



301 West Jefferson St  
Suite 660  
Phx, AZ 85003-2148  
Phone: 602-506-1585  
Fax: 602-506-8957  
www.maricopa.gov

October 13, 2010

Don Stapley, Chairman, Board of Supervisors  
Fulton Brock, Supervisor, District I  
Andrew Kunasek, Supervisor, District III  
Max W. Wilson, Supervisor, District IV  
Mary Rose Wilcox, Supervisor, District V

**Court Tower Construction—Audit of Contract Payments**

Executive Summary

Based on the work performed, the auditors reported six observations:

- Three instances of questioned billings (totaling \$60,064)
- Three areas where construction controls can be improved

Background

The Board of Supervisors approved the construction of the Maricopa County Downtown Court Tower through a series of Guaranteed Maximum Price (GMP) contracts with Gilbane Building Company (Gilbane). The overall budget for the project is \$340 million, of which \$213 million through March 31, 2010 was committed to the contracts with Gilbane.

Under the direction of Internal Audit, the consulting firm Moss Adams LLP (Moss Adams) reviewed expenditures charged under five construction contracts, in various stages of completion, for the Downtown Court Tower project.

<b>Project Expenditures through 03/31/10 By Contract</b>	<b>Amount Billed (millions)</b>	<b>Percent Complete</b>
1. Parking Garage Demolition	<b>\$ 4.4</b>	<b>87%</b>
2. Steel Orders	<b>18.1</b>	<b>97%</b>
3. Excavation, Steel, General Conditions	<b>10.5</b>	<b>36%</b>
4. Exterior Work	<b>28.5</b>	<b>52%</b>
5. Core and Shell Work	<b>8.2</b>	<b>8%</b>
<b>Totals</b>	<b>\$ 69.7</b>	<b>33%</b>

### Purpose of the Review

The purpose of the review was to determine if the contractor billed the County in accordance with contract terms and conditions. Moss Adams reviewed billings submitted by the contractor and subcontractors from project inception through March 31, 2010.

### Summary of Results

<b>Questioned Billings</b>	
Insufficient documentation for relocation expenses	<b>\$ 55,000</b>
Incorrect labor rates and unallowable paid time off	<b>4,398</b>
Duplicate vendor charges and incorrect payments	<b>666</b>
<b>Total</b>	<b>\$ 60,064</b>

<b>Construction Control Issues</b>
Owner procedures for the project are still in draft form
Close-out for the costs associated with GMP 1 has not been completed
Labor rate multipliers were approved separately from the general conditions

<b>Good Construction Practices Observed</b>
Personal review of stored materials and inventories was consistent
Regular project status meetings occurred (including meetings with subcontractors)
Communication about the project was presented regularly to the public through a dedicated website

### Audit Standards

This performance audit was conducted 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 findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Detailed Report and Responses from Public Works

Within the attached, detailed report by Moss Adams, you will find specific information on the areas reviewed, and responses to the recommendations. Moss Adams reviewed this information with Public Works and the contractor. If you have any questions, or wish to discuss the information presented in this report, please contact Richard Chard at (602) 506-7539.

Sincerely,

A handwritten signature in black ink that reads "Ross L. Tate". The signature is written in a cursive, slightly slanted style.

Ross L. Tate  
County Auditor

Attachment

C: David Smith, County Manager  
Sandi Wilson, Deputy County Manager  
Kenny Harris, Assistant County Manager  
Abe Thomas, Project Executive Manager





# **Maricopa County Downtown Court Tower Project**

## **Construction Contract Performance Audit**

October 13, 2010

# EXECUTIVE SUMMARY

## Engagement Scope and Objectives

The primary focus of this construction audit was to evaluate construction program controls and procedures and determine whether construction expenditures charged to this project were reasonable, allowable, and in accordance with the construction contract. This report covers costs reported through the following Guaranteed Maximum Price (GMP) contracts.

