



**METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY**

**OFFICE OF INTERNAL AUDIT**

**Professional Audit and Advisory Service**

**FINAL REPORT**



**Audit of the Music City Convention Center Construction  
Project**

**INTERIM REPORT  
AUGUST 1, 2010, THROUGH OCTOBER 31, 2010**

**Date Issued:**

November 17, 2010, without Management Response

December 28, 2010, with Management Response

Office Location and Phone Number

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

# EXECUTIVE SUMMARY

November 17, 2010

Results in Brief	Recommendations
<p>We performed an audit of the processes and controls in place pertaining to compliance with applicable contract stipulations, laws, and regulations governing labor practices for entities involved in the construction of the Music City Convention Center.</p> <p>Key audit objectives and conclusions are as follows:</p> <ul style="list-style-type: none"> <li>• <i>Were trade and subcontractors in compliance with guidelines regarding employment eligibility to work in the United States?</i></li> </ul> <p>Yes. However, expanding the use of Department of Homeland Security E-Verify program can provide further assurance that only eligible workers are employed.</p> <ul style="list-style-type: none"> <li>• <i>Were trade and subcontractors providing health insurance to qualified workers in accordance with Tennessee Code Annotated § 7-4-205, Wage rates and benefits for workers?</i></li> </ul> <p>Yes. No material issues were encountered.</p> <ul style="list-style-type: none"> <li>• <i>Were trade and subcontractors compensating workers according to prevailing wage laws as required by Tennessee Code Annotated § 7-4-205, Wage rates and benefits for workers, and Article 5.6 of the Convention Center Authority Procurement Policy?</i></li> </ul> <p>Generally yes. However, additional policies and procedures will ensure future compliance and alleviate confusion.</p>	<p>Key recommendations of this report include:</p> <ul style="list-style-type: none"> <li>• Expand the use of the E-Verify system</li> <li>• Devise a protocol that ensures each covered worker is classified according to Tennessee's Prevailing Wage building or highway wage schedules</li> </ul>

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# INTRODUCTION

## AUDIT INITIATION

The continuous performance audit of the Music City Center construction is being conducted as part of the approved 2010 Audit Work Plan. This is the second in a series of interim reports that will be issued throughout the duration of the construction project. These reports will culminate with a more detailed performance audit report at the conclusion of construction related activities. Significant observations and recommendations noted throughout these interim reports will be incorporated in the final report.

## MUSIC CITY CONVENTION CENTER PROJECT STATUS

### Exhibit A - Project Budget Status as of September 30, 2010

Description	Budget	Paid to Date	Percentage Paid	Cost to Complete	Percentage Remaining
Direct Construction Costs	\$452,044,757	\$38,706,713	8.56	\$413,338,044	91.44
Land Acquisition & Relocation Costs	57,000,000	49,932,992	87.60	7,067,008	12.40
Architectural Design & Engineering	40,189,684	30,815,193	76.67	9,374,491	23.33
CCA Project Management	10,993,758	4,260,932	38.76	6,732,826	61.24
Project Insurance & Programs	8,252,322	2,838,263	34.39	5,414,059	65.61
Legal, Financing, Audits, and Consultants	2,869,480	1,608,106	56.04	1,261,374	43.96
MCC Furniture, Fixtures, and Equipment	11,650,000	-	-	11,650,000	-
MCC Pre Opening Operations	2,000,000	-	-	2,000,000	-
Totals	\$585,000,000	\$128,162,198	21.90	\$456,837,802	78.10

Source: Convention Center Authority Project Financial Summary

## SIGNIFICANT PROJECT MILESTONES

- As of October 20, 2010, 35,000 of 110,000 cubic yards of concrete have been poured. Concrete pour for the first part of the main exhibit hall has been completed and the building is five stories high
- The Diversity Business Enterprise team submitted the State of Tennessee Compliance Reports on October 18, 2010, outlining the percentage of dollars paid and the workforce composition for the third quarter.

