



**METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY  
OFFICE OF INTERNAL AUDIT**

**Professional Audit and Advisory Service**

**Audit of Metro Capital Projects Governance Process**

Date Issued: March 16, 2010

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*The Metropolitan Nashville Office of Internal Audit is an independent audit agency  
reporting directly to the Metropolitan Nashville Audit Committee*

**EXECUTIVE SUMMARY**  
**March 16, 2010**

| Results in Brief   | Recommendations   |
|--|---|
| <p>We performed a review of key processes related to the governance (approval, funding, procuring, project management) of two capital projects undertaken by Metro. Key audit objectives and conclusions are as follows:</p> <ul style="list-style-type: none"> <li>• Has the Metropolitan Government of Nashville &amp; Davidson County developed adequate controls over the procuring and monitoring of capital related projects?</li> </ul> <p>Yes. No ongoing material weakness or significant issues were noted.</p> <ul style="list-style-type: none"> <li>• Does the Metropolitan Government of Nashville have policies and procedures in place to address the monitoring and approval of additional funding needed when overruns occur in capital projects?</li> </ul> <p>Generally, yes. The Office of Internal Audit was unable to locate documentation showing that capital funds redirected across fiscal years were approved by Metro Council.</p> <ul style="list-style-type: none"> <li>• Are contractors and subcontractors properly licensed and paying the appropriate business tax?</li> </ul> <p>Generally, yes. The Office of Internal Audit noted a single instance of a subcontractor not properly remitting business taxes for work performed in Davidson County (see Observation B.)</p> <ul style="list-style-type: none"> <li>• Are contractors and subcontractors complying with the Metro prevailing wage rate requirement?</li> </ul> <p>Generally, no. The Office of Internal Audit noted instances of non-compliance with prevailing wage rates (see Observation A.)</p> | <p>The Metropolitan Government of Nashville &amp; Davidson County General Services Department Management should:</p> <ul style="list-style-type: none"> <li>• Develop a methodology to ensure contractors and their respective subcontractors utilized on Metro capital projects are properly paying any and all business tax owed. At a minimum, contracts should include a clause requiring that such taxes be paid.</li> <li>• Develop and implement a methodology whereby contractors and their subcontractors are monitored to ensure compliance with wage rates specified in the respective contracts.</li> </ul> <p>The Metropolitan Government of Nashville &amp; Davidson County Finance Department Management should:</p> <ul style="list-style-type: none"> <li>• Develop enhancements to the current quarterly Capital Plan Status Report so that an interested party could determine how much was spent on each project, including all material amounts budgeted for related project.</li> </ul> |

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# INTRODUCTION

## PREFACE

The Office of Internal Audit conducted this review to gain a preliminary understanding of the processes in place regarding capital projects. It is important to note that as of July 1, 2008 the primary responsibility for managing capital projects was transferred to the General Services Department. Prior to this, management of these projects was administered by of the Department of Finance's Real Property Services Division.

General Services is currently in the process of revamping the management of Metro Nashville's capital projects. Consequently, we decided to focus the audit effort on gaining a preliminary understanding of the capital project process for future audits and to perform a limited review of two completed capital projects: the construction of the A. A. Building and the related project at the Public Square.

## BACKGROUND

Capital projects needs arise for a variety of differing reasons: growing or declining service demand, the introduction of new services, changes in technology, mandates from the state or federal government or the deterioration of assets. At Metro Nashville, capital projects have been used for a wide assortment of projects such as the construction or renovation of schools and other governmental buildings, parks, sidewalks, greenways, and sewage systems.

The Capital Improvement Budget, the Capital Spending Plan, and the actual amounts spent on capital outlays during fiscal years 2004 through 2009 are summarized in Exhibit A below.

### Exhibit A – Capital Budget and Spending Plan FY 2004 to FY 2010

| Fiscal Year    | Capital Improvement Budget | Capital Spending Plan      | Capital Outlays        |
|----------------|----------------------------|----------------------------|------------------------|
| 2010           | \$4,636,263,080            | \$560,803,000              | Not Applicable         |
| 2009           | 4,147,054,420              | No Plan for FY 09          | \$150,288,362          |
| 2008           | 4,039,712,894              | 263,532,268                | 249,427,494            |
| 2007           | 3,997,449,868              | 371,950,582                | 222,420,972            |
| 2006           | 4,591,683,500              | 343,983,400                | 208,643,682            |
| 2005           | 3,781,728,630              | 246,476,380                | 138,537,768            |
| 2004           | 3,704,064,930              | No Plan for FY 04          | 142,625,016            |
| <b>Total</b>   | <b>Not Applicable</b>      | <b>(a) \$1,255,942,630</b> | <b>\$1,111,943,294</b> |
| <b>Average</b> | <b>\$4,128,279,617</b>     | <b>(a) \$204,323,772</b>   | <b>\$185,323,882</b>   |

Sources: The Capital Improvement Budget (Fiscal Years 2004 to 2009), the Capital Spending Plan (Fiscal Years 2004 to 2009), and the Comprehensive Annual Financial Report (Fiscal Years 2004 to 2009)

*Note (a): In June 2009, a new Capital Spending Plan for \$560,803,000 was approved by the Metropolitan Nashville Council. This new plan retroactively de-authorized prior unfinished projects on Capital Spending Plans. Capital Spending Plan total and average are for fiscal years 2004 through 2009.*

### Key Terms

**Capital Improvement Budget:** A comprehensive “wish list” of all capital projects various Metro Nashville entities want to see implemented. Amounts on this plan have not been approved for funding or implementation.

