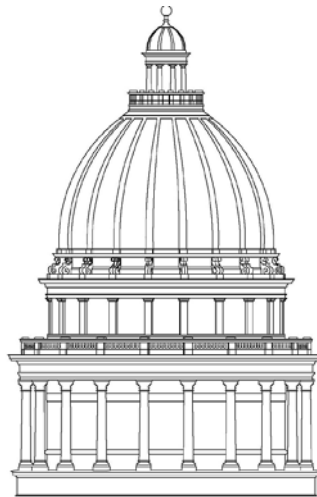


REPORT TO THE
UTAH LEGISLATURE

Number 2015-07



**A Review of Allegations Concerning
DFCM Construction Contracting**

July 2015

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah



STATE OF UTAH

Office of the Legislative Auditor General

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JOHN M. SCHAFF, CIA
AUDITOR GENERAL

July 14, 2015

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Review of Allegations Concerning DFCM Construction Contracting** (Report #2015-07). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of a Review of Allegations Concerning DFCM Construction Contracting

The Division of Facilities Construction and Management (DFCM or the division) is housed in the Department of Administrative Services (DAS or the department). The division is responsible for managing capital development projects, providing facilities management services for some state buildings, acquiring state-owned space, and overseeing non-higher education and non-judicial branch leases. DFCM is closely associated with the State Building Board, which recommends capital development projects to the Legislature, allocates capital improvement funding, and drafts policy. The focus of this audit is on DFCM's process for managing development and improvement projects.

Chapter II Compliance with Some Contractual Terms Is Lacking

DFCM Does Not Collect Health Insurance Information as Required by Law. All prime contractors on DFCM contracts are statutorily required to submit information to DFCM demonstrating that the contractors and their subcontractors are providing a minimum level of health insurance. However, according to DFCM and our review of project files, DFCM does not collect this information from contractors as part of the contracting process. DFCM should enforce statutory and contractual requirements by collecting health insurance information.

DFCM Does Not Collect Required Drug and Alcohol Information. According to DFCM management and our review of project files, contractors are not submitting mandatory drug and alcohol information (as required by administrative rule and DFCM contract), nor has DFCM collected this information. *Administrative Rule R23-7-4* and DFCM contract boilerplate language require contractors to semi-annually submit written information to DFCM as an attestation that the contractor has complied with state drug and alcohol testing requirements. DFCM should enforce administrative rule and contractual requirements by collecting drug/alcohol testing information.

DFCM Certification of E-Verify Is Sufficient. DFCM's processes for ensuring certain contractual obligations appear to satisfy state requirements. DFCM sufficiently fulfills the requirement that contractors certify that they are registered and participating in a status verification system to verify worker eligibility in the United States.

Poor Contractor Practices Should Be Reported to Labor Commission. During the audit, allegations of poor contractor or subcontractor practices on some past projects were reported to us. These allegations involved cash payments and poor site safety practices. These allegations should be reported to the Labor Commission.

Chapter III

Construction Project Management Processes Are Appropriate

DFCM Consistently Follows Accepted Procurement Processes. DFCM appears to consistently award contracts according to agency policy and industry standards. Our review of sampled Value-Based-Selection (VBS) project procurements shows a consistent use of required documentation as well as proper application of procurement processes. Sampled low-bid projects were consistently awarded to contractors with the lowest bid. Utah's prequalification process, used for low-bid projects, has improved and is comparable to processes in other states.

Change Orders and Warranty Processes Meet Standards. DFCM also appears to process change orders consistently and in accordance with industry standards. Sampled change orders included documents and processes comparable to those used in other states and the architect industry. Similarly, DFCM's post-construction warranty process follows industry standards. However, DFCM does not maintain documentation of warranty claims or issues, possibly because of DFCM's subordinate role in the warranty process.

DFCM Rule on Restrictions of Programming Firms Needs Clarification. The administrative rule governing when DFCM may permit or forbid the same architect/engineer (A/E) from preparing both a project's program document and design document is unclear, specifically for design-build projects. The rule should be amended to clearly state whether and when it is appropriate for the same A/E to prepare both documents for a single project or group of projects based on the same design.

Chapter IV

Most Building Board Responsibilities Are Codified and Independent of DFCM

Building Board Fulfills Distinct Role as Assigned by Statute. The Building Board is an eight-member body appointed by the Governor. Activities of the board are organized and documented by the Building Board director. The Building Board's four major responsibilities include interpreting legislation and drafting rules for DFCM, prioritizing capital development for consideration and approval by the Legislature, approving non-state-funded capital development projects, and prioritizing capital improvement projects.

Role and Structure of the Building Board Has Been Modified. While the core duties of the Building Board have not changed, recent changes to its structure and procedures have added controls and created separation between it and DFCM. The Legislature has also added more controls to the board's processes. State construction activities have also been separated by function to increase oversight. Finally, new standardized board processes for capital improvement prioritization should improve the state's ability to respond to the specific capital improvement needs in order of necessity.

REPORT TO THE UTAH LEGISLATURE

Report No. 2015-07

A Review of Allegations Concerning DFCM Construction Contracting

July 2015

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Chapter I

Introduction

The Division of Facilities Construction and Management (DFCM or the division) is housed in the Department of Administrative Services (DAS or the department). The division is responsible for managing capital development projects, providing facilities management services for some state buildings, acquiring state-owned space, and overseeing non-higher education and non-judicial branch leases. DFCM is closely associated with the State Building Board, which recommends capital development projects to the Legislature, allocates capital improvement funding, and drafts policy. The focus of this audit is on DFCM’s process for managing development and improvement projects.

DFCM manages capital development projects, provides facility maintenance services, acquires land, and oversees leases.

DFCM Activities Are Funded Through a Variety of Sources

DFCM has several roles within state government and is accordingly funded from a number of different sources. DFCM administrative staff and functions are funded primarily through the general fund and the capital projects fund.

DFCM staff and functions are primarily funded through the general fund and the capital projects fund.

Figure 1.1 DFCM’s Administrative Budget Over the Last Five Fiscal Years. DFCM’s budget covers personnel, travel, and other current expenses but does not include major building project funds.

Fiscal Year	Amount
2011	\$4,537,900
2012	5,112,200
2013	5,190,700
2014	5,627,400
2015	\$6,008,100*

Source: 2015 Compendium of Budget Information (COBI)
 * DFCM was given an additional appropriation of \$3.4 million to fund prison relocations planning.

Figure 1.1 shows that DFCM funding has increased fairly steadily. Personnel services are the biggest category of expenditure.

In addition, facilities management services, such as custodial and preventative maintenance in state buildings, are entirely funded by the agencies that receive the services, through an Internal Service Fund

State funding for capital projects is supplemented by other sources, such as revenue bonds.

(ISF). ISF funds are entirely separate from DFCM’s administrative budget and are not reflected in Figure 1.1. In fiscal year 2015, the value of these services was \$29.2 million.

The largest appropriation received by the agency is the capital budget. This appropriation contains state funds for capital development and improvement projects. *Utah Code 63A-5-104* defines capital development, which includes new facility construction with a cost of \$500,000 or more, or any project with a total cost of \$2,500,000 or more. Capital improvement includes construction projects for remodeling, altering, or repairing existing state facilities with a total cost under \$2,500,000.

In addition to state funding, capital development and improvement projects are funded with institutional funds from higher education, revenue bonds, and other sources. Figure 1.2 shows the total amount of state funds and non-state funds that contribute to state construction.

Figure 1.2 Funds Allocated to Capital Development and Improvement Projects from All Sources. Sources of funding include general fund, institutional money, revenue bonds, and money from the operating budgets of state agencies.

Fiscal Year	Non-State Funded	State Funded	Total
2010	\$193,956,724	\$96,334,500	\$290,291,224
2011	219,715,720	252,796,511	472,512,231
2012	178,369,288	159,964,600	338,333,888
2013	349,810,483	101,939,100	451,749,583
2014	\$253,709,204	\$97,855,604	\$351,564,808

Source: DFCM

Figure 1.2 demonstrates the variation in construction needs from year to year. The amount of state funding, whether from a capital appropriation or bonding, also varies significantly, depending on the prioritized projects for the year. The figure’s values were recently put together by DFCM in an attempt to quantify the total cost of capital construction for all state agencies and state institutions. This information was not tracked previously.

