

Audit 2015-07

A Review of Allegations Concerning DFCM Construction Contracting

http://le.utah.gov/audit/15_07rpt.pdf

Recommendation	Original Response from the DAS - DFCM / State Building Bd	Current Status/Action Taken as reported by the DAS - DFCM / State Building Bd	IGG Appropriations Subcommittee Action
1 We recommend that the Division of Facilities Construction and Management enforce state statute and its own contract language by collection written statements from contractors demonstrating that the contractors provide the appropriate levels of health insurance.	DFCM agrees with this recommendation and will modify our contracting process to enforce the reporting requirements 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.	Partially implemented. DFCM has developed a separate form for contractors/architects and qualifying subcontractors to verify compliance with state statute regarding appropriate health insurance coverage. An informational meeting is scheduled for November with the contracting and architectural community to present this new requirement and address any questions. This form will be implemented into the DFCM contracting process in December. The form will be required prior to the execution of a qualifying contract.	
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 be 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.	Partially implemented. DFCM has modified administrative rule R-23-7 to now match state statute. This proposed rule was presented to the State Building Board on September 9th for their review and was granted approval. The modification is now going through the required public comment period. The Building Board approved this to take effect at the end of the public comment period absent any negative public comment.	
3 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.	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.	Implemented. DFCM has developed and implemented a formal process that now tracks and documents the one-year warranty walkthrough. This new process now requires the DFCM project manager to be responsible for the completion and documentation.	
4 We recommend that DFCM clarify <i>Administrative Rule 23-3-7</i> , 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: <ul style="list-style-type: none">• 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 Adminstrating 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.	Partially implemented. DFCM has modified administrative rule R-23-3-7 to clarify when architects/engineers may prepare both a project's program as well as design documents. This proposed rule was also presented to the State Building Board on September 9th for their review and was granted approval. The modification is now going through the public comment period. The Building Board approved this to take effect at the end of the public comment period absent any negative public comment. Modified language in the rule states: R23-3-7. Restrictions of Programming Firm. (1) The Division may in its sole discretion based on the interest of the State, determine whether a programming firm (person) may be able to participate in any or all of the design or other similar aspects of a project. (2) If there is any restriction of a programming firm to participate in future selections of a project, the Division, shall provide this restriction in any competitive solicitation, if there is one, that may be issued for selecting a programming firm. If there is no solicitation for the selection of the programming firm (i.e. sole source, small purchase, emergency procurement, etc.), then Division may simply provide any restriction of the firm's future participation in any other aspect of the project, by placing the restriction in the contract. (3) Notwithstanding any provision of this Rule or any other Rule of this Board, the Division may terminate or suspend programming and design contracts at any time consistent with the provisions of the contract.	

5 We recommend that the Building Board amend *Administrative Rule 23-32-8* to remove 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.

Partially implemented. The State Building Board has modified administrative rule R-23-32-8 to remove the DFCM director from performing secretarial duties for the Board. This proposed rule was also presented to the State Building Board on September 9th for their review and was granted approval. The modification is now going through the public comment period. The Building Board approved this to take effect at the end of the public comment period absent any negative public comment. Modified language in the rule states:

R23-32-8. Administrative and Staff Services

The Department of Administrative Services shall provide administrative and staff services to enable the Board to exercise its powers and discharge its duties, and shall provide necessary space and equipment for the Board.