**Capital Spending Plan:** The specific projects from the Capital Improvement Budget that have been approved during a given fiscal year by the Metro Nashville Council to be funded and implemented.

**Capital Outlays:** The actual amount Metro Nashville has spent on capital projects in a given year.

### The A. A. Birch Building and Public Plaza

Before the construction of the A. A. Birch Building, judges, courtrooms and their respective staff were located in three separate buildings: the Stahlman Building, the Ben West Building and the Courthouse. Many judges felt this was inefficient and that the buildings were not designed to be conducive for a courtroom setting. Others believed that there was inadequate parking space available for visitors and staff. A large number of officials recognized that these buildings were older and needed renovation. Consequently, requests were made that Metro Nashville Government revamp the downtown justice campus. To that end, Metro Nashville hired a consulting group to develop a conceptual framework for what would be the best plan to convert the existing structure. Involved parties determined that the most effective approach was to build a new courthouse and underground parking garage with a courtyard (the Public Plaza) on top of this parking garage.

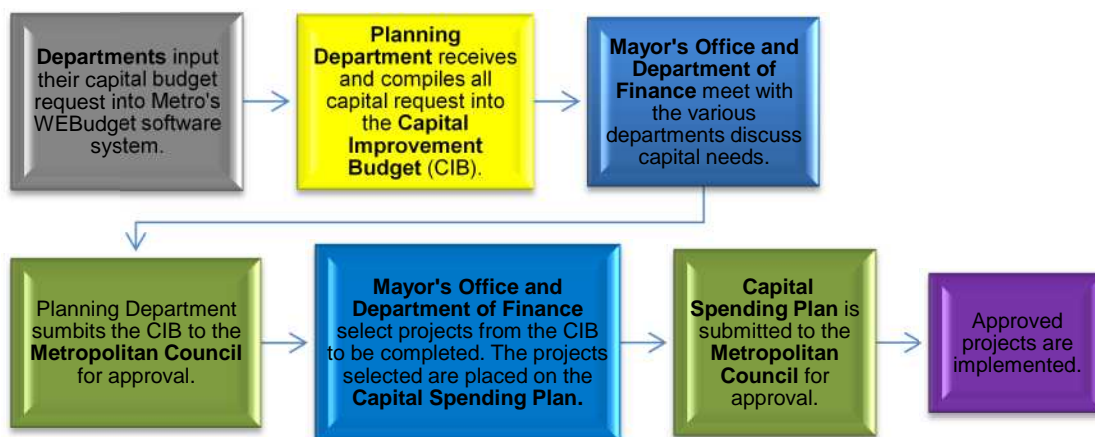
Ray Bell Construction obtained the contract for the A. A. Birch Building while Brasfield & Gorrie obtained the contract for the Public Plaza. Heery International was hired to serve as the project manager for the two projects. Civil Constructors was hired to do excavation work on the project. Our audit efforts focused on the Ray Bell Construction and Brasfield & Gorrie contracts.

### Capital Budgeting Process

The major areas involved in the capital projects process include: Department of Finance’s Office of Management and Budget, Department of Finance’s Purchasing Division, Mayor’s Office, Metropolitan Council, Planning Commission, Department of Finance’s Real Property Services Division (prior to July 1, 2008), and General Services Department (subsequent to July 1, 2008).

A brief summary of how capital projects are recommended at Metro Nashville is outlined in Exhibit B on the next page.

## Exhibit B – Capital Budgeting Process Overview



The Metro Nashville capital budgeting process is discussed in the Metropolitan Code Part I (Charter) §6.6.13 and states that the Director of Finance shall annually obtain information from all officers, departments, boards, commissions and other agencies who are requesting funds for capital improvements. This information is required by the Planning Commission in order to prepare the Capital Improvement Budget. The process typically begins with the annual budget kick-off meeting. Departments are given instructions on how to submit their capital budget requests. The Finance Director also meets individually with the various departments to discuss their capital budget needs and requests. The Capital Improvement Budget is merely a “wish list” of both general and urban service district capital projects along with an accompanied report and recommendation from the Planning Commission. The resulting Capital Improvement Budget must be submitted by the Mayor’s Office to the Metropolitan Council by May 15<sup>th</sup> of each year as stated in the Metropolitan Charter. The Metropolitan Council then either accepts, amends or rejects the document. The Metropolitan Charter requires that Council act on the Capital Improvement Budget by June 15<sup>th</sup>. The Mayor may submit amendments to the Capital Improvement Budget at any time during the year, accompanied by the Planning Commission recommendation, which must be approved by a two-thirds council vote to be approved. At this point, no specific capital projects have been approved for implementation or funding.

Once the Capital Improvement Budget is approved, the Mayor’s Office prioritizes which projects are the most important based on Metro Nashville’s funding capacity. Each year, Metro utilizes a contracted consultant to ascertain the amount of additional capital funding that is available given Metro’s current debt structure and tax rate. Financial projections, or debt capacity models, segregate proposals into two distinct categories: the Current Debt Level Program and Essential Needs Program. The Current Debt Level Program includes capital projects that can be pursued with no change in the amount or distribution of tax rates. Essential Needs Program assumes additional revenues would be made available to retire the general obligation

bonds, but the total outstanding indebtedness would remain below the available limits set by Metro Nashville.