DFCM Uses Multiple Delivery Methods to Complete Projects

Each DFCM project above \$100,000 is completed using one of three delivery methods, which are processes for executing a construction project. Depending on how the project is procured and specific project needs, whether a Value-Based-Selection or low-bid process (both discussed in Chapter III), the division uses one of the three methods described below.

As defined in *Administrative Rule 23-1-45(5)* and in the 2012 Construction Management Association of America's *Owner's Guide to Project Delivery Methods*, each delivery method is described below:

- Design-bid-build involves three sequential project phases of design, procurement, and construction.
- Design-build combines architectural and engineering design services with the construction performance under one contract.
- Construction manager/general contractor (CMGC) involves a construction manager acting as a consultant to the owner/agency during the development and design phases of a project, then coordinating the construction phase of the project as the general contractor.

The specific delivery method chosen for a given project is determined by the project's size and complexity as well as the needs of the user agency. The delivery methods differ by the number of contractors who directly contract with DFCM and the distribution of risk between DFCM and the contractor.

Each method has strengths and weaknesses. For example, design-build is the quickest delivery method for project completion but the quality of the building might suffer because design-build contracts have a guaranteed price. One delivery method may be more suitable for a particular type of project than another. For example, design-bid-build is most suited for less complicated projects with a fixed budget. CMGC may offer more teamwork between the design firm and contractor but may expand the budget.

VBS projects are completed using design-build, design-bid-build, or CMGC.

These varied delivery methods were used to complete projects representing significant dollar amounts. Figure 1.3 shows the number of projects completed by DFCM between fiscal years 2012 and 2014.

Figures 1.3 DFCM Completed More than 1,000 Projects Over the Last Three Fiscal Years. The funding for these projects includes state and non-state funds.

Fiscal Year	Completed Projects
2012	313
2013	270
2014	444

Source: DFCM

Between fiscal years 2010 and 2014, DFCM contracted with 578 separate contractors. Sixty percent of total contract costs have been awarded to the four contractors large enough to handle the state's larger projects.

Audit Scope and Objectives

We were asked to review DFCM's construction contracting and project management processes. Our responses to the concerns raised in the audit request are addressed in the following chapters:

- Chapter II – Compliance with Some Contractual Terms Is Lacking
- Chapter III – Construction Project Management Processes Are Appropriate
- Chapter IV – Most Building Board Responsibilities Are Codified and Independent of DFCM

Chapter II Compliance with Some Contractual Terms Is Lacking

We were asked to review allegations concerning the Division of Facilities Construction and Management's (DFCM) enforcement and monitoring of certain contractual terms and processes. Our review found DFCM is not collecting contractor information on health insurance as required by statute. In addition, DFCM is not collecting drug- and alcohol-testing information as required by administrative rule and DFCM contract. However, it appears DFCM is sufficiently enforcing contractual obligations related to contractors' employee immigration status through the E-Verify program. Finally, we concluded that allegations of poor contractor practices should be reported to the Labor Commission because DFCM is neither charged with the responsibility nor equipped to deal with contractor labor problems.

Every DFCM design or construction contract contains a set of general conditions that cover the responsibilities of each party. In addition to these general conditions are several supplemental general conditions that address specific topics, including health insurance, drug/alcohol testing, and illegal immigration. By signing a DFCM contract, the contractor agrees to all requirements stipulated in the contract.

DFCM Does Not Collect Health Insurance Information as Required by Law

All prime¹ contractors on DFCM contracts are statutorily required to submit information to DFCM demonstrating that the contractors and their subcontractors are providing a minimum level of health insurance. However, according to DFCM and our review of project files, DFCM does not collect this information from contractors as part of the contracting process. DFCM should enforce statutory and contractual requirements by collecting health insurance information.

**DFCM is not collecting
required health
insurance information.**

¹ A prime contractor is a general contractor that directly contracts with DFCM.

Prime contractors must demonstrate to DFCM that they and their subcontractors provide sufficient health insurance.

Utah Code 63A-5-205 requires that, for prime contractors with contracts over \$1.5 million and subcontractors with contracts over \$750,000, the prime contractors must demonstrate to DFCM that they and their subcontractors provide sufficient health insurance to their employees. To satisfy this requirement, contractors must submit to DFCM a written statement proving that the health insurance provided by the contractors and their subcontractors meets health insurance guidelines. Figure 2.1 reproduces some of the requirements that contractor-provided health insurance must meet or exceed. The full list of minimum health insurance requirements is in Appendix A.

Figure 2.1 DFCM Provides Health Insurance Benchmarks. Employer-provided health insurance must meet these standards.

Benefits	Participating*	Non-Participating**
Deductible (single/family)	\$1,000/\$2,500	\$1,500/\$3,000
Out-of-Pocket Maximum (single/family)	\$4,000/\$8,000	\$6,000/\$12,000
Medical, Surgical, Hospice, Emergency Admission	20% after deductible	50% after deductible
Skilled Nursing Facility	20% after deductible	50% after deductible

Source: DFCM web site

**Participating means a doctor or doctor's office that is considered "in-network" for insurance coverage.*

***Non-participating means a doctor or doctor's office that is considered "out-of-network" for insurance coverage.*

Contractors should be able to obtain the required statement from their health insurance providers.

Contractors could satisfy this requirement by providing a statement from their health insurance providers affirming that the insurance meets the qualified health insurance requirements. The Utah Insurance Department believes that health insurance providers are aware of this requirement and should be able to provide the requested statement to contractors.

Other states do not have a similar reporting requirement.

We contacted five other states and found that none require health insurance coverage reporting from their contractors associated with state building design and construction. However, the representative from Oregon stated that, although they do not specifically require health insurance in their contracts, contractors are required to abide by all state and federal laws, including any laws requiring health insurance.

DFCM Does Not Collect Required Drug and Alcohol Information

According to DFCM management and our review of project files, contractors are not submitting mandatory drug and alcohol information (as required by administrative rule and DFCM contract), nor has DFCM collected this information. *Administrative Rule R23-7-4* and DFCM contract boilerplate language require contractors to semi-annually submit written information to DFCM as an attestation that the contractor has complied with state drug and alcohol testing requirements. DFCM should enforce administrative rule and contractual requirements by collecting drug/alcohol testing information.

Utah Code 63G-6a-1303 requires contractors and subcontractors to comply with the following processes:

- Have drug and alcohol testing policies that apply to employees in safety-sensitive positions²
- Post notices to employees in conspicuous places that state the contractor has a drug and alcohol testing policy
- Conduct random drug testing for employees in safety-sensitive positions if the contractor employs ten or more employees in these positions

While statute is directed toward the contractor, administrative rule and section four of DFCM's *Supplement General Conditions for Drug and Alcohol Testing* call for DFCM to act on the statute. Administrative rule and the contract require that the prime contractor or prime designer shall, on a semi-annual basis during the term of the contract, report in writing to the division information that indicates compliance with statutory requirements.

We contacted six states and it appears that none require contractors to submit a written statement indicating compliance with drug/alcohol testing policies. The only example we could find related to

² A safety-sensitive position is a design or construction position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

Contractors must semi-annually submit a written statement confirming compliance with drug/alcohol testing requirements.

DFCM should determine whether submission of semi-annual drug/alcohol testing reports is necessary.

drug/alcohol testing is in Colorado, where construction projects related to state prisons have contracts that require drug and alcohol testing, but it is unclear whether there are any reporting requirements.

Since the semi-annual written submission is not required by law and DFCM is not collecting the information, DFCM should determine whether this information is valuable and necessary. If not, administrative rule and the DFCM contract should be amended to revoke this requirement.

DFCM Certification of E-Verify Is Sufficient

DFCM's processes for ensuring certain contractual obligations appear to satisfy state requirements. DFCM sufficiently fulfills the requirement that contractors certify that they are registered and participating in a status verification system to verify worker eligibility in the United States.

Under *Utah Code* 13-47-201, a private employer employing 15 or more employees may not hire a new employee unless that private employer is registered with and uses a system that verifies federal legal working status. The system recognized in the *Utah Code* is the E-Verify program. As stated in a pamphlet published by the U.S. Citizenship and Immigration Services, E-Verify is an internet-based system that "provides an automated link to Government records to help employers confirm the employment eligibility of new hires." Participation in E-Verify is required for employers with certain federal contracts or by state law, as in Utah's case.

