

**Independent Accountant's Report
On Applying Agreed-Upon Procedures**

**Florida A&M University
Review of Allegations – EMO Architects**



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Carr, Riggs & Ingram, LLC
1031 West Morse Boulevard
Suite 200
Winter Park, FL 32789

(407) 644-7455
(407) 628-5277 (fax)
www.cricpa.com

INDEPENDENT ACCOUNTANT'S REPORT ON APPLYING AGREED-UPON PROCEDURES

Florida A&M University Review of Allegations – EMO Architects

The Board of Trustees of Florida A&M University
Tallahassee, Florida

We have performed the procedures enumerated below, which were agreed to by The Board of Trustees of Florida A&M University ("Florida A&M", the "University", or the "Owner"), solely to assist you in evaluating certain allegations made by EMO/Architects, Inc. ("EMO") relative to their contract for the design and other services regarding the Pharmacy Building, Phase Two (the "Project"). This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of the party specified in this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

Brief History

In fiscal year 2003 – 2004 the University sought and received authorization for limited funding for the Pharmacy Building, Phase Two (the "Project"). On January 8, 2008, the University entered into an Agreement between Owner (the "University") and Architect/Engineer ("EMO") to begin the design phase of the Project. On December 24, 2008, the University entered into an Agreement with Skanska USA Building, Inc. ("Skanska") to become the Construction Manager for the Project, at which time preconstruction activities were authorized.

In November of 2013, the University concluded that no additional services would be required from EMO and a termination letter was prepared and delivered to them. On April 7, 2014, EMO sent a letter addressed to Chancellor Marshall Criser, III of the Board of Governors for the State University System of Florida. In the letter, EMO makes multiple allegations relating to the University's management of the Project. As a result of the April 7, 2014 letter sent by EMO, CRI has entered into a Contract with the University to perform specific Agreed Upon Procedures as identified later in this report. The remainder of this report identifies the work performed by CRI and the resultant findings.

The procedures applied and the related findings are as follows:

Appropriations v. Incurred Costs and Contract Commitments

1. Appropriations/Encumbrances by the State of Florida:
 - We reviewed and assessed the relevant documents that identify and quantify amounts appropriated/encumbered by the State of Florida for costs to be incurred for the Pharmacy Building, Phase Two.
 - We determined what costs (i.e. land costs, construction costs, architectural and engineering costs, etc.) are included within the amounts appropriated/encumbered by the State of Florida.
2. Financial Obligations/Encumbrances by the University:
 - We obtained, reviewed and assessed the relevant documents that identify all costs incurred or contractual commitments made by the University.
3. We interviewed the appropriate University representatives to discuss the contents of the documents obtained in steps 1 and 2 above. Primarily, we interviewed Mr. Jerry Osterhaus and Ms. Erica Wilcox. However, it should be noted that Mr. Osterhaus was not involved at Florida A&M during much of the period EMO was engaged on the Project. Additionally, we interviewed Mr. Chuks Onwunli, although Mr. Onwunli was not employed by the University at the conclusion of this engagement. Other members of the construction management team for the University were no longer employed and therefore, were not available to CRI.
4. We made a determination if the University had incurred and/or committed to costs for the Project that exceed the amount appropriated by the State of Florida. The results are reported in Exhibit A.

Delay Damages

5. We obtained and reviewed the construction contract between the University and the Construction Manager.
6. We obtained and reviewed the Applications for Payments submitted by the Construction Manager to the University. We reviewed Pay Applications #1 through #24.
7. Except for Pay Application #16, we determined that the approval process for each of the Applications for Payment that have been paid were adequately documented. CRI did not see an approval by the Architect or the Engineer for payment of Pay Application #16. Additionally, it should be noted that Pay Applications #2 and #3, and #17 through #21 were signed by EMO, but Pay Applications #4 through #15, and #22 through #24 were signed by a representative of Spectra Engineering & Research. The document that was considered pay application #1 was actually an invoice in the amount of \$42,454 related to early site preparation.
8. We obtained and reviewed all contract change orders executed between the University and the Construction Manager through the time of our fieldwork (through change order #3). We determined that change orders were approved and justification for the change was adequately documented for all change orders through the date of our review. It should be noted that

change order #3 seemed to indicate that the Construction Manager may eventually request additional compensation for general conditions related to previous unforeseen delays.