- GMP 1 Payment Application No. 1 through Payment Application No. 10, dated August 31, 2009
- GMP 2a Payment Application No. 1 through Payment Application No. 7, dated March 31, 2010
- GMP 2b Payment Application No. 1 through Payment Application No. 15, dated March 31, 2010
- GMP 2c Payment Application No. 1 through Payment Application No. 14, dated March 31, 2010
- GMP 3a Payment Application No. 1 through Payment Application No. 12, dated March 31, 2010
- GMP 3b Payment Application No. 1 through Payment Application No. 9, dated March 31, 2010
- GMP 3c Payment Application No. 1 through Payment Application No. 11, dated March 31, 2010
- GMP 3d Payment Application No. 1 through Payment Application No. 11, dated March 31, 2010
- GMP 4 Payment Application No. 1 through Payment Application No. 9, dated March 31, 2010
- GMP 5 Payment Application No. 1 through Payment Application No. 4, dated March 31, 2010

The following procedures were completed:

- Interviewed General Contractor's Senior Project Manager, Project Controller, and other personnel to understand accounting system and available reports.
- Discussed project controls with Maricopa County Executive Director and relevant personnel.
- Reviewed Contractor's accounting reports to identify reports most useful for the audit.
- Analyzed Maricopa County construction controls to identify areas for improvement.

- Reviewed payment documentation/calculation to assess adequacy of supporting documentation.
- Assessed internal controls surrounding Contractor's processes.
- Reviewed contract terms, identified sensitive accounts for examination of unallowable costs, and listed the cost codes (categories).
- Performed labor transaction testing.
- Reviewed materials and equipment cost analysis.
- Analyzed direct and indirect costs.
- Tested and reviewed subcontractor costs and contract records.
- Reviewed change orders.
- Reviewed lien release, insurance, and bond documentation.
- Reviewed safety documentation.
- Performed fee testing.
- Performed other miscellaneous testing procedures, as necessary.

## Project Overview

The Board of Supervisors approved the construction of the Maricopa Count Downtown Court Tower through several Guaranteed Maximum Price (GMP) Contracts between Maricopa County and Gilbane Building Company (Gilbane). The following table provides a summary of the project costs as reflected through the most recent payment application as of March 31, 2010.

GMP	Work Scope	Original Schedule of Values	Change Orders	Revised Schedule of Values	Total Completed To Date	Percent Complete
1	Parking Garage Demolition	\$5,043,971	\$10,591	\$5,054,562	\$4,408,357	87%
2a	Structural Steel Reservation	568,462	-	568,462	542,064	95%
2b	Structural Steel Order (Floors 5 – 15)	9,579,882	-	9,579,882	9,282,054	97%
2c	Structural Steel Order (Floor 1 – 4)	8,504,608	-	8,504,608	8,301,175	98%
3a	Mass Excavation	1,785,991	(117,929)	1,668,062	1,414,689	85%
3b	Structural Steel Fabrication	2,795,488	-	2,795,488	2,794,434	99.9%
3c	General Conditions	21,043,137	23,952	21,067,089	5,628,217	27%
3d	General Requirements	3,746,536	-	3,746,536	587,646	16%
4	Exterior Work	59,756,291	(4,877,264)	54,879,027	28,498,956	52%
5	Core and Shell Work	\$103,974,005	\$1,240,467	\$105,214,472	\$8,231,202	8%
<b>Total GMPs</b>		<b>\$216,798,371</b>	<b>(\$3,720,183)</b>	<b>\$213,078,188</b>	<b>\$69,688,794</b>	<b>33%</b>



# SUMMARY OF OBSERVATIONS

This construction audit identified \$60,064 in questioned billings as well as opportunities for construction controls improvement. Below is a summary of our construction audit observations.

**1.1 Unsupported Relocation Expenses** – Two charges for relocation expenses totaling \$55,000 were paid as a lump sum amount instead of at actual cost.

**1.2 Unallowable Labor Charges** – Incorrect labor rates and unallowable paid time off charged for Gilbane personnel resulted in an overcharge of \$4,398 to the contract.

**1.3 Unallowable Vendor Charges** – Duplicate charges and incorrect payments resulted in an overcharge of \$666.

**2.1 Downtown Court Tower Owner Procedures** – The Owner procedures for the project are still in draft form.

**2.2 Close-out of GMP 1** – Close-out for the costs associated with GMP 1 has not been completed.

**2.3 Labor Rates** – The labor rate multipliers used in charging Gilbane personnel to the project were approved separately from the general conditions listed in GMP 1 and GMP 3c.

The following Maricopa County construction processes and results were consistent with good construction practices:

- Personal review of stored material and project inventory was consistent.
- Regular project status meetings, including meetings with subcontractors, occurred.
- Communication about the project was presented regularly to the public through a dedicated website.

Observations in this report have been discussed with the Maricopa Internal Audit Department. Reported observations have been verified.

