Services and Executive Design Professional Agreements

The review was conducted in conformance with the *International Standards for the Professional Practice of Internal Auditing* and included interviews, tests, and other procedures considered necessary to achieve the objective.

Summary Opinion

Based on the results of the work performed within the scope of the audit, Capital Programs’ organizational structure and controls are generally conducive to accomplishing the department’s business objectives related to contract management processes. However, controls and business practices could be further strengthened by implementing the following:

*Subcontractor Substitutions*

* Capital Programs’ Contracts Administration and Project Management units should coordinate to periodically review a sample of payment applications to verify whether a subcontractor substitution may have occurred without prior approval from the University. Additionally, in those cases when a contractor has violated the Subletting and Subcontracting Fair Practices Act, the University should consider exercising its options to either (1) cancel the contract, or (2) assess a penalty on the contractor of not more than 10 percent of the amount of the subcontract involved, as stated in Section 11.5.5 of the UC Facilities Manual.

The audit results and corresponding recommendations are detailed in the following sections of the report.

Audit Results and Recommendations

### Bidding and Contracts Administration

Construction Contracts

Audit & Advisory Services reviewed the UC Facilities Manual and the California Public Contract Code to identify the policies, procedures, and guidelines for bidding and awarding construction contracts. Once the permission to solicit bids is approved, the bid must be advertised publicly with the option to prequalify bidders. Bidders are required to attend a pre-bid conference and are then eligible to submit a bid. Contracts Administration staff receives, opens, and reviews the bids publicly and identifies the apparent lowest responsible bidder. Once the lowest bidder is selected after further review, the contract is awarded, executed, and the Notice to Proceed is issued.

Audit work included discussions with management and review of 10 construction projects with a Notice to Proceed date in fiscal year 2017-18. Where applicable, advertisements for bid, bid forms, bid summary sheets, best value documentation, notices of selection, agreements, and other supporting documentation were reviewed.

Based on the audit test work performed, the following was noted:

* Construction projects were publicly advertised, as required.
* The advertisement for bids provided notice of the time and location for receiving and opening sealed bids, described the scope of work, and the method by which a bidder would be selected.
* Bids were received on or before the bid deadline and were opened publicly according to the bid instructions.
* Bidders submitted the required documents in accordance with the contract documents.
* The contractors selected were appropriate based on the evaluation methods prescribed.

There were no significant control weaknesses noted in this area.

Bid Protests

Per UC Facilities Manual, Volume 5, Chapter 9 “Bid Protests,” any person or entity may file a protest related to the selection of a bidder by the University for the award of a contract. A judgmental sample of five projects, in which bid protests had been filed during fiscal year 2017-2018, was selected for detailed audit testing. Audit & Advisory Services obtained and reviewed supporting documentation for each bid protest including the written bid protest, the written decision issued by the University, the written appeal to the University of California, Office of the President (UCOP) Chair of the Construction Review Board (CCRB) [if applicable], and the written decision issued by the UCOP CCRB [if applicable].

Based on the testing performed, A&AS noted the following:

* All five written bid protests were filed in a timely manner with the University and stated specific reasons and facts as to why the protest was filed.
* In all five bid protests, a written decision was issued within 15 days of bid protest and stated the reasons for the action taken and copied the UC Office of General Counsel and other bidders.
* In four of the five selections, the University responded to the protest with a denial of protest. For the one remaining selection, the University responded to the protest with a rejection of all bids.
* In three of the five selections, the University's response was accepted by the protester. For the remaining two selections, the University's response was appealed by the protesting vendor to the UCOP CCRB, which resulted in the University's response being upheld in both cases. For both of these selections, the contract was not awarded until the final decision was made by the UCOP CCRB.

There were no significant control weaknesses noted in this area.

### Licenses, Insurance, and Bonds

Construction projects require various types of insurance coverage depending upon the type of work involved and total project costs. General Liability, Automobile Liability, and Workers’ Compensation insurance are required for all projects. Projects involving hazardous materials also require Contractors Pollution Liability insurance. Builder’s Risk Insurance is required for all projects greater than $300,000, and all projects greater than $25 million are required to obtain coverage through the University Controlled Insurance Plan. Additionally, bid, payment, and performance bonds are required for all projects, with the amount based on the project costs. Further, all contractors must have active licenses, as required in the Advertisement for Bids, at the time of submission of the bid.