Based on the priority and urgency to implement a specific project and the yearly assessment, the Mayor's Office selects projects it would like to see implemented. The selected projects are placed on a Capital Spending Plan, which is submitted to the Metropolitan Council for review and approval. Those projects that are approved will be set up in the accounting system and the procurement of the services needed to implement the projects begins.

#### Monitoring of Capital Projects

Metropolitan Council Resolution RS2001-746 requires that the Director of Finance furnish a quarterly status report on capital expenditures to the Metropolitan Council. The Metropolitan Office of Management and Budget prepare this quarterly status report on all approved capital investment projects. It reports the status of all projects approved from fiscal year 2000 through the current fiscal year Capital Spending Plan. Key information related to each project and its status is included. Printed copies of the Quarterly Status Report are provided to the Council and Council's Office. In addition, electronic versions are placed on the Metro Capital Budgeting webpage.

#### Change Orders / Field Orders

Change orders are a component of the project management process whereby changes from the agreed upon scope of the contract require mutual agreement. Typically, change orders require additional funds to be spent towards the project. The most common causes for the need of a change order include; the cost of the projects work was incorrectly estimated, Metro Nashville or the project manager discovers obstacles or possible efficiencies, which require them to deviate from the original plan or during the course of the project additional features or options are perceived and requested.

Change orders (field changes/authorizations) are handled mainly by the project manager of that particular project. Field orders pertain to either small dollar changes to the contract and/or changes that, if not implemented immediately, would cause the project to come to a stop. The project manager authorizes field changes while out in the field. The field orders are collected and compiled into a single change order. All change orders for capital funded projects have to be approved by General Services Department, Purchasing Agent, the Office of Management and Budget, the Finance Director, the Law Department and the Mayor's Office.

Project managers will have weekly meetings with their workers and steering committee meetings to keep everyone involved abreast on what is going on with the project. Even though changes of any type are by definition unplanned events, no projects are contemplated to be completed without requiring field orders and change orders.

### Overruns on Capital Projects

On any capital project, a risk exists that the actual cost of the project will exceed the original budget. To mitigate this risk, the Department of Finance directs departments to estimate toward the "high - side" when submitting their project requests on the Capital Improvement Budget schedule. The purpose of this is to help ensure that if the project is selected for the Capital Spending Plan, its estimated budget is not greater than the amount listed in the Capital Improvement Budget.

Project estimates are further refined between their submission to the Capital Improvement Budget schedule and their Capital Spending Plan. Before a large capital project is initially approved for the full amount, the project will be funded at a significantly smaller amount of the estimated cost (typically 10%) for a "planning period" in the first year. At the end of that year, Metro will have a better understanding of the costs associated with the project and will submit the remaining estimate in the Capital Improvement Budget for the following year. For example, if Metro Nashville wants to propose a capital project to renovate a building that will have an estimated cost of \$18 million dollars; for year one, Metro will fund \$1.8 million for the planning phase. If after the first year it is determined that the estimated cost is closer to \$20 million, Metro will submit the revised figure in the Capital Improvement Budget for that year for consideration to be included in the Capital Spending Plan.

Approved projects typically include a contingency equal to two to three percent of the total estimated project cost for any overruns. If this is not sufficient, the Department of Finance listed three ways in which overruns are handled. The listing below is placed in order of precedence the Department of Finance prefers for handling capital project overages.

1. Maximize the use of funds in other capital projects that have already been approved but not restricted to a specific project. These type projects may include things such as: "ADA Compliance Projects", Major Maintenance Projects" etc. For example, if an overage is anticipated on the building renovation project, Metro will look to see if there are any funds available in these "pre-approved, non-restricted" projects. If funds are available in the "ADA Compliance Projects", Metro will utilize funds from this project for all ADA compliance expenses associated with the building renovation.
2. Four Percent Reserve Fund Pool funds may be requested for expenditures related to equipment or renovations. This must be approved by a Metropolitan Council resolution.
3. The final option is to amend the Capital Improvement Budget and Capital Spending Plan; or, wait and submit an additional project through the normal capital budget approval process. This option would require the approval of Finance, the Planning Commission, and the Metropolitan Council.



### Close out for Capital Projects

Prior to July 1, 2009, a project would not be closed out until the final invoice was paid to the contractor. Throughout the project, invoices would be reviewed and approved by the project manager, architects, and the Finance Department. The same holds true for the final invoice. Additionally, the Codes Department would be required to conduct a thorough inspection of the project in order to determine if the project has been completed in accordance with all applicable codes and regulations as well as conforming to the construction plans. The Codes Department would then issue a Use and Occupancy Certificate if they were satisfied. The final invoice would not be approved without this certificate. Once the certificate was issued and the project team was satisfied that the project had been completed in accordance with the contracts and all other relevant project requirements, the final invoice was approved, and the contractor paid.

Subsequent to July 1, 2009, the General Services Department has implemented several enhancements to the oversight of design and construction projects. One major component is hiring a third-party “commissioning agent”, which adds approximately three percent to the project’s total costs. The purpose of the commissioning agent is to obtain an independent certification that the owner’s intent, project design, and actual project completion are aligned and executed as desired. Commissioning agents are increasingly being used in the construction industry and are a required element of all Leadership in Energy and Environmental Design (LEED), a prominent “Green” certification standard. The commissioning agent team works with Metro from the very beginning to the end of a project and will be primarily responsible for ensuring that the final product conforms to what Metro requested from the project design. The commissioning agent will insure that the project will include a preventative maintenance schedule, operating manuals, fire system manuals, as-built blueprints, and all warranty information. This information will be used in the operation and maintenance of the facility in an effort to reduce costs and extend the lifecycle of the facility. The formal commissioning process is completed only after all elements have been completed and all documentation is provided. Once commissioning has been completed, the General Services Department has developed a close out procedure for review of all required documentation. All legal information pertaining to the facility, including warranties is to be retained in the real estate management module of J. D. Edwards EnterpriseOne (described later.)