## Billings in Question

Reference	Observations	Comments
1.1	<p><b>Unsupported Relocation Expenses</b></p>	<p><b>Criteria:</b> The contract states the owner will make payments as provided in the Construction Manager at Risk (CMR) construction contract for the CMR's performance of the actual cost of construction work up to but not exceeding the Guaranteed Maximum Price.</p> <p><b>Condition:</b> The County paid \$55,000 for two charges for relocation expenses that were approved as a lump sum amount instead of charged based on actual costs.</p> <p><b>Effect:</b> Without proper supporting documentation of actual cost, the total amount of the relocation expenses cannot be determined which may lead to a contract overcharge. The transaction also may be considered a legal risk since the approval to pay the expenses as a lump sum is not in compliance with the contract.</p> <p><b>Cause:</b> The relocation payments were approved as lump sum amount by the Owner.</p> <p><b>Recommendation:</b> Management should verify actual relocation costs to ensure the payment to Gilbane did not exceed actual cost. In addition, management should review the approval documentation to ensure the transaction did not create a legal risk to the County.</p>
1.2	<p><b>Unallowable Labor Charges</b></p>	<p><b>Criteria:</b> Owner approved labor multipliers are applied to the actual labor rate to calculate employee labor charges to the Owner. In addition, the contract does not allow paid time off for Gilbane employees to be charged to the Owner.</p> <p><b>Condition:</b> The rate calculated using the labor multiplier did not match the rate charged to the Owner in 13 of 117 items in our sample (11 percent) totaling \$3,696. Unallowable paid time off totaling \$702 was charged to the Owner in 1 of 117 items in our sample (0.9 percent).</p> <p><b>Effect:</b> Incorrect use of the labor multiplier and unallowable paid time off charges in GMP 1 resulted in an overbilling of \$4,398.</p> <p><b>Cause:</b> Gilbane did not adequately calculate the labor rates or appropriately identify the overcharge due to paid time off.</p> <p><b>Recommendation:</b> Gilbane should provide the Owner with a credit of \$4,398 in a subsequent payment application. Gilbane should also implement adequate controls to avoid future overbillings.</p>

Reference	Observations	Comments
1.3	<b>Unallowable Vendor Charges</b>	<p><b>Criteria:</b> The contract allows such costs as material, equipment, and vendor invoice charges incurred by Gilbane for the project to be billed to the Owner.</p> <p><b>Condition:</b> Unallowable vendor rates, duplicate charges, and payment for an incorrect invoice amount were identified in 5 of 156 items in our sample (3 percent), totaling \$666.</p> <p><b>Effect:</b> Charges related to incorrect rates and incorrect payments in GMP 1 resulted in an overbilling of \$442. Charges related to duplicate payments in GMP 3c resulted in an overbilling of \$224.</p> <p><b>Cause:</b> Gilbane did not appropriately identify vendor overcharges.</p> <p><b>Recommendation:</b> Gilbane should provide the Owner with a credit of \$666 in a subsequent payment application. Gilbane should also implement adequate controls to avoid future overbillings.</p>

### Opportunities for Construction Controls Improvement

Reference	Observations	Comments
2.1	<b>Downtown Court Tower Procedures</b>	<p><b>Criteria:</b> The Owner compiled the Downtown Court Tower General Requirements, a list of construction policies and procedures for the project that addresses items such as site use, security requirements, special conditions, allowance approvals, project meetings, and warranties.</p> <p><b>Condition:</b> The policies and procedures provided were dated December 2009 and in a draft format.</p> <p><b>Effect:</b> The absence of finalized written policies and procedures may result in practices that are not consistent with the County's guidelines.</p> <p><b>Cause:</b> The County has not completed finalized policies and procedures for the Downtown Court Tower.</p> <p><b>Recommendation:</b> The County should finalize the policies and procedures related to the Downtown Court Tower.</p>

Reference	Observations	Comments
2.2	Closeout Documentation	<p><b>Criteria:</b> The contract provides guidance for final completion of the contract, including final payment and final certification of the work.</p> <p><b>Condition:</b> Work performed under GMP 1 was completed in August 2009; however, final closeout documentation has not been processed.</p> <p><b>Effect:</b> Not performing all close-out procedures may lead to unfulfilled contractual obligations.</p> <p><b>Cause:</b> Agreement between the County and Gilbane has not been reached regarding the calculation of line item savings. Gilbane has not performed a reconciliation of the bond cost.</p> <p><b>Recommendation:</b> Close-out documentation including final payment should be completed for work performed under GMP 1.</p>
2.3	Labor Rate Multiplier	<p><b>Criteria:</b> The Owner approved labor multipliers to be applied to the labor rates to calculate labor charged to the project for Gilbane personnel.</p> <p><b>Condition:</b> The labor rate multipliers were approved by the Project Management team separately from the general conditions listed in GMP 1 and GMP 3c.</p> <p><b>Effect:</b> Approval of labor rates outside the GMP contracts may diminish recourse in a legal dispute.</p> <p><b>Cause:</b> The County did not include the labor multipliers in the GMP documentation for general conditions.</p> <p><b>Recommendation:</b> For future projects, any labor multipliers or rate schedules should be included in the contract documents to ensure they are approved by the appropriate parties and are legally supported in case of dispute.</p>