Utah Code 63G-12-302 forbids DFCM, as a public employer, to enter into a contract for the physical performance of services unless the contractor registers and participates in a program like E-Verify. However, a contractor is individually responsible for verifying the employment status of new employees who work under that contractor's supervision. In addition, DFCM is not required to ensure compliance by the contractor.

DFCM's *Supplemental General Conditions Regarding Illegal Immigration*, which is incorporated into contracts, states:

Each offeror [bidder] and each person signing on behalf of any offeror certifies as to its own entity, under

DFCM cannot enter into a contract with a contractor unless the contractor has verified employment status.

penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with 63G-12-302... .

The contract states that signing the award proposal (which is the contract for the DFCM project) is deemed the contractor's required certification of compliance with all provisions of this employment status verification certification. Subcontractors are also required to certify by affidavit that the subcontractor has verified employment status. However, the subcontractor must answer to the contractor, not to DFCM.

The *Utah Code* does not impose a penalty on contractors who fail to certify and participate in E-Verify. However, signing a contract with DFCM invokes the criminal penalty of perjury if the contractor is found to be in breach of the contract terms. This means that a contractor could be criminally prosecuted if he or she signs a DFCM contract and then breaches the employment status verification terms. The contractor may also lose his or her DFCM contract. DFCM's contract also holds harmless the State of Utah against any claims or damages resulting from violations.

We believe that DFCM's approach to ensuring that contractors certify and participate in E-Verify exceeds what some other Utah agencies are doing. One agency's representative said that they do not have the contractor stipulate to anything regarding E-Verify in their contracts because verification is already the law. Another agency has been permitted to use valid Utah driver's licenses in lieu of E-Verify. Both of these actions appear to meet state requirements.

Two of the four states we contacted regarding employment verification, Colorado and Arizona, require certification and participation. We also spoke with Nevada and Idaho and were told they do not require participation. An article published in September 2014 by the National Conference of State Legislatures lists 21 states that require at least some employers to E-verify. Specifically, the article indicated the following:

- Nine states require the use of E-Verify by all employers, both private and public

Contractors certify compliance with employment status verification requirements by signing the contract.

Contractors on DFCM projects could be criminally prosecuted if they do not verify employment status.

DFCM's approach to E-Verify exceeds what other Utah agencies are doing.

- Another ten states require the use of E-Verify by most public employers
- Two states (making up the 21) require some public contractors to E-Verify
- Most states do not require worker eligibility verification in state law

We believe that, under Utah law, DFCM is sufficiently requiring contractors, who are under contract with the state to develop and improve state-owned buildings, to responsibly attest to E-Verification participation.

Poor Contractor Practices Should Be Reported to Labor Commission

During the audit, additional allegations of poor contractor or subcontractor practices on some past projects were reported to us. These allegations involved cash payments and poor site safety practices. These allegations should be reported to the Labor Commission.

According to DFCM management and DFCM's attorney, they have never received any complaints about laborers being paid in cash where there was evidence of the practice. We were told that, if complaints were made, they would investigate the issue and forward it to the Attorney General's investigation and tax attorney units.

We also reviewed the OSHA (Occupational Safety and Health Administration) records for a subcontractor with allegations of poor site safety practices but found no current violations and, at the time of this audit, the subcontractor has a valid contractor's license.

We discussed these concerns with the commissioner of the Utah Labor Commission and the director of the Division of Industrial Accidents. Both indicated that the Labor Commission, specifically the Division of Industrial Accidents, is the appropriate reporting authority for wage, worker's compensation, and Utah OSHA safety concerns. Although we believe that DFCM should be alerted to any of these concerns during an ongoing project, the appropriate investigative function is handled by the Labor Commission.

Allegations of poor contractor practices should be reported to the Labor Commission.

Recommendations

1. We recommend that the Division of Facilities Construction and Management enforce state statute and its own contract language by collecting written statements from contractors demonstrating that the contractors provide the appropriate levels of health insurance.
2. We recommend that the Division of Facilities Construction and Management evaluate the collecting of drug and alcohol testing practices to determine if they provide needed information worth collecting. If so, DFCM should begin collecting the information as required; if not, DFCM should amend administrative rule and remove this requirement from contracts.

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Chapter III

Construction Project Management Processes Are Appropriate

We were asked to review allegations concerning the Division of Facilities Construction and Management's (DFCM) procurement processes and management of contracts. We found that DFCM appropriately manages its procurement process and follows accepted procurement practices. Additionally, we found DFCM's change order and warranty processes also meet standards. However, DFCM's rule on restrictions of programming firms needs clarification.

DFCM Consistently Follows Accepted Procurement Processes

DFCM appears to consistently award contracts according to agency policy and industry standards. Our review of sampled Value-Based-Selection (VBS) project procurements shows a consistent use of required documentation as well as proper application of procurement processes. Sampled low-bid projects were consistently awarded to contractors with the lowest bid. Utah's prequalification process, used for low-bid projects, has improved and is comparable to processes in other states.

For construction procurement over \$100,000, DFCM awards contracts using either VBS or low-bid processes. Division policy states that construction projects under \$5 million should use a form of low bid and projects over \$5 million should use VBS. DFCM uses its website to advertise for both VBS and low-bid projects and also advertises all low-bid projects on the BidSync website. VBS procurements evaluate project submissions based on several criteria, including price. VBS contracts are awarded to contractors who represent the best value to the state.

DFCM advertises both VBS and low-bid projects on its website.

DFCM followed procedures consistently in sampled VBS procurements.

Review of Sampled VBS Projects Shows Consistent Application of Selection Process

Based on a sample of six VBS projects and observations of other VBS evaluations, it appears DFCM consistently follows policies and procedures when awarding VBS projects. Each procurement used similar documentation and followed similar procedures. All evaluators signed conflict-of-interest forms, scoring sheets were filled out according to criteria stated in the request for proposal, and justification letters explained why the winning contractor was awarded the contract. In addition, we attended three evaluation interviews and observed a fair, consistent process at various stages of VBS evaluations.

Washington and Arizona report that they use similar VBS processes for selecting state building contractors. These states use multiple criteria to determine the winning contractor for projects above a certain dollar threshold. For example, Arizona uses a request for qualifications to advertise VBS projects, uses successive evaluations to narrow the number of candidates, and employs an evaluation matrix to award projects.

DFCM has recently improved its VBS process by refining the evaluation criteria and the evaluation matrix used to score proposals. The former process, shown in Figure 3.1, did not allow for sufficient differentiation and detail among proposals. It evaluated four criteria with no subcategories.

Figure 3.1 Former VBS Evaluation Scoring Matrix Considered Four Broad Criteria. DFCM used to award VBS contracts based on a scoring system that did not allow for much detail.

All Selection Criteria	Points Possible
Cost	20
DFCM Past Performance Rating	15
Strength of Contractor's Team	35
Project Management Approach	30
TOTAL	100

Source: DFCM procurement documents

Figure 3.2 demonstrates the level of detail now included in just one category, strength of team, of the new DFCM scoring matrix.

Figure 3.2 New VBS Evaluation Expands Broad Criteria. A contractor can now determine the weighting of different aspects of each broad criteria such as strength of team.

Strength of Team Criteria	Points Possible
Show the overall experience of the firm in relation to projects of similar scope, size, and complexity	30
Experience with high-performance design and an integrated design approach	20
Project team experience	20
Describe the team's experience with similar delivery methods	10
Describe the team's experience in this specific geographical region and how experience will benefit project	10

Source: DFCM procurement documents

The strength of team category now provides expanded detail to facilitate evaluating proposals in more depth. In the new matrix, strength of team represents a similar portion of the overall evaluation points (35 out of 100 or 35 percent on the old system, 90 out of 325 or 28 percent on the new system) but now includes more detail and is better defined. This new matrix adds selection criteria, expanding the total criteria from 4 to about 30, with criteria tailored to the specific project. For example, the new matrix may allow points for budget management, the contractor's energy plan, and change order management.

Ultimately, the new matrix allows a contractor to earn points in areas that could not be addressed in a single number. A contractor may be able to more easily compensate for a specific weakness, such as a lack of experience with similar projects, by earning more points in a strength area, such as experience in a specific geographic area. In addition, the new scoring system also provides more useful information to contractors who are not awarded contracts because it more clearly states areas of weakness.

Some Are Concerned that VBS May Limit Competition, But It Appears to Be Commonly Used in the Industry. Toward the end of the audit, we received correspondence from a group representing contractors concerned with the VBS approach. One of their concerns is that they believe the VBS process limits competition and may not be in the public's best interest. In this audit, we did not study the effects of the VBS system on Utah's construction industry as a whole but

The new VBS matrix allows contractors to earn points in areas that were not previously scored.

