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STATE OF CALIFORNIA

JUDICIAL COUNCIL OF THE COURTS

ADMINISTRATIVE OFFICE OF THE COURTS

CALIFORNIA COURTHOUSE CAPITAL PROGRAM MANAGEMENT AUDIT REPORT

Final Report

Pegasus Global Holdings, Inc.®

August 13, 2012

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List of Acronyms and Abbreviations Used

List of Acronyms and Abbreviations Used *(Shown Alphabetically)*	
AD	Assistant Division Director
A/E	Architect/Engineer
AIA	American Institute of Architects
AIA Handbook	The Architect's Handbook of Professional Practices
AOC	Administrative Office of the Courts
ARF	Architecture Revolving Fund
BANCO	(Undefined)
BGSF	Building Gross Square Feet
BOMA	Building Owners and Managers Association
BP	(Undefined)
CAFM	Computer Aided Facilities Management System
Cal Green	California Green Building Standards Code
CE	Conceptual Estimate
CEQA	California Environmental Quality Act
CFR	Count Funded Requires
CFWG	Court Facilities Working Group
CII	Construction Industry Institute
CM	Construction Management
CM@Risk	At-Risk Construction Management
CMAA	Construction Management Association of America
COBCP	Capital Outlay Budget Change Proposals
CPM	Critical Path Method Scheduling
CRARF	(Undefined)
DB	Design-Build
DBB	Design-Bid-Build
D&C	Design and Construction
DGS	Department of General Services
DOF	Department of Finance
EPC	Engineer-Procure-Construct
FF&E	Furnishing, Fixtures and Equipment
FM	Facilities Modification
FMCC	Facility Modification Coordination Committee
FMG	Facilities Modification Group
FMU	Facilities Modification Unit
FPE	Facility Performance Evaluation

List of Acronyms and Abbreviations Used *(Shown Alphabetically)*	
GAGAS	Generally Accepted Government Auditing Standards
GAPP	Generally Accepted Purposes and Practices
GBCI	Green Building Certification Institute
GMP	Guaranteed Maximum Price
GO	General Obligation
ID/IQ	Indefinite Delivery/Indefinite Quantity
IOR	Inspector of Record
JLBC	Joint Legislative Budget Committee
JPA	Joint Powers Authority
LEED®	Leadership in Energy and Environmental Design
MPR	Monthly Progress Report
NCRO	(Undefined)
OCCM	Office of Court Construction Management
OCIP	Owner Control Insurance Program
OERS	Office of Emergency Response and Security
OGC	Office of General Counsel
OSHA	Occupational Safety and Health Administration
PAG	Project Advisory Group
PAL	Process Asset Library
PCC	Public Contract Code
Pegasus-Global	Pegasus Global Holdings, Inc.
PEP	Project Execution Plan
PgMP	Project Management Plan
PJ	Presiding Judge
PMBOK®	Project Management Book of Knowledge
PMI	Project Management Institute
PMP	Project Management Professional
POE	Post Occupancy Evaluation
Program	Court Capital Construction Program
Project Definition Report	Management Plan and Project Definition Report
PWB	Public Works Board
PWBS	Program Work Breakdown Structure
QS	Quality Staff
RCP	Review of Capital Project
Report	Capital Program Management Audit Report
RFI	Request for Information
SAM	State Administrative Manual
SCO	State Controller's Office

List of Acronyms and Abbreviations Used *(Shown Alphabetically)*	
SOC	Standard of Care
SRO	(Undefined)
SSAP	Site Selection and Acquisition Policy
TBD	To Be Determined
TCFMWG	Trial Court Facilities Modification Working Group
Title 24	California Building Standards Code
USGBC	U.S. Green Building Council
Willis	Willis Insurance Services of California, Inc.

ACKNOWLEDGEMENTS

We acknowledge and appreciate the excellent cooperation and assistance provided by the Administrative Office of the Courts, the Office of Court Construction and Management and their respective staff during the course of this audit for their tremendous support in promptly responding to our many document and information requests and in enabling our efforts to meet and interview key Program personnel.

Pegasus-Global found that every Program and Project Manager interviewed was willing to answer questions in a very open and comprehensive manner, without regard to how those answers might reflect on either the specific project under audit or the Program as a whole. Likewise the Program and Project Managers acknowledged what they considered to be gaps in the governance of the Program and the projects, often sharing suggestions which they believed would strengthen both the Program and the projects.

Pegasus-Global in particular recognizes the outstanding guidance and cooperation afforded by Judge Patricia Lucas, Chair of the Court Facilities Working Group Audit Subcommittee during the execution of this Management Audit. Judge Lucas provided Pegasus-Global valuable input during the development and finalization of the audit scope and plan, and arranged for direct access to other California Judiciary members during the audit interview process.

