

JEFFERSON PARISH GOVERNMENT  
PERFORMING ARTS CENTER



COMPLIANCE AUDIT  
ISSUED OCTOBER 12, 2011

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LOUISIANA LEGISLATIVE AUDITOR  
DARYL G. PURPERA, CPA, CFE

October 12, 2011

**MR. JOHN YOUNG, JEFFERSON PARISH PRESIDENT  
AND MEMBERS OF THE JEFFERSON PARISH COUNCIL**  
Gretna, Louisiana

We have audited certain transactions of the Jefferson Parish Government. Our audit was conducted in accordance with Title 24 of the Louisiana Revised Statutes to determine the propriety of certain financial transactions.

Our audit consisted primarily of inquiries and the examination of selected financial records and other documentation. The scope of our audit was significantly less than that required by *Government Auditing Standards*; therefore, we are not offering an opinion on the Jefferson Parish Government's financial statements or system of internal control nor assurance as to compliance with laws and regulations.

The accompanying report presents our findings and recommendations as well as management's response. This correspondence is intended primarily for the information and use of management of the Jefferson Parish Government. Copies of this report have been delivered to the District Attorney for the Twenty-Fourth Judicial District of Louisiana and others as required by law.

Respectfully submitted,

Daryl G. Purpera, CPA, CFE  
Legislative Auditor

DGP/dl

JPAC 2011

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## Project Management

According to the Performing Arts Center (Center) construction contract, J. Calderara & Company, Inc.'s (JCC) original bid for the Center construction cost was for \$26,565,000, which the Jefferson Parish (Parish) Council has added to by approving seven change orders totaling \$18,145,682, bringing the total current budgeted Center construction costs, as of June 10, 2011, to \$44,710,682 (68.3% increase in construction costs). As part of our audit, we reviewed decisions made by the Parish Council and Administration which may have contributed to the cause of these change orders. During our review, we determined the following:

1. Pre-bid meeting questions from potential bidders were not answered prior to bidding.
2. The Parish advertised for construction bids prior to submitting the design plans to the State Fire Marshall and awarded the Center project prior to receiving conditional approval of the Center design plans from the State Fire Marshall.
3. As of October 10, 2011, Parish Code Enforcement has not permitted or inspected the Center design plans or construction.
4. The construction manager may have a conflict of interest by employing the architect/design consultant and by creating engineering drawings for the Center.
5. According to the construction manager, the Center has become a design-build project.
6. The Parish has approved seven change orders totaling \$18,145,682, which increased the overall construction cost to \$44,710,682.
7. Although not required in Louisiana law, a vendor provided services under contracts that were never signed.
8. The Parish's contract with JCC did not include an audit clause.
9. Due to the Parish's decentralized management of the project, documents were stored in nine different locations.

## Center Architect Selection

The Parish used a technical evaluation committee to evaluate, score, and qualify Statements of Qualifications (SOQ) from architects for the Center, but could not produce records of the score sheets completed by the committee. According to Department of Public Works Director Kazem Alikhani, the Parish does not have a central repository for the storage of evaluation committee records, including the SOQ score sheets. In addition, a former councilman, parish president, and chief administrative officer all stated that the Parish Council has an unwritten practice of choosing professional service providers based solely on the request of the councilmember whose district will benefit from the services. The architect for the Center, Wisznia and Associates, Inc. (Wisznia), was ranked fourth out of the five qualified architects;

however, Wisznia was requested by John Lavarine, Jr., the councilmember for the 2nd district. Since the Parish Council may not have considered the rankings of the technical review committee when it selected Wisznia as the architect for the Center project, the council may have violated the public bid law.<sup>4</sup>

### **Possible Bid Law Violation**

The Parish may have violated the public bid law by including language in the construction bid advertisement which conflicts with state law<sup>5</sup> and by not running an updated construction bid advertisement for three separate weeks as required by state law.<sup>6</sup>

### **Inadequate Accounting Controls**

During our audit, it was noted that after receiving Center invoices from other Parish departments, the Parish Finance Department lacked a proper set of internal controls to review and approve Center invoices for payment. This lack of controls allowed the Parish Finance Department to make the following payments:

1. A \$5.6 million payment was made without the Parish Finance Department obtaining or reviewing the invoices or supporting documentation.
2. The Parish paid Wisznia \$18,414 for invoices that were either submitted after the required date for submission or for receipts with no date.
3. The Parish paid the same \$87,500 Carothers Construction invoice three times. The Parish subsequently recovered these funds only after Carothers Construction discovered the duplicate payments.
4. Prior to October 10, 2002, the Parish Finance Department did not record expenses related to the Center land improvements in the Center project fund.

### **Role of Facility Planning and Control**

The accepted base bid on the Center was \$26,565,000, which is 100% state capital outlay funds. As of March 2011, the Parish has requested \$28,182,001 from the Office of Facility Planning and Control (OFPC). The state has paid \$19,177,746 on these invoices. The difference in the amount requested and paid (\$9,004,255) is due to the different levels of state participation in change orders. Though the state has spent \$19,177,746 on the Center project, there have been no OFPC inspections of the work. Based on the role of OFPC, the Louisiana Legislature may want to consider taking action to clarify the provisions of R.S. 39:124 as it relates to entities receiving state capital outlay funds.

The Parish of Jefferson's system of government was established by its Home Rule Charter, which became effective in 1958 with several other charter changes in 1996 and 2002. The Parish operates under a president-council form of government with seven council members and the Parish President who are each elected for four-year concurrent terms.

The procedures performed during this examination consisted of:

- (1) interviewing employees and officials of the Parish;
- (2) interviewing other persons as appropriate;
- (3) examining selected documents and records of the Parish;
- (4) performing observations; and
- (5) reviewing applicable state laws and regulations.



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## Background

In July 1998, the University of New Orleans published a Market/Land-Use Study for the purpose of analyzing the feasibility and viability of a proposed performing arts center to be located on the LaSalle Tract in Jefferson Parish (Parish), which is located in Council District 2. The study made targeted recommendations and supported the construction of one, 1,750-seat performing arts center, as well as one smaller 550-seat theater.

In May 1998, the Parish received seven Statements of Qualifications (SOQ) in response to a published solicitation for SOQs from parties interested in providing services to the Department of Public Works for the design of the LaSalle Tract master plan which was to include a performing arts center, community center, and the related promenade and observation tower. On June 4, 1998, a technical evaluation committee reviewed and scored the seven SOQs. The evaluation committee determined that five out of the seven firms had the necessary experience, competence, and professional expertise to complete the work in a timely and professional manner. In a letter to Parish Clerk Terry Rodrigue, the evaluation committee listed the five qualified firms in the order of their ranking score. Of the five approved firms listed, Wisznia and Associates, Inc. (Wisznia) was ranked fourth. On July 8, 1998, the Parish Council selected Wisznia to design the LaSalle Tract master plan.

On April 1, 2002, the Parish signed a Cooperative Endeavor Agreement (CEA) and subsequent amendments with the State of Louisiana (State) under which the State would provide \$20 million in funding for the Performing Arts Center (Center) project, which resulted in an original overall budget for the project of \$32,944,519. Following this CEA, the Parish signed contracts with Wisznia to design the Center, Carothers Construction to manage the Center's construction, and FM Squared for Center operations consulting.

The Parish's first public advertisement for construction bids was in 2005, and resulted in the Parish's rejection of all bids since the lowest bid exceeded the budget by \$1.7 million. Rather than funding the difference with local funds, the Parish chose to cancel all bids and request Wisznia to conduct a redesign of the Center to lower the overall construction cost. During the redesign period, the State agreed to pay \$8 million more toward the Center (a total of \$27,990,000). The Parish publicly advertised for construction bids again in 2006, which resulted in the selection of J. Calderara & Company, Inc. (JCC), who bid \$26,565,000 to build the Center. The Parish did not renew the contracts of Wisznia and Carothers Construction and replaced them with Perrin and Carter, Inc. (P&C) in December 2006 to provide construction management and resident inspection for the construction of the Center.



\*Picture 1 - Front of the Center, taken June 1, 2011.

According to the Parish Finance Department, the budget for the Center project as of June 10, 2011, has increased to \$52,407,782 (59% increase in total cost). According to Mr. Mike Carter of P&C, the construction of the Center is approximately 75% complete and should be completed by the middle of 2012. From October 10, 2002, to June 10, 2011, the Parish accounted for \$44,882,367 in direct Center expenses, which included \$16,060,914 of expenses paid to date pertaining to seven construction change orders. In addition, Mr. Carter stated that an eighth change order is currently being reviewed, which could increase the total final cost of the Center beyond the budgeted \$52,407,782.



\*Picture 2 - Back of the Center, taken June 1, 2011.

<b>Performing Arts Center Expenses October 10, 2002 to June 10, 2011</b>		
<b>Vendor</b>	<b>Services Provided</b>	<b>Grand Total</b>
J CALDARERA & CO INC	Center Construction	\$38,398,512
PERRIN & CARTER, INC	Construction Management, Resident Inspection and Architectural Services	3,241,615
WISZNIA & ASSOCIATES	Architectural Services	1,880,347
BURGLASS & TANKERSLY, LLP	Legal Services	433,614
CAROTHERS CONSTRUCTION, INC	Construction Management and Project Cost Estimation	356,250
LCDA 2009B BOND EXPENSE	LCDA Bond Expense	91,284
LCDA 2009C BOND UNDERWRITER'S DISCOUNT	LCDA Bond Underwriter's Discount	65,000
LCDA 2009C BOND PREMIUM	LCDA Bond Expense Premium	62,390
BOH BROS CONSTR CO LLC	LaSalle Walking Trail Asphalt Maintenance	60,933
CITYWIDE TESTING & INSPECTION	Geotechnical, Concrete, Steel and Other Inspection Services	52,434
THE BECKNELL LAW FIRM	LCDA Bond Services	41,775
LCDA 2009C BOND INSURANCE	LCDA Bond Insurance	35,137
PROFESSIONAL SERVICE INDUSTRIES	Geotechnical, Concrete, Steel and other Inspection Services	34,355
MAHTOOK & LAFLEUR	LCDA Bond Services	25,000
GOVERNMENT CONSULTANTS OF LA	LCDA Bond Services	16,450
RIDGWAY'S, INC.	Copies of Center Design Plans	13,956
MISC EXPENSES	Center Signs and Other Misc. Expenses	12,869
LEAKE & ANDERSON	LCDA Bond Services	10,000
STANDARD & POORS CORP	LCDA Bond Services	7,600
THE BANK OF NEW YORK	LCDA Bond Services	7,000
GREGORY A PLETSCHE & ASSOC	LCDA Bond Services	5,500
PICKERING & COTOGNO	LCDA Bond Services	5,000
FM SQUARED, LLC	Center Operating Consulting	4,099
LA STATE BOND COMMISSION	LCDA 2009 Bond Fees	3,750
ARGOTE DERBES STEGALL & TATJE	Land Appraisals	3,500
LA COMMUNITY DEV. AUTHORITY	LCDA 2009 Bond Issuance Fee	3,250
TIMES PICAYUNE	Center Bid Advertising	2,248
NEW ORLEANS PUBLISHING GROUP	Center Bid Advertising	2,110
SISUNG INVESTMENT MANAGEMENT	Investment Management	1,742
BFM CORPORATION LLC	Surveying Services	1,575
MOODY SERVICE & IMAGE MASTER	Printing Services	2,464
MARRERO REPRODUCTIONS	Photocopy Services	608
<b>Grand Total</b>		<b>\$44,882,367</b>
<b>Source:</b> Prepared by LLA using information from the Jefferson Parish Finance Department		

## **Project Management**

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### Pre-bid Meeting

According to Mr. Joe Caldarera, Wisznia Representative Jeffrey Cohen did not answer the majority of the questions asked by contractors at the October 2006 Center pre-bid meeting. Mr. Caldarera stated that Ms. Peggy Barton, then Parish Purchasing Director, advised the prospective bidders that all questions regarding the Center plans would be answered after the bids were received with Requests for Information (RFIs). Mr. Caldarera further stated that, because of this decision, all contractors interested in bidding on the Center were unable to submit as accurate a bid had their questions been answered prior to bidding. When asked about holding all questions until after the bids were received, Ms. Barton stated that she did not recall directing the prospective bidders to hold their questions until after the Parish received the bids. She

further stated that all questions were required to be submitted in writing and that any questions from contractors that would have affected the plans would have been addressed with addendums to the Center design plan specifications. As of June 16, 2011, there were 463 RFIs submitted by JCC regarding the Center construction.

#### State Fire Marshall Review

According to documentation from the State Fire Marshall (SFM) and the Parish, the Parish advertised for construction bids prior to submitting the design plans to the SFM for review. According to SFM records, the plans were submitted on October 17, 2006, and the first Center advertisement was published on October 12, 2006. In addition, the Parish awarded the construction contract to JCC on November 15, 2006, which was approximately three months before they received notification of satisfactory compliance with applicable laws, codes, rules, and regulations of the SFM for the Center plans. The February 12, 2007, notification of compliance letter from the SFM allowed the Parish to obtain a local building permit, but also listed 20 deficiencies that were required to be addressed prior to issuance of the approval for occupancy. The SFM's notice also identified 52 issues or recommendations for the Parish to address. Since the Parish did not wait for the SFM's inspection results, the deficiencies identified by the SFM could not be addressed by the architect prior to putting the project out for bid. As a result, the Parish has had to incorporate these deficiencies and issues as part of the change orders through negotiated pricing which may not have allowed the Parish to receive the lowest price for these additional changes.

#### Center Building Permit

As of October 10, 2011, the Center is not currently permitted (which includes inspections and design plan review) for construction by the Parish Office of Code Enforcement. According to Parish correspondence and former Code Enforcement Director Louis Savoye, the Center was considered a State project by the Parish Administration and, therefore, was not permitted by the Parish. However, this is a Parish building, and therefore should have been permitted by the Parish. The cost for Parish permitting is based on a percentage of the building cost, which would have resulted in a \$147,025 charge to permit the Center construction.

Mr. Savoye stated that the Parish also did not inspect or permit the construction of the Alario Center and Zephyr Stadium. The CEA between State Facility Planning and Control (OFPC) and the Parish does not specifically address the permits. However, in a January 27, 2005, letter from OFPC regarding the original bidding of the Center, OFPC stated that it was the responsibility of the Parish to obtain all local, state, and federal permits and provide copies to OFPC. In an e-mail to Legislative Auditors dated April 14, 2011, Bill Eskew, OFPC project manager, stated that the Parish was not required to submit documentation as to permits and inspections in order to be reimbursed by OFPC.

Construction Management Conflict of Interest

In December 2006, P&C was selected as the construction manager for the Center. In January 2007, Wisznia's contract as design consultant for the Center project was not renewed by the Parish. According to Mr. Jerry Jones, then Director of OFPC, he then directed the Parish to hire an architect for the Center project in order to receive State funding. Following Mr. Jones's direction, the Parish allowed P&C to act as the design consultant by sub-contracting with Anthony J. Gendusa, Jr., AIA, Architect Inc. (Gendusa) to act as the Center architect of record and design consultant. However, according to P&C's construction management contract, they "...shall not be the designer or general contractor for the capital project..." As a result of sub-contracting with Gendusa, P&C became the design consultant and construction manager. In addition, Mr. Carter confirmed that P&C and Gendusa are generating drawings for the Center.

A construction manager is intended to be an independent agent of the owner during the construction process. This status allows the construction manager to verify the constructability of the design plans and the implementation of the design by all contractors without alternative motivations. In addition, the United States General Services Administration's Construction Management Implementation Guide dated April 3, 2008, states, in part, "...*The CM is acting solely as the Agency (Owner's) Agent. The CM functions as an advisor or consultant to the owner/Agency to assist with the execution of the project, to help the owner achieve a project that is properly constructed, on time and on budget. The CM is not involved with designing the project or performing the construction of real property. He is the CM but not the constructor, and will not construct the project, nor is the CM a party to the construction contract.*"

By hiring the architect and participating in the design drawings, P&C may have impaired their independence in appearance and in fact.

Design Build Project

P&C was contracted on March 20, 2007, to provide construction management and inspections services for the Center under two contracts. According to Mr. Carter, as part of their role as construction manager, they began to review the Center design plans for errors. However, according to Mr. Carter, they were not able to fully review the plans and further stated that once the multi-level concrete issues regarding the foundation began, P&C relied heavily on Mr. Caldarera to identify design and engineering issues in the Center plans. Mr. Carter further stated that, since a thorough review of the Center designs for engineering issues would take a year, they did not request the Parish to hold up construction on the project and relied on Mr. Calarera to identify design and engineering issues as construction progressed.



Mr. Carter stated that, in his opinion, the Center project had become a design-build<sup>1</sup> project. He further stated that when an issue arises, P&C will produce drawings to keep the project moving forward, effectively redesigning the project as construction takes place. When a single entity is working as the designer and contractor, the circumstance can allow for the designer/contractor to run the project in a way that would benefit them and not necessarily the government. According to Mr. Carter, P&C is currently being paid a specified amount on a monthly basis and not on a percent of work completed basis. Because P&C receives payment for services on a monthly basis rather than on a work completed basis, there is no incentive for P&C to expedite the construction process.

Change Orders

As of June 10, 2011, the Parish has executed seven change orders<sup>2</sup> totaling \$18,145,682, in addition to the \$26,565,000 original cost of the Center project resulting in budgeted construction costs of \$44,710,682. The apparent reason for the increased costs and change orders, such as inconsistent project management practices and noncompliance with bid specifications, are described in this section.

