

DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS –  
CORRECTIONS SERVICES  
STATE OF LOUISIANA



FINANCIAL AUDIT SERVICES  
PROCEDURAL REPORT  
ISSUED AUGUST 23, 2017

**LOUISIANA LEGISLATIVE AUDITOR  
1600 NORTH THIRD STREET  
POST OFFICE BOX 94397  
BATON ROUGE, LOUISIANA 70804-9397**

**LEGISLATIVE AUDITOR**  
DARYL G. PURPERA, CPA, CFE

**ASSISTANT LEGISLATIVE AUDITOR**  
**FOR STATE AUDIT SERVICES**  
NICOLE B. EDMONSON, CIA, CGAP, MPA

**DIRECTOR OF FINANCIAL AUDIT**  
ERNEST F. SUMMERVILLE, JR., CPA

Under the provisions of state law, this report is a public document. A copy of this report has been submitted to the Governor, to the Attorney General, and to other public officials as required by state law. A copy of this report is available for public inspection at the Baton Rouge office of the Louisiana Legislative Auditor and at the office of the parish clerk of court.

This document is produced by the Louisiana Legislative Auditor, State of Louisiana, Post Office Box 94397, Baton Rouge, Louisiana 70804-9397 in accordance with Louisiana Revised Statute 24:513. One copy of this public document was produced at an approximate cost of \$1.05. This material was produced in accordance with the standards for state agencies established pursuant to R.S. 43:31. This report is available on the Legislative Auditor's website at [www.la.la.gov](http://www.la.la.gov). When contacting the office, you may refer to Agency ID No. 3342 or Report ID No. 80170056 for additional information.

In compliance with the Americans With Disabilities Act, if you need special assistance relative to this document, or any documents of the Legislative Auditor, please contact Elizabeth Coxe, Chief Administrative Officer, at 225-339-3800.



---

# Louisiana Legislative Auditor

Daryl G. Purpera, CPA, CFE



## Department of Public Safety and Corrections – Corrections Services

August 2017

Audit Control # 80170056

---

### Introduction

The primary purpose of our procedures at the Department of Public Safety and Corrections – Corrections Services (Corrections) was to evaluate certain internal controls Corrections uses to ensure accurate financial reporting, compliance with applicable laws and regulations, and to provide overall accountability over public funds.

Corrections is responsible for the custody and care of adult offenders across Louisiana with a mission to enhance public safety through the safe and secure incarceration of offenders, effective probation/parole supervision, and proven rehabilitative strategies that successfully reintegrate offenders into society, as well as to assist individuals and communities victimized by crime.

### Results of Our Procedures

We evaluated Corrections' operations and system of internal controls through inquiry, observation, and review of its policies and procedures, including a review of the applicable laws and regulations. Based on the documentation of the department's internal controls and our understanding of related laws and regulations, we performed procedures on selected controls and transactions relating to movable property, Prison Enterprises' nonpayroll expenditures, professional services contracts, and sheriff's housing payments. In addition, we performed procedures to determine that Corrections has complied with certain state laws and reviewed information relating to the renovation of a building at Corrections' Headquarters.

---

### Current-year Findings

#### Noncompliance with Public Bid Law for Building Renovations

Corrections, acting on behalf of the Louisiana Correctional Facilities Corporation (LCFC), did not comply with the requirements of the Public Bid Law in the renovations performed on the building located adjacent to Corrections' Headquarters and referred to as Building 10. The nature of the work undertaken in regard to Building 10 meets the definition of a public work under Louisiana Revised Statute (R.S.) 38:2211(A)(12), which defines a public work as "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." R.S. 38:2212 requires that contracts for

public works that exceed the contract limit of \$152,550<sup>1</sup> shall be advertised and let for bid through a sealed bidding process.

In addition, R.S. 15:832.1 authorizes the use of inmate labor in connection with a particular capital construction project on the grounds of a penal or correctional facility, which is defined as any location in which inmates are housed on a permanent basis. However, the provisions of R.S. 15:832.1 are not applicable to this project since the Corrections' Headquarters Complex, which includes Building 10, does not permanently house inmates. *Executive Order BJ 14-10* authorized the use of inmate labor for the renovations of Building 10. However, since *Executive Order BJ 14-10* did not state any other authority upon which it relied except for R.S. 15:832.1, and there appears to be no other legal authority for the former governor to exempt Corrections, Prison Enterprises, or LCFC from the provisions of the Public Bid Law or the provisions of R.S. 38:2310, *et seq.*, the Public Bid Law and R.S. 38:2310, *et seq.* would be applicable. Therefore, the required bid process was not utilized to advertise and let the contract for the renovation of Building 10 in accordance with the Public Bid Law.

Noncompliance with the Public Bid Law resulted in not all potential vendors and contractors being notified of the project. The total cost of the Building 10 renovations equaled approximately \$5.9 million. The Public Bid Law ensures that public entities receive the best possible price when using public funds for public works.

Corrections incorrectly presumed bidding was not required in accordance with the Louisiana Procurement Code (R.S. 39:1551-1775). However, in this case, the Building 10 renovations were considered a public works project; therefore, the Public Bid Law, rather than the Procurement Code, would apply. In addition, Corrections relied on *Executive Order BJ 14-10* which improperly authorized the use of inmate labor on the Building 10 renovations.

### **Noncompliance with Public Bid Law for Architectural Services on Building Renovations**

Corrections, acting on behalf of LCFC, did not properly let architectural services for the renovations performed on Building 10. Building 10 is located adjacent to Corrections' Headquarters and was renovated for use by Prison Enterprises and the Department of Corrections Credit Union (DOCCU).

R.S. 39:1481, *et seq.*, which governed contracts for professional, personal, consulting, and social services, was applicable to Corrections when the agreement with GraceHebert Architects (GraceHebert) was signed.<sup>2</sup> As a contract for professional services, the architectural services could ordinarily be awarded without any required competitive bidding or competitive negotiation in accordance with R.S. 39:1494 (see R.S. 39:1617 for current statute). However, since the estimated project cost of \$3,095,505 for the Building 10 renovation was greater than \$500,000, the provisions of R.S. 38:2310, *et seq.* would apply.

---

<sup>1</sup> The contract limit for public works at the time in which the Building 10 project commenced was \$150,000.

<sup>2</sup> Corrections, on behalf of LCFC, entered into an agreement for architectural services with GraceHebert, Inc. for the work on Building 10 on August 11, 2014.

R.S. 38:2310 *et seq.*, which is part of the Public Bid Law, provides for the process for selection of “professional services” for public contracts by agencies for construction of or additions, renovations, and restoration to buildings, plants, and related facilities. Contracts for architects, engineers, and landscape architects under the provisions of R.S. 38:2310, *et seq.* must be let through a Request for Qualifications process and must utilize the various licensing boards for these professions. R.S. 38:2316 notes that the provisions of R.S. 38:2310, *et seq.* will not apply to contracts for architects, engineers, and landscape architects in which the estimated project budget cost is \$500,000 or less.

Noncompliance with the Public Bid Law by not properly letting the architectural services resulted in not all potential architects being notified of the project. The cost for the design work provided by GraceHebert for the Building 10 renovations totaled approximately \$557,000.<sup>3</sup> The Public Bid Law ensures that public entities receive the best possible price when using public funds for public works.

**Recommendation:** Management should ensure that Corrections and LCFC comply with all applicable laws, including the Public Bid Law.

**Management’s Response:** Management did not concur with the findings (See Appendix A for management’s full response).

**LLA Additional Comments:** In its response, management provided information in support of its action regarding Building 10. None of management’s assertions, however, change the fact that the Public Bid Law applied in this case and was not followed. Our responses to the specific assertions made by management are as follows:

**Assertion #1 – No State General Funds used:** The funds of Corrections, Prison Enterprises, Facility Planning and Control (FPC), and LCFC bond proceeds are all public funds and their expenditures on a public works project by any of these entities requires compliance with the Public Bid Law.

**Assertion #2 – Savings were achieved from not bidding out the entire project:** There is no exception from the Public Bid Law provided under the theory of saving public funds. As the project was not properly bid out, there is no way to accurately determine what amount the winning bidder would have submitted.

**Assertion #3 – No intent to bypass policy, procedure, or statute, including the Public Bid Law:** Our findings merely note a lack of compliance with the Public Bid Law and do not attribute any intent behind the noncompliance.

**Assertion #4 – All contracted services for mechanical and electrical work and all supplies were publically bid or purchased:** The Public Bid Law does not allow for the splitting of the various parts of a public works project. The project as a whole, including labor, was required to be bid as a single project by Corrections or LCFC.

---

<sup>3</sup> LCFC - \$282,000; DOCCU - \$275,000

**Assertion #5 – Various Corrections projects have saved the state money:** While there may be some potential savings to the state obtained through unrelated projects, the Building 10 project was not properly let in accordance with the Public Bid Law.

**Assertion #6 – Corrections had a short deadline for finding a new location for Prison Enterprises following Water Campus Project Announcement:** The Public Bid Law process from advertisement to the opening of bid may be accomplished within a month. The Public Bid Law also provides provisions for responding to emergency situations [R.S. 38:2212(P)]; however, the requirements for these emergency provisions were not followed.

**Assertion #7 – Corrections needed to relocate Credit Union staff due to space concerns at Headquarters:** The Building 10 public works project required compliance with the Public Bid Law. Corrections' need to relocate the staff of a private company does not afford an exception to the Public Bid Law.

**Assertion #8 – Executive Order BJ 14-10 directed Corrections to utilize offender labor for renovations on Building 10 and was done to provide offender training and rehabilitation and create savings of approximately \$3.3 million:** The executive order solely relied upon authority under R.S. 15:832.1. The statute authorizes the governor by executive order to authorize the use of offender labor for renovations at penal and correctional facilities, and limits the definition of these facilities to locations that permanently house offenders. Neither Building 10 nor the remainder of the Corrections' Headquarters permanently houses offenders. Therefore, the executive order cannot be construed as authorizing the use of offender labor on the public works project for Building 10.