Recent improvements to the VBS process may address contractor concerns.

performed a limited review of how DFCM manages the VBS process. However, we believe that the changes in DFCM's processes may address some of these concerns and VBS appears to be used in other states as well.

The Federal Acquisition Regulations (FAR), the rules governing the purchase of goods and services by the federal government, guide selection of proposals that represent the best value. The FAR regulations provide that the award decision will be based on evaluation factors, which are tailored to the acquisition and chosen at the discretion of the agency. The evaluation factors must include price or cost and at least one or more of the following factors: past performance, compliance with solicitation requirements, technical excellence, management capability, and other qualifications. Past performance must be evaluated on all source selections exceeding certain thresholds, because the FAR regulations require it as one indicator of the ability to perform the contract successfully.

During the audit, we found that Arizona, Colorado, Nevada, and Washington all include a qualifications-based process for at least some of their construction project selections. For example, Arizona generally uses VBS for projects valued at \$100,000 and above. In Nevada, the decision of whether to use low bid or VBS depends on the type of project more than the project's budget. Of the states we contacted, only Idaho primarily uses a low-bid process, but the representative we spoke with expressed a desire to be able to consider other factors besides cost. From our limited review, we believe that the VBS selection process appears to be used commonly in the industry.

Sampled Low-Bid Projects Consistently Awarded to the Lowest Bidder

Low-bid projects generally involve improvements on existing buildings that can cost up to \$2.5 million. Our review found that DFCM is awarding these contracts to contractors submitting the lowest bids. We reviewed data received from BidSync (the website that DFCM uses to advertise low-bid projects) and found that all low-bid solicitations during calendar year 2014 were awarded to the lowest bidder. Of the 66 solicitations in 2014, the data showed that 9 did not go to the initial lowest bidder. We reviewed all nine cases and found that, in each instance, the initial lowest bid was withdrawn due to a misunderstanding about project specifics or an error in calculations. For example, a contractor bidding on an improvement project

Four of the six western states contacted use a form of VBS for building procurement.

The lowest bidders on low-bid projects withdrew their bids in some instances.

accidentally omitted the cost of electrical work in the total bid price. The lowest complete bid was awarded contracts in all instances.

Low-bid projects are awarded to the lowest responsible and responsive³ bid. Low-bid projects can be bid on by contractors who have been prequalified through DFCM's open-ended prequalification process⁴ or by contractors who possess a particular skill not reflected in the prequalified list. Low-bid solicitations are awarded based on bid amount. Bid amounts typically include a base bid and then bids for add-ons, known as alternates, specified in the request for bids. The alternates represent possible upgrades to the project if sufficient funds are available or if base bids are sufficiently lower than the base budget. When alternates are present for a low-bid project, DFCM compares the cumulative bids at each alternate level, which contractors must present in the same order, creating an equal comparison for DFCM to evaluate.

Bid Award on One Project Shows Appropriate Procedures. An allegation arose during the audit that DFCM did not properly handle the procurement for Dixie State University library improvements in fiscal year 2013. A misunderstanding between a subcontractor and the general contractor led the general contractor to bid an amount that was too low. The bid did not account for work that was clearly stated in the specifications. DFCM gave the general contractor two options: withdraw the bid or proceed with the contract at the bid price and fully complete the project. The contractor decided to proceed with the contract, agreeing to do the work at the bid price. DFCM confirmed that the general contractor completed the project at the specified price.

The Use of Out-of-State Architects Should Not Increase the Cost of Design Services on Projects. The audit request raised the concern that the use of out-of-state architects increases the cost of projects. According to both DFCM and a local architect firm, out-of-state architects often participate on DFCM projects but do not increase the architect fees on a project. Architect fees are governed by a

³ A responsible bid is one submitted by a contractor that is capable of fulfilling the contract resulting from the solicitation. A responsive bid is one that meets all requirements of the invitation for bids or request for proposals.

⁴ The prequalification process allows contractors to submit qualifications and other documentation to be eligible to bid on low-bid DFCM projects. The prequalification process is described in detail in a later section.

Only prequalified contractors can bid on certain low-bid projects.

DFCM correctly followed procedures on a capital improvement project at Dixie State University.

Architect fees are governed by a uniform DFCM policy that sets a maximum allowable fee.

uniform DFCM policy that sets the maximum allowable fee at 9.25 percent of the total project budget. The exact fee amount depends on the construction budget and project complexity. Travel costs are included in the overall architect fee. If a local architect firm subcontracts with an out-of-state architect, the two firms divide the fee rather than charging an additional fee for the out-of-state architect.

Prequalification Process Has Improved and Is Comparable to Processes in Other States

Low-bid projects can be bid by contractors who have been prequalified through DFCM’s open-ended prequalification process. DFCM’s prequalification process has recently improved by emphasizing contractor participation and raising the standards used to prequalify contractors.

Prequalification enables DFCM to award low-bid projects to contractors who can reliably do the work well and finish the work. DFCM requests prequalification submissions for general contracting as well as for trades like roofing and paving. Prequalification submissions include, but are not limited to, company information, relevant experience, bonding information, and contractor’s license. Figure 3.3 shows the number of contractors currently prequalified for different trades.

Figure 3.3 DFCM Prequalifies Contractors in Five Major Areas. Contractors are able to submit prequalification documents once every six months to be prequalified for low-bid projects.

Contractor Specialty	Number of Contractors Currently Prequalified
General Contracting	42
Roofing	14
Paving	12
Mechanical	11
Electrical	14

Source: DFCM website

DFCM’s prequalification improvements include the following:

- Accepting prequalification submissions every six months instead of once every year, allowing greater contractor access to the prequalification process

The new prequalification process encourages greater participation by contractors.

Prequalification makes it possible for DFCM to award low-bid contracts to reliable contractors.

- Dropping DFCM’s requirement of attending a mandatory meeting before submitting prequalification documents, which encourages additional participation
- Using an improved contractor score sheet that now assigns points to each category of evaluation, which allows both DFCM and contractors the ability to see how each applicant is rated

Appendix B shows the new prequalification sheet.

DFCM also changed how it uses past performance ratings for contractors. Under the old system, contractors who completed less than three DFCM projects in the previous five years had to submit information and contact information on five non-DFCM projects. Using this information, DFCM would generate an average performance rating requiring a minimum score of four on a five-point scale. Under the current prequalification process, contractors have to submit contact information for all projects they have completed. This system eliminates the opportunity for contractors to hand select only the projects on which they excelled.

DFCM also changed the performance rating requirement from an average performance rating of four to all ratings of at least a four. This applies to ratings derived from DFCM and non-DFCM projects. These two changes help DFCM more accurately assess the past performance of contractors while being more selective.

Of the five states we contacted, Colorado, Nevada, and Arizona use a prequalification process for different categories of state construction projects. For example, Arizona prequalifies contractors for jobs under \$1 million, which represents the bulk of their capital improvement projects, and reviews the qualifications of potential contractors.

Change Orders and Warranty Processes Meet Standards

DFCM also appears to process change orders consistently and in accordance with industry standards. Sampled change orders included documents and processes comparable to those used in other states and the architect industry. Similarly, DFCM’s post-construction warranty

Past performance rating requirements for prequalification have become stricter.

process follows industry standards. However, DFCM does not maintain documentation of warranty claims or issues, possibly because of DFCM's subordinate role in the warranty process.

Change Orders Are Applied Consistently And Meet Industry Standards

Change orders occur after a contract is signed and authorize a modification in the construction work, contract time, and/or cost. DFCM has a formal change order process to help manage project alterations and ensure government funds are used properly. DFCM appears to be consistently processing change orders according to industry standards.

Based on a review of 14 of the most recent change orders processed by 11 different DFCM project managers, it appears DFCM is using change orders consistently. Each change order's documentation was based on the same form and included appropriate approvals, reason codes, and justification statements. We also found that change order funding was appropriately applied. It appears DFCM's change order policies and procedures have created a standard process.

A change order can involve several project modifications. In these cases, each modification is assigned a reason code that succinctly states why the change is necessary. Figure 3.4 outlines DFCM's four main change order categories or reasons.

**Change order funding
was appropriately
applied.**

Figure 3.4 DFCM Uses Four Main Categories for Change Orders. As part of the change order process, each change order is assigned a reason code.