Audit work included a review of 10 construction projects with a Notice to Proceed date in fiscal year 2107-18. Where applicable, Certificates of Insurance, bond documents, bid forms, and licensing information from the Contractors State License Board were reviewed. In addition, an analysis of expired licenses was performed with information obtained from CapSTAR as of July 31, 2018, to determine whether active prime contractors with expired licenses performed work on construction projects. Based on the testing performed, construction projects had the required insurance coverage, and bid, payment, and performance bonds, where applicable. Contractors held the required licenses at the time of bid submission and no active prime contractors with expired licenses performed construction work.

There were no significant control weaknesses noted in this area.

### Substitution of Subcontractors

The University of California is subject to, and follows, the requirements of the state’s Subletting and Subcontracting Fair Practices Act, which prohibits the performance of any work other than the subcontractor listed in the bid without the consent of the University. The act also establishes procedures for the University to approve subcontractor substitutions and limits the situations where the University can approve such requests.

Audit work included discussions with management and a review of 10 construction contracts with a Notice to Proceed date in fiscal year 2017-18. Where applicable, bid packages, payment applications, invoices, and change orders were reviewed. Out of 10 projects, three projects had subcontractor substitutions. Two of those projects did not have adequate prior approval from the University for the substitutions. The following was noted:

* In one project, the substituted subcontractor was not listed in the bid package but was still paid for work performed on the project; however, a formal request authorizing the substitution was not submitted to the University.
* In the second project, there were three subcontractor substitutions. Two of the substitutions were formally requested and were approved by the University; however, the substitution requests were only approved after work had already been performed on the project. The third substitution was not formally requested by the contractor or approved by the University, although the subcontractor was still paid for work performed on the project.

For the second project noted above, Capital Programs’ Contracts Administration staff actively sought to have the contractor sign the two agreements to execute a substitution prior to work commencing. In addition, Contracts Administration staff notified the relevant Project Manager that the subcontractor should not perform work on the project until the substitution agreements had been approved by the University. Nevertheless, the replacement subcontractors continued to work on the project and incurring expenses. According to the Public Contract Code 4107.b, "a prime contractor whose bid is accepted may not permit a subcontract to be voluntarily assigned or transferred or allow it to be performed by anyone other than the original subcontractor listed in the original bid, without the consent of the awarding authority, or its duly authorized officer." In these instances, the subcontractors should have been prohibited by the prime contractor to work on the projects until the University formally approved the substitution.

Recommendation: Management should explore having the department’s Contracts Administration and Project Management units coordinate to periodically review a sample of payment applications to verify whether a subcontractor substitution may have occurred without prior approval from the University. Additionally, in those cases when a contractor has violated the Subletting and Subcontracting Fair Practices Act, the University should consider exercising its options to either (1) cancel the contract, or (2) assess a penalty on the contractor of not more than 10 percent of the amount of the subcontract involved, as stated in Section 11.5.5 of the UC Facilities Manual.

Response: Given the amount of effort expended by Contracts Administration staff in each of the noted instances (multiple emails and verbal notifications to both internal project management staff and outside contractors), management disagrees that additional steps should be initiated by Contracts Administration concerning this matter. Contracts Administration staff will continue to attend the Pre-Construction Meeting for projects, at which they present multiple topics including subcontractor substitution procedures. Additionally, UCLA Contracts Administration will continue its decades-long approach of assessing penalties in all known instances of violation of the Subletting and Subcontracting Fair Practices Act.

### Professional Services and Executive Design Professional Agreements

Per UC Facilities Manual, Volume 3, Chapter 2, Section 2.2 “Procedures for Consultant Selection,” a Facility may advertise specifically for consultants for any project, regardless of project cost. However, advertising is mandatory for a consultant contract with a sum of fees plus reimbursables reasonably anticipated to be over $100,000 for covered services, which include: architectural, landscape, engineering (structural, civil, mechanical, and electrical), land surveying, construction project management, and real property development services.