**Assertion #9 – While R.S. 15:832.1 appears to limit the use of offender labor, it must be read in conjunction with R.S. 15:832(C). The provisions of R.S. 15:832(C) are an exclusion from the Public Bid Law:** The concluding provisions of R.S. 15:832 state, "The provisions of this Section shall not be construed to limit the applicability of R.S. 38:2212 to any work undertaken pursuant to this Section." In other words, while Corrections is given broad authority to utilize offender labor in construction, such authority is clearly limited by compliance with the Public Bid Law. Use of offender labor is expressly limited to those projects below the statutory contract limit, absent a specific exclusion. As stated above, no statutory exclusion applies in this case.

**Assertion #10 – LCFC properly bid out all parts of the Building 10 project:** The Public Bid Law specifically prohibits the splitting of elements of a public works project to avoid compliance with the Public Bid Law. As the use of offender labor was not authorized, the entire Building 10 public works project, including labor, should have been properly bid out as a single package.

**Assertion #11 – Corrections is not, and cannot legally serve as, the agent for LCFC. LCFC is created outside of the executive branch and the department:** The legal authority, or lack thereof, for Corrections to act as agent for LCFC is not questioned by

the LLA's finding and does not change the fact that the contract for architectural services with GraceHebert was executed by LCFC and by Corrections "as agent" for LCFC. LCFC, as a public corporation of the State created by statute and whose board members are subject to appointment by the governor and confirmation by the Senate, is statutorily placed within the executive branch of government.

**Assertion #12 – Part VI of Title 38 of the Revised Statutes, addressing the selection of Architectural, Engineering, and Landscape Architectural services, does not apply to LCFC, as R.S. 39:1785 provides the sole laws applicable to LCFC. LCFC is similar to the Road Home Corporation:** The fact that R.S. 39:1785 expressly states that LCFC is subject to specific laws does not automatically exclude it from being subject to a general law under R.S. 39:1781. LCFC is not the same type of entity as the Road Home Corporation, but is rather more akin to the Office Facilities Corporation (OFC), also created in Title 39. The laws applicable to LCFC, specifically R.S. 39:1781 and 39:1782, provide that these laws are supplemental to general laws applicable to LCFC, but will prevail in cases of conflict. The statutes regarding the Road Home Corporation do not contain similar language.

The Attorney General (AG) in *Opinion No.96-440* stated that laws applicable to OFC with nearly identical language to R.S. 39:1781, 39:1782, and 39:1785 did not preclude OFC from compliance with laws generally applicable to public corporations, such as the Public Lease Law, except where a direct conflict exists between a duty or power of the corporation and general law.

R.S. 38:2310, *et seq.*, by its terms, applies to state public corporations, such as LCFC in the executive branch. There are no statutory provisions enumerating the powers or duties of LCFC that directly conflict with LCFC's obligations under R.S. 38:2310, *et seq.*

Finally, R.S. 39:1785(B) provides that LCFC shall comply with any applicable procurement law relative to the item or items being procured, and that the State shall follow all applicable procurement laws when LCFC is used as a financing vehicle. The procurement of architectural services for public works projects by State entities, including LCFC, is governed by R.S. 38:2310, *et seq.*

**Assertion #13 – As stated in the finding, R.S. 39:1481, *et seq.* regarding procurement for professional, personal, consulting, and social services contracts were applicable when the agreement was signed and does not require competitive bidding or competitive negotiation. LCFC procured the architectural services under this provision and not R.S. 38:2310, *et seq.*:** As the public works project for Building 10 was over \$500,000, the provisions of R.S. 38:2310, *et seq.* and not the provisions of R.S. 39:1481<sup>4</sup> would have applied to the selection of GraceHebert under the architectural service contract. Furthermore, R.S. 39:1482(C)<sup>5</sup> expressly noted that the provisions of

---

<sup>4</sup> See now R.S. 39:1552

<sup>5</sup> See now R.S. 39:1554(L)

R.S. 39:1481, *et seq.* do not apply to contracts for architectural services otherwise subject to R.S. 38:2310, *et seq.*

**Assertion #14 – Regardless of the statutory process used, the cost of the services would have been identical because the calculated fees for both statutory processes would have been based upon the 2014 State Fee Curve as approved by FPC:** The proper process for selection of the architectural services contract for Building 10 was not followed.

**Assertion #15 – GraceHebert was already contracted by DOCCU for work it was going to undertake on Building 10 using its private funds and was previously selected as the most qualified architect on a separate Corrections project:** The proper process for selection of the architectural services contract for Building 10, a public building, was not followed. There is no statutory waiver provided.

---

## **Other Results of Our Procedures**

### **Movable Property**

Based on risks identified, we performed procedures to determine that controls over movable property were adequate for Corrections' multiple locations. We performed procedures to ensure that property of Corrections' Administration (Headquarters), Dixon Correctional Institute, Rayburn Correctional Center, Probation and Parole, and Prison Enterprises was properly located and safeguarded on site, timely tagged, accurately recorded, and disposals were approved prior to removal. We also obtained and reviewed the Certifications of Annual Property Inventory, totaling approximately \$66 million for Corrections' various locations, to determine if there was an excessive amount of unlocated property. Our procedures determined that assets were properly safeguarded and recorded and complied with state property regulations.

### **Prison Enterprises' Nonpayroll Expenditures**

Prison Enterprises (PE) is a division of the Department of Public Safety and Corrections and is authorized under the provisions of R.S. 15:1151-1161. PE purchases a variety of items due to its numerous operations, which include agriculture, manufacturing plants (license plates, furniture, soap, mattress, garment, etc.), printing, silk screening, laser engraving, embroidery, canteen distribution, janitorial services, and metal fabrication. We obtained an understanding of PE's controls over nonpayroll expenditures and examined selected transactions. Based on the results of our procedures, PE has adequate controls in place to ensure that nonpayroll expenditures were properly approved, adequately supported, accurately recorded, and in compliance with applicable laws and regulations.



**Professional Services Contracts**

Corrections contracted for various services such as teachers, instructional aides, healthcare claim management, doctors, counselors, laboratory services, etc. We traced selected contract payments to contract terms and evaluated compliance with laws and regulations. We also ensured selected contracts had the required levels of approval and were supported by adequate documentation. We performed procedures to ensure that Corrections monitors contract terms and deliverables as well as contractor performance. Based on the results of our procedures, Corrections had adequate controls in place to properly monitor contract expenditures and evaluate contractor performance.

**Sheriff's Housing Expenditures**

During fiscal year 2017, Corrections expended approximately \$160 million for local housing, transitional work programs, and local re-entry programs for state offenders. Sheriff's housing payments are made in accordance with R.S. 15:824(B)(1)(a), which authorizes Corrections to pay a per diem rate of \$24.39 to each parish sheriff, or to the governing authority of those parishes in which the governing authority operates the parish jail, for the housing and feeding of state adult offenders. Corrections is also authorized to pay a per diem rate of \$11.25 per offender for contract transitional work programs and \$15.39 per offender for non-contract transitional work programs.

We performed procedures to determine whether invoices for sheriff's housing expenditures are certified, mathematically correct, and agree to amounts recorded in the accounting system. We also determined whether the per diem rates, custody locations, and custody dates per the invoices agree to the information in the department's offender records system. Based on the results of our procedures, we determined that the correct per diem amounts were paid and properly recorded.

**Compliance with Certain State Laws**

We reviewed R.S. 36:8.2, which requires certain state departments to establish an effective internal audit function that adheres to the Institute of Internal Auditors, International Standards for the Professional Practice of Internal Auditing. We also reviewed R.S. 47:1676(G) regarding the procedures state agencies are required to follow for referring delinquent debt to the Office of Debt Recovery for collection. We interviewed agency personnel and reviewed supporting documentation to obtain an understanding of the requirements and the procedures implemented by the department to ensure compliance with these laws. We determined that Corrections has complied with these state laws.

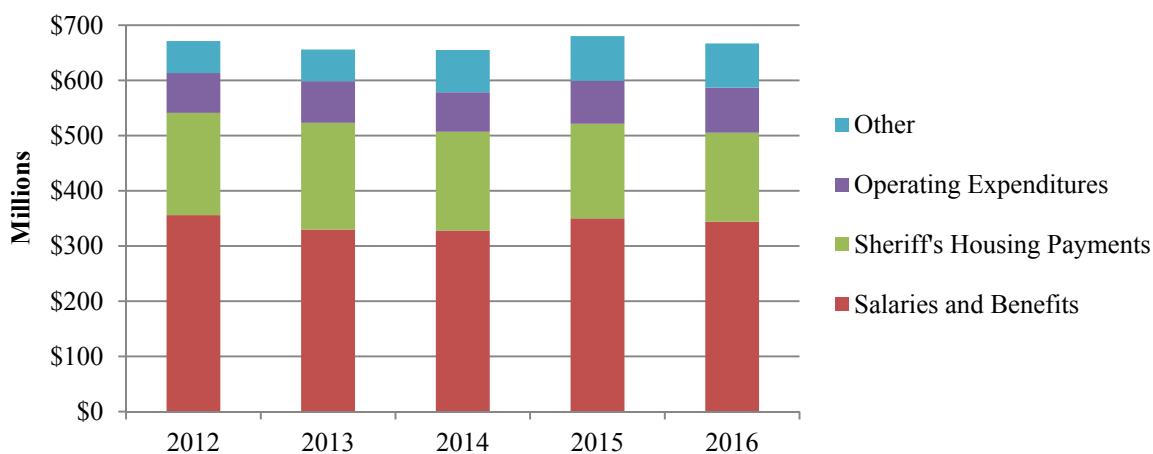
---

## Trend Analysis

We compared the most current and prior-year financial activity using Corrections’ annual fiscal reports and/or system-generated reports to identify trends and obtained explanations from management for any significant variances that could potentially indicate areas of risk. Management provided reasonable explanations for all significant variances.