- To date, minority, women, and small business participation on the project totaled 22.7 percent.
- The Diversity Business Enterprise and MCC Finance teams have completed a fully automated reporting system that will allow the team to capture, track, and generate reports for diversity business participation.
- Work on the NES Substation relocation from Demonbreun to 6th Ave. and Peabody Street continues. NES duct banks in 5th Avenue, 4th Avenue, Demonbreun, Peabody and Franklin Streets are 50% complete.
- An extensive amount of utility relocation and related work have been completed in the streets around Music City Center. On 10-31, permanent water service to the MCC was tied into the 12" water main in Demonbreun Street.
- As of October 12th, the Workforce Development (WFD) component has received over 2,100 local job applications and 34 workers were hired through the program, including one supervisor. WFD applicants that need assistance and/or additional training are being referred to partner community based organizations (i.e. Urban League of Middle Tennessee, 15th Avenue Baptist CDC, Project Return, and Martha O'Bryan Center).
- As of 10-31-10, current work force on site is approximately 480 workers.
- Steel truss fabrication for the Exhibit Hall and Grand Ballroom has begun.
- Mass excavation for the 19 acre MCC is complete. This equated to 30,000+ loads of rock/dirt hauled to the airport.
- Currently 95% of the building footings are complete and over 1000 support columns have been constructed.

### **Exhibit B – Exhibit Hall Progress as of November 10, 2010**



# AUDIT ACTIVITY UPDATE

## BACKGROUND

The objective for the labor testing phase of the audit was to ascertain whether selected service providers, trade contractors, and subcontractors were in compliance with contract stipulations set forth in article 6.15 *Wage and Labor Practices* of the Construction Management Agreement with Bell/Clark a Joint Venture. This contract term at a minimum, requires Bell/Clark and all subcontractors to pay State of Tennessee prevailing wage rates in accordance with Tennessee's Prevailing Wage Act of 1975. Similarly, the Convention Center Authority enabling legislation and Procurement Policy includes prevailing wage requirements. Furthermore, the Authority's enabling legislation includes health insurance coverage requirements for workers during the construction of the new convention center.

Also, the Convention Center Authority's Procurement Policy, Article 5.10, supports that only employees eligible to work in the United States can work on the convention center project site.

As part of our assessment, the Metro Nashville Office of Internal Audit performed site visits to seven trade and subcontractor offices to inspect, review, and test compliance with employment eligibility, prevailing wage labor rates, and health insurance requirements.

## OBJECTIVES AND CONCLUSIONS

1. *Were trade and subcontractors in compliance with guidelines regarding employment eligibility to work in the United States?*

Yes. The Metro Nashville Office of Internal Audit evaluated and reviewed Form I-9 documentation pertaining to 384 workers (see Exhibit C, page 4), from seven different trade and subcontractors that had performed or were currently performing work for the Music City convention center. During the review process we were able to substantiate the availability of supporting documentation for 375 employees during site visits. This was accomplished by observing subcontractor certified Department of Homeland Security Form I-9, Employment Verification forms for all employees assigned to work at the Music City convention center project site.

The Metro Nashville Office of Internal Audit determined of the nine workers without Form I-9 documentation, eight were hired prior to November 6, 1986; the date Form I-9 requirements were implemented. Department of Homeland Security rules do not require Form I-9 documentation for employees hired prior to November 6, 1986. The other employee, which Form I-9 documentation was not available, only worked for one day and resigned before a Form I-9 was processed. Department of Homeland Security rules allow three business days from time of hire to complete a Form I-9.

## Exhibit C – Internal Audit Form I-9 Review Summary

Subcontractor	Employees Reviewed	Employees Verified	Employees Hired Prior to November 6, 1986	Employees Resigned Within Three Days
Tuck-Hinton	13	13		
Mountain States (1)	105	103	2	
CCK	32	31		1
CECO Concrete	234	228	6	
Totals	384	375	8	1

*Source: Metro Nashville Office of Internal Audit*

*Note 1 – Includes review of Jones Brothers, Incorporated; Jones Brothers, LLC; and HMA.*

We observed as of January 1, 2010, that CECO Concrete had started using the Department of Homeland Security E-Verify program to electronically verify employment eligibility of newly hired employees. The Department of Homeland Security U.S. Citizenship and Immigration Services state in their E-Verify User Manual:

*“E-Verify is free and the best means available to determine the employment eligibility of new hires and the validity of their Social Security numbers.”*

The expanded use of the E-Verify program would enhance subcontractor’s determination of employment eligibility. (See Observation A, page 6.)