9. Based on our discussions/interviews with representatives of the University, there were no outstanding/open (not executed by the University) contract change orders submitted by the Construction Manager.
10. We determined that the University had approved payment to the Construction Manager relative to delay costs experienced by the Construction Manager in performance of their duties to move the Project forward. See Exhibits B-1 and B-2.
11. We determined that amounts described as "deferred labor cost" had been approved for payment to the Construction Manager as disclosed in Exhibit B-1. Additionally, approximately \$290,000 of the payments were in accordance with the Schedule of Values attached to the contract documents for Amendment #2 (see Exhibit B-2), and the Specific Clarifications included in the Guaranteed Maximum Price Proposal for the Amendment #2 scope of work included the following wording:

"In an effort to ensure completion of the phase one Storm Facility and parking; and the additional North Regional Pond and Parking Expansion within the established Amendment #1 approved budget, Skanska deferred a total \$290,181 of its construction management labor to be recovered in a subsequent 'component GMP'. This deferred labor cost was itemized and certified with each pay application beginning May 2011 through May 2012. This deferred amount has been included in this component GMP portion of the General Conditions Labor."

Therefore, it appears the amounts for the "deferred billings" were approved and properly classified.

12. We interviewed University personnel as described in item #3 above.
13. In Section 2.3.1.2 of the Agreement it states the following:

"The Architect/Engineer shall assist the Owner in its negotiations with the Construction Manager in an effort to develop an acceptable Guaranteed Maximum Price."

Additionally, Section 2.3.2 of the Agreement states the following:

"The Architect/Engineer shall assist the Owner in the preparation of the Owner-Construction Manager Agreement and the Conditions of the Contract."

CRI, as well as current University Facilities staff, were unable to identify direct evidence that EMO was purposely excluded from the development of the guaranteed maximum price, but none of the persons directly involved on behalf of the University in developing the Guaranteed Maximum Price continue to be employed by the University.

Amount Due EMO, If Any

14. We obtained and reviewed a copy of the Contract (Agreement) between EMO/Architects, Inc. and the University.

15. We obtained and reviewed all requests for payment (invoices) submitted by EMO.
16. We determined that the requests for payment complied with the relevant contract provisions of the Agreement between EMO and the University.
17. We determined that all requests for payment were properly approved and such approval was properly documented.
18. We obtained and reviewed a copy of the letter(s) prepared by the University and delivered to EMO relevant to the termination of EMO's services.
19. We determined that EMO was paid all amounts due to them in accordance with the Agreement as adjusted for Additional Service Authorizations. See Exhibit C.
20. We interviewed University personnel as described in item #3 above.
21. We interviewed Warren EMO, the president of EMO/Architects, Inc.

Miscellaneous Compliance

22. Based on interviews of University representatives (primarily Mr. Jerry Osterhaus) we determined that although one of EMO's subconsultants had done work for the University during the period the Project was underway (Spectra Engineering & Research, Inc.), the University did not appear to solicit EMO's subconsultants subsequent to EMO's termination. It was represented to us that the University did initially approach subconsultants, but was immediately instructed to cease, and did not contact any of EMO's subconsultants thereafter.
23. We determined that upon the termination of the Agreement with EMO, a consultant was hired on an emergency basis. Additionally, we determined that the engagement of the consultant on an emergency basis was performed in compliance with relevant provisions of the Florida procurement law and Florida A&M University Board of Trustees Policy 2005-7A. The process involved is discussed more fully in Exhibit D.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of The Board of Trustees of Florida A&M University, and is not intended to be and should not be used by anyone other than the specified party.

Cary Riggs & Ingram, L.L.C.

Orlando, Florida
December 8, 2015

Florida A&M University

**Pharmacy Building Project – Issues Relative to EMO Architects
Appropriations v. Incurred Costs and Contract Commitments**

Exhibit A

Summary of Results

Carr, Riggs & Ingram, LLC (“CRI”) has reviewed various documents in the process of performing the procedures identified in the attached report relative to the comparison of State of Florida appropriations vs. commitments regarding the Pharmacy Building, Phase Two (the “Project”). In its letter dated April 7, 2014, EMO alleged the following:

Allegations by EMO:

“The total legislative appropriation to date is reported to be \$26,071,000. This is the total appropriation that must cover not only the Construction Cost of \$27,636,278, but also the other expenses that are the responsibility of the Owner pursuant to Article 4 of the Agreement. It is apparent, based upon the documents provided by your office (FAMU), that the Construction Cost alone exceeds the total appropriations by over \$1 million dollars. The problem, however, is far worse. As of 27 January 2014, \$6,415,291 had apparently been expended on the Project, leaving a remaining balance of only \$19,655,709, to complete the Project. Since only minimal site work has been performed, there is simply not enough money to build the building. As it stands, FAMU has, at best, the funds to build an 89,000 square foot 5-story empty shell.”

Work Performed and Findings:

During the course of the engagement, relating to this issue, the primary documents that CRI reviewed and relied upon were as follows:

- Capital Project Plans per the FDOE website
- Contract documents between the University and EMO/Architects, Inc., including Additional Service Agreements
- Contract documents between the University and Skanska USA Building, Inc., including Amendments 1 through 3
- Schedule of encumbrances to Clemons, Rutherford & Associates, Inc. (“CRA”)
- Section 1013.65, Florida Statutes
- Encumbrance Authorization documents issued by the State of Florida Department of Education.