Change Order Reason	Definition	Example
Scope Change	Requested changes by either DFCM or the user agency beyond original project guidelines	Adding a room in the basement of a building
Unknown Conditions	Unanticipated problem arises during construction	Soil that is unsuitable for a foundation
Design Error	Architect- or engineer-produced design contains mistakes	Designed a smaller entrance than needed for the intended use of the building
Design Omission	Details that are left out of a project's design but still provide a value or are required	Design left out a stairway hand rail that is required by the building code

Source: Auditor discussions with DFCM project managers

Reason codes help DFCM project managers assign proper funding sources. For example, funding for scope changes must come from project funds or user agency funds. Based on discussions with local architects, DFCM is unique in its use of reason codes to classify change orders. DFCM does not use the reason codes to manage the number and type of change orders over time but does use them to identify proper funding sources for changes. For example, modifications due to design error could be partially funded by the architect as well as with contingency funds.⁵

DFCM's change order process is similar to that described by a representative of the Utah Chapter of the American Institute of Architects (AIA), which begins when there is a problem on a project that needs addressing. The change order process typically starts with a design proposed by the architect. The contractor then creates a list of the work that needs to take place to implement the design, including cost estimates. This list is reviewed by the architect and forwarded to the user agency for approval. AIA change order forms explicitly

⁵ Contingency funds are dollar amounts reserved from DFCM project budgets that are used to cover unforeseen project costs. Between 4.5 and 9.5 percent of the construction budget is placed into contingency.

Reason codes help DFCM assign proper funding sources for change orders.

DFCM's change order process follows AIA guidance.

require approval from all three of these parties before change orders proceed to the next step. DFCM requires additional approvals with required signatures from the DFCM project manager, DFCM management, and DFCM's accountants. We observed discussions of change orders at weekly project update meetings that demonstrated the oversight function DFCM provides over change orders. Other states appear to have similar processes with similar requirements for change order approvals.

Warranty Review Follows Industry Standards but Lacks Documentation

DFCM's post-construction warranty review process follows industry standards but lacks formal documentation. Similar to other states' programs, DFCM plays a subordinate role in the management of warranties one year after project completion. It is customary in the industry to conduct a one-year or eleven-month walkthrough of a facility after the building's substantial completion.⁶ However, although DFCM coordinates the walkthrough and makes sure the parties fulfill their contractual obligations, the walkthrough and warranty period are mainly managed by the architects/engineers (A/E), user agencies, and contractors.

Nevada is the only state we contacted with a more formalized process that is initiated and managed by the Nevada Public Works project manager. However, Idaho, Colorado, and Arizona have less formal walkthrough processes that may not be tracked by the state building agency. Rather, documentation, scheduling, and/or conducting are done by the A/E or user agency. During the first year from substantial completion, the contractor is responsible for correcting any problems.

DFCM's design contract requires the A/E to actually perform the walkthrough. In addition, the *AIA Standard Form of Agreement Between Owner and Architect for a Large or Complex Project* states:

Ten months following Substantial Completion, the Architect, the Owner, and the Owner's Representative shall

⁶ Substantial completion is defined in DFCM's General Conditions as the date the work is sufficiently complete and any lack of completion does not reasonably interfere with the intended use of the project.

Warranty walkthroughs and the warranty period are mainly managed by A/Es, user agencies, and contractors.

conduct an on-site walk-through review of the Project structure, operation, and performance. The Architect shall promptly inform the Construction Manager, the Owner and Owner's Representative, in writing, of the results of this review and shall make appropriate recommendations.

This contract language clearly places more of the responsibility on the architect.

Discussions with a large Utah architect firm and a major contractor found that they believe the walkthrough process is naturally managed by the architect and contractor, rather than DFCM. The A/E creates a memorandum at the end of the walkthrough to document the event and issues, if any. Although the architect firm we spoke with documents the walkthrough, they believe there should be more walkthroughs on DFCM projects, even if there are no issues, followed by standard documentation. They stated that, at a minimum, documentation helps monitor how materials have lasted over time. The contractor we spoke to uses a warranty checklist at the end of each project through the one-year mark and warranties all construction work for up to one year after the project is complete.

Although DFCM has not formalized this process through policy, it is a common practice. At the 11-month period, DFCM contacts the user agency to check on the completed project for concerns. If there are no concerns, specifically with improvement projects, there will be no one-year walkthrough. According to DFCM, it is more likely there will be a walkthrough for development projects.

None of the nine project files we reviewed contained documentation about the walkthrough. Some project managers were able to provide emails and other documentation from their personal records concerning the end of the warranty period, but there was no formal record.

We also contacted four agencies to learn about their experience with the warranty process and DFCM's involvement. Three of the four agencies indicated that no issues arose during the year. One agency said they worked with the contractor to take care of a few issues during the year but that they were resolved. The agencies felt that they were in a better position to know of any issues because they used the building and DFCM's role was appropriate in the current process. One contractor's warranty management documents instruct

DFCM contacts the user agency 11 months after project completion to check for concerns.

DFCM does not formally maintain warranty walkthrough documentation.

that communications should occur between the contractor and the user agency but do not include a requirement for communicating with DFCM. It appears that DFCM taking a subordinate role in the management of warranty walkthroughs is both common and appropriate. However, DFCM could benefit from formalizing the process with standard documentation after each project that records the outcome of the one-year walkthrough.

DFCM Rule on Restrictions of Programming Firms Needs Clarification

The administrative rule governing when DFCM may permit or forbid the same architect/engineer (A/E) from preparing both a project's program document and the design document is unclear, specifically for design-build projects. The rule should be amended to clearly state whether and when it is appropriate for the same A/E to prepare both documents for a single project or group of projects based on the same design.

Preparation of a program document by an A/E is the first phase of a project and is used to define general project specifications. From the program document, an A/E produces the design documents of the project. The design takes the program one step further by addressing other technical and architectural details of the project. In those projects that involve a program, DFCM's *Administrative Rule 23-3-7* allows the same firm to be involved in both processes but includes a restriction for design-build projects. The rule also allows the DFCM director to waive the restriction.

DFCM explained that projects using the design-build delivery method rely heavily on the program documents because, once the contractor takes over, DFCM has less control over the project. If the program's specifications are not adequate, the project may lose quality with this loss of control. On design-build projects, DFCM can exert the most control over the project at the programming level, before the prime contractor takes control. Therefore, on a design-build project, restricting the A/E from also producing the design documents may be more appropriate than with other delivery methods because the program documents specify most of the project's design that will be used throughout the project.

Administrative rule governing design-build programming and design contracts is unclear.

Projects using design-build rely heavily on program documents because DFCM has less control over the project.

One DFCM representative believes the rule should allow for DFCM to have discretion to determine when the same A/E may develop both documents, based mainly on delivery method (whether design-build or another method). This representative said it is more efficient to hire the same A/E for the design if they did the program because they already know the project; it would be inefficient to have to bring another group up to speed. However, he believed DFCM should be able to release the A/E that produced the program from producing the design if the work was substandard.

DFCM management agrees that the rule is unclear, but indicated that they usually restrict the practice, if possible. However, they also believe that they should have discretion about when a firm that produces a program should be prohibited from bidding on design. The discretion would be contingent upon the project's delivery method, with DFCM preferring to hire a different A/E for design-build projects. However, according to DFCM, the delivery method is not always known at the early stages of a project.

In an attempt to learn the industry's perspective, we also spoke with two A/E firms who disagree about this issue. One firm believes that having the same A/E do both programming and design creates an unfair process, limiting competition. The other firm believes that limiting the A/E to either program or design will put the project at a disadvantage, risking quality and time. An added consideration is that, by limiting the A/Es to bidding on either the program or the design, the more qualified A/Es will only bid on the design portion, because that is the more lucrative of the two options.

Hill Air Force Base adheres to the U.S. Army Corps of Engineer's policy on A/E services, under the Federal Acquisition Regulations (FAR), which typically prohibits the practice for design-build projects. Finally, a representative from another state commented that they prefer not to award a contract for design to a firm that also did the programming on the same project.

We believe DFCM should clarify this rule and consider requiring justification language in the project documents when an exception is made. The rule should consider if a restriction should be placed on the A/E that does the programming for a group of projects that are based on the same design. The rule could also provide a provision allowing

A DFCM representative believes hiring the same architect for both programming and design work may create efficiencies.