General Services has developed an internal process that includes a project close out checklist requiring signatures of completion by all parties.

### General Services Role

As of July 1, 2008, the General Services Department was assigned responsibility for managing capital projects. While there have been few capital projects executed since that time, the General Services Department has worked to establish a comprehensive series of process and procedures regarding the management of capital projects. According to department staff,

General Services Department has benchmarked various capital project processes in an attempt to adhere to best practices. A very high level, overview of some of these new procedures is summarized below:

Capital projects are managed by the Design and Management Group. The Building Support Services Division provides administrative support, including payment review and processing, as well as a closeout audit. General Services is in the process of implementing the use of an industry standard estimator tool for the development of budgets for capital projects. Previously, various parties compiled estimates and it was not always possible to determine exactly how they were obtained. Additionally, General Services Department has standardized information collection and screening of project ideas prior to being considered for inclusion on the Capital Improvement Budget. An effort is being made to ensure not only construction costs but also power, drainage, upkeep, etc. are considered. General Services Department also states that they have concentrated a greater effort on the planning phase to ensure other agencies and departments are on-board and providing necessary input on the front end so that unplanned requirements or unanticipated results are minimized.

#### Information Technology Background

The Capital Projects process utilizes two software systems. A listing of these two systems and a brief description are outlined below.

**J.D. Edwards EnterpriseOne** - is the software system utilized by Metro for financial reporting. All financial transactions pertaining to capital projects are reported in the J.D. Edwards EnterpriseOne system.

**WEBudget** – is the software system utilized by Metro Finance during the budget process.

## A. A. Birch Building Project

The budget, the related funding allocation, and amounts spent on the A. A. Birch Building are summarized in Exhibit C below.

### Exhibit C – A. A. Birch Building and Related Projects Budget versus Actual Cost

| A. A. Birch Building Capital Spending Plan Allocations            | Budget            | Actual Cost       | Variance         |
|---|-------------------|-------------------|------------------|
| <i>Original Allocation - 2000</i>                                 | 14,811,192        | 14,811,192        |                  |
| <i>Second Allocation - 2002</i>                                   | 31,607,000        | 29,600,078        | 2,006,922        |
| <i>Furniture, Fixtures and Equipment - 2006</i>                   | 1,693,000         | 1,008,262         | 684,738          |
| <b>Sourced By Other Capital Spending Plan Project Allocations</b> |                   |                   |                  |
| <i>Jail Funds</i>   | 1,083,926         | 1,083,926         |                  |
| <i>ITS - Technical Cost</i>                                       | 392,463           | 392,463           |                  |
| <i>ADA - Compliance Projects</i>                                  | 123,812           | 123,812           |                  |
| <i>District Energy Solutions</i>                                  | 10,567            | 10,567            |                  |
| <i>Public Works - Major Maintenance Projects</i>                  | 2,589,832         | 2,589,832         |                  |
| <b>Total Project<sup>1</sup></b>                                  | <b>52,311,792</b> | <b>49,620,132</b> | <b>2,691,660</b> |

Source: The Metropolitan Office of Management and Budget staff and Capital Status Report Quarter 3, 2009

This project was initially conceived before September 11, 2001. At first, the project was to be a renovation of the old Ben West Building and an additional two to three stories added on the top of the existing parking garage. The estimated cost and allocation for this project was originally set at \$15 million. After the terrorist attacks of September 11, 2001, new regulations dictated that new courthouses could not be built on top of parking garages for security reasons. Metro Nashville officials also determined that, instead of conducting a renovation, it would be more feasible to demolish the parking garage and build a completely new courthouse. Consequently, a second allocation was made for an additional \$30 million to construct the A. A. Birch Building. For the A. A. Birch Building project, the furniture, fixtures, and equipment allocation was \$3.3 million. The first two allocations of \$15 million and \$30 million, as well as the furniture, fixtures, and equipment allocation of \$3.3 million, were all obtained through the capital budgeting process described above.

Below is a brief summary from the Capital Spending Plan for the line items in Exhibit C, page 8, under the category “Sourced by Other Capital Spending Plan Project Allocations.”

- “Jail Funds” were amounts allocated to construct secure spaces for things such as detention and prisoner transfer areas within the courthouse. Specifically, \$834,000 was allocated for detention areas while \$249,963

<sup>1</sup> Note that \$2,691,700 for a retro-commissioning project has been provided for the A.A. Birch Building.

was allocated to construct the prisoner's bridge. The funding was reallocated from the Criminal Justice Center and Sheriff Jail projects.

- "ITS – Technical Cost" were amounts allocated for costs such as installing telephone lines, cable lines, telephones, and computers at the A. A. Birch Building.
- "District Energy Solutions" were amounts allocated for costs associated with additional electrical connections work in the infrastructure for the building to be set up for heating and cooling systems from District Energy Solutions.
- "Public Works – Major Maintenance Projects" were amounts allocated for costs associated for the new streetscape, intersection, sewer and drainage system associated with the A. A. Birch Building.