Annually, the Board of Governors (“BOG”) for the State University system publishes a list of funding approvals for its universities, which indicates the projects and the amounts that will be funded for the coming fiscal year. Once a project on the list is identified for funding, the University goes through the process of receiving encumbrance authority, and a contract should not be entered into prior to the receipt of an encumbrance authorization per BOG interpretation. Therefore, it is our understanding that money appropriated to the University by the State of Florida for a particular project may be committed to a vendor at the time the University applies for and receives an encumbrance authorization document.

Florida A&M University

**Pharmacy Building Project – Issues Relative to EMO Architects
Appropriations v. Incurred Costs and Contract Commitments – Continued**

Exhibit A

Summary of Results – Continued

CRI researched the appropriations/encumbrance history of the Project, and scheduled the appropriations against the encumbrances made for the Project, such encumbrances taking the form of contracts, invoices, or other supporting documentation. The results of our procedures indicate that in May 2010 the University committed funding to EMO Architects (“EMO”) through Amendment #1 to their Agreement in the amount of \$1,083,115. As a result of the issuance of Amendment #1 to EMO, gross encumbrances through May 2010 totaled \$1,734,547. Appropriations through May 2010 totaled \$1,071,000. As can be seen of Exhibit A-1, as of May 2010 the University’s encumbrances exceeded appropriations by \$663,547. This situation of over-encumbrance appears to be the result of the fact that monies apportioned to the University from the 2008-2009 fiscal year were not authorized for encumbrance until September 3, 2010. Therefore, at the date of Amendment #1 (May 2010), the University had only been authorized to encumber \$1,071,000 based on the 2003-2004 fiscal year appropriations, an amount less than the total encumbrances as of May 2010.

Our analysis, which extended through the date of the letter from EMO, did not indicate any other instance where the encumbrances by the University for the Project were in excess of the amounts authorized for encumbrance. See Exhibit A-1 for a schedule of appropriations vs. encumbrances.

Based on the information presented above, we concluded that, for a brief period of time in 2010, encumbrances exceeded appropriations by \$663,547, but for the overall project through April 9, 2014, appropriations exceeded encumbrances (See Exhibit A-1).

Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Appropriations v. Incurred Costs and Contract Commitments – Continued

Exhibit A-1

	Appropriation		Commitments		Appropriations over	
	Description	Amount	Description	Amount	Commitments	Commitments
September 4, 2003	Capital Projects Plan, State of Florida, Fiscal year 2003-2004	1,071,000				1,071,000
January 31, 2008			Contract with EMO Architects	427,224		1,071,000
May 28, 2008			ASA #1 with EMO Architects	16,115		643,776
						627,661
						627,661
						627,661
August 14, 2008			ASA #2 with EMO Architects	19,000		627,661
						608,661
						608,661
December 24, 2008			Original Agreement with Skanska, GMP for preconstruction services	189,093		419,568
						419,568
						419,568
May 6, 2010			Amendment #1 to the contract with EMO Architects	1,083,115		(663,547)
						(663,547)
September 3, 2010	Capital Projects Plan, State of Florida, Fiscal year 2008-2009	2,000,000				1,336,453
September 7, 2010			Purchase order to Skanska for various tasks	70,000		1,336,453
						1,266,453
						1,266,453
September 10, 2011	Capital Projects Plan, State of Florida, Fiscal year 2010-2011	23,000,000				24,266,453
			Amendment #1 to the Agreement with Skanska; Off-site Parking and Storm Water Facility	1,493,485		24,266,453
January 21, 2011						22,772,968
						22,772,968

Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Appropriations v. Incurred Costs and Contract Commitments – Continued

Exhibit A-1 - Continued

	Appropriation		Commitments		Appropriations over Commitments
	Description	Amount	Description	Amount	
May 17, 2011		34,889	Peter Brown Construction		22,738,079
May 19, 2011		222,064	ASA #3 with EMO Architects		22,738,079
August 30, 2011		9,765	ASA #4 with EMO Architects		22,516,015
June 25, 2012		327,099	Amendment #2 to the Agreement with EMO Architects		22,516,015
August 6, 2012		1,134,872	Amendment #2 to the Agreement with Skanska; Early Site package		22,506,250
December 7, 2012		104,326	ASA #5 with EMO Architects		22,506,250
January 31, 2013		20,000,000	Amendment #3 to the Agreement with Skanska; Building construction		21,044,279
May 16, 2013		60,894	City of Tallahassee		21,044,279
December 18, 2013		184,392	Change order #3 to the Agreement with Skanska		20,939,953
Various dates		42,815	Miscellaneous expenditures under \$20,000		939,953
March 6, 2014		368,117	Agreement and purchase order with CRA		939,953
April 9, 2014		(233,679)	Close out of the remaining balance on the purchase order to EMO Architects		879,059
					879,059
					879,059
					694,667
					694,667
					651,852
					651,852
					283,735
					283,735
					283,735
					517,414

Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Evidence Regarding Delay Damages

Exhibit B

Summary of Results

Carr, Riggs & Ingram, LLC (“CRI”) has reviewed the contract documents regarding the guaranteed maximum price between Florida A&M University (the “University”) and Skanska USA Building, Inc. (“Skanska”) regarding the evidence of delay damages. The procedures performed are identified in the attached report. In its letter dated April 7, 2014, EMO alleged the following:

Allegations by EMO:

“As discussed below, due to FAMU mismanagement, the Project has been delayed for 1923 calendar days (5.27 years delay) and there is no end in sight. The delay, to our knowledge, continues as of this date and has already caused the waste of public funds through delay claims paid by FAMU to the Construction Manager. These claims have been concealed with the full knowledge and consent of the FAMU staff under the category of “deferred billings” and other categories within the Construction Manager’s Applications for payment. These delay claims have already exceeded \$1,500,000, which represents only a portion of the costs for delays and extended overhead charges that will likely be incurred if action is not taken.”

Work Performed and Findings:

During the course of the engagement, relating to this issue, the primary documents that CRI reviewed and relied upon were as follows:

- Contract documents between the University and Skanska USA Building, Inc., including Amendments 1 through 3 and Change Orders 1 through 3
- Guaranteed Maximum Price proposals and summaries produced by Skanska USA Building, Inc. for each of the Amendments

CRI did not discover a document that specifically addressed “delay damages”. However, in the initial stages of the work, Skanska appeared to have been delayed in completing the work associated with Amendment #1 relative to off-site parking and storm water facilities (this portion of the work was expected to take 90 days and was extended to 16 months), resulting in additional general conditions costs for Skanska. In order to allow completion of this phase of the work, Skanska deferred billing for a portion of their general conditions costs (in the amount of \$290,181) until additional funding was made available through Amendment #2, the Early Site Package. Also, per our review of pay application 15A, it appears that additional amounts of general conditions costs may have been funded through buyout savings in the amount of \$35,000. Therefore, the total amount of “deferred billings” (presumably extended general conditions costs) noted in the contract documents was \$325,181.

Subsequently, in the guaranteed maximum price for Amendment #2, a line item was established for the “deferred billing” amount, and Skanska was paid for these general conditions costs that appeared to relate to the Amendment #1 work. (See Exhibits B-1 and B-2)



**Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Evidence Regarding Delay Damages – Continued**

Exhibit B

Summary of Results – Continued

Additionally, it appears, based on the examination of documentation for Amendment #3 to the Agreement between Skanska and the University, there may be an indication that Skanska intends to request additional funding for extended general condition costs subsequent to Amendment #1. The dollar value that Skanska may request for extended general conditions is unknown at this time. Based on our experience in the construction industry, it should be noted that it is not unusual for a Construction Manger to be paid for extended general conditions when the party responsible for delays is deemed to be the Owner.

Based on the information presented above, it is evident that as of the date EMO issued its letter (April 7, 2014), delay damages sought by/paid to Skanska were a fraction of the \$1,500,000 asserted by EMO.

Exhibit B-1

SKANSKA USA BUILDING INC.

PROJECT: FAMU - Pharmacy Building Phase II Early Site Package (ESP)
 EST. TYPE: GMP - 100% Construction Documents dated 2/10/2012
 DATE: May 30, 2012

SCHEDULE OF VALUES		
ITEM NO.	DESCRIPTION	Estimate
1	Surveying	\$ 30,000 ✓
2	Exploratory Digs	\$ 30,000 ✓
3	Material Testing	\$ 40,000 ✓
4	Dumpster Rental	\$ 20,000 ✓
5	Site Demolition/Sitework/Utilities/Paving	\$ 349,045 ✓
6	Landscape and Irrigation	\$ -
7	Hardscapes / Sidewalks	\$ -
8	Cnst-In-Place Concrete	\$ -
9	Aluminum Handrails	\$ -
10	Site Mechanical (Allowance)	\$ -
11	Site Electrical / Communication (Allowance)	\$ -
12	Subguard	\$ 8,443 ✓
A	TOTAL, COST OF WORK	\$ 477,488
B	General Conditions	\$ 270,144 ✓
C	CM Contingency	\$ 23,874 ✓
D	General Liability	\$ 10,592 ✓
E	Builders Risk (Allowance)	\$ 8,473 ✓
F	Payment & Performance Bond	\$ 5,931 ✓
G	Overhead Fee (Article 7 Fee)	\$ 7,965 ✓
H	TOTAL, COST OF WORK including INDIRECT COST (A+B+C+D+E+F+G)	\$ 804,468
I	CM Fee	\$ 40,223 ✓
J	TOTAL GMP PROPOSAL	\$ 844,691
K	Deferred Billing (May 2011 - May 2012)	\$ 290,181 ✓
L	GRAND TOTAL PROPOSAL (INCLUDES DEFERRED GENERAL CONDITIONS)	\$ 1,134,872