As shown in Exhibit 1, expenditures for Corrections have fluctuated over the past five fiscal years. In 2013, expenditures decreased due to the closure of three correctional facilities. Expenditures increased in fiscal years 2014 and 2015 due to the transfer of offender healthcare expenditures from the public hospitals to Corrections and increased salaries and related benefits. For fiscal year 2016, expenditures have been reduced as a result of budget cuts to state funding. The department’s expenditures by type are also presented in Exhibit 1 for all correctional facilities, Corrections’ Administration, Sheriff’s Housing, and Adult Probation and Parole for fiscal years 2012 through 2016. Operating expenditures include operating services, supplies, interagency transfers, and travel. Other includes expenditures for other charges, auxiliary programs, professional services, and capital outlay.

**Exhibit 1**  
**Expenditures, by Fiscal Year**

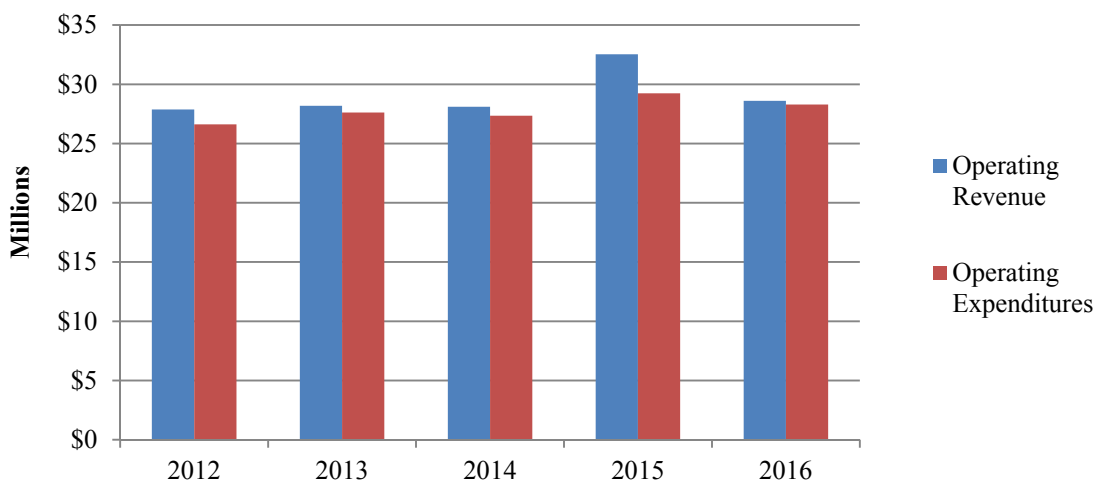


Source: FY 2012–2016 Annual Fiscal Reports



We also presented Prison Enterprises' operating revenues and expenditures for the last five fiscal years (see Exhibit 2). The operating revenue of Prison Enterprises has remained relatively stable except for fiscal year 2015, where sales increased by approximately \$4.4 million due to increased sales of the soybean crop and the increased sales and timing of cattle sales. The operating expenditures of Prison Enterprises have remained steady, ranging from approximately \$27-\$29 million each fiscal year.

**Exhibit 2**  
**Prison Enterprises**  
**Operating Revenue and Expenditures**



Source: FY 2012–2016 Annual Fiscal Reports

---

## Other Reports

On January 18, 2017, a report on the Louisiana State Penitentiary at Angola (Angola) was issued by LLA's Investigative Audit Services. The investigative audit found that Angola employees failed to take leave while working on Warden Burl Cain's personal residence; lodging and meals were provided to Warden Cain's family members; Angola's PE facility refurbished iron gates for Warden Cain's personal residence; and public funds were used to purchase appliances and household furnishings for the Warden's house at Angola without proper authority. Other findings included revenue from the Angola Rodeo was not deposited with the State Treasury; the Angola Prison Rodeo Committee improperly donated funds to purchase a bus; the Angola Employee Recreation Committee's (AERC) use of state assets without a contract; personal purchases and cash withdrawals made from AERC by a former Angola employee; AERC Rodeo concession sales revenue not deposited; and personal purchases made from the Angola Hook and Ladder Club Account by an Angola employee. This report is available on the LLA website.

Other procedures are currently being conducted by LLA's Performance Audit Services on Corrections' Criminal and Justice Unified Network (CAJUN) System and the Offender Management System. A report may be issued at a later date to communicate the results of that engagement. Such report, if issued, will be available on LLA's website.

Under R.S. 24:513, this report is a public document, and it has been distributed to appropriate public officials.

Respectfully submitted,



Daryl G. Purpera, CPA, CFE  
Legislative Auditor

LMN:NM:WDG:EFS:aa

DPS-CORRECTIONS 2017

## **APPENDIX A: MANAGEMENT'S RESPONSES**



# Department of Public Safety & Corrections

State of Louisiana  
Office of Management and Finance

JOHN BEL EDWARDS  
Governor



JAMES M. LE BLANC  
Secretary

July 20, 2017

Daryl G. Purpera, CPA, CFE, Legislative Auditor  
Louisiana Legislative Auditor's Office  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

Please accept this as the Department of Public Safety and Corrections—Corrections Services' (DPS&C-CS) response to the recent financial compliance audit conducted at the Department with regards to Building 10.

The Building 10 Renovation Project was the first of its kind undertaken by the Department with the intent to benefit the State in using available resources that would renew the use of a neglected and abandoned state property and make available space for State employees. It was accomplished via a unique public/private partnership and the use of offender labor. The total cost for the project was \$6,339,937, of which no appropriated State General Funds were used for payment. Of the total cost, \$3,672,147 was financed through bonds issued by the Louisiana Correctional Facilities Corporation (LCFC) to be paid through Prison Enterprises self-generated funds, \$463,700 from Facility Planning and Control for the replacement of windows, and \$2,194,090 was funded by the Department of Corrections Credit Union's (DOCCU) private sector funds. It is estimated that this project would have cost \$9,619,000 had it been bid as a public works project under one bid package and precluding the use of offender labor. Through this unique partnership with a private entity and the use of offender labor, the **Department saved the State an estimated \$3.3 Million.** There was never intention by anyone involved in this project to bypass policy, procedure, or statute nor was there intent to be noncompliant with public bid laws. In fact, all contractual services for mechanical and electrical work and all supplies were publicly bid or purchased off of state contracts.



To understand the need for the Building 10 Renovation project, it is important to recognize the issues that the Department faced when the building became available to the Department:

- In the Fall of 2012, the Department made a decision to improve time computation efficiency through the centralization of its pre-classification function for offenders sentenced to the Department by consolidating that functions at its Headquarters. This was a Lean Six Sigma project and saved the State an estimated \$1 Million. As a result, the Department increased the number of positions at Headquarters by 48 full-time positions and decreased the field staff proportionally.
- When the State decided to transition the charity hospital system, DPS&C was charged with assuming the oversight and coordination of healthcare for all DPS&C offenders and emergency care for all offenders at the parish and local level. As a result, the Department increased healthcare staff at our Headquarters operations by 24 full time positions to accommodate case management and scheduling functions. For this effort, an initial funding level of \$50 Million was established in the Department's budget. Since that time, through the efficiency efforts of the Department, that allocation has decreased to approximately \$30 Million, thereby saving the State \$20 Million.
- As a result of the previous administration's Governmental Efficiency and Management Systems (GEMS) project, the Department was able to expand reentry services to those housed at local level facilities. The oversight and management of the field component of this expansion is accomplished through staff at Headquarters, resulting in an increase of 18 full-time positions at Headquarters. The Department's success through the GEMS initiative has resulted in a marked decrease in the offender population and continues to save the State \$16.5 Million annually.
- When the state announced the Water Campus project, the Department was notified that the Prison Enterprises Headquarters Building would be torn down and the 31 staff working there would have to be relocated. The Department was given a short deadline for finding a new location for this operation.

With the increase of staff at Headquarters as noted above, the Department began looking at all space options. Among the various options, the leadership team recognized that the Department of Corrections Credit Union housed 30 staff members in a large portion of a DPS&C Headquarters building. And while they Credit Union being housed at Headquarters provides a valuable service to DPS&C-CS employees, the Department did not view this as a wise use of our resources considering that departmental staff were being subjected to a poor work environment and cramped working spaces. Subsequently, the Department approached the DOC Credit Union about relocating from their current offices to make more room for departmental staff.



As all of these issues began to surface and leadership began to develop a plan of action for the Prison Enterprises relocation, the Baton Rouge Police Department announced its planned relocation from Building 10 on the Department's Headquarters Compound on Mayflower to its new buildings on Airline Highway. At the time, Building 10 (47,000 sq. ft.) was in poor condition and with the planned departure of the Baton Rouge Police Department, the local Beauregard Town community, and the Foreign Language Academic Immersion Magnet (FLAIM) school situated next door were concerned as to what would become of the space. The potential for vandalism and vagrants was high and the Department immediately began to discuss options for securing that location and ensuring it didn't become a public safety hazard for the community.

The plan to renovate Building 10 began to come together when the Credit Union agreed to pay for the renovation of a part of Building 10 to be used for housing its operations and staff and to apply that renovation cost as its rent. This freed up the large part of the Department's office building that DOCCU was occupying at the time, thus allowing space to house departmental staff.