The Mayor's Office, with the assistance of the Finance Director, is responsible for determining how and when funding for a particular project will be presented in the Capital Spending Plan. Certain types of expenditures such as those mentioned in the above paragraph are present in all capital projects. For many of these type expenditures, funds are requested and approved in their own category and department. For example, the Metro Information Technology Services Department was responsible for the funding estimates needed for computers, telephones and cables. These technology costs are estimated for all the construction projects initiated throughout the coming year. These technology estimates are then added to the Capital Improvement Budget and approved and funded in the Capital Spending Plan under the ITS Department.

All technology invoices charged to the A. A. Birch Building project were reviewed by Heery International and the Finance's Real Property Services Division to ensure the amounts billed and the services provided related to the invoice were accurate. Once approved, Real Property Services Division would contact the Finance Office of Management and Budget to request the amounts be transferred to the construction project. The Office of Management and Budget reviewed the request to ensure funds were available in the ITS – Voice/Data Technology Fund allocation. Once the Office of Management and Budget approves the request, the Finance Division of Accounts initiates the transfer of funds from the ITS – Voice/Data Technology Fund to the A. A. Birch Building capital fund.

#### *Additional Work for the A. A. Birch Building*

The fiscal year 2010 Capital Spending Plan included a \$2.7 million allocation for the A. A. Birch Building. The balance will address certain issues encountered with the operations of the A. A. Birch Building. General Service Staff stated the funds will be used to procure a Commissioning Agent to assess the HVAC, electrical, and plumbing systems in the A. A. Birch Building and make any enhancements, if needed.

## Public Plaza/Parking Garage/Excavation Project

The budget, the related funding allocation, and amounts spent on the Public Plaza/Parking Garage/Excavation project are summarized in Exhibit D below.

### Exhibit D – Public Plaza Parking Garage/Excavation and Related Projects Budget versus Actual Cost

| Public Plaza/Parking Garage/Excavation Capital Spending Plan Project Allocations | Budget            | Actual Cost       | Variance       |
|--|-------------------|-------------------|----------------|
| <i>Original Allocation - 2002</i>  | 25,000,000        | 24,897,793        | 102,207        |
| <b>Sourced By Other Capital Spending Plan Allocations</b>                        |                   |                   |                |
| <i>Parks Allocation</i>  | 5,468,000         | 5,468,000         |                |
| <i>Public Works Signage Allocation</i>   | 462,000           | 324,861           | 137,139        |
| <i>Capital Spending Plan Residual<sup>2</sup></i>                                | 6,000,000         | 6,000,000         |                |
| <b>Total Project</b>   | <b>36,930,000</b> | <b>36,690,654</b> | <b>239,346</b> |

e

Source: The Metropolitan Office of Management and Budget staff and Capital Status Report Quarter 3, 2009

The original allocation of \$25 million was the amount initially requested and approved through the normal capital budgeting process. Similar to the ITS – Voice/Data Technology Fund for the A. A. Birch Building, the Parks Allocation and Public Works allocation were amounts approved on the Capital Spending Plan that were reallocated to the Parking Excavation.

Note: Only the "Original Allocation – 2002" line item is individually identifiable on the latest quarterly Capital Projects Update Report posted on the Metro Finance website (see Observation C.) The format of the report was designed to facilitate Council Resolution RS2001-746 and compare Capital Spending Plan line items on the report.

## Key Processes Over Capital Projects

Our review of the capital project process focused primarily on the capital budgeting process, the procurement process, and the monitoring process. For these key processes, the Office of Internal Audit noted the following key controls:

### Capital Budgeting Process

- Capital Improvement Budget is reviewed and approved by the Planning Commission, the Mayor's Office, and the Metropolitan Council.
- The Capital Spending Plan is recommended by the Mayor's Office and approved by the Metropolitan Council.

<sup>2</sup> This amount was part of \$17.4 million in residual funds from bond issues for 1985 through 1999 capital projects. These remaining funds supplemented four other projects.

- Metro procures an independent, objective third party to ascertain Metro's ability to fund additional capital projects under various tax structures.

#### Procuring of Vendors for Capital Projects

- The process of selecting a vendor for capital projects is codified in the Metropolitan Procurement Code.
- Evaluation teams made up of end users, Purchasing Department staff, and other interested parties are created to develop selection criteria and create proposal, and assist in selecting the appropriate vendor.
- Announcements of request for proposal must be made publicly.
- Specific selection criteria is developed covering multiple variables in the selection of the vendor.
- The evaluation teams select the winning proposal and the Purchasing Agent must approve all selections.

#### Monitoring of Capital Projects

- Finance's Department of Office of Management and Budget prepares Quarterly Status Reports on all approved capital investment projects, which are available online, and distributed to the Metropolitan Council, the Council Office, and the Director of Finance.
- Change orders must be reviewed and approved by General Services, the Purchasing Agent, the Office of Management and Budget, the Director of Finance, the Legal Department, and the Mayor's Office.
- In times past, weekly meetings would occur between the Real Property Services, project manager, and the General Contractor to discuss project status.
- Subsequent to July 1, 2008, a Commissioning Agent will be hired to ensure that the "as-built" capital project received conforms to the approved "to-be" project design. This agent will be comprised of experts who will be involved in the process from beginning to end to ensure Metro Nashville's intent and needs for a specific project are met.
- Metro Nashville will receive, from the Commission Agent, all applicable operating manuals and preventative maintenance schedules.
- Before a project can be closed out, the Codes Department must conduct a thorough inspection of the new facility to ensure compliance with all applicable codes, regulations, and laws. Additionally, going forward, a comprehensive checklist must be completed before the project is closed out.