SKANSKA

Specific Clarifications

The following definition represents the basis of our estimate. The estimated costs were developed based upon the above referenced construction documents and schedule data described elsewhere in this report, and the clarifications and design criteria presented under this section.

1. Full Lane Closures can be done on Martin Luther King Blvd. and Harrison Street for pipe crossings. Only Maintenance of Traffic Included is detour signs and road-closure signs.
2. Excess material will be stockpiled on the site.
3. Changes or revisions to the foregoing Information may result in a modification to the GMP price and may require modifications to the project schedule as specified in the Contract Documents. Documents, communications and Information not included in the foregoing list, including for instance, any third party agreements are not accounted for in the GMP Proposal.
4. The Owner and Architect/Engineer shall specify all performance and design criteria and codes, laws, etc. compliance criteria pertaining to the design of the Project, including all value engineering items outlined in the GMP Proposal in a timely manner and in sufficient detail so as to facilitate the orderly progress of the Work as scheduled. Other than as specifically set forth in Contractor's proposal and clarifications, Contractor shall not be required to provide any architectural, engineering or other professional design services of any nature whatsoever in the performance of its Work, including, but not limited to, seismic engineering design and/or structural design required as a result of construction sequences except where specified in pertinent sections of the Project Manual. Any claim by Owner for damage, loss, or expense, based directly or indirectly upon acts, errors, or omissions of an Architect, engineer, or other design professional engaged by Contractor, in connection with this Agreement or the Project, shall be made by Owner against the Contractor and its insurer.
5. The General Condition labor rates as provided in this GMP proposal are the rates as submitted and approved by the Owner. The Owner hereby agrees that these rates which include associated burden pursuant to Article 8.1 of the executed contract have been established for purposes of conducting audits and/or requesting time extensions that may require additional construction management labor. Personnel rates, multipliers and other fixed percentages and amounts to be charged by Construction Manager as a Cost of the Work are deemed to constitute Construction Manager "Cost of the Work" under this Agreement and are auditable only to determine their proper application under the Agreement and not their composition.
6. In an effort to ensure completion of the phase one Storm Facility and Parking; and the additional North Regional Pond and Parking Expansion within the established Amendment 1 approved budget, Skanska deferred a total \$290,181 of its construction management labor to be recovered in a subsequent 'component GMP'. This deferred labor cost was itemized and certified with each pay application beginning May 2011 through May 2012. This deferred amount has been included in this component GMP as a portion of the General Conditions Labor.

Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Amount Due EMO If Any

Exhibit C

Summary of Results

Carr, Riggs & Ingram, LLC (“CRI”) has reviewed the contract documents between Florida A&M University (the “University”) and EMO/Architects, Inc. (“EMO”) regarding the evidence of amounts paid to EMO, and the validity of the allegation that amounts are due to EMO.

Allegations by EMO:

“...FAMU has failed to pay for EMO work performed and even refuses to pay EMO the “termination fee” specifically set forth in the Agreement.”

Work Performed and Findings:

During the course of the engagement, relating to this issue, the primary documents that CRI reviewed and relied upon were as follows:

- Invoices #1 through #23B submitted by EMO to the University (Invoice #23B is included in this report as Exhibit C-1)
- The Project Ledger, which is a listing of payments made by the University to EMO
- Correspondence between the University’s attorneys, EMO, and EMO’s attorneys
- Two termination letters – one dated August 14, 2013, and one dated November 13, 2013

CRI vouched the total payments from the University’s contract value summary to a listing of payments from the University’s Project Ledger and, finally, agreed them to individual invoices (#1 through #23B) signed by EMO and executed by the University. These payments totaled \$1,986,728. CRI noted \$11,698 was related to a purchase order outside of the main work that was included in these payments. Thus, the total payments related to EMO’s Project Scope of Work totaled \$1,975,030 through invoice #23B, and appear to have been properly submitted, authorized and paid.