At the same time Prison Enterprises (PE), began to review its relocation options. PE leadership staff was tasked to evaluate lease options, options for building a new PE Headquarters at one of the Department's institutional sites, and the option of renovating the remainder of Building 10. The recommendation was made to renovate the remaining portion of Building 10 and keep the Prison Enterprises Headquarters operations centrally located with all DPS&C-CS Headquarters operations.

It was a logical and practical decision and in the best interest of efficiency to support the efforts of the Credit Union and Prison Enterprises to take on this project.

As noted above, the funding and coordination of this project was unlike any previous project undertaken by the Department as:

- Payment for the project did not involve the use of any appropriated general fund money,
- Payment was accomplished through private sector funds and a bond issuance through the Louisiana Correctional Facilities Corporation secured by self-generated revenue.
- The total cost for the project was \$6,339,973, of which \$3,672,147 was financed through bonds issued by the Louisiana Correctional Facilities Corporation (LCFC) to be paid through Prison Enterprises self-generated funds, \$463,700 from Facility Planning and Control for the replacement of windows, and \$2,194,090 was funded by the Department of Corrections Credit Union's (DOCCU) private sector funds.
- This project was approved through Louisiana Correctional Facilities Corporation (LCFC), the entity that would also handle the bonding and financing of the project.



LCFC presented the proposal to the bond commission and was given approval to move forward with the funding of the project.

- This project involved two separate entities and would require major coordination and administrative oversight.
- The allocation of the 47,000 sq. ft. of the building was 31,500 sq. ft. (67%) for Prison Enterprises and 15,500 sq. ft. (33%) for DOCCU.

With regards to the findings contained in the report, the Department has the following response:

**Finding 1:** Improper use of inmate labor in connection with a particular capital construction project and noncompliance with Public Bid Law for Building 10 Renovations

**Management's Response:**

The Department does not concur with that part of the report's legal conclusion that that the use of offender labor for the Building 10 renovations was not authorized.

Executive Order BJ-14-10 directed the Department to utilize offender labor for the renovations of Building 10 at the Department of Corrections Headquarters complex located in Baton Rouge, Louisiana, so that the space could be utilized for administrative services. The order directing the Department to utilize offender labor for this specific purpose was signed on August 11, 2014, by the Honorable Bobby Jindal, Governor of Louisiana, after review and approval by the governor's executive counsel and legal staff. The goal of the order was to utilize inmate labor to do the demolition and basic carpentry work in order to provide training and rehabilitation for the prison population and in order to save approximately \$3.3 Million.

The order signed by Governor Jindal specifically references LSA-R.S. 15:832.1 whereby the governor is given broad authority to authorize the use of offender labor in connection with the renovation, maintenance, repair, or remodeling of certain public works.

While the report notes that LSA-R.S. 15:832.1 appears to limit to the use of offender labor to public works within the confines of a penal or correctional facility, this is very narrow construction of the statute that fails to interpret the text in light of surrounding statutory authority. Specifically, LSA-R.S. 15:832(C), as amended by Acts 1997, No. 640, §1, allows the use of offender labor in connection with construction or maintenance of any public work subject to two exceptions—neither of which is applicable in this case. The use of offender labor in connection with a public works project as provided for in LSA-R.S. 15:832(C) necessarily means that the project is not subject to public bid laws regarding labor procurement. A genuine interpretation of the two statutes shows that the provisions complement one another, and the governor has statutory authority to authorize the use of offender



labor in connection with a public works project subject to certain exceptions (which do not apply).

Because of the Department's good faith reliance upon a signed executive directive, and accepting the directive in light of complementary provisions of various offender labor statutes, the Department must disagree with the report's legal conclusion that the use of offender labor in connection with the Building 10 renovations was improper.

Further, the Department does not concur with the that part of the finding that the Louisiana Correctional Facilities Corporation (LCFC) did not bid the entire project through a sealed bid process as stipulated in R.S. 38:2212 which requires that contracts for public works be advertised and let for bid through a sealed bidding process.

The LCFC did advertise and let contracts via a sealed bid process for all parts of the project requiring bidding. The parts of the project that required bidding were the Mechanical component and the Electrical Component. These two components compromised the largest value of the Building 10 Renovation project. The chart in Attachment 1, "Prison Enterprises / Credit Union Cost Tracking" delineates the costs incurred by LCFC on behalf of Prison Enterprises paid from bond proceeds. The chart shows that LCFC spent approximately \$1.5 Million on the Mechanical part of the project and \$1.3 Million for the electrical part of the project out of an overall cost of \$3.67 Million born by LCFC on behalf Prison Enterprises. Both components were bid through a sealed bid process through Grace Hebert Architects as part of its designer contract (see Attachment 2, "Advertisements for Mechanical and Electrical"). The contract for the mechanical work was awarded to Airtrol and the contract for the electrical work was awarded to Dykes via this sealed bid process. Furthermore, all materials and supplies provided for this project by the Department were purchased following all applicable procurement laws and regulations.

The Louisiana Correctional Facilities Corporation is a nonprofit corporation that was created by the enactment of LSA-R.S. 39:170, *et seq.* LCFC is established by law as a nonprofit corporation outside the executive branch of government; thus, the corporation is separate and apart from the Department, an executive agency. *Id.* The corporation is subject to the General Nonprofit Corporation Law as contained in Title 12 of the Louisiana Revised Statutes, and LCFC is also authorized, from time to time, to issue bonds for any purpose provided for by law. *Id.* As an entity created outside both the executive branch and Department, no bonds or certificates issued by the corporation shall be deemed to constitute a debt or liability to the state of Louisiana or any political subdivision. *Id.* At no point in the Louisiana Correctional Facilities Corporation Act is the Department or an employee of the Department granted legal authority to act as an agent on behalf

of LCFC. Thus, the Department must disagree with the report's legal conclusion that the Department acted on behalf of LCFC.

Furthermore, the Department and legal counsel for the LCFC disputes the report's legal conclusion that LCFC violated any applicable portions of the Public Bid Law (see Attachment 1; Letter from Jones Walker). The report asserts that LCFC violated provisions of Part VII, Chapter 10, of Title 38 concerning the letting of certain contracts for professional services when the value of the project exceeds \$500,000. The provisions cited by the report were enacted by Acts 1975, No. 721 § 1. As more fully set forth below, the provisions cited by the report are not applicable to LCFC due to the clear wording of the Louisiana Correctional Facilities Corporation Act as enacted by Acts 1985, No. 893 §1—the most recent expression of legislative will.

Certain laws are made applicable to LCFC through LSA-R.S. 39:1785, and among these are the Public Records Law, Public Meeting Law, Code of Ethics, and the Bond Validation Procedures Act. Rather than cite the entirety of the Public Bid Law as applicable to LCFC, only certain sections of Public Bid Law are made individually applicable to LCFC. As stated in R.S. 39:1785(C), the only portion of the public bid law made applicable to LCFC is R.S. 38:2211, *et seq*, or Part II, Chapter 10 of Title 38. The particular provisions noted by the report are R.S. 38:2310, *et seq*, or Part VII, Chapter 10 of Title 38.

The Public Bid Law provisions cited by the report are entirely inapplicable to LCFC, as these provisions are not referenced by the Louisiana Correctional Facilities Corporation Act. In fact, the LCFC Act specifically states that to the extent provisions of this Chapter are inconsistent with any other provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed controlling. See LSA-R.S. 39:1782. See *also* La.Atty.Gen.Op. 08-0346 (holding that the substantially similar Road Home Corporation was not subject to Public Bid Law, and the Act enabling the Road Home Corporation controls as to any provisions of law to the contrary).

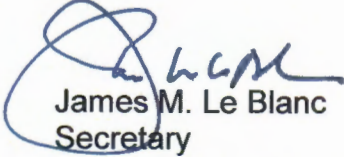
**Corrective Action Plan:**

No Corrective Action needed.



In closing, should you have any questions or require additional information, please contact Thomas Bickham, Undersecretary at (225) 342-6739.

Sincerely,



James M. Le Blanc  
Secretary

JML/tcb

Attachments:

1. Prison Enterprises / Credit Union Cost Tracking
2. Advertisements for Mechanical and Electrical
3. Letter from Jones Walker

7/19/2017

Prison Enterprises/ Credit Union Cost Tracking

	Total Project Cost	Allocation		Comments
		LCFC (PE)	Credit Union	
		67%	33%	
<b>Mechanical</b>	\$ 1,339,400.00	\$ 1,017,061.34	\$ 500,940.66	
Change Order #1	\$ 130,603.00			
Change Order #2	\$ 23,535.00			
Change Order #3	\$ 24,464.00			
<b>Total Mechanical</b>	<b>\$ 1,518,002.00</b>			
<b>Electrical</b>	\$ 1,228,000.00	\$ 891,195.25	\$ 438,946.91	
Change order #1	\$ (20,760.50)			
Change order #2	\$ 48,529.00			
Change order #3	\$ 42,507.00			
Change order #4	\$ 31,866.66			
<b>Total Electrical</b>	<b>\$ 1,330,142.16</b>			
	<b>\$ 2,848,144.16</b>	<b>\$ 1,908,256.59</b>	<b>\$ 939,887.57</b>	Note: The cost applied to the Credit Union against the PE Mechanical and Electrical cost being paid by PE

	TOTAL PROJECT COST	AMOUNTS ENCUMBERED		
		LCFC (PE)	Credit Union	
Grace & Hebert Design Contracts	\$ 556,673.81	\$ 282,000.05	\$ 274,673.76	
Mechanical - Airtrol	\$ 1,518,002.00	\$ 1,518,002.00		
Electric - Dykes	\$ 1,330,142.16	\$ 1,330,142.16		
Mech/Elec Direct Pay Rqsts	\$ 129,427.20		\$ 129,427.20	
Project Manager - salary	\$ 240,850.33		\$ 230,814.90	
Materials/Tools/Rentals/Etc	\$ 2,101,177.84	\$ 542,002.83	\$ 1,559,175.01	Total encumbered times 67% (PE portion) - PE Encumbered
			\$ -	
		\$ -	\$ -	
<b>Running Totals</b>	<b>\$ 5,876,273.34</b>	<b>\$ 3,672,147.04</b>	<b>\$ 2,194,090.87</b>	

**Publisher of  
THE ADVOCATE**

The hereto attached notice was published in THE ADVOCATE, a daily newspaper of general circulation published in Baton Rouge, Louisiana, and the Official Journal of the State of Louisiana, City of Baton Rouge, and Parish of East Baton Rouge, in the following issues:

Galleani

Sworn and subscribed before me by the  
person whose signature appears above

My Main Christian

**ADVERTISEMENT**  
**ENCL 04**  
Deliver sealed bids to  
Grace Robert Architects,  
APAC, 361 Government  
Street, Suite 200, Baton  
Rouge, Louisiana 70802,  
before 2:00 PM, Tuesday  
20th January, 2013, for the  
project entitled

Department of  
Corrections,  
Building 10, Mississippi  
Prison Enterprise  
Association and  
Credit Union  
704 Mayflower Street,  
Hosain Ridge, Louisiana

Project Number:  
GMA Project No. 24-000

Complete documents for this project are available in electronic form. They may be obtained without charge and without deposit of any money or security.