2. *Were trade and subcontractors providing health insurance to qualified workers in accordance with Tennessee Code Annotated § 7-4-205, Wage rates and benefits for workers?*

Yes. The Music City Center’s construction management team, Bell/Clark, has set-up a health insurance plan that provides basic health coverage for workers on-site. This plan is based on a pay-per-use basis, and premiums are paid by the employers at the rate of one dollar for each hour a worker logs in a given pay period. Our procedures evaluated 363 workers that had performed or were currently performing work at the construction site. During our review we were able to substantiate 355 workers with health insurance, either utilizing the program or had coverage before working at the site, or coverage through other providers. Subsequently, there were eight workers that we were unable to verify because those workers were either terminated or resigned prior to becoming eligible for the benefit. Also, the Metro Nashville Office of Internal Audit observed 291 out of 372 eligible employees, or 78 percent of the workers, were utilizing the Bell/Clark health insurance program that was tailored for the project.

3. *Were trade and subcontractors compensating workers according to prevailing wage laws as required by Tennessee Code Annotated § 7-4-205, Wage rates and benefits for workers, and Article 5.6 of the Convention Center Authority Procurement Policy?*

Generally yes. We reviewed payroll records, reconciled worker rates with Tennessee Prevailing Wage schedules, recalculated payroll advices, and obtained supporting documentation of actual disbursements for each trade and subcontractor (see summary of review in Exhibit D below). We performed this process for three or four judgmentally selected pay periods; one for each month that the trade or subcontractor performed services for the construction project. In conducting the review, we noted 33 pay period instances where Tennessee Prevailing Wages were not adhered to. The 33 pay period compliance exceptions noted affected 24 different workers; 17 were unique (one-time) and seven were multiple occurrences. Underpayment for hourly wage rates ranged between \$.09 and \$4.34. (See Observation B, page 7.)

**Exhibit D – Internal Audit Prevailing Wage Review Summary**

<b>Subcontractor</b>	<b>Number of Payroll Periods Reviewed</b>	<b>Number of Transactions Reviewed</b>	<b>Number of Payroll Transaction Exceptions</b>
Mountain States:	3	65	22
- Jones Brothers, Incorporated	3	49	5
- Jones Brothers, LLC	3	16	5
- HMA	3	25	0
CECO Concrete	4	275	1
CCK	4	54	0
Totals	N/A	484	33

Source: Metro Nashville Office of Internal Audit

# OBSERVATIONS AND RECOMMENDATIONS

## ***A – Expand Use of E-Verify Program***

The existing Department of Homeland Security Employment Eligibility Verification Form I-9 program does provide a baseline for compliance with existing federal and local employment eligibility requirements. However, having Convention Center Authority contractors and subcontractors enrolled in the Department of Homeland Security E-Verify program provides an additional layer of assurance. This is accomplished by comparing information on an employee's Form I-9 with Social Security Administration and Department of Homeland Security records to verify the identity and employment eligibility of newly hired employees.

We observed as of January 1, 2010, that CECO Concrete had started using the Department of Homeland Security E-Verify program to electronically verify employment eligibility of newly hired employees. The Department of Homeland Security U.S. Citizenship and Immigration Services state in their E-Verify User Manual:

*“E-Verify is free and the best means available to determine the employment eligibility of new hires and the validity of their Social Security numbers.”*

Tennessee Code Annotated § 50-1-1-3 (a) and (d) states:

*“(b) A person shall not knowingly employ, recruit or refer for a fee for employment, an illegal alien.”*

*“(d) A person has not violated subsection (b) with respect to a particular employee if the person verified the immigrant status of the person at least fourteen (14) calendar days after commencement of employment by using the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003.”*

The expanded use of the E-Verify program would enhance subcontractor's determination of employment eligibility.

### Criteria:

- Convention Center Authority Procurement Policy, Article 5.10, *Use of employees who are not legal residents of the United States prohibited.*
- Article 6.5 *Compliance with Applicable Laws and Codes - Construction Management Agreement with Bell/Clark a Joint Venture*
- Metropolitan Code of Laws § 4.40.060, *Use of employees who are not legal residents of the United States prohibited.*

### Risks:

The inherent limitation in employer's knowledge and/or training in recognition of employment documentation authenticity.