If possible, DFCM usually restricts the programming architect from bidding on the design contract.

The federal government typically places restrictions on programming and design contracts on design-build projects.

DFCM to release an A/E at the design stage if programming work was found to be inadequate.

Recommendations

1. We recommend that DFCM consider formalizing the one-year warranty walkthrough practice in policy to ensure a consistent application and require documentation be included evidencing that the one-year period was addressed by DFCM.
2. We recommend that DFCM clarify *Administrative Rule 23-3-7*, which governs when an architect/engineer prepares both a project's program documents and the design documents. In addition to clarifying the rule, DFCM should consider:
 - Requiring justification language in the project documents when an exception is made
 - If a restriction should be placed on the A/E that does the programming for a group of projects that are based on the same design
 - Language that would allow DFCM to release an A/E at the design stage if programming work was found to be inadequate

Chapter IV

Most Building Board Responsibilities Are Codified and Independent of DFCM

The Utah State Building Board (Building Board or board) fulfills a distinct, statutory role in state building activities. While the Legislature has final approval over capital development projects that receive state funds, the Building Board performs independent activities that contribute to its prioritization processes for all types of capital projects. Broadly, capital projects include both capital development and capital improvements, funded by both state and non-state sources. In recent years, the role and structure of the Building Board has been modified. The board's prioritization and oversight processes have been separated from project management, which is performed by the Division of Facilities Construction and Management (DFCM).

We were asked to review the functions and duties of the Building Board. Specifically, we were asked to define the relationship between legislative and board roles and activities. In addition, we were asked if the functions of the board and DFCM were sufficiently separated.

Building Board Fulfills Distinct Role as Assigned by Statute

The Building Board is an eight-member body appointed by the Governor. Activities of the board are organized and documented by the Building Board director. The Building Board's four major responsibilities include:

- Interpreting legislation and drafting rules for DFCM
- Prioritizing capital development for consideration and approval by the Legislature
- Approving non-state-funded capital development projects
- Prioritizing capital improvement projects

The Building Board has the sole responsibility for prioritizing all types of capital projects. The board prioritizes capital improvement

The Building Board prioritizes capital improvement and capital development projects for state agencies and institutions.

Most capital development projects must ultimately be approved by the Legislature.

projects based on its own independent preventative maintenance audit⁷ reports, facilities condition assessments⁸ (FCAs), and agency or institutionally produced need statements. In fiscal year 2015, the board prioritized \$181,141,424 in capital improvement requests from agencies and institutions. The Legislature appropriated just over \$100 million for improvements. The \$100 million was divided among 310 improvement projects.

The board also does an initial prioritization of capital development projects (either new buildings or projects whose estimated budgets are greater than \$2.5 million). Most capital development projects must ultimately be approved by the Legislature. However, for projects that use only non-state funds for design, construction, and any additional ongoing funding such as operations and maintenance, the Building Board serves as the only state oversight body that must approve or deny the project before it moves forward.

Figure 4.1 Non-State-Funded Capital Development Projects Prioritized by the Building Board. Non-state-funded capital development projects do not require legislative approval.

Fiscal Year	Amount
2011	\$216,408,000
2012	150,152,600
2013	182,162,600
2014	190,864,000
2015	132,221,256

Source: *Five-Year Program, 2011-2015*

Figure 4.1 shows development projects that do not use state funding appropriated by the Legislature. Building purchases approved by the Building Board were removed from these totals, as were any projects that would be categorized as capital improvements. Capital improvement funding is included in Figure 4.2.

Each year, the Building Board produces the *Five-Year Program*. This document details completed state-funded and non-state-funded

⁷ A preventative maintenance audit is designed to measure the level of compliance with the Utah State Building Board's mandated Preventive Maintenance Standards.

⁸ A facilities condition assessment is an industry term that describes the process of a qualified group of trained industry professionals performing an analysis of the condition of a group of facilities that may vary in terms of age, design, construction methods, and materials.

capital development projects, summarizes anticipated capital improvement expenditures as prioritized by the board, and presents the board's recommendations for future development projects. This document serves to keep the Legislature informed of all board activities. As directed by the Legislature, all development projects prioritized for the next two years by the board include the following:

- A construction budget estimate (CBE)
- An annual operation and maintenance estimate
- An estimate of future capital improvement costs
- The anticipated number of new full-time equivalents (FTEs) that will be housed in the building
- The estimated cost of new FTEs as well as expanded programmatic costs
- The estimated lifespan of the building
- The cost associated with any required support facilities

These criteria guide final legislative action on capital development projects. The report is produced through the collaboration of the Building Board, DFCM, and the Department of Administrative Services (DAS).

The board does fulfill a limited oversight role for DFCM. It reviews changes in scope and hears building report summaries from higher education, state agencies, and the Utah Department of Transportation at its meetings. In addition, the board's preventative maintenance audit reports guide DFCM actions regarding facilities maintenance. If a preventative maintenance audit shows that an agency is not properly maintaining its buildings, DFCM can revoke the agency's delegation to perform its own facilities maintenance. When delegation is revoked, DFCM staff performs facilities maintenance for the agency. These services are funded through the Internal Service Fund (ISF).

Role and Structure of the Building Board Has Been Modified

While the core duties of the Building Board have not changed, recent changes to its structure and procedures have added controls and created separation between it and DFCM. The Legislature has also added more controls to the board's processes. State construction activities have also been separated by function to increase oversight.

The *Five-Year Program* is a document produced by the Building Board that provides an overview of state building activities.

Finally, new standardized board processes for capital improvement prioritization should improve the state's ability to respond to the specific capital improvement needs in order of necessity.

The Legislature Has Added Controls to Board Processes

Utah Code Title 63A Chapter 5 covers both DFCM and the Building Board. One of the more significant changes that has affected the Building Board (as well as the agencies and institutions that receive capital improvement funding through it) is the requirement that 80 percent of prioritized improvements and upgrades be allocated to the following types of projects:

80 percent of improvement projects must address essential upgrades to state buildings.

- A structural issue
- Fire safety
- A code violation
- Any issue that impacts health and safety
- HVAC system
- Electrical system
- Essential equipment/building component
- Infrastructure, including utility tunnel, water/gas/sewer line etc.

In addition to the items listed above, *Utah Code* 63A-5-104 requires the funds to be allocated to projects that “demolish and replace an existing building that is in extensive disrepair and cannot be fixed by repair or maintenance.” These needs are easy to identify for agencies because they must be in the facilities condition assessment. The building board and its staff ensure that this requirement is met before formalizing the prioritization in the *Five-Year Program*. The remaining 20 percent of the requested funds may be requested for remodeling and aesthetic upgrades that meet program needs or to construct an addition to an existing building or facility.

The Legislature has also added controls concerning ongoing costs of state-owned buildings. During the 2015 General Legislative Session, the Legislature made additional changes to the duties of the Building Board. Beginning in fiscal year 2016, *Utah Code* 63A-5-1-104.1 requires the board, in collaboration with the Board of Regents and other organizations, to prepare a report that proposes a process for tracking operations and maintenance costs in addition to identifying alternative funding mechanisms for state-owned buildings.

State Construction Activities Have Been Separated by Function to Increase Oversight

The Legislature, DAS, and the Building Board have made changes to delineate the board's duties from the duties of DFCM. In general, the board (with the approval of the Legislature) decides what to build and DFCM manages the projects from the bidding process to completion.

During the 2014 General Legislative Session, the Legislature approved a request from the DFCM interim director to separate the board's budget from DFCM's budget. Beginning the following fiscal year, the FCAs (performed by an independent third party) and the preventative maintenance audits (performed by two non-DFCM employees) were funded through a line item independent from the division. The line item includes \$282,900 in personnel expenses for the Building Board director and the two auditors, \$920,000 for the FCA contract, and other small expenditures. The total line item for both fiscal year 2015 and fiscal year 2016 is \$1,255,900.

DAS also made adjustments that both increased separation between the board and DFCM and provided the board with more resources with which to perform its functions. DAS is required to provide support staff to the Building Board. Based on this requirement, DAS added two FTEs to the Building Board staff, reclassified the Building Board director to eliminate responsibilities to DFCM, and removed potential DFCM influence from the board.