Printed copies are not available from the Designer, but arrangements can be made to obtain them through most reprographic firms. Plan holders are responsible for their own reproduction costs.

[illegible]

All bids must be accompanied by the security deposit to life of the low bidder must be in the form of a certified check. The deposit shall be in favor of the Louisiana Department of Transportation and Development. The bid shall be accompanied by the appropriate money order. If the bidder is an individual or less than five years old, the bid by an individual is acceptable.

[illegible]

**A PRE-SEN CONFERENCE**  
**WILL BE HELD**

**AL 2008 FIVE TO MEMPHIS**

Gracelobert Architects  
APAC  
801 Government Street  
Salt Lake City, UT 84103

NOBS SHALL BE ACCEPTED  
ONLY FROM CONTRACTORS  
THAT ATTEND THE PM-BID  
CONFERENCE.

Bids shall be accepted from responsive bidders who are satisfactorily licensed to cover the scope of work listed per the Bidding Document. Bidder is required to comply with provisions and requirements of I.A.R. 30-2212 (A)(1)(c). No bid may be withdrawn for a period of thirty (30) days after receipt of bids, except under the provisions of I.A.R. 30-2214.

The Owner reserves the right to reject any and all bids for just cause.

31



# CAPITAL CITY PRESS

Publisher of  
THE ADVOCATE

REC'D JAN 1 2 REC'D

## PROOF OF PUBLICATION

The hereto attached notice was published in THE ADVOCATE, a daily newspaper of general circulation published in Baton Rouge, Louisiana, and the Official Journal of the State of Louisiana, City of Baton Rouge, and Parish of East Baton Rouge, in the following issues:

12/23/14, 12/30/14, 01/06/15

*Shelley Calloni*

Shelley Calloni, Public Notice Clerk

Sworn and subscribed before me by the person whose signature appears above

January 6, 2015

*M. Monic McChristian*

M. Monic McChristian,  
Notary Public ID# 88293  
State of Louisiana  
My Commission Expires: Indefinite



GRACE & HEBERT ARCHITECTS  
CHERYL RICHARDSON  
501 GOVERNMENT ST STE 200  
BATON ROUGE LA 70802

5072539

### ADVERTISEMENT LAW 9003

Bidder posted bids to Grace & Herbert Architects, APC, 501 Government Street, Baton Rouge, Louisiana 70802, for the project entitled:

Department of Corrections  
Building 10 Renovation  
Process Improvements  
Electrical and  
Crews Union  
704 Mayhew Street,  
Baton Rouge, Louisiana  
70802

Project Number  
GHA Project No. 661407

Complete bidding documents for this project are available in electronic form. They may be obtained without charge and without deposit from the project engineer. Printed copies are not available from the Designer but arrangements may be made to obtain them through those reprographic firms. Plan holders are responsible for their own reproduction costs.

Scope of work includes the installation of new electrical and fire alarm systems for an existing building located at 704 Mayhew Street in the Seagraves Tower District of Baton Rouge. The project scope consists of a complete renovation and removal of the ca. 1975 addition building of the Old Louisiana School for the Deaf, recently occupied by the Baton Rouge Police Department.

All bids must be accompanied by the security equal to 5% of the low bid and must be in the form of a certified check or cashier's check. The bid must be in the form of the Louisiana - Commercial Bidder's Certificate. All bids must be accompanied by the approval of the owner or its representative on a bid form of the project or less than the percent GHA by any method is acceptable.

The successful bidder shall be required to furnish a Performance and Payment bond written by a company licensed to do business in Louisiana, in amount equal to 100% of the contract amount. The surety company must be listed currently in the U.S. Department of Treasury Financial Management Service List (Treasury List) as approved for an amount equal or greater than the contract amount, or must be an insurance company domiciled in Louisiana or owned by Louisiana residents. If the surety company is qualified other than by listing on the Treasury List, the contract amount may not exceed fifteen percent of policyholders' surplus as shown by the surety's company most recent financial statements filed with the Louisiana Department of Insurance and may not exceed the amount of liability. However, a Louisiana domiciled insurance company with at least an A rating in the latest printing of the A.M. Best's Key Rating Guide shall not be subject to this limitation, provided that the contract amount does not exceed ten percent of the policyholders' surplus filed with the Louisiana Department of Insurance. The bond shall be signed by the surety's company agent or attorney-in-fact and countersigned by a person who is under contract with the surety's company as a surety agent in this state, and who is residing in this state.

A PRE-BID CONFERENCE WILL BE HELD

At 2:00 PM on Monday January 19, 2015, at Grace & Herbert Architects, APC

Grace & Herbert Architects, APC  
501 Government Street  
Baton Rouge, LA 70802

BIDS SHALL BE ACCEPTED ONLY FROM CONTRACTORS THAT ATTEND THE PRE-BID CONFERENCE.

Bids shall be accepted from responsive bidders who are satisfactory licensed to provide the scope of work stated on the bidding document. Bids are required to comply with provisions and requirements of the Louisiana Code of Civil Procedure. All bids may be withdrawn for a period of thirty (30) days from receipt of bids, except under the provisions of L.A. R.S. 28:2214.

The Owner reserves the right to reject any and all bids for just cause.

5072539 dec 23-30-Jan 6-

561467

REC'D MAR 20 REC'D

# CAPITAL CITY PRESS

**Publisher of  
THE ADVOCATE**

## PROOF OF PUBLICATION

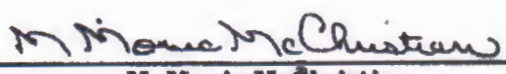
The hereto attached notice was published in THE ADVOCATE, a daily newspaper of general circulation published in Baton Rouge, Louisiana, and the Official Journal of the State of Louisiana, City of Baton Rouge, and Parish of East Baton Rouge, in the following issues:

02/26/15, 03/05/15, 03/12/15

  
Shelley Calloni, Public Notice Clerk

Sworn and subscribed before me by the person whose signature appears above

March 12, 2015

  
M. Monic McChristian,  
Notary Public ID# 88293  
State of Louisiana  
My Commission Expires: Indefinite



**GRACE & HEBERT ARCHITECTS 5098060**  
**CHERYL RICHARDSON**  
**501 GOVERNMENT ST STE 200**  
**BATON ROUGE LA 70802**

equal to 5% of the low bid, and must be in the form of a certified check, or cashier's check. The bid bond shall be in favor of the Louisiana Department of Transportation and Development, and shall be accompanied by the appropriate power of attorney. No bid indicating an obligation of less than five percent (5%) by any method is acceptable.

The successful bidder shall be required to furnish a Performance and Payment Bond written by a company licensed to do business in Louisiana, in amount equal to 100% of the Contract amount. The Surety Company must be listed currently on the U.S. Department of Treasury Financial Management Service List (Treasury List) as approved for an amount equal or greater than the contract amount, or must be an insurance company domiciled in Louisiana or owned by Louisiana residents. If the Surety Company is qualified other than by listing on the Treasury List, the contract amount may not exceed fifteen percent of policyholders' surplus as shown by the Company's most recent financial statements filed with the Louisiana Department of Insurance. However, a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide shall not be subject to the \$250,000 limitation, provided that the contract amount does not exceed ten percent of the policyholders' surplus filed with the Louisiana Department of Insurance. The bond shall be signed by the Surety's Company agent or attorney-in-fact and countersigned by a person who is under contract with the Surety's Company as a licensed agent in this State, and who is residing in this State.

A PRE-BID CONFERENCE WILL BE HELD AT 2:00 PM on Monday, March 16, 2015, at GraceHebert Architects.

Bids shall be accepted from responsive bidders who are satisfactorily licensed to cover the scope of work listed per the Bidding Document. Bidder is required to comply with provisions and requirements of LA R.S. 38:2212 (A)(c). No bid may be withdrawn for a period of thirty (30) days after receipt of bids, except under the provisions of LA R.S. 38:2214.

The Owner reserves the right to reject any and all bids for just cause.

Advertisement Dates:  
Thursday, February 26, 2015  
Thursday, March 5, 2015  
Thursday, March 12, 2015  
5098060 feb 26-mar 5-12-15

### ADVERTISEMENT FOR BIDS

GraceHebert Architects, APAC, 501 Government Street, Baton Rouge, Louisiana 70802, is soliciting bids for the project entitled:

Department of Corrections, Building 10 Renovation, Prison Enterprises Relocation and Credit Union, 704 Mayflower Street, Baton Rouge, Louisiana 70802

Project Number: GHA  
Project No. 581467

Complete Bidding Documents for this project are available in electronic form. They may be obtained without charge and without deposit from [www.gha.com/onlinebidding](http://www.gha.com/onlinebidding). Printed copies are not available from the Designer but arrangements can be made to obtain them through most reprographic firms. Plan holders are responsible for their own reproduction costs.