Jefferson Performing Arts Center Summary of Construction Bids and Change Orders				
	Description	Date	Change Order Amount	Project Total
Bid 1	The Parish rejected all bids due to higher than expected cost.	5/4/2005		-
Bid 2	Following an additional \$8,000,000 of funding provided by the State, JCC was the lowest bidder and awarded the Center contract.	11/7/2006		\$26,565,000
Change Order 1	Additional foundation and ground work, pile driving issues and increases in steel costs.	11/14/2007	\$655,300	27,220,300
Change Order 2	Waterproofing for all slab & pit areas.	6/11/2008	195,399	27,415,699
Change Order 3	Revisions to structural concrete.	9/17/2008	3,234,402	30,650,101
Change Order 4	Changes to exterior concrete block, additional steel piles, and changes to plans.	2/18/2009	243,865	30,893,966
Change Order 5	Structural concrete revisions.	6/24/2009	5,900,000	36,793,966
Change Order 6	Additional Builder's Risk insurance.	12/9/2009	328,179	37,122,145
Change Order 7	Increased the contract's cost and duration for various design revisions.	6/30/2010	7,588,537	44,710,682

<sup>1</sup> According to [www.businessdictionary.com](http://www.businessdictionary.com), a design-build contract (DB) is a "construction contract where both the design and the construction of a structure are the responsibilities of the same contractor."

<sup>2</sup> Louisiana Revised Statute (R.S.) 38:2211(A)(2) states, "Change order" means an alteration, deviation, addition, or omission as to a preexisting public work contract."



*Change Order One*

Change order one totaled \$655,300, and lists the reasons as follows:

1. Foundation issues
2. Underground obstructions
3. The changing of the steel supplier resulting in an increase in steel cost

According to Parish records, approval of the design plans by the SFM caused a delay in signing the contract with JCC, which in turn caused JCC to incur \$143,517 of additional steel cost. However, the material quotes submitted by JCC had not expired as of the date the company signed the contract. Further, had JCC not been able to guarantee the bid price at the time the Center construction contract was signed, the construction contract should have been re-bid. According to Attorney General Opinion 06-0304, a government agency cannot use public funds to pay a contractor for an increase in cost of the materials under a contract that does not contain an escalation clause for material costs and that the payment or reimbursement of such costs, absent a legal obligation to do so, would constitute a donation of public funds prohibited by Article VII, Section 14 of the Louisiana Constitution.

*Change Order Two*

On June 11, 2008, the Parish Council approved change order two, which totaled \$195,399 and was for the addition of Bentonite blankets to waterproof the areas of the Center foundation that are below the Center's first floor elevation. The elevation of the first floor, rather than the basement, was used to determine the foundation elevation. However, the Center's basement is approximately three feet below the foundation grade, which contains the building's heating, ventilation, and air conditioning and other mechanical systems.

The Center is located on the corner of Airline Drive and Stable Drive in Metairie, Louisiana. According to Capital Projects Director Reda Youssef, the Center's foundation elevation was determined by using Stable Drive rather than Airline Drive. The basis of this decision was that Stable Drive was not known to flood. If Airline Drive was used as the basis, the Center's foundation would need to have been built up an additional three to four feet. Mr. Youssef stated that, in his opinion, this would have been a significant cost. According to Mr. Youssef, the elevation and grade level is based on the foundation height at the entrance point, not the lowest point in the building, and due to this he believes it is within parish building code.

In a letter to Mr. Deano Bonano, then deputy chief administrative assistant, dated February 15, 2006, Mr. Cohen recommended that the Parish elevate the Center foundation five additional feet and stated that the estimated cost would be \$500,000. Mr. Cohen's letter provides the reason for elevating the foundation: *"Should we have another levee breach in a location that floods the project site, please be aware that the incoming electrical service, the emergency generators, the fire pumps, and the mechanical equipment will be, in all probability, rendered useless. In this scenario, because of energy efficiency requirements and the resulting*

*“tightness” of the building envelope, mold and mildew will essentially render all interior finishes, the seating, and much of the theatre accoutrement, worthless.*” Mr. Bonano responded to Mr. Cohen on February 16, 2006, and advised Mr. Cohen to continue to move the project forward and that the Parish did not have \$500,000 to deal with the elevation issue and would obtain a commercial flood insurance policy. When asked, Mr. Bonano stated that the issue was taken to then Parish President Aaron Broussard and that Mr. Broussard decided not to raise the elevation but rather purchase flood insurance.

Mr. Cohen wrote to Mr. Bonano again in October 2006, prior to the second bid, and recommended that the Parish change the elevation before the project started, but the Parish did not address the elevation of the project. However, they did attempt to minimize potential damage to the slab by adding the Bentonite blanket in change order two. Due to the Parish’s decision not to elevate the Center, the Parish may have to obtain and pay for an annual flood insurance policy and will experience increased risk of flooding and potential loss of use.



\*Picture 3 - Basement area of the Center, taken February 23, 2011.



\*Picture 4 - Basement area of the Center, taken February 23, 2011.



\*Picture 5 - Basement area of the Center, taken February 23, 2011.



\*Picture 6 - The Center basement exit door, taken June 1, 2011.



\*Picture 7 - Basement door partially obstructed by duct work, taken February 23, 2011.



\*Picture 8 - Scaffolding in the theater area of the Center, taken February 23, 2011.

### *Change Orders Three & Five*

Change orders three and five totaled \$9,134,402, and were paid to cover the contractor's additional cost incurred for structural concrete revisions. However, during a review of change orders three and five, it was noted that the contractor used the 2008 RS Means Building Construction Manual Labor rates to calculate the additional labor costs incurred by the contractor instead of the actual labor costs as required by the bid specifications. According to P&C, the RS Means rates were used due to several conflicting statements in the construction contract, supplementary general conditions, and bid specifications. Due to JCC calculating their invoices using the RS Means rates and not the actual rates paid, the Parish cannot demonstrate if the labor rates billed to the Parish were appropriate. And since JCC's profit and overhead were calculated based on the actual materials and labor rates, the Parish could not confirm that JCC was paid the appropriate amount.

### *Change Order Six*

Although required by the construction specifications, the Parish contracted with JCC on February 12, 2007, without confirming if JCC had obtained a Builder's Risk insurance policy.<sup>3</sup> In addition, both the Parish and P&C failed to maintain copies of JCC's current insurance certificates. According to Mr. Youssef, the Center contract package, which consists of all documentation such as insurance certificates, proof of bonding, and an executed construction contract, is usually assembled by the project's designing architect or engineer. However, since Wisznia's involvement with the Center ended on January 9, 2007, the Capital Projects

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<sup>3</sup> The October 2006 Center bid specifications state that Builders Risk insurance "shall insure against the perils of fire and extended coverage and shall include, "all risk", insurance for physical damage including, without duplication of coverage, theft, vandalism and malicious mischief."

Department assembled the contract package for the Center project. Ms. Denise Ashley, capital projects engineer, stated that the Capital Projects Department did not have a copy of the bid specifications at the time that it assembled the contract package and, as a result, they did not know that Builder's Risk insurance was required or that they needed to obtain proof of the Builder's Risk insurance prior to signing the contract.

According to correspondence from Mr. Calderera, change order six was submitted to pay for insurance costs incurred due to the additional 22 months of construction. The Parish Council approved this change order on December 9, 2009, which included a 3% charge for unspecified sub-contractor bonds, a 5% charge for general contractor overhead and profit, and a 2% charge for general contractor bond insurance.

The construction contract specifications require JCC to keep Worker's Compensation, Commercial General Liability, Business Automobile Liability, Owner's Protective Liability, and Builder's Risk insurance for the duration of construction. During our review, we requested copies of all JCC insurance policies from both the Parish and P&C. Neither the Parish, nor P&C were able to supply copies of JCC's Builder's Risk insurance. According to Mr. Youssef and Parish Risk Management Director Bill Fortenberry, the Parish does not maintain and update copies of JCC's insurance certificates. According to Kirk Henry of P&C, they did not maintain copies of JCC's insurance certificates until copies of the insurance certificates were requested as part of this audit.

When asked for a copy of the original Builder's Risk insurance policy, Mr. Calderera stated that he had an agreement with the Parish attorney's office to delay obtaining the Builder's Risk insurance until the Center foundation work was completed. Neither the Parish Attorney's Office nor JCC could provide documentation supporting Mr. Calderera's statement. In addition, the Parish could not provide documentation showing that Mr. Calderera had provided a credit to the Parish since JCC's bid price included the cost of Builder's Risk insurance to cover the entire project period. Therefore, the Parish should have discounted change order six by the cost of Builder's Risk insurance from the beginning of the project until Builder's Risk was purchased by JCC.

#### *Change orders four and seven*

Work approved under these change orders is still in progress and, as a result, the Parish has not received all supporting documentation for work authorized under these change orders. Therefore we could not perform a complete review of these change orders.

#### Services Provided Outside the Contract Period

On March 22, 2006, the Parish Council approved amendment number five to Wisznia's 2002 architectural design contract, increasing the amount by \$273,000. This amendment granted a one-month extension to Wisznia's time frame to complete the construction documentation. This amendment was not signed by Wisznia or then Council Chairman John Young; however, according to invoices and Parish payments, Wisznia provided services under this contract amendment until November 24, 2006. According to Mr. Marcel Wisznia, he did not sign the



amendment because he did not agree with the length of time to complete the services stated in the amendment.

#### Audit Clause

The Parish's construction contract and subsequent change orders with JCC does not contain an audit clause to allow the Parish or the State to audit the contractor's records. OFPC did include an audit clause in the CEA with the Parish; however, since the Parish did not include an audit clause in the contract with JCC, the Parish and OFPC may not have access to JCC's records should a dispute arise.

#### Project Management and Document Storage

The budget for the Center is part of the Parish Parks and Recreation Department's budget. The Center invoices were sent to Parks and Recreation, but additional Parish departments reviewed the invoices prior to payment; however, this was an informal process with no written procedures or guidance. Based on interviews of current and former employees in each department, departments had a different understanding regarding their responsibilities. As a result of the multiple departments involved, we found original documentation for the Center project in nine different locations. According to current and former Parish employees, the review of Center invoices was as follows:

1. From October 2002 to January 2007, invoices were received from each vendor by the Parish President's Office where they were reviewed and then sent to the Parks and Recreation accounting office for review and entry into the Parish accounting system. Following entry by Parks and Recreation, invoices were sent to the Finance Department for review, approval and payment.
2. From February 2007 to current, construction invoices are received and reviewed by the Parish Center construction manager, P&C. After review, P&C sends the invoices to the Capital Projects Department where they are reviewed and then forwarded to the Parish Engineering. Following Engineering's review, invoices are sent back to Capital Projects and approved by Mr. Youssef, capital projects director. Following approval by Capital Projects, the invoices are sent to Parks and Recreation for entry into the Parish accounting system and then sent to the Finance Department for review, approval and payment.

We recommend the Parish:

1. Answer all questions from potential bidders prior to receipt of bids and issue any required addendums to help the Parish obtain the lowest construction price possible.
2. Receive approval of all construction design plans from the SFM prior to advertising for bids for the project.

3. Require Parish Code Enforcement to review and permit the plans for the Center and all future Parish projects prior to beginning construction.
4. Consider contracting directly with the Center architect and future architects to create independence and a separation of duties from the construction manager.
5. Require future construction management contracts to be paid based on a percentage of completion and not on a monthly basis.
6. Conduct an independent evaluation of the Center's foundation elevation and consider additional options to mitigate the risk of possible flooding.
7. Consult with legal counsel as to the recovery of the \$143,517 in excess charges for change order one, explained by the contractor as his increased cost of steel.
8. Require that the contractor submit actual labor rates paid and supporting documentation for all labor and material costs invoiced to the Parish as a result of change orders. The Parish should then use this information to recalculate the cost to determine if the appropriate amounts for the change orders were paid to the contractor.
9. Maintain current insurance certificates for all Parish contractors.
10. Request the Parish Attorney review the bid specifications to determine if the Parish is owed a credit for change order six.
11. Review change orders to ensure that services billed in change orders were not required as part of the bid specifications.
12. Ensure vendors have valid contracts prior to providing services and ensure that all invoiced services are provided within the contracted time period.
13. Include an audit clause in all construction and professional services contracts.
14. For each Parish project, appoint a Parish employee as the project owner. This employee would be responsible for:
  - a. Developing detailed written policies and procedures,
  - b. Reviewing and approving all invoices,
  - c. Reviewing and approving all change orders,
  - d. Attending all construction meetings, and
  - e. Establishing appropriate document flow and storage.

## Center Architect Selection

The Parish used a technical evaluation committee to evaluate, score, and qualify SOQs from architects for the Center, but could not produce records of the score sheets completed by the committee. According to Department of Public Works Director Kazem Alikhani, the Parish does not have a central repository for the storage of evaluation committee records, including the SOQ score sheets. In addition, a former councilman, parish president, and chief administrative officer all stated that the Parish Council has an unwritten practice of choosing professional service providers based solely on the request of the Councilmember whose district will benefit from the services. The architect for the Center, Wisznia, was ranked fourth out of the five qualified architects; however, Wisznia was requested by John Lavarine, Jr., the councilmember for the 2nd district.

### SOQ Score Sheets

In 1998, the parish received seven responses to its solicitation for SOQs to develop the LaSalle Tract, which included the Center. The Parish used a four-person technical evaluation committee to review the responses. The technical evaluation committee consisted of four members: one parish employee and three citizens. As part of our audit, we requested the SOQ score sheets from the technical evaluation committee's review to gain an understanding of the scoring methodology used by the committee; however, the parish could not provide the score sheets. Of the seven responses, five were determined to be qualified and were ranked by the committee and provided to the Parish Council as follows:

1. Howard-Montgomery-Steger Performance Architecture, P.C.
2. N-Y Associates, Inc
3. The Mathes Group
4. Wisznia & Associates, AIA
5. Barton Myers Associates, Inc

According to Mr. Kazem Alikhani, SOQ score sheets are collected and maintained by the Parish's representative serving on the technical evaluation committee and are not currently stored in a central repository. The Parish representative is required to summarize the technical review committee's determinations in a letter which is then sent to the Parish Council clerk for the Parish Council's consideration.

Mr. Alikhani stated that he was employed as the director of the Water Department at the time he served on the technical review committee for the LaSalle Tract master plan, which included the Center project. He also stated that if copies of the score sheets were still in existence, they would be located in the Water Department. Several days later, Mr. Alikhani contacted us and stated that the SOQ score sheets were not at the Water Department and further stated that, even though the Center project is still active, the score sheets were likely destroyed since they were more than 10 years old. Since the Parish could not provide copies of the SOQ

score sheets, the Parish could not confirm the accuracy of the ranking order as summarized to the Parish Council.

### Parish Council Selection of Wisznia

On July 8, 1998, the Parish Council selected Wisznia to provide services for the design of the LaSalle Tract master plan. According to former Parish President Tim Coulon and former Parish Chief Administrative Officer Tim Whitmer, the Parish Council selected professional service providers based solely on the recommendation of the councilmember representing the district where the work will be performed.

The LaSalle Tract and Center are located in Parish Council District Two, which was represented by Councilman Lavarine from 1995 to 2003. During Mr. Lavarine's tenure, the Parish Council selected Wisznia to design the Center. When asked, former Councilman Lavarine confirmed that the Parish Council's practice was to select professional service providers based on the motion of the councilmember representing the district where the services were to be performed.

According to Mr. Lavarine, he chose Wisznia because they were the only firm to contact him regarding the Center and that he was impressed by Wisznia's enthusiasm for the project. Mr. Lavarine also stated that he had not reviewed Wisznia's or any other architect's submitted statement of qualifications. He further stated that even though Wisznia was ranked fourth out of five, Wisznia was still approved by the technical committee as holding the experience necessary for the project. He added that the other councilmembers approved Wisznia without reviewing the technical evaluation committee's rankings.

Public bid law<sup>4</sup> requires design professionals to be selected based on competence and qualifications. Since the Parish Council may not have considered the rankings of the technical review committee when it selected Wisznia as the architect for the Center project, the Council may have violated the public bid law.

We recommend the Parish:

1. Maintain SOQ technical evaluation committee score sheets in the Parish Council Clerk's Office.
2. Maintain SOQ technical evaluation score sheets for all active projects and contracts.
3. Select the best service provider for each job based on the provider's rank and experience.

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<sup>4</sup> **R.S. 38§2318.1. (A)** states, in part, "It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection."



### **Possible Bid Law Violation**

The Parish may have violated the public bid law by including language in the construction bid advertisement which conflicts with state law<sup>5</sup> and by not running an updated construction bid advertisement for three separate weeks as required by state law.<sup>6</sup> According to Parish documentation, the Center construction bid advertisements ran in 2006 on October 12, 19, and 26 and November 2. Although state law<sup>5</sup> requires the contract to be awarded within 45 days of the opening of the bids, the Parish's October 12 and 26 advertisements extended the deadline to award the contract to 90 calendar days after the opening of the bids. According to Attorney General Opinion 83-463, the attempt to provide for a time extension to award the bid in the specification for the project is an apparent violation of state law; however, this language would not invalidate the low bid.

According to the Purchasing department, the deadline extension language was removed from the Center bid specifications at some point during the bid process and replaced with a "corrected" bid invitation. However, according to Parish records, the corrected advertisement was not dated and the Parish could not demonstrate when or if the updated language was advertised. If the Parish changed the language in the construction bid during the advertisement process, they should have run the corrected version during three separate weeks and for 25 days prior to opening the bids as required by state law.<sup>6</sup> We recommend the Parish comply with the public bid law.

### **Inadequate Accounting Controls**

During our audit, it was noted that after receiving Center invoices from other Parish departments, the Parish Finance Department lacked a proper set of internal controls to review and approve the Center invoices for payment. This lack of controls allowed the Parish Finance Department to make the following payments:

1. A \$5.6 million payment was made without the Parish Finance Department obtaining or reviewing the invoices or supporting documentation.
2. The Parish paid Wisznia \$18,414, for invoices that were either submitted after the required date for submission or for receipts with no date.
3. The Parish paid the same \$87,500, Carothers Construction invoice three times. The Parish subsequently recovered these funds only after Carothers Construction discovered the duplicate payments.
4. Prior to October 10, 2002, the Parish Finance Department did not record expenses related to the Center land improvements in the Center project fund.