## OBJECTIVES AND CONCLUSIONS

1. *Are there adequate controls over the procuring and monitoring of capital related projects?*

Yes. No material weakness, significant issues or control observations were noted. The approval, budgeting, and funding of capital projects is distinctly segregated. The yearly calculation of Metro's financial ability to take on additional capital projects also helps ensure Metro does not get overextended. The procurement process on capital related projects is very methodical with a strong emphasis placed on fairness and flexibility in obtaining the best services. At the time of the projects under review, capital projects were monitored by Real Property Services, an outside project manager, and the Office of Management and Budget.

2. *Are there policies and procedures in place to address the monitoring and approval of additional funds when overruns occur in capital projects?*

Generally, yes. The approval of all capital projects is segregated between the Mayor's Office and the Metropolitan Council through the Capital Spending Plan and resulting bond resolutions. Reallocation must be approved by the Office of Management and Budget. Additional funding must be approved by the Metropolitan Council.

The Office of Internal Audit found that during fiscal year 2005, \$17.4 million of unobligated proceeds from several prior year bond issuances (1985, 1987, 1988, 1990, 1996A, 1997A, 1999) were reallocated to projects still open in 2005. The projects that received the reallocations were: Historic Courthouse Renovation, Public Plaza, Enterprise Business Solutions and a Metro Transit Authority project. Documentation exists from the previous Finance Director stating that the unspent balances were carefully analyzed for proper redirection, had been reviewed with bond counsel, and that he had "shared with Council" the analysis and the redirection of the funds. When the Office of Internal Audit reviewed council minutes and council resolutions from 2004 and 2005, we were unable to locate any references to approval of this reallocation of funds.

3. *Are contractors and subcontractors properly licensed and paying the appropriate business tax?*

Generally, yes. The Office of Internal Audit obtained a listing of all contractors and subcontractors utilized in the A. A. Birch Building and the related Public Square projects. From this listing, our office selected a sample of 18 entities for test work. Specifically, our office contacted the Davidson County Clerk's Office who reviewed their records to ascertain that these entities did pay required business taxes during the construction period of these projects. One of the entities did not pay a nominal business tax during this period even though they had been paid for services provided on one of the reviewed contracts (see Observation B.) Additionally, our office accessed the Tennessee State of Comptroller website for all Tennessee contractors and subcontractors to verify if each was properly licensed.

4. Are contractors and subcontractors complying with the prevailing wage rate provisions?

Generally, no. The Office of Internal Audit obtained a listing of all contractors and subcontractors associated with the A. A. Birch Building and the related Public Square. Payroll records for the projects were reviewed by randomly selecting 12 subcontractors. Records examined for employees paid for work on the A. A. Birch Building, utilizing Ray Bell Construction as the prime Contractor, indicated they were paid in accordance with applicable prevailing wage rates.

For the Public Plaza Parking Garage project, numerous instances of non-compliance were observed resulting in employees being paid below the prevailing wage rate. Instances of non-compliance occurred across several different sub-contractors and across several different job categories. Prime contractor Brasfield & Gorrie however had no instances of noncompliance amongst their own company employees. A brief summary of the job classifications, number of employees, number of contractors, and range of actual pay are presented in Exhibit E below. The specific contractors not complying with the prevailing wage rate guidelines are also listed in Exhibit F below.

**Exhibit E – Job Classifications Failing to Meet the Prevailing Wage Rate**

| Job Classification | Number of Employees | Number of Contractors | Range of Actual Hourly Pay Rate | Prevailing Wage Hourly Rate |
|--------------------|---------------------|-----------------------|---------------------------------|-----------------------------|
| Cement Finisher    | 7                   | 1                     | \$13.50 to \$15.00              | \$15.08                     |
| Unskilled Laborer  | 16                  | 4                     | \$8.00 to \$10.00               | \$10.48                     |
| Painter            | 4                   | 1                     | \$10.00 to \$15.00              | \$16.78                     |
| Truck Driver       | 2                   | 1                     | \$12.25                         | \$12.32                     |
| Concrete Finisher  | 1                   | 1                     | \$13.75                         | \$15.80                     |
| Pipe Layer         | 1                   | 1                     | \$11.85                         | \$21.76                     |

Source: Data compiled by the Office of Internal Audit from subcontractor’s certified payroll records, Public Plaza Parking Garage project.

**Exhibit F – Contractor’s Failing to Meet the Prevailing Wage Rate**

| Contractor           |
|----------------------|
| Allstate Plastering  |
| Civil Constructors   |
| Reese Enterprise     |
| Roy Goodwin          |
| Commercial Paintings |
| Vicker’s Concrete    |
| Greathouse Landscape |

Source: Data compiled by the Metro Office of Internal Audit from subcontractor’s certified payroll records, Public Plaza Parking Garage project.



## OBSERVATIONS AND RECOMMENDATIONS

### ***A– Monitoring and Compliance of Prevailing Wage Rates***

Internal controls over monitoring contractors and subcontractors should be enhanced. Specifically, despite including a clause requiring such in all construction contracts, Metro Nashville lacks any formalized effort to determine if contractors and subcontractors are complying with prevailing wage rates that are mandated by the Metropolitan Code of Law.