Scope of work includes the installation of new electrical and fire alarm systems for an existing building located at 704 Mayflower Street in the Seagraves Town District of Baton Rouge. The overall project scope consists of a complete renovation and remodel of the ca. 1925 Vocational Building of the Old Louisiana School for the Deaf, recently occupied by the Baton Rouge Police Department.

All bids must be accompanied by bid security





8555 UNITED PLAZA BOULEVARD  
BATON ROUGE, LOUISIANA 70809-7000  
225-248-2000  
FAX 225-248-2010  
www.joneswalker.com

Matthew W. Kern  
Not admitted in Alabama  
Direct Dial: 225-248-2238  
Direct Fax: 225-248-3138  
mkern@joneswalker.com

## MEMORANDUM

**To:** Jonathan Vining  
Louisiana Department of Corrections

**From:** Matthew W. Kern

**Date:** May 19, 2017

**Re:** Architect Contract for Prison Enterprises Project

You have asked me to review certain correspondence received by the Louisiana Department of Corrections (the "*Department*") from the office of the Louisiana Legislative Auditor (the "*Auditor*") relating to a project financed by the Louisiana Correctional Facilities Corporation (the "*LCFC*") on behalf of the office of Prison Enterprises ("*Prison Enterprises*"). I have reviewed a draft of the findings of the Auditor that indicate that an agreement between LCFC and GraceHebert Architects (the "*Architect*") did not comply with public bid laws. I disagree with the Auditor for the reasons below.

### I. Execution of the Contract

LCFC is a nonprofit corporation created pursuant to La. R.S. 39:1780, *et seq.* (the "*LCFC Act*"), for the purpose of financing and acquiring correctional facilities for lease to the State of Louisiana (the "*State*"). As a non-profit corporation, LCFC possesses all of the authority granted to nonprofit corporations under the Nonprofit Corporation Law of the State, including the authority to contract. In addition, Section 1786 of the LCFC Act provides for specific powers of LCFC, including the power to enter into "any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the corporation or to carry out any power expressly given in [the LCFC Act]."

The Chairman of LCFC executed a standard AIA agreement with the Architect on August 11, 2014 (the "*Contract*") for the purpose of engaging the Architect for the Prison Enterprises project. LCFC executed the Contract as the "Owner" of the project. A second "Owner" signature block was included on the Contract and was executed by an undersecretary of the Department "as agent for: Louisiana Correctional Facilities Corporation."

It is not clear why the Contract included a signature block for the Department to act as an agent for LCFC when LCFC was already a party to the Contract. The LCFC Act grants broad authority to

{B1165106.1}

JONES WALKER LLP

ALABAMA • ARIZONA • DISTRICT OF COLUMBIA • FLORIDA • GEORGIA • LOUISIANA • MISSISSIPPI • NEW YORK • OHIO • TEXAS



LCFC to contract on its own behalf. The assertion by the Auditor that the Contract does not comply with public bid laws simply because the Department executed the Contract is without merit. The Department was not the proper party to execute the Contract as the "Owner" of the project and the Department executed the Contract "as agent for" LCFC and not on its own behalf.

The Prison Enterprises project was financed with bonds issued by LCFC and construction costs were not paid from funds of the Department. It is my understanding that all payments for project costs, including the payments to the Architect, were made directly by LCFC from bond proceeds held by its trustee bank. The Department played an important role in the structure of the financing because it subleased to LCFC the building that was renovated in connection with the project. However, LCFC was responsible for all contracting for the project in compliance with the laws applicable to LCFC and was the proper party to execute the Contract with the Architect.

## **II. Scope of La. R.S. 39:1481, *et seq.***

The Auditor's office asserts that La. R.S. 39:1481, *et seq.*, which has been repealed but was in effect when the Contract was executed, was applicable to the Contract. However, La. R.S. 39:1482(A) provided that "this Chapter shall apply to every expenditure of public funds in excess of two thousand dollars by the executive branch of this state..." LCFC is a nonprofit corporation established by the State legislature. It exists primarily to aid in the financing of projects undertaken by the Department, which is a part of the executive branch of the State. However, LCFC itself is not a part of the executive branch and, as a result, these statutes do not apply to contracts relating to the expenditure of LCFC funds.

## **III. La. R.S. 38:2310, *et seq.* does not apply to LCFC**

The Auditor also asserts that La. R.S. 38:2310, *et seq.*, relating to the selection of professional services for public contracts, were applicable to the Contract. These statutes were enacted by the State legislature in 1975. The LCFC Act was enacted by the State legislature in 1985 and constitutes the later expression of the legislature's will.

The LCFC Act provides in Section 1785, that LCFC "shall be subject to the Public Records Law, Public Meeting Law, Code of Ethics, and the Bond Validation Law." This section further provides that "any capital construction performed by or on behalf of the corporation, and/or to be used by the state, shall be advertised, bid, and contracted for in accordance with the provisions of R.S. 38:2211 *et seq.*..." Section 1782 of the LCFC Act also provides that "[t]o the extent that the provisions of [the LCFC Act] are inconsistent with any other provisions of any general statute or special act or parts thereof, the provisions of [the LCFC Act] shall be deemed controlling."

In La. Atty. Gen. Op. No. 08-0346, the State Attorney General addressed a request of the Louisiana Recovery Authority relating to the applicability of public bid laws to the Road Home Corporation in connection with the disposal of property acquired by the Road Home Corporation. The opinion noted that while "the general law applicable to the sale of State-owned immovable property requires that such property be sold pursuant to the public bid process...[t]he more recent and more specific law that relates to the functioning of the Road Home Corporation...contains no such requirement." In deciding that the public bid laws at issue were not applicable to the Road Home Corporation, the opinion cited a specific list of laws contained in the legislation establishing the Road Home Corporation and provided "[i]t is important to note...that this exclusive and nonillustrative list of laws with which the Road Home Corporation must comply does not include any mention of adherence to

the public bid laws.” The opinion also cited part of the enabling legislation of the Road Home Corporation that provides “[t]o the extent that the provisions of this Chapter are inconsistent with...any other provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed to be controlling.”

Like the Road Home Corporation’s organizational statutes, the LCFC Act provides a specific list of statutes with which LCFC must comply. The exclusive and nonillustrative list of statutes that apply to LCFC does not refer to La. R.S. 38:2310, *et seq.* and does not refer to any statutory provision pursuant to which architects must be selected by LCFC. If the State legislature intended to require LCFC to comply with La. R.S. 38:2310, *et seq.*, language could have been included in the LCFC Act specifically citing those statutes just as language was included requiring LCFC to utilize the public bid law process when selecting contractors for capital construction. However, the State legislature did not include any such restrictions in the LCFC Act. Because the LCFC Act is the latest expression of the legislature’s will and no restrictions were included in relation to the hiring of architects by LCFC, the execution of the Contract with the Architect complied with the laws that are applicable to LCFC.

MWK



# Department of Public Safety & Corrections

State of Louisiana

Office of Management and Finance

JOHN BEL EDWARDS  
Governor



JAMES M. LE BLANC  
Secretary

July 13, 2017

Daryl G. Purpera, CPA, CFE, Legislative Auditor  
Louisiana Legislative Auditor's Office  
P.O. Box 94397  
Baton Rouge, LA 70804-9397

Dear Mr. Purpera:

Please accept this as the Department of Public Safety and Corrections—Corrections Services' (DPS&C-CS) response to the recent financial compliance audit conducted at the Department.

The Building 10 Renovation Project was the first of its kind undertaken by the Department with the intent to benefit the State in using available resources that would renew the use of a neglected and abandoned state property and make available space for State employees. It was accomplished via a unique public/private partnership and the use of offender labor. The total cost for the project was \$6,339,937, of which no appropriated State General Funds were used for payment. Of the total cost, \$3,672,147 was financed through bonds issued by the Louisiana Correctional Facilities Corporation (LCFC) to be paid through Prison Enterprises self-generated funds, \$463,700 from Facility Planning and Control for the replacement of windows, and \$2,194,090 was funded by the Department of Corrections Credit Union's (DOCCU) private sector funds. It is estimated that this project would have cost \$9,619,000 had it been bid as a public works project under one bid package and precluding the use of offender labor. Through this unique partnership with a private entity and the use of offender labor, the **Department saved the State an estimated \$3.3 Million.** There was never intention by anyone involved in this project to bypass policy, procedure, or statute nor was there intent to be noncompliant with public bid laws. In fact, all contractual services for mechanical and electrical work and all supplies were publicly bid or purchased off of state contracts.

To understand the need for the Building 10 Renovation project, it is important to recognize the issues that the Department faced when the building became available to the Department:

- In the Fall of 2012, the Department made a decision to improve time computation efficiency through the centralization of its pre-classification function for offenders sentenced to the Department by consolidating that functions at its Headquarters. This was a Lean Six Sigma project and saved the State an estimated \$1 Million. As a result, the Department increased the number of positions at Headquarters by 48 full-time positions and decreased the field staff proportionally.
- When the State decided to transition the charity hospital system, DPS&C was charged with assuming the oversight and coordination of healthcare for all DPS&C offenders and emergency care for all offenders at the parish and local level. As a result, the Department increased healthcare staff at our Headquarters operations by 24 full time positions to accommodate case management and scheduling functions. For this effort, an initial funding level of \$50 Million was established in the Department's budget. Since that time, through the efficiency efforts of the Department, that allocation has decreased to approximately \$30 Million, thereby saving the State \$20 Million.
- As a result of the previous administration's Governmental Efficiency and Management Systems (GEMS) project, the Department was able to expand reentry services to those housed at local level facilities. The oversight and management of the field component of this expansion is accomplished through staff at Headquarters, resulting in an increase of 18 full-time positions at Headquarters. The Department's success through the GEMS initiative has resulted in a marked decrease in the offender population and continues to save the State \$16.5 Million annually.
- When the state announced the Water Campus project, the Department was notified that the Prison Enterprises Headquarters Building would be torn down and the 31 staff working there would have to be relocated. The Department was given a short deadline for finding a new location for this operation.