Likewise, Pegasus-Global acknowledges and is extremely grateful to Mr. James Mullen, Senior Facilities Risk Manager for the Office of Court Construction and Management for his cooperation, support and assistance as Pegasus-Global's direct liaison to AOC and OCCM. Mr. Mullen was tasked with responding to all Pegasus-Global requests, a difficult task given the depth and breadth of the Management Audit conducted, and one that Mr. Mullen discharged effectively and efficiently. Mr. Mullen's responsiveness to Pegasus-Global's requests was a vital element in enabling Pegasus-Global to meet the full requirements of the Work Order within the schedule established for the Management Audit.

CALIFORNIA COURTHOUSE CAPITAL PROGRAM MANAGEMENT AUDIT REPORT

1.0 EXECUTIVE SUMMARY

1.1 INTRODUCTION

On January 12, 2012, Pegasus Global Holdings, Inc.® ("Pegasus-Global") was selected as an independent consultant to assist the Court Facilities Working Group ("CFWG") of the State of California Judicial Council in its ongoing oversight of the Judicial Branch's Court Capital Construction Program. Pegasus-Global's contract signed February 24, 2012 and effective February 6, 2012, defined various audit deliverables. This Capital Program Management Audit Report ("Report") addresses Deliverable 1 to the Pegasus-Global contract.

Background Summary

The California Judicial Branch comprises 58 superior (trial) courts (one in each county), six intermediate appellate courts in nine locations, and the Supreme Court, with more than 2,000 judicial officers and approximately 20,000 employees.

The Judicial Council of California has rule-making authority respecting court administration, practice, and procedure. This authority includes developing, advocating for, and allocating the Judicial Branch budget.

The Chief Justice of California is authorized to establish working groups to assist the council on topics affecting the administration of justice. The CFWG has been appointed by the Chief Justice to provide oversight of the entire Judicial Branch facilities program. The facilities program includes the judicial branch courthouse construction program ("Program") that is being implemented through the AOC.

The Program includes the planning, site acquisition, budgeting, design and construction of new courthouses and the renovation of existing courthouses throughout California. As of yearend 2011, the Program included construction and renovation projects with a total estimated construction cost of $4.5 billion.

1.2 AUDIT OBJECTIVES

The overall objective of the audit was to evaluate the Office of Court Construction Management's ("OCCM") processes in the management of the Administrative Office of the Courts' ("AOC") Court Capital Construction

Program ("Program") including an assessment of those processes in order to determine opportunities to improve efficiency and effectiveness. Specifically, the objectives of this audit include:

- An assessment of the overall management of the AOC Program relative to budget, scope, schedule and quality outcomes using a combination of AOC policies, procedures, processes, standard document reviews and interviews of designated representatives of the CFWG, the executive and senior management of the AOC and OCCM and other senior management responsible for key elements of the Program.

- An assessment of individual project team performance relative to budget, scope, schedule and quality outcomes based on a comparative review of actual project implementation as compared to program policy, procedure, process and standards utilizing a combination of document reviews and interviews with Project Managers and supporting staff responsible for the delivery of the following six (6) audit test projects:

    1. B.F. Sisk Renovation
    2. New Mammoth Lakes Courthouse
    3. New Portola/Loyalton Courthouse
    4. New San Bernardino Courthouse
    5. New Susanville Courthouse
    6. New Madera Courthouse

- An assessment of the structure and composition of the Program Management and individual project delivery teams, OCCM organization structure, overall staff qualifications, and the quality of project consultants, architects and engineers and general contractors.

1.3 AUDIT METHODOLOGY

Pegasus-Global conducted its audit in accordance with Generally Accepted Government Auditing Standards ("GAGAS") issued by the U.S. Government Accountability Office. Those standards require that Pegasus-Global plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for the findings and conclusions based on the audit objectives. Pegasus-Global believes that the evidence obtained provides a reasonable basis for the findings and conclusions relative to the audit objectives established.

Pegasus-Global conducted the audit over the period of February 13, 2012 – July 26, 2012, including review of extensive program records and interviews with members of the CFWG, AOC and OCCM.

The audit results are not presented as, or meant to be interpreted as, a critique of any individual, particular unit, group, division, department, or the State of California. The audit results are presented as observational comparisons against comparative industry standards solely with the intention of providing stakeholders in the Program and individual Program projects with information that can be used by those stakeholders to improve the execution of the Program and the individual Program projects.

1.4 BACKGROUND

It is important when reviewing the audit findings to place the findings in context of the history of the Court Capital Construction Program:

1. The entire Program is relatively new having first come into existence in 2002 under SB 1732;

2. The initial priority for the Program was to transfer the county courts to judiciary management and control, a task which was not fully complete until December 2009;

3. While moving to execute the provisions of SB 1732, AOC had to establish, organize and staff the OCCM;

4. The OCCM had to:

    a. First survey the conditions of the county courthouses transferred to the judiciary, identify the court facilities that needed to be replaced, renovated or added to the courthouse inventory, then formulate and execute a priority listing which identified those immediate and critical capital construction needs;

    b. Establish its policies, procedures and processes, working in conjunction with other California state agencies;

    c. And, finally, initiate and execute courthouse projects under the Court Capital Construction Program.

