

Buffalo City School District - Joint Schools Construction Program Phase 1 - Executive Summary

In 1998, the City of Buffalo (City) and the Buffalo City School District (District) established the Joint Schools Construction Board (JSCB) to manage the acquisition, design, construction, and financing of educational buildings in the District. State legislation was passed in 2000, and later amended, that gave the JSCB the authority to more economically and innovatively carry out these efforts. The JSCB and the District have undertaken the task of reconstructing and renovating the District's existing buildings through a 10-year, multi-phase project estimated to cost \$670 million. They anticipate that an additional \$300 million will be used for constructing new facilities after the reconstruction of existing facilities is complete.

In June 2002, the JSCB contracted with Louis P. Ciminelli Management Co., Inc. to act as the "Comprehensive Program Packaging and Development Services (PPDS) Provider" (Program Provider). In September 2003, the JSCB, the District, and the Program Provider executed a Master Construction Agreement, which identified the specific school facilities to be redeveloped, the general scope of the work to be completed in such facilities, the sources of financing for the work, and the cost of the project work approved by the State Education Department (SED) as eligible for building aid.

In consideration of the performance of its obligations pursuant to the PPDS agreement and the Master Construction Agreement, the Program Provider was to be paid a "stipulated sum" in an amount equal to the "approved costs" established by SED for the project work. "Approved costs" are contractually defined as those costs of project work approved by SED as eligible for reimbursement with State building aid. The "approved costs" for the 11 projects included in Phase 1, as initially established by SED, were \$173.5 million. This amount was used as the basis for payments to the Program Provider and reimbursements made to the District from Phase 1 project funds.

Phase 1 project costs were financed by bond proceeds totaling \$197 million. The District's semi-annual debt service payments on the bonds issued to fund Phase 1 activities will be financed primarily by building aid from the State. For Phase 1 projects, SED will reimburse the District 94.3 percent of all allowable costs. To fund the other 5.7 percent, known as the "local share," the District will use moneys primarily from two sources: interest earnings on a \$19.2 million debt service reserve created from the bond proceeds, and savings generated from energy conservation measures implemented through an energy performance contract.

Scope and Objectives

The objective of this audit was to evaluate Phase 1 of the District's 10-year, \$1 billion construction program. Accordingly, we developed audit procedures to examine the financial records maintained by the District and the Program Provider to determine the manner in which Phase 1 project funds were expended. However, representatives from the Program Provider asserted that certain records they maintained were proprietary and denied us access to them. As a result, we were unable to assess the validity of approximately \$24 million in costs charged to Phase 1 projects, a material amount. The Program Provider's refusal to provide access to financial information creates a scope limitation on our audit. The readers

of this report should consider the effect of this scope limitation on the findings and conclusions we present below.

Our audit addressed the following questions for the period September 2003 through February 28, 2006:

- For Phase 1 construction projects, was the scope of the construction work ultimately performed in substantial conformance with the scope of the construction work planned?
- Was the construction work that was actually performed of acceptable quality?
- Did the District establish and implement appropriate management controls and adequately monitor Phase 1 program activities?

Audit Results

Our audit disclosed that the JSCB and the District did not establish and implement appropriate management controls or adequately monitor Phase 1 program activities. This lack of project management resulted in the following:

- The Office of the State Comptroller engaged consultants to determine if the scope of the construction work that was ultimately set forth pursuant to the SED approved plans and specifications was the same as the scope of the construction work that was actually performed, and if the construction work that was performed was of acceptable quality. In their report to us, the consultants stated that the work they observed appeared to be performed in accordance with prevailing industry standards, and concluded that the quality of the work was generally good. They further concluded that, for the four schools they tested, the work performed was in substantial compliance with the plans and specifications approved by SED.
- The District does not withhold retainage from the Program Provider even though the agreement provides that either 5 percent or 10 percent retainage should be withheld. However, the Program Provider withholds retainage from its subcontractors. Therefore, the Program Provider is, at times, in possession of District funds that otherwise would have been withheld pursuant to the terms of the agreement.
- The District does not request, nor does the Program Provider submit, regular comparisons of approved construction cost estimates with actual construction costs, in accordance with the Program Provider Agreement. Therefore, District officials are unable to determine when individual projects are exceeding their budgets or where such over-expenditures may occur in the future.
- District officials could not produce adequate documentation to support \$2.1 million being held by the Program Provider in a self-insurance risk pool or a written agreement regarding the custody and disposition of such funds. In fact, key District officials were unaware of the arrangement altogether.
- The District does not determine if the Program Provider is paying its subcontractors in compliance with the terms of the Master Construction Agreement or holding sums of money in excess of their \$10 million faithful performance bond.
- The District was unable to assess the validity of approximately \$24 million in costs charged to Phase 1 projects by the Program Provider. Several million dollars of these costs were reported in questionable categories such as “charitable contributions” or “construction paid from contingency.” The Program Provider also refused to provide us with support for these charges.

- The District should not have paid \$2.6 million to the Program Provider because the Program Provider did nothing to warrant this payment. This amount represented available program funds that were not spent as originally planned, because project costs were instead funded by a Federal telecommunications grant.

The Program Provider allocated certain costs from six Phase 1 projects that exceeded their construction budgets to other Phase 1 projects whose budgets had not been fully expended. This allocation of costs “where they fit” is not in agreement with assertions made to us by the District’s Chief Operating Officer (COO) and is certainly not in compliance with the SED building aid guidelines. This manner of accounting for project costs by the Program Provider will affect the amount of reimbursable expenditures that SED officials will allow and, therefore, will reduce the amount of aid paid to the District to be used for debt service payments. SED could disallow more than \$8.7 million in Phase 1 costs that were not charged in compliance with SED’s requirements. If this happens, building aid would be reduced by about \$14.3 million and the District would need to use local funds for debt service costs. Furthermore, the District received less construction work on the schools that had costs shifted from other buildings than would have been the case if the entire budgeted amount had been spent on those buildings.

Additionally, architects who are certifying the work of the Program Provider in order to generate payment from the District are contracted directly with the Program Provider. Other professional services including a cost consultant and the Attorney for the JSCB are also paid directly by the Program Provider. These relationships suggest a lack of independence, because the professional is expected to protect the interests of the District.

Finally, the District was unable to demonstrate that the savings anticipated from an Energy Performance Contract would be greater than the cost of the contract and interest costs on the financing used to fund such contract. The contract and interest costs exceed the savings illustrated in the Energy Performance Contract by approximately \$7.5 million. In addition, the same contractor that implemented the energy performance contract will also be analyzing and reporting on the District’s computed annual savings resulting from work completed by them. Again, this relationship, at a minimum, suggests a lack of independence.

These deficiencies were attributable to a number of factors, including District officials’ insistence that the construction program will not cost the District any money, as well as the notion that the Program Provider “assumes the risk” for providing all of the project work identified in the construction plans and specifications. Despite these perceptions, there should be no doubt that the District has the responsibility to establish and implement appropriate management controls to ensure that the District’s best interests are adequately safeguarded.

Comments of District Officials and Corrective Action

The results of our audit and recommendations have been discussed with appropriate officials and their comments, which appear in Appendix A, have been considered in preparing this report. District officials generally agreed with our recommendations and indicated they planned to initiate corrective action.

[*Complete Audit in PDF*](#)