With the increase of staff at Headquarters as noted above, the Department began looking at all space options. Among the various options, the leadership team recognized that the Department of Corrections Credit Union housed 30 staff members in a large portion of a DPS&C Headquarters building. And while the Credit Union being housed at Headquarters provides a valuable service to DPS&C-CS employees, the Department did not view this as a wise use of our resources considering that departmental staff were being subjected to a poor work environment and cramped working spaces. Subsequently, the Department approached the DOC Credit Union about relocating from their current offices to make more room for departmental staff.



As all of these issues began to surface and leadership began to develop a plan of action for the Prison Enterprises relocation, the Baton Rouge Police Department announced its planned relocation from Building 10 on the Department's Headquarters Compound on Mayflower to its new buildings on Airline Highway. At the time, Building 10 (47,000 sq. ft.) was in poor condition and with the planned departure of the Baton Rouge Police Department, the local Beauregard Town community, and the Foreign Language Academic Immersion Magnet (FLAIM) school situated next door were concerned as to what would become of the space. The potential for vandalism and vagrants was high and the Department immediately began to discuss options for securing that location and ensuring it didn't become a public safety hazard for the community.

The plan to renovate Building 10 began to come together when the Credit Union agreed to pay for the renovation of a part of Building 10 to be used for housing its operations and staff and to apply that renovation cost as its rent. This freed up the large part of the Department's office building that DOCCU was occupying at the time, thus allowing space to house departmental staff.

At the same time Prison Enterprises (PE), began to review its relocation options. PE leadership staff was tasked to evaluate lease options, options for building a new PE Headquarters at one of the Department's institutional sites, and the option of renovating the remainder of Building 10. The recommendation was made to renovate the remaining portion of Building 10 and keep the Prison Enterprises Headquarters operations centrally located with all DPS&C-CS Headquarters operations.

It was a logical and practical decision and in the best interest of efficiency to support the efforts of the Credit Union and Prison Enterprises to take on this project.

As noted above, the funding and coordination of this project was unlike any previous project undertaken by the Department as:

- Payment for the project did not involve the use of any appropriated general fund money,
- Payment was accomplished through private sector funds and a bond issuance through the Louisiana Correctional Facilities Corporation secured by self-generated revenue.
- The total cost for the project was \$6,339,973, of which \$3,672,147 was financed through bonds issued by the Louisiana Correctional Facilities Corporation (LCFC) to be paid through Prison Enterprises self-generated funds, \$463,700 from Facility Planning and Control for the replacement of windows, and \$2,194,090 was funded by the Department of Corrections Credit Union's (DOCCU) private sector funds.
- This project was approved through Louisiana Correctional Facilities Corporation (LCFC), the entity that would also handle the bonding and financing of the project.



LCFC presented the proposal to the bond commission and was given approval to move forward with the funding of the project.

- This project involved two separate entities and would require major coordination and administrative oversight.
- The allocation of the 47,000 sq. ft. of the building was 31,500 sq. ft. (67%) for Prison Enterprises and 15,500 sq. ft. (33%) for DOCCU.

With regards to the findings contained in the report, the Department has the following response:

**Finding 2:** Noncompliance with Public Bid Law for Architectural Services on Building Renovations

**Management's Response:**

The Department does not concur with this finding. Louisiana Correctional Facilities Corporation ("LCFC") is a nonprofit corporation that was created by the enactment of LSA-R.S. 39:170, *et seq.* LCFC is established by law as a nonprofit corporation outside the executive branch of government; thus, the corporation is separate and apart from the Department, an executive agency. *Id.* The corporation is subject to the General Nonprofit Corporation Law as contained in Title 12 of the Louisiana Revised Statutes, and LCFC is also authorized, from time to time, to issue bonds for any purpose provided for by law. *Id.* As an entity created outside both the executive branch and Department, no bonds or certificates issued by the corporation shall be deemed to constitute a debt or liability to the state of Louisiana or any political subdivision. *Id.* At no point in the Louisiana Correctional Facilities Corporation Act is the Department or an employee of the Department granted legal authority to act as an agent on behalf of LCFC. Thus, the Department must disagree with the report's legal conclusion that the Department acted on behalf of LCFC.

Furthermore, the legal counsel for the LCFC disputes the report's legal conclusion that LCFC violated any applicable portions of the Public Bid Law (see Attachment 3; Letter from Jones Walker). The report asserts that LCFC violated provisions of Part VII, Chapter 10, of Title 38 concerning the letting of certain contracts for professional services when the value of the project exceeds \$500,000. The provisions cited by the report were enacted by Acts 1975, No. 721 § 1. As more fully set forth below, the provisions cited by the report are not applicable to LCFC due to the clear wording of the Louisiana Correctional Facilities Corporation Act as enacted by Acts 1985, No. 893 §1—the most recent expression of legislative will.

Certain laws are made applicable to LCFC through LSA-R.S. 39:1785, and among these are the Public Records Law, Public Meeting Law, Code of Ethics, and the Bond Validation Procedures Act. Rather than cite the entirety of the Public Bid



Law as applicable to LCFC, only certain sections of Public Bid Law are made individually applicable to LCFC. As stated in R.S. 39:1785(C), the only portion of the public bid law made applicable to LCFC is R.S. 38:2211, *et seq*, or Part II, Chapter 10 of Title 38. The particular provisions noted by the report are R.S. 38:2310, *et seq*, or Part VII, Chapter 10 of Title 38.

The Public Bid Law provisions cited by the report are entirely inapplicable to LCFC, as these provisions are not referenced by the Louisiana Correctional Facilities Corporation Act. In fact, the LCFC Act specifically states that to the extent provisions of this Chapter are inconsistent with any other provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed controlling. See LSA-R.S. 39:1782. See also La.Atty.Gen.Op. 08-0346 (holding that the substantially similar Road Home Corporation was not subject to Public Bid Law, and the Act enabling the Road Home Corporation controls as to any provisions of law to the contrary).

As stated in the finding, Louisiana Revised Statute (R.S.) 39:1481, *et seq.*, which governed contracts for professional, personal, consulting, and social services, was applicable when the agreement with GraceHebert Architects (GHA) was signed. As a contract for professional services, the architectural services could ordinarily be awarded without any required competitive bidding or competitive negotiation in accordance with R.S. 39:1494 (see R.S. 39:1617 for current statute). The Louisiana Correctional Facilities Corporation (LCFC) procured the services with GHA under this statute and not through R.S. 38:2310, *et seq.* which stipulates these contracts must be let through a Request for Qualifications process via the Architect Review Board. **Regardless of which statutory process that was used, the cost of the services would have been identical because the calculated fees for both statutory processes would have been based upon the 2014 State Fee Curve as approved by the State of Louisiana Facility Planning and Control.** For reference, the Fee Curve calculation sheet is Attachment B of the contract and Attachment 2 of our response.

With regards to the qualifications of the architectural firm selected, GHA has an extensive portfolio of work in both the public and private sector as well as an existing contractual relationship with the Department under which it has completed many successful projects. GHA also has working relationship with the Department of Corrections Credit Union. As part of the overall Building 10 renovation project, DOCCU was responsible for the costs of the renovations to that part of Building 10 that it would occupy. As such, DOCCU procured the services of GHA before the Department had finalized its plans to relocate Prison Enterprises to Building 10 from its previous site as a result of the construction of the Water Campus. As such, it was a logical and practical decision by LCFC to retain GHA to provide the design services for that part of Building 10 that Prison Enterprises would occupy.

Of note, due to the recent catastrophic flooding in August of 2016, the Louisiana Correctional Institute for Women (LCIW) suffered significant damage requiring extensive renovation. This project to rehabilitate LCIW is wholly the responsibility of the Department and in no way involves LCFC. As part of this project, the Department sought the services of an architectural firm through the Request for Qualifications process via the Architect Review Board. The contract for the design services was awarded to GHA through this competitive process.

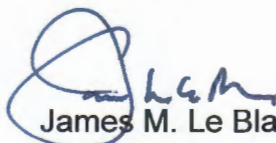
As the Public Bid Law ensures that public entities receive the best possible price when using public funds for public works, based upon the 2014 State Fee Curve used to calculate the designer fees and the experience and expertise of GHA, the State got the best possible price for the services and a well-qualified designer to complete the project.

**Corrective Action Plan:**

No corrective action needed.

In closing, should you have any questions or require additional information, please contact Thomas Bickham, Undersecretary at (225) 342-6739.

Sincerely,



James M. Le Blanc  
Secretary

JML/tcb

**Attachments:**

1. Letter from Jones Walker
2. State Fee Curve Calculation Sheet As Included With The GHA Contract





8555 UNITED PLAZA BOULEVARD  
BATON ROUGE, LOUISIANA 70809-7000  
225-248-2000  
FAX 225-248-2010  
www.joneswalker.com

Matthew W. Kern  
Not admitted in Alabama  
Direct Dial: 225-248-2238  
Direct Fax: 225-248-3138  
mkern@joneswalker.com

## MEMORANDUM

**To:** Jonathan Vining  
Louisiana Department of Corrections

**From:** Matthew W. Kern

**Date:** May 19, 2017

**Re:** Architect Contract for Prison Enterprises Project

---

You have asked me to review certain correspondence received by the Louisiana Department of Corrections (the "*Department*") from the office of the Louisiana Legislative Auditor (the "*Auditor*") relating to a project financed by the Louisiana Correctional Facilities Corporation (the "*LCFC*") on behalf of the office of Prison Enterprises ("*Prison Enterprises*"). I have reviewed a draft of the findings of the Auditor that indicate that an agreement between LCFC and GraceHebert Architects (the "*Architect*") did not comply with public bid laws. I disagree with the Auditor for the reasons below.