5. Since the initiation of the Program in 2002, OCCM began work (site acquisition funding) on 59 projects with a total budgeted value of $6.6 billion. During that same time period OCCM has completed eight projects with a total budgeted value of $300 million.

By having to transfer all trial courts to the Judicial Branch, create a prioritization methodology to identify the immediate and necessary trial court projects, and actually initiate execution of individual capital projects while simultaneously attempting to plan, organize and staff the OCCM all in a compressed timeframe; AOC and OCCM did not have the luxury to fully complete the traditional ramp-up phase expected in the life cycle of a megaprogram before embarking on the execution of projects identified for the Program.

As a result, the Judicial Council, AOC and OCCM had to focus primarily on those actions that were deemed critical to achievement of the immediate objectives set for the Program and its individual projects. Ultimately, OCCM had to choose where to focus its attention with the limited time and staff resources available, and chose to focus on the

actions which would most quickly meet the objectives mandated in the most expeditious manner possible.

Thus, given the priorities and demands on the AOC and OCCM under SB 1732 and SB 1407 Pegasus-Global would expect to find gaps in the formal policies, procedures and processes developed and implemented by the AOC and OCCM as noted in the findings of this Report. However, in light of the magnitude of the Program still before the OCCM it is critical that those gaps now be addressed in order to manage and control the Program and its projects in a more structured manner and to improve the uniformity (consistency), transparency and accountability of the Program elements.

1.5 KEY FINDINGS

Pegasus-Global's overall key findings are summarized below:

ORGANIZATIONAL STRUCTURE

- While the program organizational structure portrayed in the Program's organization chart and existing policies and procedures reflect a vertical form of organizational management, OCCM has essentially been forced to function as a horizontal organizational structure given the inability to have a ramp-up period, staffing limitations and constraints placed on the Program.

- From the legislation, it appears that the legislature specifically empowered and required the Judicial Council to perform as the Owner of the Program, and in logical extension, of each project within that Program. However, there is no universally acknowledged agreement or understanding within the Program (at any level) as to the ultimate Owner of the Program. Thus, the actual Owner may not be exercising its responsibility to examine and make crucial funding decisions from a program perspective.

- The program staff is generally well qualified and is dedicated to the execution of the Program and its individual projects, often bearing a program or project load which is at, or in certain cases, beyond the limits of an individual's reasonable span of control under the current organizational structure.

- The program staff has a generally entrepreneurial perspective, taking initiatives, ownership, and responsibility for their respective scopes of work. This perspective has enabled the staff at the program level to work around issues which may have had an impact on OCCM's ability to deliver the new courts per the legislative mandate.

- The OCCM is not staffed to the planned levels or for all of the organizational positions identified. The lack of staff since the inception of the Program resulted in the need to prioritize program tasks away from the completion of the Program's draft policies, procedures and processes, focusing the existing staff on a limited number of what were considered to be more critical elements of the Program.

- There is no formal delegation of authority and responsibility at either the program or project levels. This has resulted in confusion and some disagreement as to who within the Program and project structure are accountable for the decisions made and actions taken on behalf of the Program and each project.

- No issues were found related to a single point of accountability as every Program and Project Manager without exception held themselves accountable and responsible for all the decisions made and actions taken relative to their functions and project assignments.

POLICIES, PROCEDURES, AND PROCESSES

- OCCM currently does not have a formal document control system expected of a megaprogram, which has impacted the uniformity and transparency of the project practices.

- Although a Program Management Manual has been drafted, this foundation document for the Program does not appear to be uniformly followed by the program staff and does not provide a logical link between and among the policies, procedures and processes promulgated by OCCM.

- Overall, while some individual policies, procedures and processes met the industry Standard of Care ("SOC"), as a complete body, the policies, procedures and processes that are currently in place at OCCM for managing and controlling the Program are not uniform or transparent and do not provide for the level of accountability expected for a megaprogram the size and complexity of the Court Capital Construction Program.

- There are two primary sets of policies in place within OCCM, one for the capital construction projects and one for the facility modification projects. While the facility modification project policies have been drafted to a uniform template, the capital construction policies do not use a uniform format, making it difficult to determine what is a policy, procedure or process, and how those capital construction policies should be linked to the facility modification policies, procedures and processes to form a comprehensive set of mutually supportive policies, procedures and processes.

- The AOC/OCCM policies, procedures, processes and practices relative to site selection and acquisition were uniform, transparent and had a single point of accountability.

- The Trial Court Facility Standards and Practices were found to be fundamentally sound, providing a uniform and transparent structure which enables Project Management to manage and control project design. Some implementation gaps concerning design management and control were identified; however, those appeared to be relatively minor and can be easily addressed by Program Management.

- There is currently no comprehensive, complete or final policy, procedure or process in place which fully defines construction management under the Program, or which provides a uniform structure under which construction management and control will be exercised at the project level.