**AUDIT RESPONSE**  
**CONSTRUCTION CONTRACTS – DOWNTOWN COURT TOWER**  
**October 8, 2010**

**Issue #1.1**

**Two charges for relocation expenses totaling \$55,000 were paid as a lump sum amount instead of being charged based on actual costs.**

**Recommendation:** Management should determine actual relocation costs to ensure the payment to Gilbane did not exceed actual cost. In addition, management should review the approval documentation to ensure the transaction did not create a legal risk to the County.

**Response:** Concur—Relocation expenses were approved as a lump sum due to the complicated move of two key members of the project. The lump sum approval was based on estimated expenses. Because the moves required the selling of property, temporary housing, household storage, etc. Gilbane used the estimate to negotiate a lump sum payment to the employees (less than employee estimate). Due to economic conditions, the homes have not sold yet and all costs associated with these moves have not been finalized. It is for this reason that the move is often negotiated as a lump sum to the employee. The contract with Gilbane and the County does not specifically address the payment of travel and relocation of employees.

**Recommendation:** County should develop a reimbursement policy regarding travel and relocation as a part of the general requirements of the contracts for consultants/vendors.

**Target Completion Date:** All anticipated relocation has occurred on this project. All travel is currently being treated as an actual expenditure against a "not to exceed estimate" and receipts must be presented. A travel authorization form must be executed prior to the commencement of travel.

**Benefits/Costs:** Accurate billings for contract conditions to date.

**Issue #1.2**

**The rate calculated using the labor multiplier did not match the rate charged to the County, which totaled \$3,696. Gilbane also charged unallowable paid time off totaling \$702 to the County.**

**Recommendation:** Gilbane should provide the Owner with a credit of \$4,398 in a subsequent payment application. Gilbane should also implement adequate controls to avoid future overbillings.

**Response:** Concur—Gilbane issued a credit. Adequate controls are now in place.

**Target Completion Date:** Actual credit issued July 20, 2010

**Benefits/Costs:** Compliance with contract terms increased accountability.

**Issue #1.3**

**Gilbane invoiced \$666 for unallowable vendor rates, duplicate charges, and an incorrect invoice amount.**

**Recommendation:** Gilbane should provide the Owner with a credit of \$666 in a subsequent payment application. Gilbane should also implement adequate controls to avoid future overbillings.

**Response:** Concur—Gilbane has issued a credit. Adequate controls are now in place

**Target Completion Date:** Actual credit issued July 20, 2010

**Benefits/Costs:** Increased control over accountability.

**Issue #2.1**

**The County's policies and procedures provided for the project were dated December 2009 and in a draft format.**

**Recommendation:** The County should finalize the policies and procedures related to the Downtown Court Tower.

**Response:** The Division 1 document was finalized and incorporated in the contracts January, 2010. This document may continue to be revised as needed to address upcoming issues.

**Target Completion Date:** Completed

**Benefits/Costs:** Finalized procedures increased compliance with contract terms and conditions.

**Issue #2.2**

**Work performed under GMP 1 was completed in August 2009; however, final closeout documentation has not been processed.**

**Recommendation:** Close-out documentation including final payment should be completed for work performed under GMP 1.

**Response:** Concur--Completed.

**Actual Completion Date:** 9/13/10 – Deductive change order executed

**Benefits/Costs:** Increased control over accountability.

**Issue #2.3**

**The Project Management team approved the labor rate multipliers separately from the general conditions listed in GMP 1 and GMP 3c.**

**Recommendation:** For future projects, any labor multipliers or rate schedules should be included in the contract documents to ensure they are approved by the appropriate parties and are legally supported in case of dispute.

**Response:** Concur--will implement on future projects


**Target Completion Date:** Future projects

**Benefits/Costs:** Increased control over accountability.

**Approved By:**

  
\_\_\_\_\_  
**Project Executive Manager** 10/8/10  
**Date**

  
\_\_\_\_\_  
**Assistant County Manager** 10-8-10  
**Date**

  
\_\_\_\_\_  
**County Manager** 10/8/10  
**Date**