The Office of Internal Audit reviewed documentation related to contract #15823, *Brasfield & Gorrie*, and contract #15600, *Ray Bell Construction* and noted the absence of any documentation that would indicate that Metro Nashville was monitoring contractors or their respective subcontractors for compliance with prevailing wage rates as specified in the contracts. The Office of Internal Audit did note Metro officials were communicating with the project manager and contractor regarding the management and progress of the projects. However, there was no indication from the documentation we found that prevailing wage rates were any concern of Metro or the Heery Project manager. Statements made by the prime contractor, in the instance of the Public Plaza project, indicated that they notified the subcontractor's that they were required to pay prevailing wage rates and required certified payroll records be submitted on a weekly basis as required by the contract (the records were available and complete for our audit.). *Brasfield & Gorrie* officials stated that they "attempted to provide the certified payrolls to Metro" but were told to "keep them on file". *Brasfield & Gorrie* also provided email evidence of questions to Metro and the Heery Project Manager seeking guidance on the proper wage rate category. Responses from Metro simply referred them to the U.S. Government Accountability Office and U.S. Department of Labor websites with no follow-up on the issue.

#### *Criteria:*

- *Metro Code of Law § 4.2.080* mandates payment of prevailing wage rates as set by the Department of Labor for all construction contracts with Metro Nashville. It further requires that the rates be posted on the job site by the contractor.
- *The COSO Internal Control- Integrated Framework* establishes a common definition of internal controls, standards, and criteria by which organizations can assess their internal control systems. Having adequate procedure in place to ensure contractor compliance is crucial in developing a strong internal control environment.
- *Section 5 of contract #15823 and contract #15600* dictates that the prime contractor and all related subcontractors utilize the Prevailing Wage Rate specified by the U.S. Department of Labor 42 U.S.C. 8276 (a).

#### *Cause:*

Metro Nashville does not have a formal methodology in place to verify that contractors and subcontractors are paying their workers in accordance with prevailing wage rates specified in the contract.

*Risk:*

Not having an adequate monitoring process in place to ensure prevailing wage rates are adhered to, increases the risk that workers are being underpaid. Such occurrences not only violate the law but also could diminish the public's perception and trust in its local government.

*Recommendation:*

General Services Department and Finance's Purchasing Department management should develop and implement a formalized methodology to verify contractor compliance with prevailing wage rates on ongoing construction projects. Further, this area should be emphasized during the planning stages of construction, after contract award but prior to the start of on-site work.

## ***B– Sub-Contractors Failing to Pay Business Tax***

Some subcontractors are not properly filing and paying business taxes to the Metropolitan County Clerk's Office. The Office of Internal Audit selected a sample of 18 subcontractors from the A. A. Birch Building and Public Square projects to ascertain if contractors and their subcontractors are properly remitting business taxes to the Metropolitan County Clerk's office. The Office of Internal Audit noted that from 2003 to 2007, one of the subcontractors failed to pay any business tax despite being paid for work performed on the A. A. Birch Building project<sup>3</sup>.

*Criteria:*

- *Tennessee Code Annotated § 67-4-701 Business Tax* dictates the policies and laws entities conducting business in Tennessee must abide by in remitting the appropriate business tax.
- *Metro Code of Law §§ 5.16.080 to 5.15.120: Business Tax*: dictates the policies and laws entities conducting business in Davidson County must abide by in remitting the appropriate business tax for revenue generated in the County

*Cause:*

Subcontractors, in some instances, are not remitting the appropriate business tax for revenue generated on Metro capital projects.

*Risk:*

Not properly remitting business taxes reduces revenue sources for the Metro Nashville.

*Recommendation:*

- 1) General Services Department and Finance's Purchasing Department management should develop a methodology to ensure contractors and

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<sup>3</sup> The work performed by the subcontractor was only a small percentage of the project total.

their respective subcontractors utilized on Metro capital projects are properly paying all business tax owed.

- 2) Finance's Purchasing Department management should ensure a clause requiring that all business taxes be paid in all construction contracts.

### ***C – Capital Project Status Report***

Quarterly Capital Project Status Reports posted on the Metro Finance website could be more transparent. These reports were originally designed based on the requested needs in Council Resolution RS2001-746. Thus, it is formatted to facilitate the requested requirements. However, in some instances a reader of the report would not be able to determine the total amount of expenditures for related projects without other detailed information that is not specifically available on the report. In the case of the courthouse/plaza garage initially funded in 2002, additional related costs that are not easily identifiable total approximately \$11.7 million (\$36.7 million versus \$25 million.)

*Criteria:*

- The COSO - *Integrated Framework* establishes a common definition of internal controls, standards, and criteria by which organizations can assess their internal control systems. One component, Information and Communication involves developing and implementing a system whereby information is effectively communicated across an organization.

*Cause:*

Need not previously identified.

*Risk:*

Lack of transparency can cause confusion and loss of public perception.

*Recommendation:*

Finance's Office of Management and Budget management should develop enhancements to the current quarterly Capital Plan Status Report so that an interested party could determine how much was spent on each project, including all material amounts not originally budgeted for a specific project.

# **GENERAL AUDIT INFORMATION**

## **STATEMENT OF COMPLIANCE WITH GAGAS**

We conducted this performance audit from October 2008 to June 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our observations and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our observations and conclusions based on our audit objectives. Our audit included tests of management controls that we considered necessary under the circumstances.

## **SCOPE AND METHODOLOGY**

The audit period focused primarily on processes in place during the construction of the A. A. Birch Building, the related Public Square and Parking Excavation.

The methodology employed throughout this audit was one of objectively reviewing various forms of documentation, including written policies and procedures, financial information and various forms of data, reports and information maintained by Metro Nashville. Management, administrative and operational personnel, as well as personnel from other departments and stakeholders were interviewed.