### I. Execution of the Contract

LCFC is a nonprofit corporation created pursuant to La. R.S. 39:1780, *et seq.* (the "*LCFC Act*"), for the purpose of financing and acquiring correctional facilities for lease to the State of Louisiana (the "*State*"). As a non-profit corporation, LCFC possesses all of the authority granted to nonprofit corporations under the Nonprofit Corporation Law of the State, including the authority to contract. In addition, Section 1786 of the LCFC Act provides for specific powers of LCFC, including the power to enter into "any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the corporation or to carry out any power expressly given in [the LCFC Act]."

The Chairman of LCFC executed a standard AIA agreement with the Architect on August 11, 2014 (the "*Contract*") for the purpose of engaging the Architect for the Prison Enterprises project. LCFC executed the Contract as the "Owner" of the project. A second "Owner" signature block was included on the Contract and was executed by an undersecretary of the Department "as agent for: Louisiana Correctional Facilities Corporation."

It is not clear why the Contract included a signature block for the Department to act as an agent for LCFC when LCFC was already a party to the Contract. The LCFC Act grants broad authority to

{B1165106.1}

---

JONES WALKER LLP

ALABAMA • ARIZONA • DISTRICT OF COLUMBIA • FLORIDA • GEORGIA • LOUISIANA • MISSISSIPPI • NEW YORK • OHIO • TEXAS

LCFC to contract on its own behalf. The assertion by the Auditor that the Contract does not comply with public bid laws simply because the Department executed the Contract is without merit. The Department was not the proper party to execute the Contract as the "Owner" of the project and the Department executed the Contract "as agent for" LCFC and not on its own behalf.

The Prison Enterprises project was financed with bonds issued by LCFC and construction costs were not paid from funds of the Department. It is my understanding that all payments for project costs, including the payments to the Architect, were made directly by LCFC from bond proceeds held by its trustee bank. The Department played an important role in the structure of the financing because it subleased to LCFC the building that was renovated in connection with the project. However, LCFC was responsible for all contracting for the project in compliance with the laws applicable to LCFC and was the proper party to execute the Contract with the Architect.

## **II. Scope of La. R.S. 39:1481, *et seq.***

The Auditor's office asserts that La. R.S. 39:1481, *et seq.*, which has been repealed but was in effect when the Contract was executed, was applicable to the Contract. However, La. R.S. 39:1482(A) provided that "this Chapter shall apply to every expenditure of public funds in excess of two thousand dollars by the executive branch of this state..." LCFC is a nonprofit corporation established by the State legislature. It exists primarily to aid in the financing of projects undertaken by the Department, which is a part of the executive branch of the State. However, LCFC itself is not a part of the executive branch and, as a result, these statutes do not apply to contracts relating to the expenditure of LCFC funds.

## **III. La. R.S. 38:2310, *et seq.* does not apply to LCFC**

The Auditor also asserts that La. R.S. 38:2310, *et seq.*, relating to the selection of professional services for public contracts, were applicable to the Contract. These statutes were enacted by the State legislature in 1975. The LCFC Act was enacted by the State legislature in 1985 and constitutes the later expression of the legislature's will.

The LCFC Act provides in Section 1785, that LCFC "shall be subject to the Public Records Law, Public Meeting Law, Code of Ethics, and the Bond Validation Law." This section further provides that "any capital construction performed by or on behalf of the corporation, and/or to be used by the state, shall be advertised, bid, and contracted for in accordance with the provisions of R.S. 38:2211 *et seq.*..." Section 1782 of the LCFC Act also provides that "[t]o the extent that the provisions of [the LCFC Act] are inconsistent with any other provisions of any general statute or special act or parts thereof, the provisions of [the LCFC Act] shall be deemed controlling."

In La. Atty. Gen. Op. No. 08-0346, the State Attorney General addressed a request of the Louisiana Recovery Authority relating to the applicability of public bid laws to the Road Home Corporation in connection with the disposal of property acquired by the Road Home Corporation. The opinion noted that while "the general law applicable to the sale of State-owned immovable property requires that such property be sold pursuant to the public bid process...[t]he more recent and more specific law that relates to the functioning of the Road Home Corporation...contains no such requirement." In deciding that the public bid laws at issue were not applicable to the Road Home Corporation, the opinion cited a specific list of laws contained in the legislation establishing the Road Home Corporation and provided "[i]t is important to note...that this exclusive and nonillustrative list of laws with which the Road Home Corporation must comply does not include any mention of adherence to



the public bid laws.” The opinion also cited part of the enabling legislation of the Road Home Corporation that provides “[t]o the extent that the provisions of this Chapter are inconsistent with...any other provisions of any general statute or special act or parts thereof, the provisions of this Chapter shall be deemed to be controlling.”

Like the Road Home Corporation’s organizational statutes, the LCFC Act provides a specific list of statutes with which LCFC must comply. The exclusive and nonillustrative list of statutes that apply to LCFC does not refer to La. R.S. 38:2310, *et seq.* and does not refer to any statutory provision pursuant to which architects must be selected by LCFC. If the State legislature intended to require LCFC to comply with La. R.S. 38:2310, *et seq.*, language could have been included in the LCFC Act specifically citing those statutes just as language was included requiring LCFC to utilize the public bid law process when selecting contractors for capital construction. However, the State legislature did not include any such restrictions in the LCFC Act. Because the LCFC Act is the latest expression of the legislature’s will and no restrictions were included in relation to the hiring of architects by LCFC, the execution of the Contract with the Architect complied with the laws that are applicable to LCFC.

MWK

# Calculator Based on Proposed State Fee Schedule

FEE CALCULATOR for Architectural Services  
State of Louisiana - Facility Planning and Control  
2014 State Fee Curve

Project Name **DOC - Prison Enterprises Relocation**

Date **8/12/14**

1. Enter the Available Funds for Construction	\$6,542,266	Credit Union	2,729,758.52
2. Enter the Renovation Factor (if not applicable, enter '1')	1.25	Prison Enter	2,812,506.71
3. Enter the subject year for cost index data (prior year)	2013		<u>5,542,265.23</u>
4. The Building Cost Index for the subject year is	5278		
5. The Consumer Price Index for the subject year is	233.0		
6. The BCI for the reference year (1975) was	1306		
7. The CPI for the reference year (1975) was	53.8		
8. The BCI ratio is	0.2474		
9. The CPI ratio is	4.33		
10. The adjusted AFC for the reference year (1975) is	\$1,371,390		
11. log [1975 AFC] =	6.137		
12. The adjusted fee percentage for the reference year is	7.512%		
13. The adjusted fee amount for the reference year is	\$103,014		
14. The adjusted base fee for the subject year is	\$446,137		
15. <b>TOTAL FEE (including Renovation factor, if any) =</b>	<b>\$657,671</b>		

16. Fee as a percentage of the AFC =	10.0822%	2,729,758.52	2,812,506.71
		Credit Union	Prison Enterprises
1975	BCI 1306 CPI 53.8		
2000	3539 172.2	13,733.82	14,149.93
2001	3574 177.1	27,467.24	28,299.87
2002	3623 179.9	41,200.87	42,449.80
2003	3693 184.0	57,681.21	59,429.72
2004	3884 181.8	24,720.82	25,469.88
2005	4205 195.3	13,733.82	14,149.93
2006	4369 201.6	82,401.73	84,899.61
2007	4485 207.3	10,686.90	11,319.95
2008	4691 215.3	2,746.72	2,829.99
2009	4769 214.5	<u>274,672.44</u>	<u>282,998.69</u>
2010	4883 216.1		
2011	5058 224.9	PG thru CD 164,803.46	169,799.21
2012	5174 228.6	BN thru Completion 109,868.98	113,199.47
2013	5278 233.0	<u>274,672.44</u>	<u>282,998.69</u>

## APPENDIX B: SCOPE AND METHODOLOGY

We conducted certain procedures at the Department of Public Safety and Corrections – Corrections Services (Corrections) for the period from July 1, 2016, through June 30, 2017. Our objective was to evaluate certain internal controls Corrections uses to ensure accurate financial reporting and transparency, compliance with applicable laws and regulations, and to provide overall accountability over public funds. The scope of our procedures, as summarized below, was significantly less than an audit conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

We did not audit or review Corrections’ Annual Fiscal Reports, and accordingly, we do not express an opinion on those reports. Corrections’ accounts are an integral part of the State of Louisiana’s financial statements, upon which the Louisiana Legislative Auditor expresses opinions.

- We evaluated Corrections’ operations and system of internal controls through inquiry, observation, and review of its policies and procedures, including a review of the laws and regulations applicable to the department.
- Based on the documentation of Corrections’ controls and our understanding of related laws and regulations, we performed procedures on selected controls and transactions relating to movable property, Prison Enterprises’ nonpayroll expenditures, professional services contracts, and sheriff’s housing payments. In addition, we performed procedures to determine that Corrections has complied with certain state laws, and reviewed information relating to the Building 10 renovations.
- We compared the most current and prior-year financial activity using Corrections’ annual fiscal reports and/or system-generated reports to identify trends and obtained explanations from management for any significant variances that could potentially indicate areas of risk.

The purpose of this report is solely to describe the scope of our work at Corrections and not to provide an opinion on the effectiveness of the department’s internal control over financial reporting or on compliance. Accordingly, this report is not intended to be, and should not be, used for any other purpose.