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<sup>5</sup> R.S. 38§2215 (A) states, in part, "A political subdivision upon receipt of bids for the undertaking of any public works contract shall act within forty-five calendar days of such receipt to award said contract to the lowest responsible bidder or reject all bids."

<sup>6</sup> R.S. 38§2212 (A)(3)(a) states, in part, "The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids."

Change Order Five - \$5.6 Million Payment with No Documentation

In June 2009, the Parish paid JCC \$5.6 million<sup>7</sup> for change order five on the Center construction project. Parish Finance Department records did not include an invoice to support this payment. According to Finance Director Gwen Bolotte, she was instructed by Mr. Whitmer to generate a check for \$5.6 million on June 24, 2009, the day the council was meeting to vote to approve the payment. She further stated that the check was generated without the Parish Finance Department receiving or reviewing the supporting documentation for the expense and that the Capital Projects Department never sent the documentation to the Finance Department. According to former Parish Accounting Director Lorrie Toups, each payment generated by the Finance Department should have the supporting documentation, such as an invoice, attached to a copy of the payment and stored in the Accounting Department check vault.

Mr. Youssef stated that all change orders are submitted by the Center contractor, JCC, to the construction management company, P&C, who reviews and approves each change order prior to submittal to the Parish Capital Projects Department. Mr. Youssef further stated that change order five originally totaled \$6.2 million, but after review by the Parish Engineering Department, was reduced to \$2.85 million. This reduction was due to the removal of delay charges. The change order was then submitted to the Finance Department for payment. At this point, Mr. Youssef stated that Mr. Whitmer requested that he approve the payment for \$5.6 million. Mr. Youssef stated that he did not approve the payment and decided that he would no longer approve change orders for the Center. In addition, following the Parish Administration's decision to disregard the Parish Engineering Department's recommendations for change order five, the Parish Engineering Department was no longer willing to be responsible for entering Center invoices and change orders into the Parish accounting system and began sending the invoices to the Parish Parks and Recreation Department for entry into the Parish accounting system. Mr. Youssef stated that after the council approved the change order for \$5.6 million, he sent the unapproved documentation supporting change order five to accounting. He added that this was 10 days after it was approved by the Council, as is the Capital Projects Department's practice for submitting invoices. Therefore, at the time the \$5.6 million payment was made, the Finance Department had no supporting documents approved or otherwise.

Mr. Whitmer stated that he was instructed by Councilman Elton LaGasse to have the \$5.6 million payment processed because the Parish relied upon P&C to manage the project and they had stated that the change order was correct and that they could justify the change order's expenses. Mr. LaGasse stated he did not remember telling Mr. Whitmer to make the payment; however, if Mr. Whitmer said he made the statement, he probably did say it. According to an interview and separate deposition<sup>8</sup> of Mr. Carter, P&C only recommends the payment of change orders; they do not authorize payment of the change orders. Mr. Whitmer stated that the payment was processed by the Finance Department on the day it was approved by the Parish Council in order to pay the contractor and to keep the project moving forward. Mr. Whitmer further stated that, although he had instructed Ms. Bolotte to process the payment on the day it was approved by the Parish Council, his request did not relieve her or the Finance Department of

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<sup>7</sup> Change order value of \$5.6 Million and the \$5.9 Million value listed in the table titled, "Summary of Construction Bids and Change Orders" is due to contract retainage.

<sup>8</sup> Deposition taken February 3, 2011, in Parish of Jefferson versus Wisznia Company Inc.

their duty to obtain and review the documentation supporting change order five prior to processing the payment.

#### Wisznia Consultant Travel Expenses

From June 26, 2003 to December 3, 2007, the Parish paid Wisznia \$1,880,347 for services related directly to the Center. Of this amount, \$23,240 was paid for consultant travel expenses. Wisznia's contract with the Parish stated that the architect waived all rights to payment unless the expenses were invoiced within 45 days of incurring the expense. Of the \$23,240 invoiced by Wisznia for consultant travel expenses, \$18,414 or 80% was submitted after the 45 day requirement or the receipt had no date stating when the expense was incurred, causing the invoices to be ineligible for payment.

These invoices were approved by Parish Parks and Recreation Director C.J. Gibson, former Parish Chief Administrative Assistant Mike Quigley, and Mr. Whitmer. When questioned about these payments, Mr. Gibson stated that he rarely reviewed the payments and was instructed by Mr. Quigley or someone else in the Parish Administration to approve the payments.

In an interview with Louisiana Legislative Auditor representatives, former Parish employee Mr. Quigley stated that when he became a Parish president assistant in 2002, his new position included reviewing Wisznia invoices. According to Mr. Quigley, Wisznia's contract was already in place when he was promoted and it was his understanding that his duties regarding Wisznia's invoices were to review the invoices for the lump-sum payments related to the architectural services to ensure that the billed percentage of services were actually provided. Mr. Quigley stated that he forwarded Wisznia invoices for consultant reimbursements to Mr. Gibson in the Parish Parks and Recreation Department. Mr. Quigley further stated that the Parks and Recreation accountants would review the Wisznia consultant invoices for accuracy, approve them and enter the invoices into the accounting system.

Ms. Bolotte stated that the Finance Department reviews and reconciles only the summary page of the invoice and that supporting documentation such as receipts and additional invoices are not reviewed by anyone in the Finance Department.

#### Carothers Construction Invoice Paid Three Times

From January 8, 2004 to March 31, 2005, the Parish wrote four checks to Carothers Construction totaling \$531,250 for construction management services related to the Center. According to Parish accounting records, the third payment to Carothers Construction, which totaled \$262,500, was issued to pay three invoices from Carothers; each invoice was for \$87,500 and was numbered 3, #3, and #3A. Sean Carothers, owner of Carothers Construction, stated they received the payment for invoice 3 and noticed that the Parish overpaid the invoice by \$175,000. Mr. Carothers stated that after depositing the check, Carothers Construction sent a check to the Parish for \$175,000 to refund the overpayment.

When questioned about this transaction, Ms. Bolotte stated that the Finance Department does not currently review supporting documentation for invoices entered into the accounting system by other Parish departments and that reviewing the supporting documentation for invoices is the responsibility of each Parish department that enters the transaction into the Parish accounting system.

Center Expenses not Included in Construction Fund

According to the Finance Department, the Center project budget as of June 10, 2011, is \$52,407,782, with an estimated construction completion date of February 2012. The Parish accounting system lists expenses incurred, from October 10, 2002, to June 10, 2011, totaling \$44,882,367, which are directly related to the Center. In addition, according to Mr. Carter, the construction manager for the Center, they are currently reviewing an eighth change order which could increase the total final cost of the Center beyond the budgeted \$52,407,782. However, the Center project fund does not include the estimated \$2.5 million in land improvements to the site, as cited in a 2002 survey of the Center site conducted by Meyers Engineering. According to documentation from the OFPC, as part of the 2002 cooperative endeavor agreement, the Parish used the \$5,000,000 value of the land and \$1.25 million in estimated improvements to the Center site as a commitment to help obtain the funding provided by the State and administered by OFPC.

Due to the Parish not including the cost of the land improvements in the Center fund, the Parish may not be accurately budgeting or accounting for the actual cost of the entire Center project. As a result, it appears that the Parish's accounting of the actual related expenses incurred for the Center is understated by approximately \$1.5 million.

We recommend the Parish:

1. Consider assigning each project to a project accountant who would handle the accounting procedures for that project in its entirety.
2. Authorize payment of invoices only after the original invoice and supporting documentation is received and reviewed by the Finance Department.
3. Develop detailed written policies and procedures for reviewing vendor invoices to ensure that billed expenses fall within the allowable per diem listed in the vendor's contract.
4. Develop detailed written policies and procedures for reviewing and approving invoices for projects managed by multiple departments.
5. Review, evaluate, and adjust accounting controls to ensure that entries cannot be adjusted to allow for the processing of duplicate/incorrect payments.

## **Role of Facility Planning and Control**

The accepted base bid on the Center was \$26,565,000, which is 100% state capital outlay funds. As of March 2011, the Parish has requested \$28,182,001 from OFPC. The State has paid \$19,177,746 on these invoices. The difference in the amount requested and paid (\$9,004,255) is due to the different levels of State participation in change orders. Though the State has spent \$19,177,746 on the Center project, there have been no OFPC inspections of the work.

The role of OFPC related to disbursing and overseeing capital outlay funds is outlined in state law, administrative code, administrative guidelines for non-state entities, and in individual CEAs. These require the following:

- That OFPC administer all capital outlay funds appropriated to local governing authorities through cooperative endeavor agreements. (R.S. 39:113)
- That OFPC conduct periodic inspections at all stages of construction, including close technical on-site examination of the materials, structure, and equipment and surveillance of the workmanship. (R.S. 39:124)
- That OFPC direct final payment for work done on each project and refuse payment if upon final inspection it is found that the plans, specification, contract, or change orders have not been complied with (R.S. 39:125).

According to interviews with OFPC staff, they perform the following functions:

- Review of project plans/designs for capital outlay projects to determine functionality of plans, compliance with public bid law, and compliance with Capital Outlay Act; they do not provide a thorough review of plans for quality issues, nor do they ensure that the local entity has received all necessary permits and plan approvals.
- Review of change orders to determine the State's participation in the order. If the change order includes errors, the State pays nothing; if the change order includes omissions, the State can participate in 85% of costs.
- The project manager for the project reviews a monthly schedule of costs incurred for the project. This schedule is signed off on by the designer and the owner of the project. The project manager reviews the costs and associated invoices to ensure they meet stipulations found in the cooperative endeavor agreement and are in the best interests of the state.
- OFPC is not required to conduct inspections of the projects. The project manager may go out to the construction site; however, this would only involve observation and not a close technical inspection.

### **Matter for Legislative Consideration**

R.S. 39:124 states, “The facility planning and control section shall make periodic inspections at all stages of construction of any facility constructed pursuant to this Part and shall make detailed reports which shall be made available to the legislature and to the public. Such inspections shall include but not be limited to the close technical on-site examination of the materials, structure, and equipment and surveillance of the workmanship and methods used to insure reasonably that the project is accomplished in compliance with information given by the contract documents and good construction practices.”

Mr. Jerry Jones, assistant commissioner of Office of Facility Planning and Control, stated that in order to comply with the inspection statute, OFPC would have to actually be a party to the contract which would mean being involved in the selection of contractors at the local level. As OFPC does not believe that this was the intent of the law, they have never performed an inspection of the property. According to OFPC, the owner/architect of the project is required to make site visits and inspect the progress of construction. While OFPC has made some site visits to the property, they do not have documentation of these visits since the purpose of the visit was not to perform an inspection.

The Louisiana Legislature may want to consider taking action to clarify the provisions of R.S. 39:124 as it relates to entities receiving state capital outlay funds.

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## Management's Responses







**PARISH OF JEFFERSON**  
**OFFICE OF THE PRESIDENT**

**JOHN F. YOUNG, JR.**  
PARISH PRESIDENT

September 21, 2011

Mr. Dan Daigle, CPA, CIA, CFE  
Assistant Legislative Auditor and  
Director of Compliance Audit  
Office of Louisiana Legislative Auditor  
1600 North Third Street  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Re: Compliance Audit of Jefferson Parish Performing Arts Center

Dear Mr. Daigle:

Thank you for yours of August 24, 2011. Jefferson Parish welcomes the opportunity to address the issues raised in your draft report.

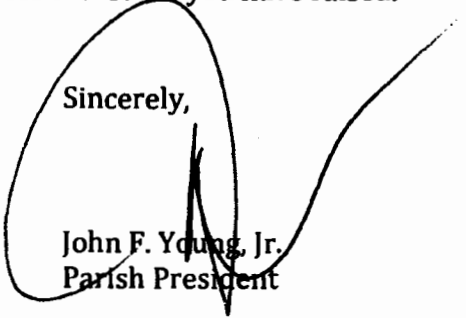
The Jefferson Parish Performing Arts Center ("JPAC") is a project developed with state funding in accordance with a Cooperative Endeavor Agreement ("CEA") between the Parish of Jefferson ("the Parish") and the State of Louisiana ("the State"). Pursuant to state law and the terms of the CEA, the State Office of Facility Planning and Control ("OFP&C") and the Parish have responsibilities in administering the JPAC project.

The Parish retained and relied upon third party experts throughout the development and construction of this project. Design errors have placed this project behind schedule and over budget. The Parish instituted suit against the architect and his subcontractors to recover for the costs associated with these errors. While the lawsuit is still pending, our attorneys advise that settlement is imminent.

I enclose the Parish's response and action plan. The Parish has already instituted many of the changes you recommend in your report in direct response to this situation. We will take additional steps to clarify existing processes, create additional safeguards and implement best practices with our employees and vendors.

The Parish Administration and Council stand together in our commitment to promptly and thoroughly address the issues you have raised.

Sincerely,



John F. Young, Jr.  
Parish President

JFY/mg

cc: Hon. Christopher L. Roberts, Council Chairman  
Hon. Michael A. Thomas, Councilman at Large, Div. B  
Hon. William Townsend, Councilman, Dist. 1  
Hon. Elton Lagasse, Councilman, Dist. 2  
Hon. Byron Lee, Councilman, Dist. 3  
Hon. Louis Congemi, Councilman, Dist. 4  
Hon. Cynthia Lee-Sheng, Councilwoman, Dist. 5  
Mr. Christopher Cox, COO

**PARISH OF JEFFERSON RESPONSE TO LEGISLATIVE AUDITOR'S DRAFT  
COMPLIANCE AUDIT REPORT OF AUGUST 24, 2011 AND ASSOCIATED ACTION PLAN**

The draft compliance audit report is divided into four primary areas: project management, architect selection, bid advertisement and accounting controls. The fifth area, Role of Facility Planning and Control, is not addressed to the Parish. Responses and action plan for each area will be addressed separately.

**1. Project Management:**

**Pre-bid meeting:**

The conclusions drawn about the pre-bid meeting are based upon Mr. Calderera's memory of a conversation he had with Assistant Parish Attorney Peggy Barton at the pre-bid meeting. Ms. Barton did not attend the pre-bid meeting and, although employed by the Parish, she was not an Assistant Parish Attorney at the time of the meeting. The pre-bid meeting for JPAC was held on October 30, 2006. A copy of the pre-bid sign-in sheet is attached.

The procedure for handling technical questions raised during a bid process is contained in the Parish Standard General Conditions. The General Conditions are known to all bidders prior to bidding. The General Conditions, special conditions, specifications and plans form the basis of all bids.

Resolution No. 105529, adopted May 17, 2006, sets forth the Parish Standard General Conditions. Section 3 is the applicable section and is set forth below.

**SECTION 3. INTERPRETATION OF CONTRACT DOCUMENTS**

A. No oral interpretation will be made to any Bidder as to the meaning of the drawings, specifications, or contract documents. Every request for such interpretation shall be made in writing and addressed and forwarded to the Engineer, Architect or person distributing plans and specifications. No inquiry received within five (5) days prior to the day fixed for opening of the bids will be given consideration. Every interpretation made to the Bidder shall be in the form of an addendum to the Specifications and shall be issued as set forth above in Section 1A(8)(b). All such addenda shall become a part of the Contract Documents. Failure of any Bidder to receive any such interpretation shall not relieve any Bidder from any obligation under his Bid as submitted without modification.

Ms. Barton, who was serving as the Purchasing Director, attended the Bid Opening on November 7, 2006. Had technical questions been raised at the Bid Opening itself, Ms. Barton reports that she would have directed the bidders to the

General Conditions. She also reports that the design professionals may request that a bid opening be postponed should any late technical question be raised that they deem warrants a response. All bidders bid on this project, acknowledging compliance with the foregoing General Conditions.

The Parish is not the Architect of this project and is not the party answering technical questions. The Parish hires architects and engineers (A/E) as professionals to perform many of the tasks that the Legislative Auditor's draft report suggests that the Parish should perform. The Parish does so because those very tasks require the expertise that A/E professionals can provide and which the Parish has neither the time nor manpower to bring to bear on the multitude of projects that it has to undertake. The Parish relied upon the Architect to determine what, if any, technical inquiries warranted a response. Bidders who bid without receiving technical responses from the Architect are bound by their Bids nonetheless. The experienced commercial contractors who bid on the JPAC project apparently concluded that they could construct JPAC in compliance with the plans and specifications without receiving additional technical information, or they would not have bid.

**Action Plan:** Continue to require as a General Condition that all technical questions be raised in writing five days prior to the bid opening. Emphasize in contracting with Architects and Engineers that the Parish relies upon them as technical experts to determine which technical inquiries warrant response prior to bid opening.

#### **State Fire Marshall Review:**

It is the design professional who obtains the state fire marshal review and approval, not the Parish. The Parish was not aware that Wisznia had not obtained the final state fire marshal review and approval, when Wisznia tendered the plans and specifications to the Parish as ready to be advertised for bids.

**Action plan:** Emphasize when contracting with design professionals that the Parish relies upon them to secure all required reviews and approvals prior to submission of plans and specifications for bid. The Parish's standard contract language provides the following: "Prepare necessary applications for permits for submission to and approval of local, state and federal authorities." This will be amended to add the language specifically identifying the Fire Marshall and requiring that the Fire Marshall plan approval be received prior to going out to bid.

#### **Center Building Permit:**

Historically, the Parish has not inspected or permitted state projects. R.S. 39:124, cited on page 25 of your report, provides that OFPC has an affirmative obligation to inspect the project to insure reasonably that the project is in compliance with "good construction practices." We respect the Legislative Auditor's

suggestion that the law be revised to exclude such a requirement for OFPC. However, the Parish was entitled to rely upon this law as it was in effect at the time the Center began construction. This provision remains the law today.