- The current program construction management policies, procedures and processes are incomplete, and in some instances in conflict with one another, which results in inconsistencies in construction management practices at the project level.

- Many of the other policies, procedures and processes that have been developed for the Program contain excellent written sections that conform to industry best practices and industry standards. However, those policies, procedures and processes are still identified as “Draft” and few of the policies, procedures and processes indicate that they have been formally approved and adopted by OCCM, AOC or the Judicial Council.

PROGRAM/PROJECT EXECUTION

- There is a lack of uniformity and transparency of project team practices across the test projects audited, in part, due to the fact that the policies, procedures and processes developed at the program level have not been completed and formally adopted. Once those policies, procedures and processes have been completed and adopted, the majority of the uniformity and transparency issues identified at the project level should be resolved.

- The current Management Plan and Project Definition Report (“Project Definition Report”) does not represent a formal Project Execution Plan (“PEP”), is inconsistent with other policies, procedures and processes within the OCCM, and omits references to the listed requirements, duties and responsibilities back to those program level policies, procedures and processes which provide the foundation and requirements which govern the operations of the project teams and any formal delegations of authority and accountability.

- There is no formal policy, procedure or process that addresses the review and approval of project designs, resulting in the Project Manager making such determinations and taking action based on their individual judgment which further impacts the uniformity, transparency and parts of accountability.

- The Program may be missing opportunities to realize economies of scale relative to bulk purchasing (construction and maintenance) and prototyping of some common design elements among projects.

- The assignment of both a Construction Manager at Risk ("CM@Risk") and a contract Construction Manager ("CM") on a single project creates confusion among the project participants and creates, or appears to create, potential conflicts of interest relative to those two positions.

- OCCM has not yet developed a quality management program that meets the industry SOC to manage and control quality across the entire Program.

- Project scheduling, one of the critical control tools in a program and project, has not yet been fully addressed through a policy, procedure or process issued by Program Management. As a result, scheduling at the project level is not uniform or transparent.

- There was no apparent comparative analysis of the original project estimate assumptions to cost adjustments made to project budgets during execution nor any program-level consolidation of, or analysis of, variations between the original project cost estimate and the final actual project costs.

- While the Program has in place a lessons learned database, the lessons learned program is not as formal as necessary to capture, consolidate and communicate the lessons learned at every phase of the Program.

- It does not appear that any formal process has been instituted by which each project architect, contractor and consultant is evaluated at the completion of their scopes of work thereby providing no documented basis to test or confirm the

qualifications of performance of those organizations against their bid representations and conditions of their individual contract agreements.

1.6 RECOMMENDATIONS

Pegasus-Global's overall recommendations are summarized below.

ORGANIZATIONAL STRUCTURE

- The Judicial Council, in consultation with the AOC and in recognition of the legislative actions in effect, should clearly establish the ultimate Owner of the Program.
- Once the identification of the "Owner" has been clarified, the Owner, working with the AOC and OCCM should establish formal, detailed delegation of authority which clearly delineates the party within the Program and projects with the authority to make decisions and take actions on behalf of the Owner. Those delegations must also specifically identify the limits of each delegated authority.
- Complete and formalize the restructuring of OCCM into a more horizontal structure, which will address the reality of the staffing levels should the staffing be reduced in light of the current slowdown of its capital construction projects.
- Develop, complete and adopt management policies, procedures and processes which better align with a horizontal structure, providing program and project staff with uniform and transparent guidance in fulfilling their duties and responsibilities under that horizontal structure effectively and efficiently.
- Maintain the current core staff positions. However, realign the interactive functions and communication processes to provide more complete, expedient and coordinated actions among all staff at both the program and project level.

POLICIES, PROCEDURES AND PROCESSES

- OCCM should adopt a formal electronic document control system and develop and issue a document preparation, management and control procedure which will ensure the timely and comprehensive preparation, distribution and capture (filings) of actual program and project document sets.

- In order to maximize the effectiveness and efficiency of the available staff and thus improve the opportunity to achieve all of the program and individual project goals and objectives, the completion of the policies, procedures and processes should be a priority of the Judicial Council, the AOC and the OCCM. Accordingly, OCCM should take advantage of the lessons learned during the planning and execution of the Program and projects to date and refocus attention on the completion and formal adoption of a comprehensive set of policies, procedures and processes by which the remaining majority of the Program and its projects will be managed and controlled.

- OCCM should adopt some policies or portions of policies with the State Administrative Manual ("SAM") for use until OCCM program policies, procedures, and processes are fully developed, approved and adopted to ensure a uniform, transparent and accountable process for executing the Program projects.

- OCCM should adopt a uniform template for the development of all policies, procedures, and processes.

- OCCM should establish a numbering and naming system which would establish a logical linkage and flow of policies, procedures, and processes within functional units and across the entire Program.