In May 2013, the DFCM interim director realigned the position of Building Board director. Formerly, the Building Board director split duties between DFCM and the board. Now, the Building Board director works only for the Building Board and reports directly to the deputy director of DAS, as opposed to reporting to the DFCM director. In addition, DAS created two preventative maintenance auditor positions, one in 2012 and the other in 2014. These two auditors filled similar roles to preventative maintenance auditors who had worked for DFCM until about 10 years ago. The new preventative maintenance auditors are also independent of DFCM and report to the Building Board director.

The Building Board determines what to build and, upon legislative approval, DFCM manages the design and construction of the project.

DFCM employees are no longer involved in Building Board activities.

Finally, DAS management has removed the director of DFCM from serving as the secretary to the Building Board. *Utah Code* 63A-5-1-101 requires that DAS provide support staff to the Building Board. Until May 2013, the director of the division sat in on all board meetings and would occasionally provide input to the meetings. While there were no allegations of wrongdoing, DAS and the Legislature were concerned that the director's participation could influence decisions made by the board. The exclusion of the director from board meetings removes the potential for influence in the future. However, the board should formalize this change through an amendment to *Administrative Rule 23-32-8*, which currently requires the director to serve as secretary to the Building Board.

The combination of a shift in organizational structure that placed the two preventative maintenance auditors and the Building Board director under the direct supervision of the deputy director of DAS, the creation of a separate line item for Building Board activities, and the removal of the DFCM director from secretarial duties to the board have created a clear separation between the board and DFCM management. The most significant implication of this separation is the corresponding separation between the project prioritization process and the project management process.

Board's Role in State Building Operations Comparable to Peers

The composition of other states' building programs suggests that Utah's model is appropriate. Similar to the organization of Utah's building process, Colorado and Oregon maintain separation between the project management and project prioritization functions. In Oregon, the prioritization is performed by representatives within the Department of Administrative Services, who are unaffiliated with the Division of Enterprise Asset Management (the division that carries out project management). In Colorado, there is a specific entity responsible for the prioritization process, the State Architect's Office.

Unlike Utah and Oregon, Colorado's project management is performed by the entity for which the improvement or development occurs. While the structure is different than the centralized model used by Utah and Oregon, the separation between the prioritization function and the project management function is clear in all three states.

In Colorado and Oregon, project prioritization is a separate function from project management.

Utah appears to have a more comprehensive prioritization process than its peers. The Oregon Department of Administrative Services only performs independent prioritization if the project requires bonding. In Colorado, projects built with non-state funds are not presented to the state architect for prioritization. In Utah, the Building Board must consider all state construction projects costing over \$10,000, regardless of the funding source.

New Process for Improvement Prioritization Increases Responsiveness to Specific Agency Needs

In March 2014, the Building Board made changes to how it prioritizes capital improvement projects. *Administrative Rule 23-33* was created to establish a scoring process for capital improvements, which occurs annually. Before this process was put into place, improvement funding was not fully allocated by need but divided between agencies and institutions based on total square footage as a percentage of all state-owned buildings.

Capital improvement projects do not require individual legislative approval. However, the board does provide the Legislature with a list of all prioritized improvement projects in the *Five-Year Program* for informational purposes. A degree of legislative control is maintained as the Legislature determines the level of funding for capital improvement projects each year, through a line item appropriation. The figure below shows the total capital improvement funding that has been allocated for projects prioritized by the Building Board since fiscal year 2011.

The Building Board utilizes a new scoring process for prioritizing capital improvements.

Figure 4.2 Capital Improvement Funding. These figures come from the line item approved by the Legislature.

Fiscal Year	Amount
2011	\$50,685,400
2012	41,648,600
2013	71,739,100
2014	87,739,100
2015	100,243,600

Source: 2015 COBI

The prioritization process involves several steps. First, each entity requesting improvement funds must submit a needs request upon notification from the Building Board director. The criteria for agencies and institutions to submit a needs request are standardized and

detailed. Then, the Building Board director preliminarily scores the projects based on necessity and ensures that the requests meet the 80 percent/20 percent split mandated by law as discussed on page 30. Figure 4.3 shows all the elements of the complete improvement project prioritization scorecard.

Figure 4.3 Capital Improvement Scoring Sheet for Project Prioritization. In 2014, the Building Board began prioritizing projects based on the points assigned through the score sheet.

Project Consideration Factors	Description	Action/Max Score
Life Safety/Code Compliance	Comprises staff or public safety or requires system upgrade to comply with current codes and standards	Immediate Automatic Funding
Project Currently Critical	A system component is inoperable or compromised and requires immediate action	50 points
Project Necessary/Not Critical	Maintain the integrity of the facility or component and replace those items that have exceeded their expected useful life	40 points
Project Programmatic	Programmatic needs of the agency/institution as determined in needs statement	30 points
Facility/Project Type		
Class 1	Classroom, hospital, laboratory, office building, penal facility, armory, infrastructure, library, roofing, courts	50 points
Class 2	Athletic facility, museum, residence, store, theater, auditorium, paving/flat work, maintenance garage, elevator, hatchery, conference centers	40 points
Class 3	Farm or shed, hanger, warehouse or shop, stand-alone restrooms	30 points
Total Points Possible		100 points
Bonus Energy Component	Projects that include energy saving components or reduce operating costs	10 points
Total + Bonus Points Possible		110 points

Source: Building Board

The above improvement project scoring methodology is similar to the methodology and criteria used to rank capital development projects. After the initial prioritization, the requesting entity and DFCM calculate the construction budget estimate (CBE). The CBE allows the board to prioritize projects up to the budgeted amount appropriated from the Legislature for capital improvement projects. The finalized rankings are presented to the Infrastructure and General Government Appropriations Subcommittee.

The functions of the Building Board, its processes, and structure have evolved. Specifically, the board and DFCM are now distinctly separate and the improvement prioritization process has been formalized. In addition, the Legislature has provided direction for the appropriate allocation of improvement funds.

Recommendation

1. We recommend that the Building Board amend *Administrative Rule 23-32-8* to remove the DFCM director from performing any secretarial duties for the Building Board to formalize the separation between the two entities.

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Appendices

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Appendix A

DFCM Health Insurance Benchmarks

BENEFITS 2014	PARTICIPATING	NON-PARTICIPATING
Deductible and Out-of-Pocket Maximum		
Deductible (Single/Family)	\$1,000/\$2,500	\$1,500/\$3,000
Out -of- Pocket Maximum	\$4,000/\$8,000	\$6,000/\$12,000
<i>This amount is your deductible + co-insurance and copay</i>		
Inpatient Services		
Medical, Surgical, Hospice, Emergency Admission	20% after deductible	50% after deductible
Skilled Nursing Facility <i>Up to 60 days/calendar year</i>	20% after deductible	50% after deductible
Rehab Therapy: Physical, Speech, Occupational <i>Up to 40 days/calendar year for all therapies combine</i>	20% after deductible	50% after deductible
Lifetime Maximum Plan Payment	None	None
Professional Services		
Office Visits and Office Surgeries		
Primary Care Provider (PCP)	\$25	50% after deductible (\$25 minimum copay)
Secondary Care Provider (SCP)	\$40	50% after deductible (\$40 minimum copay)
Allergy Tests	See Office Visits	Not Covered
Allergy Treatment and Serum	20%	Not Covered
Physicians Fees— <i>Medical, Surgical, Anesthesia</i>	20% after deductible	50% after deductible
Preventative Services Outlined by the ACA		
Office Visits (PCP/SCP)	Covered 100%	Not Covered
Adult and Pediatric Immunizations	Covered 100%	Not Covered
Diagnostic Test: Minor	Covered 100%	Not Covered
Other Preventative Services	Covered 100%	Not Covered
Pediatric Vision Service Ages 0-18 Years Only		
Routine Eye Exams	Covered 100%	Not Covered
Contacts and Corrective Lenses <i>Limit one pair of eyeglasses or contact lenses per year</i>	20% after deductible	50% after deductible
OUTPATIENT SERVICES		
Outpatient Facility and Ambulatory Surgical	20% after deductible	50% after deductible
Ambulance (air or ground) <i>emergencies only</i>	20% after deductible	See participating benefit
Emergency Room Participating Facility	\$250 after deductible	See participating benefit
Emergency Room Non-Participating Facility	\$250 after deductible	See participating benefit
Chemotherapy, Radiation, Dialysis	20% after deductible	50% after deductible
Diagnostic Tests: Minor	100% covered	50% after deductible
Diagnostic Tests: Major	20% after deductible	50% after deductible
Home Health, Hospice, Outpatient Private Nurse	20% after deductible	50% after deductible
Outpatient Rehab/Habilitative Therapy: Physical, Speech, Occupational <i>Up to 20 visits/calendar year for each therapy type</i>	\$40 after deductible	50% after deductible
MISCELLANEOUS		
Maternity and Adoption <i>Includes all related maternity and adoption services</i>	See Professional, Inpatient, or Outpatient	See Professional, Inpatient, or Outpatient
Chiropractic Care <i>up to 15 visits/calendar year</i>	Not Covered	50% after deductible
Miscellaneous Medical Supplies (MMS)	20% after deductible	50% after deductible
Durable Medical Equipment (DME)	20% after deductible	50% after deductible
Injectable Drugs and Specialty Medications	20% after deductible	50% after deductible
Infertility (<i>select services only</i>)	50% after deductible	Not covered