**Action Plan:** An ordinance authorizing the Parish to inspect and permit State projects to the extent allowed by State law will be submitted to the Parish Council. The Parish will confer with OFPC on each such project and confirm with OFPC the scope of the Parish's review and the scope of the State's review.

**Construction Management Conflict:**

Gendusa and P&C may have found it necessary to generate drawings. However, these are more in the nature of fleshing out the original design or design concept rather than redesigning it. The design of this project is complete, though it is likely additional drawings may be generated to help the contractor follow the concept. Moreover, P&C is not reviewing its own design per se, which would be a conflict, but is reviewing and managing the implementation of Wisznia's design.

**Action plan:** Continue the normal practice of contracting directly with design professionals on future projects.

**Design Build Project:**

This project is not and was not a design build project. The course of events this project has experienced to date was set by the original architect. The design of this project is complete, though it is likely additional drawings may be generated to help the contractor follow the concept. The Parish does not rely on Mr. Calderera for design and engineering issues. The Parish relies upon Perrin and Carter and their sub, Gendusa, to provide technical advice.

**Action Plan:** Consider adopting a proposal that future contracts for construction management be let on a percentage of completion basis.

**Change Orders Cumulatively:**

The Parish Council approved JPAC change orders based upon the recommendation of the Parish Administration, which, in turn, based its recommendation upon the advices of retained experts and project managers.

The Parish has pending litigation seeking to recoup some of the expenses paid by change order. Due to the confidentiality of settlement discussions, the details cannot be disclosed at this time.

**Action Plan Cumulatively:** The Parish Council has created a task force to recommend improvements to the change order approval process and has pending

an ordinance creating a process requiring independent review of change orders prior to Council approval.

**Change Order One:**

We would suggest that the citation to the AG opinion is inapposite. That opinion refers to escalation in material costs during the performance of the contract which were due to weather related conditions caused by Hurricanes Katrina and Rita. That was not the fact situation for Change Order One. In fact, the AG opinion states that where the delay or disruption is the fault of the public entity, the public entity can enter into a change order or contract amendment to reimburse the contractor the actual costs of performance attributable to the suspension, delay or disruption of the contract, including the actual cost increases of materials and supplies, which are related to the suspension, delay or disruption and which are deemed necessary to complete the project.

Action Plan: Continue to comply with Public Bid Law.

**Change Order Two:**

Action plan: Perform independent evaluation of the Center's foundation.

**Change Orders Three and Five:**

The reference should be to "R.S.Means" and not to "Federal Means."

Action plan: Parish has requested that Mr. Calderera provide actual rates paid for labor and will audit change orders three and five against those documents once received. However, it is quite likely the change orders were effected on a lump sum basis.

**Change Order Six:**

Review of the records of the Parish Attorney's Office and the Department of Risk Management reveals no agreement with Mr. Calderera to waive insurance requirements. Under some circumstances the Parish Attorney in consultation with the Risk Manager may waive insurance requirements. The Director of Risk Management, William Fortenberry, confirms that the Parish Attorney in 2007 did not approach him regarding waiver of Builder's Risk Insurance for Mr. Calderera, nor would he have agreed to such a waiver had one been proposed.

Action Plan: (1) Unrelated to JPAC, the Parish Council recently implemented a requirement that the Parish Attorney review all contracts prior to their submission to the Council for ratification. One of the specific items reviewed by the Parish Attorney's Office is the attachment of required insurance certificates. (2)

Designate the Director of Capital Improvements as the insurance certificate custodian for all capital projects. Require copies of all insurance certificates to be provided to the Director of Risk Management and the Parish Attorney at the inception of any capital project. (3) The Parish Attorney will review Change Order six to determine if overpayment has occurred and seek recovery of all overpayments. (4) Require the Project Manager and/or A/E professionals to certify that no amounts billed in its recommended change order are required as part of the bid specifications. (5) Task the Change Order review committee being established by Council to review all change orders to confirm that no amounts billed in the change order are required by the bid specifications

**Change Orders Four and Seven:**

Action Plan: Review and audit both change orders upon receipt of supporting documentation to insure compliance with the contract as well as state and local law.

**Services Provided Outside the Contract Period:**

Action Plan: CFO to provide in-house education to staff handling invoices emphasizing strict compliance with contractual requirements and payment policies.

**Audit Clause:**

Action Plan: The Parish will add an audit requirement to the Parish's General Conditions.

**Project Management and Document Storage:**

The length of the project, the intervention of Hurricane Katrina, the changing of Administrations and Council members, the replacement of the architect and project manager, and pending litigation have all contributed to changes in document handling for this and other projects.

Action Plan: (1) The Parish President has instructed the Public Works Director, the Capital Project Director, the Chief Financial Officer, the Director of Risk Management, and the Parish Attorney to work collaboratively to develop a Project Management Protocol for capital projects. (2) The Parish Council has pending an ordinance addressing the process by which change orders will be approved. (3) The Parish Council has called for a work group of Administration and Council staff to recommend best practices to the Council for inclusion in the pending change order ordinance.



## **2. Center Architect Selection:**

State law recognizes that a public bid process is not necessary for the selection of an architect, engineer or any other service professional. The very nature of professional services defies quantification as individual professionals bring varying skills to an individual project. The Parish solicits statements of qualifications from professionals rather than going through the public bid process. Those statements of qualification are reviewed by a technical evaluation committee. Only those deemed by the technical evaluation committee as possessing competence and qualifications necessary to perform under the contract are submitted to the Council for consideration.

Only five of the seven respondents for the JPAC SOQ were deemed to have the competence and qualifications necessary to perform under the contract. Wisznia and Associates was one such respondent. The Parish Council did not violate the Public Bid law, and would not have violated it by selecting any of the five responsive and responsible bidders.

The purpose of ratings by the technical committee is not to pick a "winner." The committee does not make a "recommendation" to the Council. Were that the case, then the technical evaluation committee, not the Council, would be selecting the contractor. The committee's evaluation is informational, and the Council must make an independent decision, confident that all of its choices are competent and qualified.

The ranking process itself is largely determined by the criteria listed in the SOQ. Each SOQ has its own, customized set of criteria for which varying percentage points can be earned. Thus, one respondent can be the highest ranking technically, another can be the highest ranking experientially and a third the highest ranking overall. The ultimate decision regarding whom to select and which criteria to emphasize lies with the Council. Thus, in the example above, the Council seeking the most technically proficient respondent may well pass over a respondent with a higher ranking overall and a lower ranking in technical proficiency. The Council does not violate the Public Bid Law in exercising its discretion to choose amongst competent and qualified candidates.

The draft report reflects a conversation with Mr. Kazem Alikhani, Public Works Director, regarding SOQ scoring sheets from 1998. Mr. Alikhani, Assistant Director of the Water Department until 2004, served on the technical evaluation committee for this project in 1998. Mr. Alikhani advised the Legislative Auditor in 2011 that the SOQ score sheets from 1998 could not be located; this, after Mr. Alikhani made multiple inquiries regarding the location of documents from 2004. The draft report inaccurately reflects that Mr. Alikhani is of the opinion that the documents have been destroyed. Mr. Alikhani reports that he made no such statement and is not aware of the destruction of these records. These records

existed prior to Hurricane Katrina in 2005. Some records did not survive the storm. It is not known at this time whether these particular records are still in existence.

Currently, all technical evaluation scoring sheets are submitted to the Clerk of Council along with the results of the technical evaluation. These documents are maintained by the Clerk.

Action Plan: Continue to submit SOQ scoresheets to the Clerk of Council where they will be maintained through the life of the contract. Maintain compliance with the Public Bid Law in all matters of public contracting.

### **3. Bid Advertisement:**

Jefferson Parish respectfully dissents with the Legislative Auditor's preliminary report as it relates to Louisiana Bid Law Violation. Jefferson Parish advertised the Bid Specifications on October 12<sup>th</sup>, 19<sup>th</sup> and 26<sup>th</sup>, 2006. These advertisements indeed did contain statements regarding the bid award of 90 days from the date of opening in variance to the 45 day period mandated by law. This error was corrected in the advertisement dated November 2<sup>nd</sup>, 2006, and pursuant to Louisiana Attorney General Opinion 83-463, while such provisions of time extensions are in variance to Louisiana Bid Law, they do not invalidate the process. As such, it is a non-material change, as opposed to changes to the scope of work or material changes to the specifications on the project.

LSA - R.S. 38:2212(3)(a) provides in-part: "The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids." In this instance this bid was advertised a total of four (4) times, satisfying the requirements of Louisiana Law. Accordingly, no violation of Louisiana Bid Law occurred.

### **4. Accounting Controls:**

**Change Order Number 5:** Payment of change order number 5 in the amount of \$5.9 million was recommended to the Parish by Perrin & Carter and Anthony Gendusa on May 28, 2009. Capital Works Director, Reda Youssef approved \$2,850,326.65 of the change order on June 15, 2009. On June 24, 2009 the Broussard Administration recommended that the Council approve the entire \$5.9 million based upon the recommendation of Perrin & Carter and Anthony Gendusa. The Council approved Change order 5 for \$5.9 million on June 24, 2009. Change order 5, signed by Mr. Youssef on June 15 in the amount of \$2,850,326.65 was manually amended to \$5.9 and signed by the then Council Chairman on June 24, 2009. Mr. Youssef did not approve the amended change order. The finance director was instructed by COO Tim Whitmer to pay the \$5.9 change order on June 24, 2009 after receiving Council

Approval. The supporting documentation did not include invoices. It did include the Perrin & Carter/Gendusa recommendation to pay based upon their review of invoices for work already completed and a Council Resolution to authorizing payment of \$5.9 for work already completed. Despite being instructed to release the entire \$5.9 million by her direct supervisor, the finance director withheld five percent retainage pursuant to the Contract and State law.

Action Plan: Finance will comply with pre-existing policies and standards requiring proper documentation in support of payments. Ethics and Compliance Officer will provide education to the Finance Department about the procedure for reporting abuses of authority. See additional Action Plan for Change Order Five under "Change Order Three and Five" above.

#### **Wisznia Consultant Travel Expenses:**

Currently the requesting department is responsible for insuring that the correct supporting documents are loaded into the accounting system. The accounting system confirms the contract number, budget availability and line item are being used when invoices are entered into the accounting system for payment.

Action Plan: The Finance Department, Internal Auditor and Compliance Officer will collaboratively review current policies and procedures for handling vendor invoices and recommend revisions to the policy where necessary to insure proper handling of vendor invoices.

#### **Carothers Construction Invoice Paid Three Times:**

The first invoice was paid per current procedures using the contract system. The second and third were copies approved by the Project Accountant and processed by the Accounts Payable (AP) staff. The Parish already has in place a computerized system to prevent duplicate payments. When the system advises that an invoice by the same number already exists in the system, AP staff are required to investigate to determine if the invoice is a duplicate. In this case, AP staff entered a modified invoice number by adding a letter or character. This is staff error.

Action Plan: The Finance Director and Accounting Director will provide education to the Accounting Department emphasizing existing proper procedures for processing invoices and the safeguards in the system to prevent error.

#### **Center Expenses not Included in the Construction Fund:**

When Jefferson Parish paid \$2,300,000 for site improvements per Resolution Nos. 82729 and 83200, it was charged to the Lasalle Fund, project # 58710 001 (Lasalle Park). The charges for the Performing Arts are also accounted for in the Lasalle Fund, but in project 58715 001. As this was a requisite for the State funding

of the Performing Arts, the charge should have been transferred to the Performing Arts project of 58715 001 to properly account for the costs of the facility. An entry will be made in 2011 to properly account for these transactions so that all costs for the facility are capitalized.

**Action Plan:** Move the expense to the proper sub-budget and capitalize the land once the project is complete.

**5. Role of Facility Planning and Control:**

The comments in this section are addressed to OFPC and thus the Parish has no response.

**Action Plan:** Continue to comply with State Law when entering CEAs with OFPC.

**PRE-BID CONFERENCE  
SIGN IN SHEET  
DATE: OCTOBER 30, 2006 @ 10:00 AM  
BID NO 50-81449**

**CONSTRUCTION OF A NEW PERFORMING ARTS CENTER FOR THE JEFFERSON PARISH DEPARTMENT OF PARKS  
AND RECREATION**

NAME	COMPANY NAME & ADDRESS	PHONE & FAX NUMBER	E-MAIL ADDRESS
1) Mark Schutt	Meyer Engineers 4937 Hearst St. Ste. 1B Metairie, LA 70115	504-885-9872 504-887-5056	mschutt@Meyer-E-L.com
2) Grey Tauzier	Woodrow Wilson Hilandia Dr B.R. LA	225-926-3000	msca260@bellsouth.net
3) NBRWOOD MOTT	LANDIS CONSTRUCTION 241 INDUSTRIAL AVE JEFFERSON, LA	504 833-6070 504 833-6667	NMOTT@LANDISLLC.COM
4) JASON LEACH	HI-TECH ELECTRIC 5824 RIVER OAKS DR. S MONROE, LA 70233	504-734-0811 - 734-0814	JLEACH@HTENO.COM
5) Ron Smith	Interstate Electronic Systems, LLC 520 Elmwood Park Blvd, Ste 110 Harahan, LA 70123	504-729-6111 504-729-6060	Rsmith@ies-llc.com
6) ANNE LAUDERDALE	SCHRENK & PETERSON 4141 BIENVILLE ST N.O. LA	504 482-7856 504 482-7325	alauderdale1@cox.net

7)	Tony Bultman	AFB W A P.O. Box 4688 Covington, LA 70434	985 892 - 1386	ABULTMAN @ BELL SOUTH .NET
8)	RAY CALDARERA	J. Calderera & Co, Inc. 201 WOODLAND DR. LA PLACE, LA 70068	(985) 652-7676 P (985) 652-2822 fax	rcaldarera@ jcaldarera.com
9)	Cameron Richard	812 Perdido St. New Orleans, LA 70112	581-1948	crichard@wisznia com
10)	<del>Jeffrey Costa</del>	"	1	jcohen@wisznia. com
11)				
12)				
13)				
14)				
15)				
16)				
17)				
18)				

**PRE-BID CONFERENCE  
SIGN IN SHEET  
DATE: OCTOBER 30, 2006 @ 10:00 AM  
BID NO 50-81449**

**CONSTRUCTION OF A NEW PERFORMING ARTS CENTER FOR THE JEFFERSON PARISH DEPARTMENT OF PARKS  
AND RECREATION**

NAME	COMPANY NAME & ADDRESS	PHONE & FAX NUMBER	E-MAIL ADDRESS
1) LEO WEBB	JPRO 6921 SAINTS DRIVE METairie, LA. 70003	736-6984 FAX 736-9524	LWEBB@JEFFPARISH.LA.GOV
2) PHIL BERNARD	221411 SIMONEAUX 1010 COMMON, SUITE 2050 N. O., LA. 70112	504-571-1890 F-504-571-1891	pbarnard@as-br.com
3) Lee Currauk	"	"	lcurrauk@as-br.com
4) Craig Adams	Landis Const. Co.	833-6070 833-6062	calphonso@landisllc.com
5) RAM I. PAUL	WALTON CONSTRUCTION COMPANY, L.L.C.-SOUTHERN	504/733-2212 PA 504/733-2214 PA	RAMPAUL@WALTONBUILT.COM
6) Theo Wan	Mose Eng.	504-586-1725 504-586-1800	hmoser@moserengineering.com

7)	Ardyn Smith	King C&LP 300 Jefferson Hwy Bldg 8 70131	486-9195 488-2431	a.smith@kingcolp.com
8)	Bill McDowell	The McDowell Group 3350 Ridge Lake Dr, Suite 170 Metairie, LA 70002	504-219-0032 504-219-0095	amcdowell@mcdownell.com
9)	MARJEAN GOHO	GIBBS CONSTRUCTION L.L.C. 5736 CATONS BLVD. HARAHAN, LA 70123	504-733-9336 504-734-0389 FAX	mjgohd@gibbsconstruction.net
10)	Demi R. LeJeune	LA PA 514 MAIN ST B.K.	225-7184590	FONI. LEJEUNE DHS.GOV
11)				
12)				
13)				
14)				
15)				
16)				
17)				
18)				



CHANGE ORDER NO. 5

ACCOUNT # 45870-4068-7454(58715.001)

CONTRACT # SS-8888883

VENDOR # 24494

DEPARTMENT OF CAPITAL PROJECTS DATE FEBRUARY 17 20 09

NAME AND LOCATION OF PROJECT PERFORMING ARTS CENTER FW PROJECT NO. 2006-039-REC

ARCHITECT/ENR FERRIN & CARTER, INC./Anthony Gendusa, Jr. ATA DATE OF CONTRACT 12/13/2006 /03-20-2007

CONTRACTOR J. CALDARERA & COMPANY, INC. DATE OF CONTRACT 02/09/2007

This Change Order includes not only all direct costs of the Contractor such as labor, material, job overhead, and profit mark-up but also includes any costs for modifications or changes in sequence of the Work to be performed, delays, rescheduling, disruptions, extended direct or general overhead, acceleration, any escalation including but not limited to escalation in material or wages, and any other impact costs and any extensions of time to the Contract Times related to the changes included herein, other than as excluded and reserved in Attachment A.

It is further understood and agreed that the amounts and additional time, if any, included in this Change Order are hereby accepted on behalf of the Contractor, its subcontractors and suppliers as full and final compensation from the Owner for all extended field and home office overhead costs for those items, including any and all mark-ups or fees for profit and overhead on such costs, and neither Contractor nor its subcontractors or suppliers shall seek any additional compensation of any kind or any additional extension of the Contract Time from the Owner for the changes included herein, other than as excluded and revised in Attachment A.

It is hereby mutually agreed that when this change order has been signed by the contracting parties the following described changes in the work required by the contract shall be executed by the contractor without changing the terms of the contract except as herein stipulated and agreed:

SCOPE OF CHANGES: Revisions to structural concrete due to omissions in contract documents, other than as excluded and reserved in Attachment A.