Advertisements must be posted on appropriate public online publications. The Screening Committee then develops a list of at least three consultants who appear to be the most qualified to provide services; this list is then sent to the Selection Committee. The Selection Committee notifies candidate firms about their selection and their responsibility to submit a Qualification Packet; submitted materials are then reviewed and discussions are held with the firms. A final list of candidates is created by the Selection Committee in order of ranked qualifications based on selection criteria. A notification of the contract award is given to the firm ranked the highest.

For consultant contacts with a contract sum reasonably anticipated to be under $100,000, and if the type of project and type of services required were identified in the Annual Announcement (University-placed advertisement to solicit pool of interested consultants for specified services), the Facility administrator with delegated authority to approve selection of construction-related consultant services may select a consultant from the Applicant Pool and/or any other source they wish to use. Per UC Facilities Manual, Volume 3, Chapter 2, Section 2.2 “Procedures for Consultant Selection,” Facility administrators "must preclude favoritism in the selection process and ensure compliance with University Policy to ensure Equal Opportunity in Business Contracting."

Audit & Advisory Services obtained and reviewed a listing of design contracts (Executive Design Professional Agreements and Professional Service Agreements) awarded during the past three fiscal years, 2014-15 through 2017-18, from UCLA Capital Programs and noted the following about the selection outcomes: (See Table 1)

Table 1

Top 3 Consultants Used

By Contract Amount and Number of Contracts Awarded

Fiscal Years 2014-15 through 2017-18

|  |  |  |
| --- | --- | --- |
| **Top 3 Vendors by Total Contract Amount** | | |
| **Vendor** | **Contract Amount** | **% of Total** |
| Perkings + Will | $36,851,516 | 6% |
| Studios Architecture | $26,167,241 | 5% |
| Pfeiffer Partners Architecture, Inc. | $25,507,060 | 4% |
|  |  |  |
| Sub-total of Top 3 Vendors | $ 88,525,817 |  |
| Total Dollars of Design Contracts Awarded | $ 581,191,402 |  |
| Top 3 Vendors as % of Total |  | 15% |
|  |  |  |
| **Top 3 Vendors by Number of Contracts Awarded** | | |
| **Vendor** | **Number of Contracts** | **% of Total** |
| Rozwell Engineering, Inc. | 162 | 5% |
| C & T Structural Engineering Consultants | 127 | 4% |
| Ecco Engineers | 104 | 3% |
|  |  |  |
| Sub-total of Top 3 Vendors | 393 |  |
| Total Number of Design Contracts Awarded | 3,414 |  |
| Top 3 Vendors as % of Total |  | 12% |
|  |  |  |

As Table 1 shows, of the approximately $581 million in design contracts awarded during the three-year period, one firm (Perkings + Will) received about $37 million (6%) of the consultant work awarded. In terms of contract dollars awarded, the top three vendors accounted for about 15% of the total. During the three fiscal years reviewed, 3,414 design contracts were awarded. One vendor (Rozwell Engineering, Inc.) was awarded 162 contracts (5% of the total). The top three vendors, in terms of the number of contracts awarded, received 393 of the consulting contracts (12% of the total).

A judgmental sample of 10 design contracts executed during fiscal year 2017-18 was selected for detailed audit testing. Audit & Advisory Services obtained and reviewed supporting documentation for each design contract including the Request for Qualifications, copies of advertisements publicizing the request, list of qualified candidates, award letter, and the signed agreement.

Based on the audit testing performed, A&AS noted the following:

* All 10 design contracts were awarded in accordance with the UC Facilities Manual.
* All six selections with contract amounts exceeding $100,000 were competitively bid and awarded in accordance with the UC Facilities Manual.
* The remaining four selections had contract amounts that were either at or below $100,000. For all four selections, the services were included in the UCOP Annual Announcement. Only one selection whose vendor was awarded a contract was listed in the UCLA Applicant Pool.

There were no significant control weaknesses noted in this area.

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