Invoice #23B contains a column titled “Total Fee Summary” which totals \$2,208,708. The Total Fee Summary column includes completed work as well as work not yet performed. The difference between this number (\$2,208,708) and the total payments made (\$1,975,030) occurred in three areas: “Early Site Package” - \$63,690 total fee, \$60,506 total paid; “Construction Administration” - \$306,866 total fee, \$82,872 total paid; “Post Occupancy & Inspection Report” - \$6,500 total fee, \$0 paid. These differences total \$233,678. The University’s position is that EMO did not perform the unbilled work associated with these three areas and, thus, is not entitled to be compensated for work not performed.

EMO submitted requests for additional services (“ASA”) #6 and #7, which totaled \$134,483 and \$216,266, respectively. The University did not approve or authorize any services associated with ASA #6 or ASA #7 and, therefore no additional monies are due to EMO. The contract between the parties specifically states that no additional work is to be performed without the expressed prior approval of the Owner.

Florida A&M University
Pharmacy Building Project – Issues Relative to EMO Architects
Amount Due EMO If Any – Continued

Exhibit C

Summary of Results – Continued

On November 11, 2014 we met with EMO for the purpose of conducting an interview. EMO brought Invoice #24 (Revision 4) with them to the interview. Invoice #24 lists \$100,413 of termination expenses, and \$11,230 of interest on unpaid amounts. It should be noted, invoice #24 makes no mention of ASA #6 or ASA #7 which EMO had submitted to the University, but does recognize the University's Purchase Order #125394 for \$33,231. Pursuant to Purchase Order #125394, the University issued a check to EMO in the amount of \$33,231. Invoice #24 also claimed amounts due as "termination fees". We consider the issue of termination fees to be legal in nature (contract interpretation) and, therefore are offering no opinions relating to the matter.

CRI obtained two termination letters relative to EMO's work. The first, dated August 14, 2013 and delivered to EMO's legal counsel, states EMO is in breach of the Agreement and is, therefore, terminated as of August 28, 2013, pursuant to Article 8.1 of the Agreement which states, "This Agreement may be terminated by either party upon not less than seven (7) days written notice should the other party fail to substantially perform according to the terms of this Agreement."

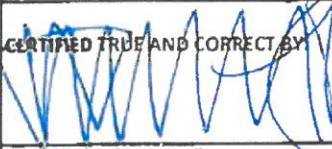
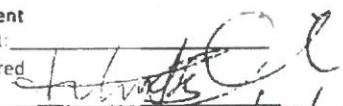

The second letter is dated November 13, 2013 and terminates the Agreement, in accordance with Article 8.6 of the Agreement which states, "This Agreement may be terminated by the Owner in its sole discretion upon seven days' written notice to the Architect/Engineer." Both of these letters appear to be sufficient to terminate the Agreement, though the first letter would depend on the validity of the stipulation EMO failed to "substantially perform" according to the Agreement.

EMO's April 7, 2014 letter does not specifically identify and quantify termination expenses it considers to be payable. However, the letter stipulates the "construction administration" had commenced at the time of the acceptance of the guaranteed maximum price between the University and its Construction Manager and was being performed by EMO right up to the point of termination. The University's position is the remaining amounts available under the construction administration scope of work relate to "vertical construction", and only limited site work construction administration had been authorized and EMO has been paid in full for those services.

It should be noted that the references made above to provisions of the Agreement or contract are legal in nature and, as a result, CRI is not expressing any opinions relating thereto.

Based on the information presented above, recognizing we are not expressing any legal opinions relating to contract interpretation, it appears that EMO has been paid in full for services rendered.