JUSTIFICATION FOR CHANGES: See attached letter from Ferrin & Carter, Inc. dated May 28, 2009 and backup information from J. Caldarera & Co., Inc. dated March 12, 2009

Attach Additional Sheets as Necessary

CONTRACTOR'S PROPOSAL FOR THE ABOVE DESCRIBED CHANGES:

I/We hereby agree to the modification of the contract as described above and agree to furnish all materials and labor and perform all work in connection therewith in accordance with the requirements for similar work in existing contract, except as otherwise stipulated herein, for the following consideration:

Contract Amount  Add to or  Deduct from - the Contract amount the sum of \$ 2,850,326.65  
Time for Completion  Add to or  Deduct from -- the present Contract Time: \_\_\_\_\_ Calendar Days.  
New Date for Completion is \_\_\_\_\_, 20\_\_\_\_.

CONTRACTOR J. CALDARERA & CO., INC.

SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_ 20\_\_\_\_

RECOMMENDED BY: NAME: FERRIN & CARTER, INC. ARCHITECT/ENGINEER

BY: \_\_\_\_\_ DATE \_\_\_\_\_ 20\_\_\_\_

APPROVED BY: Department of CAPITAL PROJECTS Parish of Jefferson By: <u>[Signature]</u> DIRECTOR Date: <u>6/15/09</u>	APPROVED BY: Department of Finance Parish of Jefferson By: <u>[Signature]</u> DIRECTOR Date: <u>6-24-09</u>	APPROVED BY: Jefferson Parish Council Resolution No. <u>112539</u> By: <u>[Signature]</u> CLERK Date: <u>6/24/09</u>
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STATEMENT OF CONTRACT AMOUNT:

ORIGINAL CONTRACT AMOUNT .....	\$ 26,565,000.00
Previous Additions .....	\$ 4,328,966.40
TOTAL .....	\$ 30,893,966.40
Previous Deductions .....	\$
Net Prior to This Change .....	\$ 30,893,966.40
Amount of This Change <input checked="" type="checkbox"/> Add <input type="checkbox"/> Deduct \$	<u>-2,850,326.65</u> 5,900,000
CONTRACT AMOUNT TO DATE .....	\$ <u>31,244,890.00</u> 36,193,941

**BOBBY JINDAL**  
GOVERNOR



**PAUL W. RAINWATER**  
COMMISSIONER OF ADMINISTRATION

**State of Louisiana**  
Division of Administration  
**FACILITY PLANNING AND CONTROL**

September 14, 2011

Mr. Brent McDougall  
Senior Compliance Auditor  
Louisiana Legislative Auditor  
Post Office Box 94397  
Baton Rouge, Louisiana 70804

Dear Mr. McDougall:

This is in response to the attached section of the Louisiana Legislative Auditor (LLA) draft compliance audit report on the Jefferson Parish Council – Performing Arts Center project transmitted by letter dated August 31, 2011. We limit our comments to the sections titled “Role of Facility Planning and Control” and “Matter for Legislative Consideration”. I have also attached an opinion from Division of Administration’s Office of General Counsel, which supplements our comments.

**Role of Facility Planning and Control**

The draft report’s enumerated FPC roles are a gross understatement of FPC statutory responsibilities. The statutes listed in the report appear to be selected in an attempt to say that FPC is required to perform construction inspections for non-state projects. A reading of the statutory framework as a whole indicates otherwise, i.e., that FPC is not statutorily required to perform inspections for non-state projects. The statutory framework is such that it would be improper for FPC to conduct detailed construction inspections associated with contracts between two other parties, and could make FPC liable for claims of contractual interference.

RS 39:113.A says that funds are appropriated to FPC, except for appropriations made to the Department of Transportation and Development (DOTD), the Department of Military Affairs, and the legislature. RS 39:113.B says that funds appropriated to non-state entities shall be administered by FPC under cooperative endeavor agreements. RS 39:121, among other things, empowers the Division of Administration to formulate necessary rules, regulations, and forms for proper enforcement of the capital outlay budget, supervise construction, approve estimates, and select and employ engineers, architects, and other personnel necessary in connection with administration of contracts for projects. However, RS 39:122.B says that:

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(1) Ports, levee districts, and other non-state entities shall wait until there is a fully executed cooperative endeavor agreement, and final approval has been given by the facility planning and control section of the division of administration, the Department of Transportation and Development, or the state treasurer, whichever is applicable, *before entering into contracts obligating state funds.* (emphasis added)

(2) If a port, levee district or other non-state entity *enters into a contract, executes a purchase order, or otherwise attempts to obligate any funds* to be reimbursed by the state without first fully complying with the provisions of this Section, any obligation resulting therefrom shall remain the sole responsibility of the port, levee district, or non-state entity, and the contract or purchase order or other obligation shall not be eligible for reimbursement or payment by the State. (emphasis added)

The statutes make a distinction in how state and non-state projects are administered. FPC, through the DOA, is empowered to execute contracts for projects, yet it is clear that non-state projects are to be administered through cooperative endeavor agreements *where the non-state entities can execute contracts obligating the state funds.*

RS 39:122 through 125 are titled:

- 122. Commencement of Work
- 123. Construction Progress Report
- 124. Periodic Inspections
- 125. Acceptance of project; guarantee period

RS 39:123, 124, and 125 were enacted in 1989. In 1989 there were very few non-state entity projects administered by FPC. In the early-mid 1990s, the DOTD administered most of the non-state projects, but from 1998 forward FPC was assigned nearly all of the non-state projects (DOTD still administers a few non-state projects). The number of non-state projects has quadrupled from 1998 to the present. Note that the RS 39:122 language pertaining to non-state entities executing contracts subsequent to cooperative endeavor agreements was enacted in 1997.

RS 39:122-125 follow the project construction process from a contract administration standpoint. Sections 122 and 123 define their applicability. RS 39:124 (the emphasis of the draft LLA report) is titled Periodic Inspections, and says:

The facility planning and control section shall make periodic inspections at all stages of construction of any facility constructed pursuant to this part and shall make detailed reports which shall be made available to the legislature and public. Such inspections shall include but not be limited to the close technical on-site examination of materials, structure, and equipment and surveillance of the workmanship and methods to insure

reasonably that the project is accomplished in compliance with the information given by the contract documents and good construction practices.

RS 39:125 also discusses inspections. RS 39:125 is clearly applicable only to state projects administered by FPC (section B says that upon completion FPC shall "release (the facility) to the agency". "Agency" is defined in Title 39 as a *state organization*). RS 39:125 is:

- A. The facility planning and control section shall be responsible for directing final payment for work done on each project. However, if upon final inspection of any project it shall be found that the plans, specifications, contract or change orders for the project shall not have been fully complied with, the facility planning and control section shall, until such compliance shall have been effected or adjustments satisfactory to it shall have been made, refuse to direct such payment.
- B. Upon completion of the project the facility planning and control section shall release it to the agency. The facility planning and control section shall be responsible for making an inspection of the project prior to the expiration of the guarantee period to observe any defects which may appear within one year after completion of the contract. The facility planning and control section shall give prompt written notice to the contractor of defects which are due to faulty materials or workmanship.

RS 39:124 also must be interpreted as pertaining to state projects administered by FPC in order to make any sense. It was earlier shown that the statutes contemplate non-state entity projects as having the non-state entities hold their contracts. To give FPC the same level of contractual oversight for both state and non-state projects would ipso facto put FPC in the same contractual role in non-state projects as it does for state projects, thus making RS 39:122 extraneous. If the statutes contemplated FPC oversight the same for state and non-state projects, then there would have been no need to make a distinction between contracting parties for those types of projects.

RS 39:124 calls for FPC to make inspections "on any facility" and RS 39:125 requirements pertain to "each project". Title 39 does not define "facility", and a literal interpretation "any" and "each" would mean that FPC must conduct inspections on facilities constructed by the DOTD (including roads and bridges), the Department of Military and legislature. What would be the purpose of the RS 39:124-125 inspections, if FPC is not party to the construction contracts? FPC does have a statutory responsibility as code official for state-owned buildings, and in that regard FPC does have an interest in state buildings constructed by agencies, even if FPC is not party to a contract. *However the inspections described in RS 39:124-125 are associated with contract administration, not code compliance.*

In previous discussions between the LLA and FPC, the LLA suggested that the RS 39:124-125 inspections are needed to assure that FPC fulfills its statutory mandate to review feasibility of projects appropriated in the capital outlay act. FPC reviews capital outlay requests prior to funds being appropriated in the capital outlay act, and per RS 39:112 *must declare unfeasible*

*projects prior to enactment of the capital outlay bill.* For non-state projects, once they are funded, the FPC non-state entity administrative process is structured around four major tenets (which are reflected in the cooperative endeavor agreement):

1. Is the project being designed congruent with the capital outlay request/appropriation, and will the project being designed result in construction of a functional facility? (implicit intent of statutes and constitution)
2. Procurements must be in accordance with public bid laws (capital outlay act provision)
3. Disburse funds in accordance with the cooperative endeavor agreement and approved contracts.(best management practice)
4. Assure costs are reasonable. (best management practice)

FPC inspections of the types enumerated in RS 39:124-125 are not necessary to see that legislative intent for the project was met. The capital outlay request, which describes the envisioned project and is the basis of feasibility determination, does not go into the detail that is contemplated in the inspections mentioned in RS 39:124-125. Note that the standard FPC cooperative endeavor agreement says, "The Entity acknowledges that any funds not used in accordance with the terms of this Agreement and state law will be reimbursed to the State."

Even so, in the current non-state process there is a degree of "inspection" performed on the non-state projects. In the current non-state process, FPC reviews plans that are almost always prepared by a professional architect or engineer. If FPC believes the plans meet the intent of the capital outlay request and appropriation, then the non-state entity is allowed to bid for construction. Once under construction, FPC receives invoices certified by both the designer of record and the entity that the invoice is for work associated with the approved plans/contract. FPC typically makes at least one site visit during construction to verify progress is as it is reported by the entity and its professionals. FPC does not disburse 100% funds minus retainage until it receives certification from the professional of record that the project is complete and all punch list items have been addressed. Retainage amounts are released when a 45 day clear lien certificate is provided. Depending on the situation, sometimes FPC will withhold payment until a certificate of occupancy is provided.

While FPC believes that function and intent, and "feasibility" are reasonably assured without FPC conducting the inspections enumerated in RS 39:124-125, for all intents and purposes these types of inspections are being done, but they're being done by the holders of the construction and design professional contracts – the non-state entities. This is appropriate and consistent with the structure of Title 39. Besides opening itself up for third party interference claims, for FPC to add another layer of inspections to that already being done by the contracting parties would be inefficient from a cost perspective. As previously mentioned, the standard cooperative endeavor agreement says, "The Entity acknowledges that any funds not used in accordance with the terms of this Agreement and state law will be reimbursed to the State"; therefore, any default of the cooperative endeavor by a non-state entity can lead to a claim by FPC for return of state funds that had been disbursed to the non-state entity.

Mr. Brent McDougall  
August 14, 2011  
Page 5

As an aside, historically there is strong support for how FPC administers non-state projects, and thus our understanding of the statutes. The Attorney General's office confected the cooperative endeavor agreements originally used by FPC, and those agreements mentioned nothing of the RS 39:124-125 inspections (quite the opposite, the agreements tended to distance FPC from any technical aspects). When the current FPC non-state process was confected in 1999, the Attorney General's office reviewed the new cooperative endeavor agreement with associated Non-State Entity Capital Outlay Administrative Guidelines. Until two years ago, the AG confected the cooperative endeavor agreements and mailed out the Guidelines to the non-state entities. Since development in 1999, the FPC non-state entity process has been used by several other state agencies to administer non-state projects. The current non-state process has been successfully used through twelve legislative sessions across three gubernatorial administrations, with no requested changes in process.

#### **Matter for Legislative Consideration**

The draft LLA report concludes with "The Louisiana Legislature may want to consider taking action to clarify the provisions of RS 39:124 as it relates to non-state entities receiving state capital outlay funds". While a reading of the statutes as a whole presents a picture of intent, we would not object to legislation explicitly indicating that RS 39:124 does not apply to FPC's administration of non-state projects.

We would not support legislation explicitly indicating that RS 39:124 does apply to FPC's administration of non-state projects. If such were introduced, changes to RS 39:125 would be required, and that would precipitate the need for FPC to hold the contracts for non-state projects. This in turn would require statutory changes in designer selection statute (Title 38) as well as other statutes applicable to any other agency (including DOTD) who may administer non-state projects (FPC would need to hold the designer contracts as well as construction since construction administration is typically part of the designer contract). It would also necessitate increases in FPC staff to manage the numerous contracts associated with each non-state project (there are presently 834 active non-state entity projects being managed by six persons at FPC).

Thank you for allowing us the opportunity to comment on the draft report, and please advise if you have any questions or need further information.

Sincerely,



John L. Davis  
Director

BOBBY JINDAL  
GOVERNOR



PAUL RAINWATER  
COMMISSIONER OF ADMINISTRATION

## State of Louisiana

Division of Administration  
Office of General Counsel

### CONFIDENTIAL MEMORANDUM

TO: John Davis

FROM: Jason Bonaventure

DATE: 3/3/11

SUBJECT: 1/24/11 Louisiana Legislative Auditor's Opinion (No. 10-A-6002/JPAC)

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Below is the review/opinion you requested yesterday. I have read over your notes and Mark Gate's notes as well. Because of the time frame, I was not able to include commentary on all points. That does not mean that some of the points made by you and Mark are not valid.

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Louisiana Revised Statute 39:124 provides:

The facility planning and control section shall make periodic inspections at all stages of construction of any facility constructed pursuant to this part and shall make detailed reports which shall be made available to the legislature and public. Such inspections shall include but not be limited to the close technical on-site examination of materials, structure, and equipment and surveillance of the workmanship and methods to insure reasonably that the project is accomplished in compliance with the information given by the contract documents and good construction practices.

#### A. Louisiana Legislative Auditor's Opinion Letter

On January 24, 2011, the Louisiana Legislative Auditor wrote an Opinion letter stating that the duty of inspection required in La. R.S. 39:124 applies not only to State Capital Outlay projects but also any Non-State Capital Outlay projects. To reach this conclusion, one must read 39:124 in isolation from not only the purpose of the Capital Outlay Budget statutes but also to the exclusion of other provisions of law found within this Part of Title 39. The Louisiana Civil Code

is quite clear that *laws on the same subject matter must be interpreted in reference to each other.*<sup>1</sup>

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<sup>1</sup>La. C.C. Art 113.



Page 1 of the LLA letter provides a summary of its position. It states:

Non-State projects are those not owned and operated by the state but nevertheless funded by the State (R.S. 39:112). We can find no distinction in law that requires OFPC to treat non-state projects differently than State owned projects.

This summary points out the fatal flaw in LLA's position. In the first sentence, LLA finds and articulates the main distinctions as to why and how State projects and Non-State projects are treated differently. Nevertheless, in the very next sentence, it claims that there is no distinction. The fact that these projects are not owned and operated by the State is paramount to the understanding of how this group of statutes should be interpreted and how non-State projects are to be treated in relationship to State projects.

#### **B. Feasibility Does Not Mean Contract Administration**

The Capital Outlay statutes is a codification of the requirements imposed upon Facility Planning and Control by the Louisiana Constitution which states:

Each capital improvement project shall be evaluated through a feasibility study, as defined by the legislature, which shall include an analysis of need and estimates of construction and operating cost.

According to the letter, "[p]art of OFPC's mission is to perform these evaluations in order to determine project feasibility." While this is true, the error made by the LLA in its letter is to take the requirement of ensuring feasibility of a project and turning it into a requirement "of soundness of a construction built with State funds. If a construction provided for in the Capital Outlay Budget cannot pass Fire Marshal inspection, has the feasibility of the project been protected as required by the Louisiana Constitution?"

Feasibility and contract administration are two separate items. Determining whether a project is feasible does not create a mandate that FPC ensure that every Capital Outlay Project is built in compliance with a non-state entities' plans, specifications, and contract documents. For non-state projects, its feasibility, after appropriations are made, is dependent upon:

1. Is the project being designed congruent with the capital outlay request, and will the project being designed result in a functional facility? (implicit intent of statutes and constitution)
2. Procurement must be in accordance with public bid laws (capital outlay act provision).
3. Disburse funds in accordance with the cooperative endeavor agreement and approved contracts (best management practice).
4. Assure costs are reasonable (best management practice).

If these tenets are met, the project is feasible, and FPC has performed its statutory and Constitutional duty of ensuring that what is, will, and has been constructed is what was intended

*Intent: Public Accountant and Contractor*

by the legislative appropriation. It is then incumbent upon the non-state entity who has been "appropriated the funds"<sup>2</sup> to ensure that the building is being built to their specifications. They after all are the owners of the building, and it is they that entered into the contracts with the design professionals and contractors to ensure that the building is being constructed properly.

In order to state that there is "no distinction in law in the level of oversight between State owned projects and non-state owned projects," one must ignore the other provisions found within this same Part. For example, La. R.S. 39:122 makes abundantly clear that the contract administration for non-state entities rests with the non-state entity. Prior to entering into these contracts and obligating State funds, the non-state entities are required to enter into cooperative endeavor agreements with the State. The State, not having any contractual privity, cannot control the day-to-day administration of the contracts for a non-state entity. To do so, would interfere with the contractual relationship between the non-state entity and the contractor or designer. By controlling the purse strings and forcing the non-state entity into a situation where it cannot pay the sub, then the non-state entity, not the State, is potentially liable for breach of contract. FPC has no ability to demand that a contractor perform nor does it have any right to make a designer correct its errors and omissions.