## **CRITERIA**

In conducting this audit, the existing capital project processes were evaluated for compliance with:

- The Metropolitan Procurement Code
- Metro Council Resolution RS2001-746
- Metro Code, Part I (Charter) §6.6.13
- The Committee of Sponsoring Organizations Internal Control-Integrated Framework
- Tennessee Code Annotated § 67-4-701 Business Tax
- Metro Code of Law §§ 5.16.080 to 5.15.120: Business Tax
- U.S. Department of Labor Prevailing Wage Rates

## **STAFF ACKNOWLEDGEMENT**

Carlos Holt, CPA, CIA, CFE, CGAP – Audit Manager  
William Walker, CPA – In Charge Auditor  
Sharhonda Terrell – Staff Auditor  
Roxanne Caruso – Staff Auditor

## **APPENDIX A. MANAGEMENT RESPONSE**

- Management's Responses Starts on Next Page -

Metropolitan Government  
of Nashville and Davidson County

Karl F. Dean, Mayor  
Nancy Whittemore, Director



Department of General Services

One Public Square, Suite G70  
P.O. Box 196300  
Nashville, TN 37219-6300  
615-862-5050, 615-862-5035 (Fax)

February 24, 2010

Mark Swann  
Metropolitan Auditor  
Office of Internal Audit  
222 3<sup>rd</sup> Avenue North, Suite 401  
Nashville, TN 37201

RE: AU2009-003 Capital Project

Dear Mr. Swann:

This letter acknowledges that the Department of General Services received the AU2009-003 Capital Project audit report and has reviewed the recommendations. Since the recommendations address Metro-wide issues, the Division of Purchasing has responded to each. The Department of General Services will comply with any Purchasing directives issued regarding these recommendations.

It was a pleasure working with you on this audit and we appreciate the opportunity to improve our processes.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Whittemore".

Nancy Whittemore  
Director of General Services

METROPOLITAN GOVERNMENT NASHVILLE AND DAVIDSON COUNTY



KARL F. DEAN  
MAYOR

DIRECTOR OF FINANCE  
METRO COURTHOUSE  
ONE PUBLIC SQUARE, SUITE 106  
P.O. BOX 196300  
NASHVILLE, TENNESSEE 37219-6300  
(615) 862-6151  
(615) 862-6156 FAX

March 8, 2010

Mr. Mark Swann  
Metropolitan Auditor  
Office of Internal audit  
222 Third Avenue North, Suite 401  
Nashville, TN 37201

RE: Audit of Metro Capital Projects Governance Process

Dear Mr. Swann:

This letter acknowledges that the Finance Department received and reviewed the report entitled, *Audit of Metro Capital Projects Governance Process*. We have reviewed the observations and recommendations and provided you a list of the proposed actions that will take place to address the suggestions made. We hope to resolve all issues by June 30, 2010.

Thank you and we appreciate the professional manner in which you and your staff have approached this assignment.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Riebeling".

Richard M. Riebeling  
Director of Finance

Copy: Talia Lomax-O'dneal  
Jeff Gossage

**Management Response to Audit Recommendations  
March 2010**

| Report Item and Description  | Response to Recommendation / Action Plan   | Assigned Responsibility   | Estimated Completion |
|--|--|---|----------------------|
| <p><b>A.1</b> General Services Department and Finance's Purchasing Department management should develop and implement a formalized methodology to verify contractor compliance with prevailing wage rates on ongoing construction projects. Further, this area should be emphasized during the planning stages of construction, after contract award but prior to the start of on-site work.</p> | <p><b>Accept.</b> While this audit was only of a General Services project, capital projects are also managed by other departments. As a result, an affidavit will be required of all prime contractors and their proposed subcontractors, stating that they will pay the prevailing wage rates. This contract affidavit will be drafted and submitted to the Department of Law for approval.</p>   | <p>Jeff Gossage,<br/>Purchasing Agent</p>                                 | <p>June 30, 2010</p> |
| <p><b>B.1</b> General Services Department and Finance's Purchasing Department management should develop a methodology to ensure contractors and their respective subcontractors utilized on Metro capital projects are properly paying all business tax owed.</p>  | <p><b>Accept.</b> All future Metro contracts will have as a minimum requirement, the submission of a current business license for the prime and all proposed subcontractors. This contract requirement will be drafted and submitted to the Department of Law for approval.</p>  | <p>Jeff Gossage,<br/>Purchasing Agent</p>                                 | <p>June 30, 2010</p> |
| <p><b>B.2</b> Finance's Purchasing Department management should ensure that a clause requiring that all business taxes be paid, should be included in all construction contracts.</p>  | <p><b>Accept.</b> Finance agrees and accepts that a standard clause is needed. This will be drafted and submitted to the Department of Law for approval.</p>   | <p>Jeff Gossage,<br/>Purchasing Agent</p>                                 | <p>June 30, 2010</p> |
| <p><b>C.1</b> Finance's Office of Management and Budget management should develop enhancements to the current quarterly Capital Plan Status Report so that an interested party could determine how much was spent on each project, including all material amounts not originally budgeted for a specific project.</p>  | <p><b>Accept.</b> Finance agrees and accepts that a revised report would be beneficial and we do plan to make some enhancements to the current report. However, it is worth noting that this capital spending report is not intended to be a capital project management report. It is the position of the Finance Department that the responsibility for providing detailed project management reports are the responsibility of the department that manages and oversees the capital project.</p> | <p>Finance - Office of Management and Budget and Division of Accounts</p> | <p>June 30, 2010</p> |