Recommendation:

The Convention Center Authority's project management team should coordinate with the construction management team to encourage current and prospective trade and subcontractors to enroll in the E-Verify program. Enrollment and subsequent utilization of the program will help provide an added layer of control to help ensure that only employment eligible new hire workers perform work or provide services for the Music City Convention Center.

## ***B – Enhance Prevailing Wages Compliance Internal Controls***

The Metro Nashville Office of Internal Audit review of payroll data and compliance with the *Construction Management Agreement Article 6.15 Wages and Labor Practice* discovered employee classification issues that have caused certain covered workers to not receive the appropriate wage rate. Our reviews noted the following observations:

- Incorrect wage rates assigned to certain worker classifications
- Job classifications that are not in accord with Tennessee's Prevailing Wage schedules
- Insufficient tracking of hours for workers with multiple job functions
- The need for a set of internal procedures that will address how to classify worker functions that are either unique, or not explicitly described within the Tennessee Prevailing Wage Act classification of workers

The summary on Exhibit D, page 5, delineates the need for enhanced internal control procedures to ensure that compliance exceptions, unintentional or otherwise, are prevented. The 33 pay period compliance exceptions noted on Exhibit C affected 24 different workers; 17 were unique (one-time) and seven were multiple occurrences. Underpayment for hourly wage rates ranged between \$.09 and \$4.34.

The primary issue was the development and implementation of internal protocols that would allow appropriate classification of each covered worker in conformance with the wage schedule. In cases where a worker has a unique job description, or if the position is not sufficiently described within the building or highway construction schedules, the contractor should seek the counsel of the project management, and construction management teams to get a determination of how the worker should be classified. However, if the determination of a job function appears to be beyond consensus, then the Tennessee Department of Labor could be requested to make a final determination. Classifying each worker according to a building or highway construction schedule would alleviate other concerns pertaining to inappropriate prevailing wage rates since this will clearly define the minimum rate the worker should be paid.

Also, we noted some instances for workers not receiving the appropriate wages caused by insufficient tracking of hours when performing more than one function. The Tennessee's Division of Labor Standards states that:

*“Employees who perform more than one classification of work must be paid the applicable prevailing wage rate for the time spent working in each classification. It is the employer’s responsibility to track separately the hours spent by each employee doing each job classification, and to report them separately on the certified payroll. If this is not done, the employee should be paid for all hours worked at the highest rate the employee earned that week.”*

Although some of the issues were promptly corrected, future occurrences can be minimized by enhancing controls and providing the appropriate protocol when issues regarding undefined jobs and misclassification of workers occur.

Criteria:

- Article 6.15 *Wages and Labor Practice* - Construction Management Agreement with Bell/Clark a Joint Venture
- Tennessee Code Annotated, § 12-435 - *Tennessee Prevailing Wage Act of 1975*
- Metropolitan Code of Laws § 4.20.070, *Declaration of policy—Payment of prevailing wages required.*
- Article 5.5 of the Convention Center Authority Procurement Policy

Risks:

- Possible legal action from affected workers and labor groups
- Negative public image within and outside the Nashville community

Recommendations:

The Convention Center Authority’s project management team should coordinate with the construction management team to:

1. Develop a protocol on how unique job positions should be addressed.
2. Require incoming trade or subcontractors to classify each covered worker according to the building or highway construction schedule provided by the Tennessee Prevailing Wage Act.
3. Require current trade and subcontractors to review their certified payrolls to ensure that each covered worker is classified according to the building or highway construction schedule provided by the Tennessee Prevailing Wage Act and to correct previous errors in pay and classification.

# **GENERAL AUDIT INFORMATION**

## **STATEMENT OF COMPLIANCE WITH GAGAS**

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our work 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 based on our audit objectives.

## **SCOPE AND METHODOLOGIES**

The audit period focused primarily on the period encompassing the beginning of on-site construction activities from April 1, 2010, through July 31, 2010, and the performance on the processes in place during the time of the audit. To perform the review and substantive tests, the Metro Nashville Office of Internal Audit reviewed personnel files at various locations, acquired certified payrolls, requested safety training records, insurance invoices and payment schedules, obtained copies of pertinent supporting documentation, performed analytical procedures, and recalculations to ascertain whether the trade and subcontractors were in compliance with stated criteria.