In conclusion, to understand the role of FPC, an analogy to the residential home construction market may be appropriate. If one were to choose to build its own home and needed financing, he would go to a bank and request a construction loan. To obtain that loan, he would have to present the loan officer with the documents and specifications to demonstrate that this project is feasible. The loan officer would then typically provide the owner with a checkbook and require documentation throughout the project to demonstrate that the home is being built as was agreed to when the loan was made. The loan officer does not interfere with the design of the project or the construction administration unless there is an attempt to change the scope of the work. For example, if the residential construction now appears to be a fast food restaurant, the loan officer will interject. FPC, in the same way, is the loan officer for the State, and the non-state entity is the owner.

### **C. The Distinction in Law Is Understood By Non-State Entities**

The distinction as to why FPC is not required to perform construction administration inspections on ongoing non-state projects is well understood by not only FPC but also the non-state entities. In fact, the Non-State Entity Capital Outlay Administrative Guidelines, which are part of the Cooperative Endeavor Agreements between FPC and the Non-State entities state, "*(s)ince the cooperative endeavor agreement is between the State and a non-state entity, FP&C will not directly engage with a non-state entity's contracted consultants or contractors.*" FP&C cannot communicate directly with the consultant or contractor concerning "faulty materials and workmanship" nor receive a guarantee of workmanship and materials for a non-state project. This agreement is required to be signed by the non-state entities prior to their entering into any contracts obligating State funds.<sup>3</sup>

<sup>2</sup> 39:113.

<sup>3</sup> See La. R.S. 39:122(B).

#### **D. LLA's Opinion Creates Unwarranted Liability for the State**

The inspections referred to in La. R.S. 39:124, if applied to non-state projects as suggested by the LLA letter, will not have any teeth and lead to FPC needlessly interjecting itself into non-state entities' business. What is the purpose of FPC performing these inspections if FPC is not party to either the design or construction contract? Furthermore, under the LLA's interpretation, implying that FPC has the duty to insure that a building is being built in compliance with the plans and specifications of the non-state entity places a heavy burden and much liability on the State for buildings and projects it does not even own. Under the interpretation by LLA, if a non-state project has a construction defect and that defect later results in property damage or personal injury to someone, the State can be sued for failure to properly inspect a project that it did not design, did not construct, and did not own.

#### **E. LLA's Opinion Is Much Broader than Contracts Involving FPC's State and Non-State Entities**

Moreover, if one were to apply the interpretation by LLA, then La. R.S. 39:124 would apply not only to FPC's State and Non-State projects, but it would also apply to all Capital Outlay projects administered by DOTD and the Military Department. FPC could halt, delay, and control nearly all construction projects in the State by simply stating it does not pass "OFPC's scrutiny." Clearly, the Legislature does not and did not intend that FPC would micromanage every public construction project in the State.

#### **Conclusion**

There is no evidence of any state agency ever conducting inspections as enumerated in R.S. 39:124-125. When FPC took over the non-state entity program from DOTD in the late 1990s, DOTD was not conducting inspections to the level of R.S. 39:124-125. When FPC took over the non-state entity program, the Attorney General's office confected the cooperative endeavor agreements, and those agreements mentioned nothing of the R.S. 39:124-125 inspections (quite the opposite, the agreements tended to distance FPC from any technical responsibility). When the current FPC non-state process was confected in 1999, the Attorney General's office reviewed the new cooperative endeavor agreement with associated *Non-State Entity Capital Outlay Administrative Guidelines*. Until two years ago, the AG confected the cooperative endeavor agreements and mailed out the *Guidelines* to the non-state entities. Since development, the FPC non-state entity process has been used by several other State agencies to administer non-state projects. The current process has been successfully used for over ten years for hundreds of projects worth over \$1 billion.

If you have any questions about this opinion or would like to discuss any further, just let me know.

**END OF MEMO**



J. CALDARERA & CO., INC.

September 12, 2011

Dan Daigle, CPA, CIA, CFE  
Assistant Legislative Auditor &  
Director of Compliance Audit  
1600 North Third Street  
Baton Rouge, Louisiana 70804-9397

Re: Compliance Audit – Jefferson Performing Arts Center Project  
Written edits/corrections as requested

Dear Mr. Daigle:

Thank you for sharing a copy of the compliance audit which is the product of work conducted by your staff on the Jefferson Performing Arts Center Project, hereinafter, "JPAC" or the "Project". I first wish to thank your personnel, particularly Mr. McDougall, who was very professional in his review, and respectful of a working construction project when he visited the site to obtain his information.

Mr. McDougall did advise that I would be provided a copy of the audit in draft form and indicated that if I was willing, I should read and provide any correction or clarification if I noted anything that was not stated precisely correct. I note that your cover letter requests such as well. In keeping with those requests, here are a few points of clarification regarding those things that may involve my company. I will point to sections that I will address by page number and paragraph on the respective page noted.

**Page 2 of 26 – Paragraph 2 – Background**

The Project was 88.34% complete as of the time of this writing per Application for Payment No. 53, dated August 31, 2011. The current construction schedule states that Substantial Completion will occur by June 19, 2012, but available time beyond that includes an additional 195 adverse weather days per the August 2011 Schedule Narrative. J. Caldarera & Company, Inc., the General Contractor (hereinafter, "JCC"), is attempting to complete the Project prior to the current schedule date. This depends on many factors, none the least being a culmination of Project changes and timely payment for completed work.

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Change Order 8 is pending, based on known additional work, and must be resolved to provide timely payments to subcontractors necessary for the completion of JPAC. In the August 26, 2011 Monthly Progress Meeting, despite the request for spending to be culminated, Joe Calderera advised that modifications to drawings continue to be forwarded to JCC. Such modifications involve the addition of necessary components to achieve code compliance and were not included in the original Contract Documents. Examples of these include adding smoke/fire dampers into ductwork (which is considered a life safety issue), boiler exhaust changes, duct changes at the stage, and dryer vent revisions. Upon discussion with Owners representatives at the August 26, 2011 Monthly Progress Meeting, it was affirmed that the State Fire Marshall (hereinafter, "SFM"), required that certain life/safety items must be included to make JPAC fully compliant.

Additionally, a recent SFM inspection revealed even more problems with the plans and SFM requirements that must be resolved prior to completion. These are added requirements that have come up since receipt of the last of ten review letters from the SFM confirming acceptability of the official plans was received.

**Page 4 of 26 – Bullet Point No. 1 – Pre-Bid Meeting Questions**

While it is true that some pre-bid questions were not answered, it is also true that some were answered. This had something to do with an Addendum that was issued by the Wisznia Architects, purportedly without conferring with the Owner, which notified all bidders that the Bid Date was to be extended. The Owner's representative in attendance at the Pre-Bid Meeting stated that the Project Bid Date could not be extended, and that another Addendum would be issued changing the date back to the original Bid Date. After that announcement the Architect terminated the question and answer process for all practical purposes.

JCC, as did other contractors in attendance, had dozens of substantive questions. Many questions that were developed prior to the Pre-Bid Meeting seeking clarification were forwarded via facsimile to the Architect as a courtesy in order that responses could be developed prior to the meeting. The auditor confirmed evidence of this. Several questions involved circumstances of non-constructible details and design omissions that have resulted in resolution and supplemental instructions during ongoing work, all of which have occurred after the signing of the Construction Contract. Many issues involved significant work, schedule revisions, out of sequence work, rework in some cases, and have resulted in substantial delays and disruption to JCC and its forces.

As a further point of clarification, some issues that arose after the construction began involve revisions to the SFM “stamped” drawings. (These are not related to SFM issues identified in the first paragraph on Page 2.) One obvious change added three pile-supported concrete monumental stairs at added egress locations on the building. The approved SFM reviewed drawings originally allowed only the main entrance as a single point of public ingress and egress. Noteworthy, is that this change occurred after the building concrete was completed in the areas adjacent to the proposed new stairs. This resulted in remobilization of the pile-driving equipment and very exacting piling placement in tight quarters near newly placed concrete. The finesse involved with this work was costly. Additionally, this change required the removal of trees, revisions to sidewalks, and relocation of drainage.

**Page 4 of 26 – Bullet Point No. 3 – JP Code Enforcement Inspections**

Generally, Code Enforcement does not inspect Public Projects that are advertised for public bid and are administered by a Project Architect. The reason for this is that if Code Enforcement officials render opinions in conflict with that of the design professional of record for any given project, the design professional may seek to defer to Code Enforcement, and in doing so may effect a tacit waiver of liability in the event any issues result from such conflict.

**Page 4 of 26 – Bullet Point No. 5 – Design/Build Project**

JPAC is not a Design-Build Project. Although JCC has participated in resolving issues by providing suggestions to overcome errors and omissions on the Project, all such suggestions are reviewed by Perrin & Carter (hereinafter, “P&C”) or its sub-consultants, or in some cases by former sub-consultants of Wisznia Architects via specific arrangements, and evolve into new designs prepared by them. The revised designs or contract modifications are enacted based on engineering and architectural considerations in keeping with the original design where at all possible. In some cases, however, significant changes to the original design have been made by the design team and implemented on their instruction by JCC, such as additional roof drains and roofing changes, added piling and concrete grade beam and pile cap modifications, substantial metal stud upgrades and revisions, structural steel and concrete modifications, added bracing, modifications due to conflicts and continuous welding at braces, changes to various stairs, door and glass corrections, concrete block modifications/supports, added roof hatches, ceiling height changes due to a lack of space for contemplated mechanical and electrical piping and ducts, numerous mechanical and electrical changes, the addition of sprinklers, and exterior wall changes to name a few.

The total revised drawings that include added details, resolution of omitted details, or revised details stands at a remarkable four hundred and sixty-nine (469) revised drawings as of the August 2011 Schedule Narrative. JCC presented Requests for Information (RFI's) in keeping with the requirements of the Contract to which either a field clarification (not necessarily a written drawing or Architectural Supplemental Instruction), or a revised drawing was provided. In short, the four hundred and sixty-nine revised drawings are only a portion of the actual revisions/clarifications on the Project. Please note that many of the aforementioned revisions were topics of questions at the Pre-Bid Meeting.

The responsibility of the Contractor to report errors, inconsistencies and/or omissions in the Contract Documents should not be interpreted as a design function of the Contractor. Reference is made to Article 3.2 of the 1997 AIA A201 General Conditions made part of the Contract for JPAC. Specifically, Subparagraphs 3.2.1 and 3.2.2 state as follows:

**3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**3.2.1** *Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require. [Emphasis added]*

**3.2.2** *Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with the applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect. [Emphasis added]*

A definition of a Design-Build Project, per that noted on Page 7 of 26, in Footnote No. 1 of the Compliance Audit from www.businessdictionary is correctly stated by the Legislative Auditor as follows:

*A design build contract (DB) is a construction contract where both the design and the construction of a structure are the responsibilities of the same contractor.*

The Contractor's reporting of errors, inconsistencies and omissions on the Project can in no way be construed as a design function. Moreover, there have been no Change Orders issued changing the Public Bid JPAC Project into a Design-Build Project. To make a material change such as establishing significantly different duties is in violation of LRS 38:2212 A (6) stated as follows:

*38:2212 A (6) Any change order outside the scope of the contract in excess of the contract limit as defined herein shall be let out for public bid as provided by this Part. [Emphasis added]*

To change the Project from a Public Bid Fixed-Price Construction Contract to a Design-Build Project is a drastic change that is outside the scope of the Contract as intended, and is prohibited. While the Project has been characterized in many terms, including "Design-Build", such is simply a characterization that has been used, and is merely a semantic misnomer.

**Page 4 of 26 – Bullet Point No. 8 – No Audit Clause**

The audit is correct that the Construction Contract with JCC did not include an audit clause. Jefferson Parish's Public Bid Construction Contracts and the Contract Documents associated therewith correctly do not include audit clauses. To include an audit clause in a Public Bid Fixed-Price Construction Contract would suggest a Cost-Plus arrangement. For example, while it is true that the examination of costs at actual wage rates and costs directly incurred could result in a credit scenario, it could also result in a circumstance where additional costs are due beyond that estimated. Any contract, if subject to an audit, must necessarily enable reconciliation of the findings of such audits as either a credit or extra, which is why auditing of Fixed-Price Contracts is not done unless there is a Guaranteed-Maximum or similar hybrid contract arrangement where certification of costs are required at the culmination of construction. This is not done in the Public Bid arena and would violate the intent of the Public Bid Law.



*Louisiana's Public Bid Law was enacted in the interest of the taxpaying citizen and has for its purpose their protection against contracts entered into because of favoritism and possibly involving exorbitant and extortionate prices.*

*The Public Bid Law is intended to ensure a level playing field whereby all bids are evaluated fairly and objectively...and in the best interest of the taxpaying citizen.*

Bids are submitted and are selected based on the lowest responsible and responsive bidder on bid day. It is the intent that the public Owner and the taxpayers are protected by receipt of the lowest bid that complies with the requirements of the bid documents. By relying upon the lowest responsive price from a responsible bidder, the Owner is guaranteed a price for the Work outlined in the Bid Documents as bid.

The price received on Bid Day includes *estimated* costs prior to the performance of the Work and is competitively bid to ensure the best price. These estimated costs rarely, if ever result in the *actual* costs of the Work. If the Contractor goes over its estimated costs there is nothing it can do. Hence, the Owner does not have to worry about going beyond the bid price unless there is a change in the Work that alters the conditions from that bid. Neither the Contractor, nor the Owner, may alter the bid price, except by Change Order. Per LRS 38:2212 A (7) Change Orders shall be negotiated in the best interest of the public entity stated as follows:

*Any change order pertaining to public work, not required by this Part to be put out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided for by this Part.*

Jefferson Parish's contract provisions include language that parallels the language of the Public Bid Law. Section 41 of the Jefferson Parish General Conditions, related to "EXTRA AND/OR ADDITIONAL WORK AND CHANGES", states as follows:

*Extra Work for which there is no price or quantity included in the Contract shall be paid for at a unit price or lump sum to be agreed upon in advance in writing by the Design Professional and the Contractor and approved by the Owner.*

This provision is in keeping with the General Conditions for the Project (AIA A201), which govern most Public Work Projects, and is in keeping with the requirements for Change Orders under the Public Bid Law.

In certain rare circumstances, when it is either impossible to estimate costs or the contractor refuses to work within reasonable negotiated pricing, or when negotiations do not yield reasonable pricing, such as when hidden underground circumstances are encountered and cannot be quantified or when a dispute related to the value of required extra work exists, the Contractor is ordered to work under a Force Account. This mechanism is used when quantification of costs cannot occur, when time limitations prevent the estimation of the Work at a fixed price, or when the Contractor simply will not prosecute the extra work at hand without such directive.

Jefferson Parish did not wish to enact the Force Account provision because it wished to have a known price to perform certain work at hand. Moreover, estimated costs were in keeping with reasonable costs for such work. The idea of examining actual costs of subcontractors is not something General Contractors wish to do either. General Contractors typically do not wish to audit subcontractors to determine a cost that may continue to escalate, but rather, like most Owners, public and private, wish to have a known price that is fixed.

**Page 4 of 26 – Paragraph 2 – Pre-bid Meeting**

Joe Caldarrera did not state that Wisznia Architect's representative, Jeff Cohen, failed to answer all questions. What was stated is that Mr. Cohen initially answered certain questions, but did not fully answer all questions. It was not until Ms. Peggy Barton, Assistant Parish Attorney that attended the Pre-Bid Meeting, indicated publicly that the Project Bid could not be extended did Mr. Cohen state that further questions should be raised in the formal Request for Information process once a Contractor was determined on Bid Day.

This public statement was made after receipt of multiple questions from various General Contractors that attended the meeting. Due to the number of questions there was a concern that the magnitude of the addendum or addenda to clarify the issues raised may extend the bid.

**Page 5 of 26 – Paragraph 1 – State Fire Marshall Review**

It is true that the Owner's delay in receiving reviewed plans back from the SFM, and that certain "open" items noted in the letter from the SFM that was eventually received created the need for additions to the Project. It is also true that some items, such as additional egress stairs in lieu of the one that was in the original design, are the reason Change Orders were necessitated.

The Change Orders that resulted therefrom, however, were negotiated in keeping with the requirements of the Contract Documents and the Public Bid Law. These were not initiated by JCC, but rather were responded to by JCC. Regarding the negotiation of such Change Orders, reference is again made to the specific language of the Public Bid Law (LRS 38:2212 A (7)) that states in pertinent part as follows:

*Any change order pertaining to public work, not required by this Part to be put out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided for by this Part. [Emphasis added]*

The idea that when a Change Order is “negotiated” it “may not have allowed the Parish to receive the lowest price for these additional changes”, as is stated in the audit, respectfully, is unfounded speculation. Negotiating Change Orders is done every day on Public Projects and results in fixed (known) prices for the added work, which is the intent of the excerpt from the Public Bid Law above.

In the case of JPAC, Change Orders were negotiated over many months, by several parties, and were supported with detailed backup. Each Change Order contains complete explanations for the costs and means by which the Work was accomplished. Additionally, Project Schedules, Schedule Narratives, Meeting Minutes, RFI/ASI Logs and other mediums of Project documentation provide further explanation on a contemporaneous basis to demonstrate the probable effects of delay and measure of delays on the Project.

Oftentimes, the perception is that each time there is a Change Order the Contractor benefits beyond that which it expected on Bid Day. Such is routinely not the case, as for instance, when Change Orders are limited to a markup less than that expected in the original bid of the Contractor or when changes, in the magnitude such as those experienced on JPAC, interrupt the momentum of the planned Work and require modifications to the sequencing of the Work.

**Page 5 of 26 – Last Paragraph (continuing onto Page 6 of 26) – Building Permit**

It is noted in the audit that the cost for Jefferson Parish permitting for JPAC would have resulted in a \$147,025.00 charge. It is not stated as to whether this cost is calculated based on the original Base Bid, or whether it includes the revised Contract Sum at the time of the audit. Notwithstanding, as a point of clarification, if the permitting fee were required at the time of the Bid, such costs would have been included in the Base Bid and transmitted to the Owner by each Contractor bidding.