- OCCM should implement a cohesive and comprehensive construction management and control system based on lessons learned during execution of the initial Court Capital Construction projects. OCCM should align all elements of construction management and control, from definition to contract documents with

program level standards, policies, procedures and processes in order to ensure that program and project construction goals and objectives are adhered to and met.

- Ultimately, OCCM should consolidate all adopted policies, procedures and processes into a centralized document control system (electronic and hard copy) so that they can be effectively and efficiently archived and accessed by anyone working within the Program.

PROGRAM/PROJECT EXECUTION

- Finalize, adopt and distribute a Project Execution Plan Manual that fully addresses the elements necessary to manage a construction project and ensure that its contents are consistent with the policies, procedures and processes that exist at the program level, and will provide guidance to the project teams in order to achieve uniformity and transparency of project team practices across the Program's projects.

- AOC/OCCM should consider examining the first projects completed, or fully underway, with representative input from an architect, a CM@Risk, a contractor, Facilities Maintenance Group ("FMG") and a facility occupant to identify possible economies of scale which can be taken advantage of to reduce both the execution of a project and the total life cycle cost of each facility constructed. Once such opportunities are identified they should be inserted into the basic project execution plans.

- AOC/OCCM should examine its contracts, policies and procedures regarding CM@Risk and CM contracting and assignments to both clarify the relative responsibilities and authorities (if the decision is made to maintain both positions on a project) and to eliminate the appearance of the conflict of interest between those two project positions.

- Develop and implement both in formally issued policies, procedures and processes and within the architectural contract document set, a standard process for the submittal, review and approval or rejection of design.

- AOC/OCCM should develop a more structured set of policies, procedures and processes to be followed relative to management and control of project schedules.

- Project and Program Management should use the data already collected by the Project Managers during development of the original estimates and budgets, and the final actual costs to execute a project to analyze the accuracy of the original estimates; the root cause for any adjustments over or under the original cost estimate; any common trends in cost estimates or management and control of project costs which should be addressed at a program level; and capture and consolidate the cost estimates, management and critical lessons learned on projects executed.

- OCCM should develop a comprehensive, formal quality management program consisting of linked and mutually supportive policies, procedures and processes for both the program and project level which address both quality control and quality assurance as practices within the industry at large.

- Formalize the lessons learned program to capture, consolidate and communicate those lessons among all program and project staff both to identify barriers to execution of the full program and/or project scope of work and to identify changes needed in the organization structure, and policies, procedures and processes which may improve the effectiveness and efficiency of OCCM as the recommended revised horizontal organizational structure is implemented and matures.

- Establish a formal process by which each project architect, consultant and contractor is evaluated at the completion of their scopes of work. Those evaluations should be templated to the conditions of the contract in general,

while still enabling OCCM staff to provide additional perspectives and observations relative to the effectiveness and efficiency with which the respective scopes of work were completed.

- A formal evaluation of the management, control and working relationships among all project stakeholders should be conducted. This evaluation is intended to establish those elements of the actual execution of a project which did not work well in forwarding or attaining project goals and objectives efficiently or effectively. These evaluations should be captured, consolidated and communicated within the lessons learned program and the document control system for use by subsequent program and project staff during the selection and engagement processes, and by Program and Project Management to adjust procedures and processes to improve the effectiveness and efficiency of stakeholder interaction.

1.7 SUMMARY

A complete listing of Pegasus-Global's detailed findings and recommendations with cross-reference locations to the corresponding audit discussion of those finding and recommendations is contained within **Exhibit A** to this Report.

Based on Pegasus-Global's audit findings, Pegasus-Global has identified and prioritized the following recommendations in **Executive Summary Table 1, *Priority Recommendation Summary***, that provide the greatest value to the Program and are necessary to execute the Program to industry standards and best practices:

EXECUTIVE SUMMARY TABLE 1 PRIORITY RECOMMENDATION SUMMARY	
Priority Number	**Recommendation**
1	Adopt a more horizontal organizational structure of OCCM
2	Finalize policies, procedures and processes
3	Issue delegations of authority
4	Install a comprehensive document control system
5	Implement a cohesive and comprehensive construction management and control system
6	Adopt uniform design review and approval policies, procedures, processes, practices and contracts
7	Finalize, adopt and distribute a Program Management Manual
8	Finalize, adopt and distribute a Project Execution Manual
9	Implement a formal lessons learned program
10	Develop evaluations of the execution of project functional scopes of work undertaken by architects, consultants and contractors
11	Develop evaluations of management, control and working relationships among all project stakeholders

Specific findings and recommendations identified in this **Executive Summary** are identified and discussed in more detail within the four **Parts** of this California Courthouse Capital Management Audit Report as follows:

- **Part I** – Management Audit of Program Level Policies, Procedures and Processes
- **Part II** – Management Audit of Individual Project Team Practices
- **Part III** – Assessment of the Structure and Composition of the OCCM Organization
- **Part IV** – Prioritization of Management Audit Recommendations

1.8 AOC/OCCM RESPONSE

As noted within GAGAS Chapter 7, Section 7.33[1]:

> "*Providing a draft report with findings for review and comment by responsible officials of the audited entity and others helps the auditors develop a report that is fair, complete, and objective. Including the views of responsible officials results in a report that presents not only the auditors' findings, conclusions, and recommendations, but also the perspectives of the responsible officials of the audited entity and the corrective actions they plan to take. Obtaining the comments in writing is preferred, but oral comments are acceptable*."