Maximum plan payment: Up to \$1,500/calendar year; \$5,000/lifetime
 Mental Health and Chemical Dependency

Inpatient

20% after deductible

50% after deductible

Outpatient

20% after deductible

50% after deductible

Residential Treatment Center

Not covered

Not covered

Cochlear Implants

See Professional, Inpatient, or
 Outpatient

Not covered

Donor Fees for Covered Organ Transplants

See Professional, Inpatient, or
 Outpatient

Not covered

TMJ (Temporomandibular Joint) Services
Up to \$2,000/lifetime

See Professional, Inpatient, or
 Outpatient

Not covered

PRESCRIPTION DRUGS

Deductible

None

Out-of-Pocket Maximum

Combined with medical

Co-pay Up to 30-day supply for covered medications
generic substitution required

Tier 1

\$10

Tier 2

25%

Tier 3

50%

Tier 4

20%

Maintenance Drug -90-day supply
generic substitution required

Tier 1

\$10

Tier 2

25%

Tier 3

50%

Appendix B Prequalification Evaluation Form

PRE-QUALIFIED SCORE SHEET

Company Name _____ Date _____

Contractor Type

- General
- Electrical
- Mechanical
- Roofing
- Paving

RFP COMPLIANCE 20 POINTS

- Cover Sheet Provided in RFS
- Business Name - address, and phone number
- Point of Contact-name, address, phone number and email
- Termination and Debarment Statement

Total Points _____

LICENSING COMPLIANCE 20 POINTS

- Cover Sheet Provided in RFS

Total Points _____

BONDING COMPLIANCE 20 POINTS

Bid Bond or letter of recommendation from bonding agent or surety.

- Complies with RFP 10 Points _____
- Bonding Experience 10 Points _____

Total Points _____

STATEMENT OF QUALIFICATIONS AND EXPERIENCE 20 POINTS

- Management Plan 10 Points _____
- Strength of Team 10 Points _____

Total Points _____

PAST PERFORMANCE RATING 20 POINTS

DFCM _____ Non-DFCM _____

Total Points _____

OVERALL TOTAL POINTS _____

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Agency Response

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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of Administrative Services

KIMBERLY K. HOOD
Executive Director

KENNETH A. HANSEN
Deputy Executive Director

June 15, 2015

John M. Schaff, CIA
Auditor General
Office of the Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, UT 84114

Dear Mr. Schaff,

Thank you for the opportunity to review an exposure draft of your report, *A Review of Allegations Concerning DFCM Construction Contracting*. The Department of Administrative Services (DAS) appreciates the professionalism in which you and your staff conducted the analysis. We also welcome this thorough review of all processes related to the Division of Facility Construction and Management's (DFCM) construction procurement. We support the Legislature's continued commitment to providing needed capital assets that allow State Agencies and Higher Education Institutions to perform their mission. DFCM strives to construct these facilities using fair and equitable processes that comply with industry standards. We believe the audit addressed these issues in both verifying our current practices and providing recommendations for continued improvement.

We appreciate the opportunity to respond to the Audit Recommendations and submit the following comments on behalf of the Division of Facilities Construction and Management.

Chapter II, Recommendation 1 – *We recommend that the Division of Facilities Construction and Management enforce state statute and its own contract language by collecting written statements from contractors demonstrating that the contractors provide the appropriate level of health insurance.*

DFCM agrees with this recommendation and will modify our contracting process to enforce the reporting requirements related to contractor health insurance. The Division has addressed the requirements in both Administrative Rule R-23-23-7 and in our contract terms and general conditions. DFCM will ensure contract and project management staff is fully aware of this reporting requirement requiring the submission of a compliance certification form as part of the contract award process.

Chapter II, Recommendation 2 – *We recommend that the Division of Facilities Construction and Management evaluate the collecting of drug and alcohol testing practices to determine if they provide*

needed information worth collecting. If so, DFCM should begin collecting the information as required; if not, DFCM should amend administrative rule and remove this requirement from contracts.

DFCM agrees with this recommendation. As identified, DFCM placed reporting requirements that exceed statute in our contract general conditions and in administrative rule R-23-7. We will evaluate the value of this additional reporting and if determined to be unnecessary, amend the administrative rule and our contract documents.

Chapter III, Recommendation 1 – *We recommend that DFCM consider formalizing the one-year warranty walkthrough practice into policy to ensure a consistent application and require documentation be included evidencing that the one-year period was addressed by DFCM.*

While the audit noted that DFCM’s post-construction warranty review process follows industry standards, we agree that a formal process be adopted to ensure related documentation is collected. This process will be developed and implemented on projects going forward.

Chapter III, Recommendation 2 – *We recommend that DFCM clarify Administrative Rule 23-3-7, which governs when an architect/engineer prepares both a project’s program documents and the design documents. In addition to clarifying the rule, DFCM should consider:*

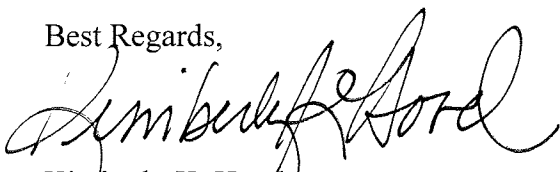
- *Requiring justification language in the project documents when an exception is made*
- *If a restriction should be placed on the A/E that does the programming for a group of projects that are based on the same design*
- *Language that would allow DFCM to release an A/E at the design stage if programming work was found to be inadequate*

DFCM agrees with the audit findings that Administating Rule R23-3-7 needs to be amended to clarify the requirements related to the programming and design process. We will also take into consideration the recommendations made by the Audit team when modifying the rule.

DFCM is currently taking measures to address the audit recommendations and will have these few items implemented soon.

Thank you for the opportunity to provide this response.

Best Regards,



Kimberly K. Hood
Executive Director, Department of Administrative Services



Gary R. Herbert
Governor

Utah State Building Board

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Salt Lake City, Utah 84114
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June 29, 2015

Mr. John M. Schaff, CIA
Legislative Auditor General
W315 Utah State Capitol Complex
Salt Lake City, Utah 84114-5315

Dear Mr. Schaff:

On behalf of the Utah State Building Board (Building Board), we wish to thank you and your staff for their efforts on this audit, and we appreciate the opportunity to review and comment on: A Review of Allegations Concerning DFCM Construction Contracting (Report No. 2015-07).

As the Building Board continues to fill its role as a recommending board to the legislature and Governor's office, it should be noted that it is in its first year of its new structure as a separate and autonomous board from DFCM. This new structure has added procedures and controls from the legislature and the Department of Administrative Services that will allow a more complete statewide process for requesting capital needs, as well as operation and maintenance (O&M) overview for both state and higher education facilities.

The Building Board will continue to operate in its traditional role as a recommending and policy board, but with the added responsibilities of state wide facility maintenance audits, facility condition assessments, and capital development and capital improvement oversight. The Building Board is also involved in a statewide review of the existing O&M models and funding. We will be preparing a report for legislative review in September of 2015.

This response is to address the following recommendation:

Chapter IV, Recommendation 1 – *We recommend that the Building Board amend Administrative Rule 23-32-8 to remove the DFCM director from performing any secretarial duties for the Building Board to formalize the separation between the two entities.*

The State Building Board will make amendments to Rule 23-32-8 removing the DFCM Director from his role as secretary to the Board as well as formalize the separation of the two entities.

Thank you for allowing the State Building Board the opportunity to respond to this audit. If you have any additional questions, please do not hesitate to contact us.

Sincerely,

Ned Carnahan, Chair
Utah State Building Board

Jeff Reddoor, Director
Utah State Building Board

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