Exhibit C-1

INVOICE NO. <u>Twenty-Three (#23) Revised No. 1-Balance Due</u> PO# 105034					
TO: FLORIDA AGRICULTURAL & MECHANICAL UNIVERSITY OFFICE OF FACILITIES PLANNING & CONSTRUCTION 2400 WAHNSH WAY, SUITE 100 TALLAHASSEE, FLORIDA 32307 FROM: Emo/Architects, Inc. 1126 Thomasville Road Tallahassee, Florida 32303-6272			Federal ID No. 59-2958414 Project No: FM-308 Project Name: FLORIDA A&M UNIVERSITY PHARMACY BUILDING, PHASE TWO (PH-II) Date: <u>19-Sep-13</u>		
THE PRESENT STATUS OF THE ACCOUNT IS AS FOLLOWS:					
SERVICE	TOTAL FEE SUMMARY	PERCENT COMPLETE	AMOUNT DUE	LESS PREVIOUSLY BILLED	AMOUNT DUE THIS INVOICE
AMENDMENT NO. 2					
A/E BASIC SERVICES					
per AMENDMENT 2 dated 21 June 2012					
EARLY SITE PACKAGE	\$ 63,690.00	95%	60,505.50	60,505.50	-
CONCEPTUAL SCHEMATIC	\$ 151,034.00	100%	151,034.00	151,034.00	-
ADVANCED SCHEMATIC DESIGN	\$ 151,034.00	100%	151,034.00	151,034.00	-
DESIGN DEVELOPMENT	\$ 352,090.00	100%	352,090.00	352,090.00	-
FLEET ANALYSIS/LIFE CYCLE	\$ 11,500.00	100%	11,500.00	11,500.00	-
75% CONSTRUCTION DOCUMENTS	\$ 441,513.00	100%	441,513.00	441,513.00	-
100% CONSTRUCTION DOCUMENTS	\$ 264,908.00	100%	264,908.00	158,944.80	105,963.20
BIDDING/NEGOTIATIONS	\$ 88,303.00	100%	88,303.00	88,303.00	-
CONSTRUCTION ADMINISTRATION	\$ 306,866.00	27%	82,871.75	82,871.75	-
POST OCCUPANCY & INSPECTION REPORT	\$ 6,500.00	0%	-	-	-
SUBTOTAL	\$ 1,837,438.00		1,603,759.25	1,497,796.05	
Additional Service Authorizations #1-#4	\$ 266,943.90	100%	266,943.90	266,943.90	-
ASA #5 Offsite Parking & SWMF	\$ 104,326.41	100%	104,326.41	104,326.41	-
SUBTOTAL	\$ 371,270.31		371,270.31	371,270.31	
GRAND TOTALS	2,208,708.31		1,975,029.56	1,869,066.36	105,963.20
<i>Less payment received 10/21/2013</i>					52,981.60
Total due Architect/Engineer					\$ 52,981.60
					0
					0
Amount payable directly to:					0
Amount payable directly to:					0
CERTIFIED TRUE AND CORRECT BY 					
(Signature of Principal)			Warren A. Emo, A.I.A., President		
(Typed Name and Title)					
UNIVERSITY APPROVAL					
Date Received: _____			Vehic # : 32-3426 CK# 134595 11/6/13		
Date Approved: _____					
Invoice Consistent with Contract: Services Rendered as invoiced: 					
10/29/2013 					

PHASE II
 10/15/13

11/8/13

Florida A&M University

Pharmacy Building Project – Issues Relative to EMO Architects
Emergency Hiring of Replacement Architect

Exhibit D

Summary of Results

Carr, Riggs & Ingram, LLC (“CRI”) has reviewed various documents in the process of performing the procedures identified in the attached report relative to the emergency hiring of a replacement architect for the Pharmacy Building, Phase Two (the “Project”) . In its letter dated April 7, 2014, EMO alleged the following:

Allegations by EMO regarding FAMU soliciting EMO’s consultants:

“...after EMO’s termination, the FAMU staff requested that EMO ‘release’ our consultants to work with a ‘Successor Architect’. EMO refused and direct efforts were undertaken by FAMU to solicit EMO’s consultants despite specific agreements prohibiting such conduct.”

Work Performed and Findings

Relative to this issue, CRI primarily relied upon interviews of University personnel, including Mr. Chuks Onwunli and Mr. Jerry Osterhaus. As stated in our report, other key personnel employed at the relevant time by the University had left the employ of the University at the time of our procedures and were not available to CRI.

Our interviews with University personnel revealed the following:

- Prior to the time of termination, FAMU did contract with one of the subconsultants of EMO for the purpose of providing construction administration and other services relative to the site, drainage, and water retention work. This work was contracted pursuant to a proposal submitted to the University by Spectra Engineering & Research, Inc. (“Spectra”) dated May 24, 2011, more than two years prior to the termination of EMO. Correspondence and emails at that time indicated that EMO was aware of the relationship between FAMU and Spectra.
- Per our interview with Mr. Jerry Osterhaus, during late December 2013 and early January 2014, the University was in the process of selecting an architectural firm to complete the construction administration portion of the Pharmacy Building, Phase Two Project. The University was attempting to create minimal impact on the completion of the Project, and they thought that using EMO’s subconsultants would lessen any problems. Mr. Osterhaus made a blind call to the MEP consultant to see if they were interested in continuing with the Project, and the subconsultant said they were. Soon after that, the University learned that EMO might have a prohibition clause in their Agreement with the subconsultants, resulting in the University’s legal counsel instructing the construction personnel not to communicate with EMO’s subconsultants relative to the Pharmacy Building, Phase Two Project. Upon receiving such notice, neither Mr. Osterhaus, nor anyone else representing the University, communicated with any of EMO’s subconsultants about the Pharmacy Building, Phase Two Project.

Florida A&M University

**Pharmacy Building Project – Issues Relative to EMO Architects
Emergency Hiring of Replacement Architect – Continued**

Exhibit D

Summary of Results – Continued

- Regarding the University's knowledge of a prohibition clause in EMO's Agreements with their subconsultants, it was Mr. Osterhaus' recollection that the University was told by one of the subconsultants about the clause, but he did not believe that they ever saw a copy of the Agreements to confirm the existence of the clause.