Per GAGAS Chapter 7, Section 7.34[2]:

> "*When auditors receive written comments from the responsible officials, they should include in their report a copy of the official's written comments, or a summary of the comments received*."

Per GAGAS Chapter 7, Sections 7.35 and 7.37[3]:

> "*Auditors should include in the report an evaluation of the comments, as appropriate*." (Section 7.35)

> "*When the audited entity's comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, or when planned corrective actions do not adequately address the auditors' recommendations, the auditors should evaluate the validity of the audited entity's comments. If the auditors disagreed with the comments, they should explain in the report their reasons for*

[1] Government Auditing Standards (GAO-12-331G), Comptroller General of the United States, Chapter 7, Section 7.33, page 173, December 2011
[2] Government Auditing Standards (GAO-12-331G), Comptroller General of the United States, Chapter 7, Section 7.34, page 174, December 2011
[3] Government Auditing Standards (GAO-12-331G), Comptroller General of the United States, Chapter 7, Section 7.35 and 7.37, page 174, December 2011

disagreement. Conversely, the auditors should modify their report as necessary if they find the comments valid and supported with sufficient, appropriate evidence." (Section 7.37)

A draft final report of audit findings and recommendations was provided to the AOC and OCCM on July 26, 2012. AOC/OCCM responded with written comments to findings and recommendations contained in that draft audit report on August 8, 2012. The full text of AOC/OCCM's response as received by Pegasus-Global is included in **Exhibit B.**

In summary AOC/OCCM accepted the findings and recommendations contained in the Management Audit Report as it stood on July 26, 2012. In addition, within its comments AOC/OCCM indicated that actions had already been initiated to address those recommendations as a foundation from which to strengthen and improve the management and execution of the Court Capital Construction Program. AOC/OCCM identified specific actions they intended to implement in response to each recommendation, the current status of the planned actions, and dates by which each of the actions would be completed in a summary table attached to their narrative response.

The AOC/OCCM narrative response addressed the major findings and recommendations presented in this Executive Summary, providing additional detail relative to the actions planned to address those major findings and recommendations. In two instances AOC/OCCM presented modifications to the Pegasus-Global recommendations:

1. AOC/OCCM partially modified the order in which Pegasus-Global prioritized the eleven findings and recommendations addressed within the Executive Summary of the Management Audit Report. AOC/OCCM explained that the change in priority was necessary to better align the sequence of the responsive actions with the current Program execution conditions and priorities. Pegasus-Global fully understands and accepts the AOC/OCCM explanation, and endorses the change in priority order identified by AOC/OCCM.

2. AOC/OCCM made adjustments to Pegasus-Global's recommended organizational structure (the organization chart) addressed in **Part III** of the Management Audit Report (See AOC/OCCM Response **Exhibit B**). Pegasus-Global's recommended organizational structure was submitted in response to a specific request by AOC/OCCM and the CFWG for Pegasus-Global's independent expert opinion of how best to organize OCCM in response to the current and expected conditions under which the Program will be planned and executed. Pegasus-Global developed its organizational recommendation based solely on the information available to it at the time and on its assumptions as to future conditions under which the Program will be executed. As a consultative service, AOC/OCCM are free to accept, reject or adjust that recommended organizational structure as seems best to it given its own internal knowledge of current and expected Program execution conditions. Therefore, Pegasus-Global understands the basis for the changes in the organizational structure and has no reason to question or challenge the AOC/OCCM changes to Pegasus-Global's recommendation.

In conclusion, Pegasus-Global is impressed with the speed with which AOC/OCCM has reviewed the full body of the findings and recommendations and moved to address each of those findings and recommendations. The immediate attention directed towards planning and implementing actions intended to improve and strengthen the management and execution of the Program and its constituent projects is highly commendable.

2.0 INTRODUCTION

2.1 BACKGROUND: HISTORY OF THE LEGISLATIVE FRAMEWORK RESPONSIBLE FOR THE COURT SYSTEM

It is important in any program audit to place the organization under audit into its historical context to understand the evolution of the management policies, procedures, processes and practices. The Court Capital Construction Program had its initial genesis under California statute SB 1732 in 2002, which initiated, among other things, the following actions relative to existing court facilities:[4]

- Transfer of all responsibility for trial court facilities funding and operations from counties to the state;
- Assigning the Judicial Branch of California government the total responsibility for "*its functions related to its operations and staff, including facilities*";
- Uniting responsibility for operations and facility increases under the Judicial Branch to increase the "*likelihood that operational costs will be considered when facility decisions are made, and enhances the economical, efficient, and effective court operations*";
- Making the Judicial Branch responsible to represent the state's interests during the transfer of existing court facilities from the counties to the state;

[4] Court Facilities Legislation – SB 1732 (Escutia), Chapter 1082, 2002, as amended through 2011

- Expecting the Judicial Branch to assume responsibility of the county court facilities in their "*as-is condition*"; and

- Transferring of all county trial courts to be completed "*as expeditiously as possible*", but no later than June 30, 2007.