Moreover, each Change Order would have incrementally increased by the value of the added work, plus the Contractor's allowed markup. Had permitting fees been a part of Change Orders, the Contractor would have actually earned a fee on the permitting cost.

Regarding the actual inspection that is included under the permitting of private sector commercial and residential projects, this was discussed on Page 3 above under Bullet Point No. 3.

**Page 7 of 26 – Paragraph 2 – Design Build Project**

This paragraph identifies the Project as a Design-Build Project. This is discussed on Page 3 above under Bullet Point 5.

**Page 8 of 26 – Paragraph 1 – Change Orders**

It is not understood what is meant by the underlined phrase in the Compliance Audit in the sentence that reads, "The apparent reason for increased costs and change orders, such as inconsistent project management practices and non-compliance with bid specifications, are described below". The descriptions contained within the table do not identify any inconsistent project management or non-compliance with bid specifications. Rather the table of items includes a single Bid tabulation and a listing of Change Orders through Change Order 7. The noted items are resultant from noted causes such as those cited herein. Additional clarification of this sentence is requested.

**Page 9 of 26 – Paragraph 2 – Change Order One**

The Compliance Audit states, "the material quotes submitted by JCC had not expired as of the date the company signed the contract." That statement is not correct. A brief history should clear this up.

First, per the Public Bid Law at LRS 38:2215 A, the following is stated in pertinent part:

*The state or any state agency upon receipt of bids for the undertaking of any public works contract shall act within thirty calendar days of such receipt to award said contract to the lowest responsible bidder or reject all bids.*

*A political subdivision... shall act within forty-five calendar days...*

*However, the public entity and the lowest responsible bidder, by mutually written consent, may agree to extend the deadline for award by one or more extensions of thirty calendar days*

JPAC's Bid Documents included an adhesive agreement that required all bidders to unilaterally accept that ninety (90) days, not the prescribed thirty or forty-five days cited in the foregoing provisions, was to be accepted. In other words, if the bidder submitted a bid, it automatically agreed to the ninety day holding of bid prices. Prior to receiving bids, JCC advised all of its prospective subcontractors and suppliers of the abnormal ninety-day requirement of this Contract.

After continuing discussions with subcontractors and suppliers for the Project, the subcontractors and suppliers ultimately agreed to hold the pricing for ninety days, but emphasized that beyond ninety days, it may be impossible to hold material pricing. Since this was an extended "freeze" period, it was noted by most subcontractors and suppliers that any time beyond the ninety days would likely result in an examination of pricing.

This was conveyed to Mr. Reda Youssef in a memo dated February 7, 2007. The memo indicated the foregoing and identified that ninety-two days had passed as of the date of the memo.

Mr. Youssef did ask what the impact might be, at which time Joe Caldarera asked if he should contact subcontractors and suppliers to revisit their bid pricing to determine an increase. It was explained that if such an inquiry would be made to each subcontractor and supplier it would likely result in an overall price increase from nearly everyone. It was decided that the Contract would be signed and a determination of increases on a case-by-case basis would result in far less impact.

That is the reason for the increase with the reinforcement steel on the Project. Although the observation in the Compliance Audit may be one that focuses on an increase that might not have been prudent; such an observation does not consider the alternative had all subcontractors and suppliers been asked what impact they faced due to the late Contract signing. It is not clear why the signing of the Contract exceeded the additional days of extension.

**Page 12 of 26 – Paragraph 2 – Change Orders Three & Five**

The use of Means rates was negotiated and agreed upon as a fair method of deriving estimated costs of the changes required to complete modifications and revisions to the concrete foundation and related pile caps, beams, columns, transition concrete, on-grade and raised slabs, and associated work.

Due to the ongoing changes required, the Work was estimated at a point in construction when an approximation of the changes were requested by the Parish to establish cost through a particular time; hence, the reason that the concrete revisions for JPAC was broken into two phases. The first phase involved largely underground work and the second phase involved largely work above grade, including elevated slab and beams.

It is noteworthy to mention that work is typically estimated based on industry applicable rates from R.S. Means and/or the A.E.D Green Book. Such a method is also identified in the Public Bid Law.

In fact, JCC and other contractors on a routine basis use similar techniques by referring to R.S. Means and/or the A.E.D. Green Book in preparing various estimates. While subcontractor pricing is used on Bid Day for those trades performed by subcontractors, it is not uncommon to use published manual rates in the estimation of work that JCC typically plans to self-perform.

It is also important to note that after completion of the underground portion of the concrete revisions, a cost reduction was utilized for rate application. This was due to a lessening difficulty factor in performing work above grade and out of the mud.

The statements regarding the Parish's inability to demonstrate if the labor rates billed to the Parish were appropriate is discussed in Bullet Point 8, on Page 5 above.

**Page 12 of 26 – Paragraph 1 – Change Order Six**

It is not correct to state, "both the Parish and P&C failed to maintain copies of JCC's current insurance certificates." I think some clarification of the occurrences related to the Builder's Risk for the Project may be in order.

First, during the original Contract period (two years), the requirement was to furnish Builder's Risk insurance as *required* by the Owner. This contemplates the normal or typical parameters for such insurance, including consideration of portions of the required insurance that are excluded from a Builders Risk policy. Standard Builder's Risk policies cover the building components above grade and **exclude** all items below grade.

Section 39 of the Jefferson Parish General Conditions, related to "INSURANCE AND INDEMNIFICATION EXTRA", states as follows:

***Builders Risk Insurance:*** *The Contractor shall take out and maintain Builder's Risk Insurance at his expense, unless otherwise provided for in the Supplementary Conditions, to insure both the Owner and the Contractor as their interests appear. There policies must cover for such amount of the Work as is determined by the Design Professional and shall be the all-risk type coverage...* [Emphasis added]

Because of delays caused by the problems with the original plans, the need for Builder's Risk insurance for above grade components did not exist until the time when the policy was procured, which was beyond the initial Contract Time. The Parish affirmed that there was no intention in any contract for contractors to provide insurance on items that cannot be later claimed (i.e., below grade items). It would be a waste of the taxpayer's money to require coverage and pay a premium on such things such as piling, underground work, utility work, including catch basins, water lines, drains, etc., as well as exterior paving, parking, and similar onsite improvements that are excluded under a typical Builder's Risk policy.

It is for these reasons that typically on projects where Builder's Risk coverage is to be procured, the decision as to when to procure such insurance is jointly made by the Owner and the Contractor. Logically, if the Contractor did not procure the insurance at the time necessary to provide coverage on insurable components of a building, that Contractor would be at its own risk if a catastrophic event availed. The risk on JPAC was always by the Contractor, up and until the initial Contract period expired.

On JPAC, the underground work, including piling, concrete foundations, underground plumbing, sprinkler, electrical and special systems below grade, water lines, drain lines, catch basins, site prep, site demo, tree removal, and other such excluded items in standard Builder's Risk policies was virtually the only work that was performed during the first two years. It was confirmed by the Owner that no insurable work existed to insure.

Second, the Parish did solicit insurance certificates annually, and JCC has met every annual request for insurance summoned by the Owner's Engineering Department with not one complaint that proper insurance was not furnished during the timeframe for all coverage that the Owner intended to have contractually.

Third, after the initial anticipated completion timeframe, the Owner again confirmed that JCC had met its obligations when it was pointed out in several Monthly Progress Meetings that after the first two years the General Contractor's responsibilities were culminated, and, as such, issued a Change Order for the next period through what was then thought to be the completion period for the Project. Now the Project is extended again, and, once again, for fault of the General Contractor. As a result of the extended time beyond the Contractor's control, additional insurance was again requested and purchased per directive from Mr. Reda Youssef.

Finally, until the Project came out of the ground, JCC was always the "at risk entity" in the virtually impossible event of damage to underground components of the structure due to a catastrophic event.

**Page 13 of 26 – Paragraph 1 – Change Order Six**

Joe Caldarera did not indicate that he had an agreement with the Parish Attorney's office concerning this Change Order. Joe Caldarera indicated that discussions were had on the subject of Builder's Risk insurance with the Owner and/or its representatives, including the Parish Attorney. Builder's Risk coverage was also discussed in Monthly Progress Meetings.

**Page 13 of 26 – Paragraph 2 – Change Orders Four and Seven**

It is stated in the Compliance Audit that Work approved for Change Orders Four and Seven is still in progress. This work has been completed and both Change Orders have been approved and are included as permitted billable items on the approved Schedule of Values that has been revised per Change Orders.

**Page 14 of 26 – Paragraph 1 – Audit Clause**

This topic is discussed in Bullet Point No. 8 on Page 5 above.

**Page 15 of 26 – Recommendations by the Auditor**

These numbered items noted by the Auditor, for which JCC has knowledge or is identified as part thereof, have been discussed in the text herein.



**Page 19 of 26 – Paragraphs 1 & 2 – Possible Bid Law Violation**

The subject of time extensions for holding Bids was discussed beginning on Page 9 under *Change Order 1*.

**Page 20 of 26 – Paragraph 1 – Change Order #5**

JCC was obviously not part of the processing of the payment for Change Order No. 5; however, Change Order No. 5 was certainly not processed too quickly and without review. Change Order No. 5 was estimated many months prior to its official approval, due largely to issues related to final funding. During the review of Change Order 5, many meetings occurred that involved P&C, as well as the Engineering Department for Jefferson Parish, mainly due to the complexity and magnitude of that Change Order.

The review by the Engineering Department as noted in the Compliance Audit did not include all aspects of the revised work initially; however, when provisions of the Contract regarding extensions for time beyond the control of the Contractor were substantiated by the Project Schedule and eventually considered, a daily rate was established and mutually agreed and the sum was adjusted for a portion of the delay costs.

Regarding documentation, or the alleged lack thereof, Change Order No. 5 was completely documented and contained voluminous supporting information sufficient to confirm its approval. Perhaps the documentation was not made available in confirmation of this work to the auditor, but it nonetheless, exists. Ultimately, an approximate \$300,000.00 credit was mutually agreed upon to culminate the negotiations on this Change Order.

Finally, with respect to this item, the only “invoicing” necessary to comply with the requirements of the Contract after approval of a Change Order is a monthly Application for Payment. Change Orders may be billed per the percent complete approved by the Project Administrator based on the detail contained within the Change Order. The Application for Payment simply contains items approved on a Schedule of Values utilized as a basis for payment under this Contract. The items invoiced by the contractor are inspected/reviewed and confirmed monthly based on the percentage completed as indicated per category by the contractor.

The A201 General Conditions that govern this Project at Article 9.2 - *Schedule of Values*, states as follows:

*9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.*

Use of an approved Schedule of Values on monthly Applications for Payment are as required by Contract and is the industry norm. Moreover, the inspection of the Work identified by a percentage complete is undertaken each month. A Change Order, once executed by all parties may be included in the Schedule of Values on the Application for Payment form and is similarly evaluated.

**Page 23 of 26 – Paragraph 2 – Expenses Not Included in Construction Fund**


Change Order 8 has been discussed for quite some time. The majority of the Work contained therein is known and has been authorized. There are some items, however, that involve Life Safety, SFM, and Code-compliant items that continue to add to the Work/scope and have not been fully provided for pricing.

Notwithstanding any of the above, it is estimated that the actual construction cost will be very close to the estimated amount noted in the Compliance Audit of \$52,407,782.00.

**Concluding Statement**

This concludes commentary on items involving JCC and/or items of which JCC may have knowledge. I would be happy to meet to discuss any of the foregoing prior to presenting this officially if you so choose. Thank you for the opportunity to provide this information.

Respectfully,

  
Joe Calderera  
President



September 15, 2011

Dan Daigle, CPA, CIA, CFE  
Assistant Legislative Auditor,  
Director of Compliance Audit

RE: Audit for Compliance- Jefferson Performing Arts Center  
Jefferson Parish LA.  
Response to Draft document sent for review  
Our Project: 06021

Dear Mr. Daigle:

We are responding to the draft report sent to us dated August 31, 2011.

**Page 3 - Table entitled: Performing Arts Center Expenses October 10, 2002 to June 10, 2011.**

This table indicates Architectural Services provided by Perrin & Carter, Inc.(P&C) total, \$3,241,615. It should be noted that a large portion of these fees paid to Perrin & Carter, Inc. are to pay the many sub consultants working for P&C. These sub consultants include:

- Anthony Gendusa, AIA, Architect
- Moses Engineers, Mechanical and Electrical Engineers
- Schrenk and Petersen – Structural Consultant
- BAI, LLC- Audio Consultant
- Fisher Dachs Associates- Theatre Consultants
- Fisher, Marantz Stone- Lighting Consultant
- Bert Tully- Interior Design
- Avallone Hardware Consultants

These fees also compensate P&C for all the expense of our own in-house staff that has been working on the project since January 2007, as well as our daily on-site field representative and direct expenses.

**Page 6- Construction Management Conflict of Interest**

It is unfortunate that the Parish authored an agreement using the terminology “Construction Manager” to describe P&C. P&C is not managing construction per the definition of construction manager. The definition of construction management is the overall planning, coordination and control of a project from inception to completion with the intent of meeting an Owner’s requirements in order to produce a functionally and financially viable project that will be completed within an authorized time and within an authorized cost.

**REGISTRATIONS**

LOUISIANA MISSISSIPPI NEW YORK MARYLAND PENNSYLVANIA GEORGIA MISSOURI VIRGINIA

P&C does not control nor does P&C coordinate the construction of the project. The contractor, JCC, controls the site and means and methods of construction. What P&C is managing, are all the sub consultants listed above. P&C is completing all the applicable tasks outlined in Section 2, Services, outlined in the 'management' agreement between Jefferson Parish and P&C. The intent of this "construction management" agreement is for P&C to complete all the tasks that are not in the construction administration agreement that P&C has with Jefferson Parish. With the absence of Wisznia design team from the project during construction, P&C is responsible to interpret the construction documents and answer the many questions that have arisen during the construction. This has necessitated the need for P&C to develop drawings and information to make the project constructible. Without collaboration between P&C and the sub consultants, this project would not have been constructible. There is nothing unusual about the contractual relationships between P&C and their sub consultants, nor is there any conflict of interest. All parties are working together with the common goal of administering construction and keeping a project with very unusual design problems moving forward.

P&C hired Anthony Gendusa, Architect, AIA, to be the professional of record for this project. Since the Wisznia firm was released by the Parish, this project required a professional of record during the construction administration phase. Mr. Gendusa shall be the professional of record to eventually sign a certificate of completion issued by the State Fire Marshal. This certificate of completion shall be required for a final occupancy certificate.

#### **Page 7- Design Build Project**

The second paragraph of the reports reads, "Mr. Carter stated that in his opinion, the Center project had become a design-build project" I said that due to the many design flaws in the construction documents, P&C has had to produce so many design change drawings that the project had essentially become a design-build project; meaning, P&C is very often redesigning the construction details found in the contract documents that do not work to keep the project moving forward. There is no design-build agreement in place that would allow P&C to be a designer and contractor, or for P&C to be running the project in a way that would benefit P&C. In fact, the extreme number of design flaws in the original construction documents has caused quite the contrary. P&C's two agreements with the Parish do not provide adequate scope or funding for the 435 additional required drawings that we have completed. The intent of P&C's construction administration agreement is not to have P&C redesign a flawed design. The intent of this or any Parish construction administration contract is for the architect or engineer to clarify minor design or construction problems, and resolve minor construction issues. One case in point to demonstrate the extent of extra work not within the scope of P&C's contract that P&C was required to complete without compensation is the following: P&C had to prepare computer models to analyze the fly tower portion of the building to verify structural capacities for braces being eliminated and modified. If this were not completed, there would not have been openings for access to the stage area. This engineering work led to just a couple of redesign drawings.

The time to complete this necessary work was hundreds of hours. There is no provision in our contract with the Parish for completing this type of engineering work or compensating P&C for this type of work. This work is clearly not construction administration, and it is clearly not construction management, and it is clearly not a benefit for P&C. If P&C had not done this work, who would have done it?

The last sentence of this section of the audit report reads, "Because P&C receives payment for services on a monthly basis rather than on a work completed basis, there is no incentive for P&C to expedite the construction process". P&C's contracts are based on lump sum amounts. Jefferson Parish decided to disperse compensation to P&C on a monthly basis because the construction issues related to the contract documents were so extensive, that this was the only way P&C could be partially compensated for the enormous amount of work P&C was completing. The monthly fee compensation has not kept pace with P&C's efforts. This high profile project creates more incentive for P&C to keep it moving forward than any other project in the Parish.

P&C has the pressure of filling in all the missing construction document pieces required for construction, while this project is regularly reported in the media and regularly discussed at council meetings. There is nothing that P&C could have done to make this project move forward more quickly.

#### **Page 11 – Change Orders Three & Five**

The last paragraph of this section of the report reads, "Due to JCC calculating their invoices using the Federal Means rates and not the actual rates paid, the Parish cannot demonstrate if the labor rates billed to the Parish were appropriate." P&C does not agree with this statement. The Work completed for change orders 3 and 5, was primarily concrete work. This additional work was due to the details furnished in the contract documents not being constructible. Much of this work was in response to the several hundred of structural details that P&C prepared. JCC started to estimate and price the extra concrete work before the work was completed. In the best interest of the Parish, it was agreed that industry standard rates for labor and equipment be used to estimate the work. The Means Manual and AED Green Book are the standards that were used to determine a fair price. Since the contractor owns much of the equipment on the job, this is perhaps the only way for a fair equipment rate to be determined.

Sections 7.1 and 7.2 of the supplementary conditions states that wages paid for change order labor shall be determined by actual rates, or if not available by the prevailing rates. Section 41 of the general conditions states that one of the ways change order work shall be paid for shall be a lump sum to be agreed upon by the Design Professional and the Contractor, and approved by the Owner. Section 01100- Summary, in the project specifications states that the AIA A201 general conditions document shall be part of the contract documents as if that document was attached. AIA A201 generally states that extra work shall be mutually agreed upon with the Owner, Architect/Engineer, and Contractor.