Based on the information presented above, it appears that the University took some initial steps to contact one of EMO's subconsultants. Once the University representative became aware that such contact was inappropriate no further communications with the subconsultant occurred.

Allegations by EMO regarding the hiring of a Continuing Contract Consultant on an Emergency basis:

"..we respectfully request your review of FAMU's attempt to declare an 'emergency' and hire a Continuing Contract Consultant (for a project with a construction value greater than \$2-million) without following Florida procurement law. As you know, Florida law and Chapter 14 of the BOG Regulations require competitive procurement when contracting with private vendors for the performance of professional services on public construction projects. The purpose of competitive procurement law is to ensure fair and open competition and to avoid the misuse of public funds. Once FAMU terminated EMO, the FAMU staff chose to jettison standard competitive procurement law by declaring an 'emergency.'

The FAMU declaration of the 'emergency,' states that the EMO termination created 'an emergency for the University.' How can FAMU terminate EMO for 'convenience' and thus create its own 'emergency?' It is almost an oxymoron. We have provided FAMU counsel with abundant case law establishing that an emergency created by an agency does not constitute justification to suspend Florida's competitive bidding law. My lawyers have provided the cases of Cianbro Corporation v. JTA and EyeMed Vision, LLC v. State of Florida DMS to FAMU's lawyers. It is well established that FAMU cannot create its own emergency and suspend the law. This is especially true in this case since the termination itself was based on an effort by the FAMU staff to get rid of an architect trying to prevent the misuse of public funds."

Work Performed and Findings

During the course of the engagement, relating to this issue, the primary documents that CRI reviewed and relied upon were as follows:

- Letter dated November 21, 2013 from Mr. Joseph Baker, Interim CFO & Vice President, to Mr. Larry Robinson, Interim President; Re: Emergency Certification.
- Correspondence dated November 21, 2013 from Mr. Robinson to Mr. Baker; Re: Declaration and Certification of Emergency to invoke the Emergency Procurement Process as authorized in Florida A&M University Board of Trustees Policy 2005-7A Va, iii and iv.
- Professional Services Notification for Construction Administration Services; Re: An emergency selection procedure requiring a licensed architectural firm...

Florida A&M University

Pharmacy Building Project – Issues Relative to EMO Architects
Emergency Hiring of Replacement Architect – Continued

Exhibit D

Summary of Results – Continued

- “Documentation of Pharmacy II Emergency Selection of Construction Administration Architect” dated February 25, 2014 (a summary)
- Florida Agricultural & Mechanical University Board of trustees Policy Number 2005-7A
- 2014 Florida Statute 287.057 and 287.055 as these statutes relate to an emergency situation.

CRI reviewed the above documentation and determined that after the termination of the Agreement with EMO (via letter dated November 13, 2013), the CFO/Vice President sought the approval of the President of the University to entertain proposals from design professionals to provide construction administration services relative to the Pharmacy Building, Phase Two Project without a customary competitive solicitation. Additionally, the letter stated that there are several immediate risks to the best interests of the University, which make it necessary for the University to invoke its emergency procurement process as set forth in the Florida A&M University Board of Trustees Policy Number 2005-7A.

That same day, pursuant to Regulation 2005-7A, the Interim President declared and certified that the necessary termination of the University’s contractual relationship with the architect of record on Phase II of the College of Pharmacy and Pharmaceutical Sciences has created an emergency for the University. Therefore, the CFO/Vice President was authorized and directed to immediately invoke the emergency procurement procedures as authorized in Article V of Regulation 2005-7A to procure the services of an architect/engineer to complete construction administration services and any design services necessary to complete the Project.

Subsequently, University staff decided the best way to identify potential candidates for the EMO replacement was to use the final list of respondents from the Project’s original selection process. In order to ensure that at least three firms were interviewed, the staff selected the four highest ranked firms under EMO. All of the four firms were contacted by phone to determine interest and capacity. One of the four firms stated they were too busy and therefore, were not interested in the work. Therefore, staff continued forward with the three interested firms, and received written qualification documents as requested by the letter of interest, and scheduled interviews. Based on these procedures, the firm of Clemons, Rutherford & Associates, Inc. (“CRA”) was selected for negotiation.

During the negotiation process, in January of 2014, discussions between CRA and the University involved the possibility of using current project subconsultants on the Project. However, as mentioned above, the University learned that the subconsultants may be restricted by contract from continuing on the Project, and the negotiations stalled until this issue was resolved. On February 18, 2014, the final agreement documents were received from legal counsel and signatures were obtained the next day.

Based on the information presented above, it appears that the University followed the relevant provisions of Regulation 2005-7A in the process of hiring an architectural firm on an emergency basis.