In addition, SB 1732 addressed the construction of new court facilities giving the Judicial Branch:

- Full responsibility for planning and construction of new facilities placed with the Judicial Branch of State government; and,

- The ability to dedicate the money collected from fee surcharges and the State Court Construction Penalty Assessment, which was "*dedicated to the capital facilities' needs of the Judicial Branch*".

In effect, SB 1732 made the Judicial Branch of California (1) responsible for the operation and maintenance of all court facilities in an economical, efficient and effective manner and, (2) responsible for the planning and construction of new trial court facilities using funds specifically collected by the Judicial Branch and allocated to the construction of those new trial court facilities.

In 2007, under SB 82 (an amendment to SB 1732), the legislature moved completion of county court transfers from June 30, 2007 to December 31, 2009, due to the number of court and court transactions which had to be undertaken by the Judicial Branch.[5] SB 82 also provided additional detail relative to the establishment of a funding mechanism for new capital construction of court facilities, including the following:[6]

- Establishment of a State Court Facilities Construction Fund which was intended to "*further reasonable access to the courts and judicial process throughout the state for all parties*".

[5] Additional findings accompanying SB 82, (2007)
[6] SB 82, Article 6, 2007

- Identification of a specific "*Immediate and Critical Needs Account*" which could only be used for the following:
    - *… the planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities*."
    - "*Repayment of moneys appropriated for lease of court facilities …*"
    - "*Payment for lease or rental of court facilities or payment of service contracts …*"
- Identification of the money contained in the Immediate and Critical Needs Account as a "*continuous appropriation*", meaning in essence that those funds were not subject to annual fiscal year appropriation once site acquisition and schematic design were complete.
- Requirement that "*The Judicial Council … make recommendations to the State Public Works Board before it undertakes projects based on its determination that the need for a project is most immediate and critical using the then most recent version of the Prioritization Methodology for Trial Court Capital-Outlay Projects originally adopted on August 26, 2006, subject to the availability of funds in the Immediate and Critical Needs Account*." That provision was expanded to include other considerations to be applied in the recommendation to the State Public Works Board ("PWB").

While SB 1732 (as amended) addressed the management and administration of the Program in some detail, Article 7 of SB 1732 summarized the full authority and responsibilities of the Judicial Council to:[7]

- "*Exercise **full responsibility, jurisdiction, control, and authority as an Owner** would have over trial court facilities the title of which is held by the state, including, but not limited to, the acquisition and development of facilities*." [**Bold highlight added**]

[7] SB 1372, Article 7, page 38 (a) and (b), 2002

- "*Exercise the* ***full range of policymaking authority over trial court facilities****, including, but not limited to, planning, construction, acquisition, and operation, to the extent not expressly otherwise limited by law*." [**Bold highlight added**]

Those two provisions encompass the duties, authorities and responsibilities of the ***Owner*** of a construction project (or program) as understood within the capital construction industry at large. Regardless of the process by which the Judicial Branch exercises its authority and control of the Program, it is ultimately responsible as the Owner for setting and meeting the goals and objectives of the Program, as addressed in more detail later in this Report.

Other provisions within SB 1732 (and its amendments) which are germane to the audit include the following:

- A report to the Joint Legislative Budget Committee ("JLBC") describing the scope, budget, schedule, number of courtrooms, number of secure holding cells, and square footage of administrative support space to be constructed or renovated;

- Creation of a local Project Advisory Group ("PAG") to provide input into the planning and construction of new trial court facilities; and,

- Creation of "performance expectations" for court facilities, including benchmark criteria for total project life-cycle costs.

Overall, SB 1732 (and its amendments) established the basic guidelines and program organizational requirements (*i.e.,* relationship with the Department of Finance ("DOF")) for the Program, but ultimately placed the responsibility for the planning and execution of the Program and its subcomponent projects with the Judicial Branch of California government.

SB 1407 (2008) enacted on September 26, 2008, provided enhanced revenue streams and authorized $5 billion in lease revenue bonds for trial facility construction. SB 1407 extended "… *the purposes for which moneys in the* [State Court Facilities Construction

Fund] *may be used to acquire, rehabilitate, construct, or finance court facilities* …", codifying in additional detail the basic provisions first addressed in SB 1732, summarized above.[8] SB 1407 increased the fees and assessments of fines to be imposed and collected into the construction fund and provided the procedural authority for the AOC to collect and deposit those fees and fines into the Immediate and Critical Needs Account of the Program. SB 1407 reiterated that the moneys collected "… *shall only be used for any of the following*":[9]

- Planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities;
- Repayment of lease court facilities under issuance of lease-revenue bonds; and
- Payment for lease or rental of court facilities, including those made for facilities in which a private sector participant(s) undertake some of the risks associated with the financing, design, construction, or operation of the facility (public private partnership projects).