## **CRITERIA**

In conducting this audit, the existing processes and controls to the Music City Convention Center construction project were evaluated for compliance with:

- Tennessee Prevailing Wage Act of 1975
- Construction Management Agreement with Bell/Clark, A Joint Venture dated September 1, 2009
- Tennessee Code Annotated § 7-4-205 Wage rates and benefits for workers
- Metropolitan Code of Laws § 4.20 Procurement of Construction Contracts
- Convention Center Authority Procurement policy

## **STAFF ACKNOWLEDGEMENT**

Mark Swann, CPA (Texas), CIA, CISA, Metropolitan Auditor  
Mel Marcella, CPA, CIA, CFE, CISA, CMA, In-Charge Auditor

## **APPENDIX A. MANAGEMENT RESPONSE**

- Management's Responses Starts on Next Page -



December 17, 2010

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

RE: Convention Center Authority – response to interim audit

Dear Mr. Swann,

This letter acknowledges that The Convention Center Authority is in receipt of the interim audit report for the period from August 1, 2010 through October 31, 2010. The Convention Center Authority has evaluated all of the observations raised in this report. Each suggestion and corrective action has been considered. Wherever possible, changes have been or will soon be implemented. Specific concerns that prevent the complete implementation of some recommendations are expressed in the attached document. Under separate cover we have forwarded back-up information we received from Bell/Clark regarding corrective measures.

Thank you for your assistance and cooperation during this process. Please let us know if you need anything further from us at this time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Larry Atema", is written over a faint, stylized graphic that resembles the letters "AAK".

Larry Atema  
Senior Project and Development Manager  
Convention Center Authority

Cc: Marty Dickens  
Mark Arnold  
Charles Robert Bone  
Rich Riebeling  
Charles Starks

Attached: Audit of the Music City Convention Center Construction Project  
Management Response to Audit Recommendations

The Convention Center Authority of the Metropolitan Government of Nashville & Davidson County  
413 Fifth Avenue South ♦ Nashville, TN 37203 ♦ 615-880-1450

**Audit of the Music City Convention Center Construction Project  
Management Response to Audit Recommendations**

Audit Recommendation	Response to Recommendation / Action Plan	Assigned Responsibility	Estimated Completion
<p>A. The Convention Center Authority’s project management team should coordinate with the construction management team to encourage current and prospective trade and subcontractors to enroll in the E-Verify program. Enrollment and subsequent utilization of the program will help provide an added layer of control to help ensure that only employment eligible new hire workers perform work or provide services for the Music City Convention Center.</p>	<p><b>Accept.</b> We will encourage Bell/Clark to suggest to all of their subcontractors that they utilize E-Verify. For any vendors (outside of direct construction), we will also encourage the use of E-Verify.</p>	<p>Scott Black</p>	<p>On-going</p>
<p>B. The Convention Center Authority’s project management team should coordinate with the construction management team to:</p> <ol style="list-style-type: none"> <li>1. Develop a protocol on how unique job positions should be addressed.</li> <li>2. Require incoming trade or subcontractors to classify each covered worker according to the building or highway construction schedule provided by the Tennessee Prevailing Wage Act.</li> <li>3. Require current trade and subcontractors to review their certified payrolls to ensure that each covered worker is classified according to the building or highway construction schedule provided by the Tennessee Prevailing Wage Act and to correct previous errors in pay and classification.</li> </ol>	<p><b>Accept.</b> Bell/Clark plans to address the following items:</p> <ol style="list-style-type: none"> <li>A. Bell/Clark will strongly encourage their subcontractors to utilize “E-verify”</li> <li>B. Bell/Clark will implement the following:               <ol style="list-style-type: none"> <li>1. Distribute and collect documentation to and from Sub’s regarding certified payroll</li> <li>2. Install signage on the jobsite to educate workers regarding certified payroll.</li> <li>3. Continue to educate subcontractors on prevailing wage regulations.</li> <li>4. Develop a plan to spot check conformance with prevailing wage regulations.</li> <li>5. Develop a protocol to clarify classifications for work positions on-site.</li> </ol> </li> </ol>	<p>Bell/Clark</p>	<p>On-going</p>