These are ambiguities in the construction documents. For this reason we consulted the attorney hired by the Parish to ask his opinion what would govern the change order pricing calculations and requirements. The attorney informed us that a change order price can be any amount that is deemed to be reasonable, and the Owner, A/E, and Contractor agree upon.

Actual labor and equipment rates were not used since the change order was being estimated before all the work was completed. Actual rates would have been used if this work were being completed on a Force Account basis. This work was not very easy to completely define during the early months of estimating while revision drawings were still being developed, so the contractor was estimating projected man-hours for labor before all of the labor work was complete. By the time the final concrete work of change order 5 was completed, there was a good handle on how much time the contractor had taken. Although this was not a force account, P&C and the Parish requested time sheets to substantiate the labor man-hours. The Contractor furnished time sheets for all of the concrete labor.

**Page 12 – Change Order Six**

P&C was not under contract with the Parish when the project was bid, when the Parish accepted the contractor's bid, or when the construction contract between JCC and the Parish was assembled. The Parish assembled the contract documents that include insurance and bonding requirements. The Parish bid documents require that proof of insurance and bonding is included with a contractor's bid on the bid day.

We understand that JCC has forwarded insurance certificates to Jefferson Parish on an annual basis at the Parish's request.

Please feel free to contact me at any time to discuss the project.

Yours truly,

*Michael A. Carter*

MICHAEL A. CARTER, P.E.  
President

RECEIVED  
LEGISLATIVE AUDITOR


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13 September 2011

Mr. Dan Daigle, CPA, CIA, CFE  
Assistant Legislative Auditor and  
Director of Compliance Audit  
Post Office Box 94397  
Baton Rouge, Louisiana 70804-9397

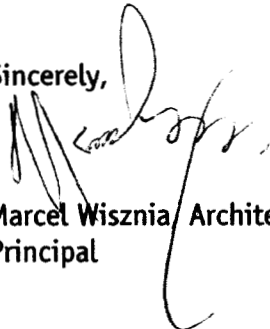
**Re: Audit Report  
Jefferson Parish Council  
Performing Arts Center Project**

Dear Mr. Daigle:

 Thank you for providing the opportunity for me to comment on the August 31, 2011-draft of your compliance audit on the Jefferson Parish Council - Performing Arts Center Project ("Draft Audit"). In response to your letter, I offer one point of clarification.

On page five of 26 of the Draft Audit, you state that, "In addition, the Parish awarded the construction contract to JCC on November 15, 2006. . . ." On November 15, 2006, the Jefferson Parish Council passed a resolution to execute the construction contract. Enclosure No.1. The February 12, 2007-construction contract states, "The Chairman . . . by virtue of Resolution . . . adopted the 15<sup>th</sup> day of November, 2006, does hereby grant . . . unto Contractor the contract . . . for construction. . . ." Enclosure No. 2.<sup>1</sup>

Sincerely,

  
Marcel Wisznia, Architect, AIA  
Principal

Enclosures (2).

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<sup>1</sup> The enclosed copy of the Performance Bond is missing the second page.

Enclosure No. 1

On motion of Mr. Lagasse, seconded by Mr. Young, the following resolution was offered:

**RESOLUTION NO. 106544**

A resolution accepting the lowest responsible bid of J. Caldarrers & Co., Inc. for labor, materials and equipment to construct the Performing Arts Center at Lesalle Park (Council District #2) in the amount of \$26,565,000.00 from bids received under Bid No. 50-81449 received on November 7, 2006 for the Department of Parks and Recreation.

**NOW, THEREFORE, BE IT RESOLVED** by the Jefferson Parish Council of Jefferson Parish, Louisiana, acting as governing authority of the Department of Parks and Recreation of said Parish:

**SECTION 1:** That the lowest responsible bid of J. Caldarrers & Co., Inc. for labor, materials and equipment to construct the Performing Arts Center at Lesalle Park (Council District #2) in the amount of \$26,565,000.00 from bids received under Bid No. 50-81449 received on November 7, 2006 be and is hereby accepted for the Department of Parks and Recreation.

**SECTION 2:** That the Chairman of the Council, or in his absence, the Vice-Chairman is hereby authorized to execute any contract documents to give effect to this acceptance in accordance with the requirements and specifications.

**SECTION 3:** The cost of \$26,565,000.00 is to be charged to 45670-4068-7454-58715.001.

The foregoing resolution having been submitted to a vote, the vote thereon was as follows:

**YEAS: 7**

**NAYS: None**

**ABSENT: None**

The resolution was declared to be adopted on this the 15<sup>th</sup> day of November, 2006.

THE FOREGOING IS CERTIFIED  
TO BE A TRUE & CORRECT COPY

*Eula A. Lopez*  
EULA A. LOPEZ  
PARISH CLERK  
JEFFERSON PARISH COUNCIL

Contract to be executed by:  
Dept. - Parish Attorney - A & E

Bid Proposal # 50-81449

Res. # 106544

WC10002607

A.47



Enclosure No. 2

AGREEMENT  
BETWEEN  
THE JEFFERSON PARISH COUNCIL  
AND  
(INSERT NAME OF CONTRACTOR)

THIS AGREEMENT made and entered into on this 12<sup>th</sup> day of February, 2007, by and between the Jefferson Parish Council, acting, as the context requires, either on its own behalf or as the governing authority of the political subdivision which has the legal authority and responsibility for this agreement and for whom the Work is being performed, hereinafter called "Owner", represented herein by its Chairman, John F. Young, Jr. and his authorized agents, duly authorized to act by virtue of Resolution No. 106544, adopted the 15<sup>th</sup> day of November, 2006, which is made a part hereof, and J. Calderera & Co., Inc., hereinafter called "Contractor".

NOW THEREFORE, for the considerations hereinafter expressed, the parties do agree as follows:

SCOPE OF WORK

The Chairman of the Jefferson Parish Council, John F. Young, Jr., by virtue of Resolution No. 106544, adopted the 15<sup>th</sup> day of November, 2006, does hereby grant and confirm unto Contractor the contract in the amount of Twenty-Six Million Five Hundred Sixty-Five Thousand Dollars (\$ 26,565,000.00), for construction of the Performing Arts Center, as per the General Conditions, any Supplementary Conditions, the Drawings and Specifications on file in the Office of the Chief Buyer for the Parish of Jefferson under Proposal No. 50-81449, and the Contractor's written Bid proposal dated November 7, 2006, copies of which are attached hereto and made a part hereof.

The Contractor and its successors and assigns hereby agree to perform the Contract well and faithfully in strict conformity with the terms and conditions of the Contract, including the General Conditions, any Supplementary Conditions, the Drawings and Specifications, the Instructions to Bidders, and Contractor's written Bid proposal attached hereto.

OWNER'S REPRESENTATIVE

The Department of Parks and Recreation or its designee, is responsible for or designed the Project which is the subject of this Agreement and is hereinafter referred to as the Design Professional who is to act as Owner's representative, and who is to assume all duties and responsibilities and have the rights and authority assigned to the Design Professional in the General Conditions in connection with the completion of Work in accordance with the General Conditions.

PAYMENT AND PERFORMANCE BOND

Contractor hereby firmly and truly binds himself as principal with \_\_\_\_\_, as surety, unto the Owner in the full and true sum of \$ Twenty-Six Million Five Hundred Sixty-Five Thousand Dollars (26,565,000.00) for the payment whereof Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents, according to the terms and conditions of the attached performance and/or labor and materials payment bond(s).

CONTRACT TIMES OR TERM

For construction contracts, the Contract Times, as set forth herein, shall commence to run on the date of execution or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. The Work will be substantially completed within 720 days after the date when the Contract Times commence to run as provided above, and completed and ready for final acceptance in accordance with the General Conditions within 730 days after the date when the Contract Times commence to run. This time allocation allows for 90 days of lost production due to inclement weather.

LIQUIDATED DAMAGES

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In accordance with Section 17 of the General Conditions, Owner and Contractor agree that as stipulated ("liquidated") damages for delay (but not as a penalty) Contractor shall pay the Owner Five Hundred Dollars (\$500.00) for each day after the time specified for Substantial Completion until the Work is substantially complete. After Substantial Completion of the Work Contractor shall pay to the Owner Five Hundred Dollars (\$500.00) for each day after Substantial Completion until the Work is complete and ready for final acceptance in accordance with the General Conditions.

Also, in addition to and not in lieu of the foregoing liquidated damages, Owner and Contractor agree that Owner shall be entitled to recover from Contractor or Contractor's surety additional liquidated damages in accordance with Section 17 of the General Conditions.

#### **PAYMENT AND TERMS**

The Owner binds and obligates itself to pay to said Contractor on proper completion of the Work under this Agreement those amounts due under the terms and conditions set forth in the General Conditions attached hereto.

Notwithstanding anything to the contrary in the foregoing, Contractor acknowledges and agrees that, pursuant to the applicable Laws and Regulations, this Agreement is subject to an annual appropriation dependency requirement to the effect that the renewal and/or continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement. If the Owner fails to appropriate sufficient monies to provide for payments under this Agreement, the Agreement shall terminate on the last day of the last fiscal year for which funds were appropriated. This ground for termination is in addition to any other grounds that are identified in the General Conditions or the Supplementary Conditions.

#### **CONTRACTOR'S REPRESENTATIONS**

In order to induce Owner to enter into this Agreement, the Contractor makes the following representations:

1. Contractor has visited the Site, has familiarized himself with and is satisfied as to the nature and extent of the Contract Documents, Work, locality, and as to all general, local and Site conditions and federal, state, and local Laws and Regulations, which may affect cost, progress, performance or furnishing of the Work.
2. Contractor has examined and carefully studied the Contract Documents (including any Addenda) and the other related data identified in the Bidding Documents including "technical data."
3. Contractor has carefully studied all (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Bidding Documents or in the Supplementary Conditions and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Bidding Documents or in the Supplementary Conditions. Contractor accepts the determination, if any, set forth in the Bidding Documents of the extent of the "technical data" contained in such reports and drawings upon which Contractor is entitled to rely. Contractor acknowledges that such reports and drawings are not Contract Documents and may not be complete for Contractor's purpose. Contractor acknowledges that Owner and Design Professional do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the Site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to

be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

4. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
5. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
6. Contractor has given Design Professional written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Design Professional is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnishing of the Work.

#### **CONTRACTOR'S REPRESENTATIONS FOR NON-CONSTRUCTION CONTRACTS**

1. Contractor has visited the Site, has familiarized himself with and is satisfied as to the nature and extent of the Contract Documents, Work, Locality, and as to all general, local and Site conditions and federal, state, and local Laws and Regulations, which may affect cost, progress, performance or furnishing of the Work.
2. Contractor has examined and carefully studied the Contract Documents (including any Addenda) and the other related data identified in the Bidding Documents including "technical data." relating to the requirements for the services, equipment, materials or supplies.
3. Contractor is aware of the general nature of work to be performed by Owner and others that relates to the Work as indicated in the Contract Documents.
4. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
5. Contractor has given the Owner or the Design Professional, if any, written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey an understanding of all terms and conditions for performance and furnish of the Work.

#### **ASSIGNMENT**

Neither the Owner nor the Contractor shall assign, sell, transfer or otherwise convey any interest in this Agreement, including any monies due or to become due to the Contractor under the contract, without the prior written consent of the other, nor without the consent of the surety unless the surety has waived its right to notice of assignment. Unless specifically stated to the contrary in any written consent, no assignment, sale, transfer, or conveyance will act as a release or discharge of a party from any duty or responsibility under this Agreement or the General Conditions.

**SUBMISSION TO JURISDICTION OF JEFFERSON PARISH COURTS**

This Agreement shall be deemed to be a contract made under the laws of the State of Louisiana, and for all purposes shall be interpreted in its entirety in accordance with the laws of said State. The contractor hereby agrees and consents to the jurisdiction of the courts of the State of Louisiana over its person. The parties hereto agree that the sole and exclusive venue of any suit or proceeding brought pursuant to this contract shall be the 24<sup>th</sup> Judicial District Court for the Parish of Jefferson, State of Louisiana.

**ENTIRE AGREEMENT**

This Agreement and the attached documents represent the entire agreement between the Owner and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the Owner, through its Council Chairman, and the Contractor.

**SEVERABILITY CLAUSE**

Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

Thus done and signed on the date first above written, in the presence of the undersigned competent witnesses.

WITNESSES:

*Paul C. Lopez*  
*Nanna Linn*

WITNESSES:

*Paul C. Lopez*  
*Nanna Linn*

PARISH OF JEFFERSON

BY:

*John E. Young Jr.*  
JOHN E. YOUNG JR., CHAIRMAN  
JEFFERSON PARISH COUNCIL

J. Calderera & Co., Inc.

*Joseph Calderera, Pres.*  
BY: *Joseph Calderera, Pres.*  
2.12.07

**PERFORMANCE BOND**

Bond No. 26-80-11

**KNOW ALL MEN BY THESE PRESENTS:**

That we, J. Calderara & Company, Inc. 201 Woodland Drive, LaPlace, LA 70068  
(Name of Contractor)

hereinafter \_\_\_\_\_ corporation  
(Corporation, Partnership, etc.)

called Principal, and National Union Fire Insurance Company of Pittsburgh, PA  
(Surety)

duly authorized to transact business in the State of Louisiana, hereinafter called "Surety, are held and firmly bound unto the Jefferson Parish Council, hereinafter called Owner, in the penal sum of Twenty six million five hundred sixty-five dollars and no/100- Dollars (\$ 26,565,000.00----- ) in lawful money of United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the 24 day of February, 2007, a copy of which is hereto attached and made a part hereof for the construction of the Jefferson Parish Performing Arts Center.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the Owner, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good any default in connection with the construction of such work, and all insurance premiums on said work, whether by subcontractor or otherwise., then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, that this bond shall inure solely to the benefit of the OWNER and its successors or assigns, and no other person shall have any right of action based hereon.

**LABOR AND MATERIALS PAYMENT BOND**

Bond No. 26-80-11  
KNOW ALL MEN BY THESE PRESENTS:

That we, J. Caldarera & Company, Inc. 201 Woodland Drive, LaPlace, LA 70068  
(Name of Contractor)  
a corporation  
(Corporation, partnership, etc.)

called "Principal", and National Union Fire Insurance Company of Pittsburgh, PA  
(Surety)

duty authorized to transact business in the State of Louisiana, hereinafter called "Surety", are held and firmly bound unto the Jefferson Parish Council, hereinafter called "Owner", in the penal sum of ~~Five Million Five Hundred Fifty~~ Dollars (\$26,565,000.00) in lawful money of United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that Whereas, the Principal entered into a certain contract with the Owner, dated the 24 day of February, 2007, a copy of which is hereto attached and made a part hereof for the construction of the Jefferson Parish Performing Arts Center.

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amount due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subcontractor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the work to be performed thereunder or the specification accompanying the same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

PROVIDED, FURTHER, it is expressly understood and agreed that this Bond is given in accordance with and limited to claims and claimants expressly covered by LSA-R.S. 38:2241 to 2248 inclusive. Final settlement between Owner and the Contractor shall not abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in (4).

counterparts, each of which shall be deemed an original, this 12<sup>th</sup> day of February, 2007.

Dawn Balan  
(Witness to Principal)

201 Woodland Drive, LaPlace, LA 70068  
(Address)

J. Calderera & Company, Inc.  
(Principal)

BY: [Signature]  
(Signature)  
President  
(Title)

201 Woodland Drive, LaPlace, LA 70068  
(Address)

Linda McLaure  
(Witness to Surety)

P.O. Drawer 51187, Lafayette, LA 70505-1187  
(Address)

National Union Fire Insurance Company of Pittsburgh, PA  
(Surety)

BY: [Signature]  
(Signature) David Patrick Daniel-82258

Attorney in Fact  
(Title)

P.O. Drawer 51187, Lafayette, LA 70505-1187  
(Address)

- NOTE:
- 1. DATE OF BOND must not be prior to date of Contract:
  - 2. Correct Name of Contractor.
  - 3. A Corporation, a Partnership, or an Individual.
  - 3. Correct Name of Surety.
  - 4. Authorization to Sign Must be Attached.

American Home Assurance Company  
National Union Fire Insurance Company of Pittsburgh, Pa.  
Principal Bond Office: 70 Pine Street, New York, N.Y. 10270

POWER OF ATTORNEY

No. 31-B-39166

KNOW ALL MEN BY THESE PRESENTS:

That American Home Assurance Company, a New York corporation, and National Union Fire Insurance Company of Pittsburgh, Pa., a Pennsylvania corporation, does each hereby appoint

—Samon C. Roy, David Patrick Daniel, Ralph Eugene Pool: of Lafayette, Louisiana—

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. have each executed these presents



this 3rd day of September, 2003.

*Michael C. Fay*  
Michael C. Fay, Vice President

STATE OF NEW YORK )  
COUNTY OF NEW YORK )ss.

On this 3rd day of September, 2003 before me came the above named officer of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seals of said corporations thereto by authority of his office.

*Dorothy L. Parker*  
DOROTHY L. PARKER  
Notary Public, State of New York  
No. 01PA808031  
Qualified in Richmond County  
Commission Expires June 28, 2007

CERTIFICATE

Excerpts of Resolutions adopted by the Boards of Directors of American Home Assurance Company and National Union Fire Insurance Company of Pittsburgh, Pa. on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of American Home Assurance Company and of National Union Fire Insurance Company of Pittsburgh, Pa. do hereby certify that the foregoing excerpts of Resolutions adopted by the Boards of Directors of these corporations, and the Powers of Attorney issued pursuant thereto, are true and correct, and that both the Resolutions and the Powers of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each corporation

this 12th day of February, 2007.



*Elizabeth M. Tuck*  
Elizabeth M. Tuck, Secretary