SB 1407 also included the following requirements, all of which bear upon the management and execution of the Program:

- The Program was authorized to pay the debt service of the lease revenue bonds, notes, bond anticipation notes, or other appropriate financial instruments used to pay for the costs in the amount of up to $5 billion.[10]
- The AOC shall serve as an implementing agency (not the Owner) for the Program (upon approval of the Department of Finance).[11]
- The Program is exempt from the California Public Contract Code, but is subject to the facilities contracting policies and procedures adopted by the Judicial Council after consultation and review by the DOF.[12]

[8] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (1), page 1, September 26, 2008
[9] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (5), page 15, September 26, 2008
[10] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (5), page 15, September 26, 2008
[11] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (7), page 20, September 26, 2008

- The AOC shall be responsible for the operation, maintenance and repair of all court facilities whose title is held by the state.[13]

- The facilities constructed under this Program are subject to certain energy legislation and polices established by the State of California.[14]

- The Judicial Council shall "*Exercise full responsibility, jurisdiction, control, and authority* ***as an Owner*** *would have over trial court facilities whose title is held by the state, including, but not limited to, the acquisition and development of facilities*."[15] **[Bold highlight added]**

- Establishment of "… *policies, procedures and guidelines for ensuring that the courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, construction, design, operation, and maintenance*."[16]

- Formalizes the PAGs for construction projects.[17]

- Preparing strategic master and five-year capital facilities plans.[18]

SB 12 (2009) further defined and refined the Program, reiterating some of what was adopted in SB 1407, and adding the following provisions relevant to this Program audit:

- Requires the Judicial Council to make recommendations to the State PWB before undertaking projects and, based on State PWB approval and the certification of sufficient funding, authorizes the Judicial Council to acquire real property and complete preliminary design plans.[19]

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[12] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (7), page 20, September 26, 2008
[13] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (7), page 20, September 26, 2008
[14] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (7), page 20, September 26, 2008
[15] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (9), page 21, September 26, 2008
[16] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (9), page 22, September 26, 2008
[17] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (9), page 23, September 26, 2008
[18] Senate Bill 1407, Chapter 311, Legislative Counsel's Digest, Section (9), page 23, September 26, 2008
[19] Senate Bill 12, Chapter 10, Legislative Counsel's Digest, page 1, February 20, 2009

- Requires the Judicial Council to report to the JLBC and the chairs of the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget the status of each project as of March 1 of each year of the Program.[20]

- Reiterates a "*continuous appropriation*" for the Immediate and Critical Needs account without regard to fiscal year, only for the purposes of acquiring real property and completing preliminary plans.[21]

- Reiterates the total funding of the Program at $5 billion (USD).[22]

- The intent of the legislation is to appropriate funding for working drawings and construction in the next annual Budget Act following approval by the State PWB of the preliminary plans completed under the initial appropriation for a project to cover site acquisition and preliminary plans.[23]

SB 78 (2011) established that the Judicial Branch was required to meet State procurement and contracting requirements as promulgated under the SAM until such time as it adopts a Judicial Branch Contracting Manual. The due date for that contracting manual was set as January 1, 2012.[24] Once submitted, the SAM was no longer the foundation document for the Program as the Judicial Branch Contracting Manual addresses the procurement and contracting policies, procedures and processes to be implemented and enforced. SB 78 also required that the Judicial Council report twice a year (February and August) information related to procurement of and amendments to, contracts secured by the Judicial Branch.[25] In addition, SB 78 requires the Judicial Council to report to the JLBC on the process, transparency, costs, and timeliness of its construction procurement practices for each court construction project completed between January 1, 2008 and January 1, 2013. The Legislative Analyst's office is to conduct an analysis of the findings in that report and compare the costs and

[20] Senate Bill 12, Chapter 10, Legislative Counsel's Digest, pages 1 and 2, February 20, 2009
[21] Senate Bill 12, Chapter 10, Legislative Counsel's Digest, Section 1, page 2 and 3, February 20, 2009
[22] Senate Bill 12, Chapter 10, Legislative Counsel's Digest, Section 2, page 3, February 20, 2009
[23] Senate Bill 12, Chapter 10, Legislative Counsel's Digest, Section 3, page 4, February 20, 2009
[24] Senate Bill 78, Legislative Counsel's Digest, Part 2.5, Section 19204 and 19206, January 10, 2011
[25] Senate Bill 78, Legislative Counsel's Digest, Part 2.5, Section 19207, January 10, 2011

timeliness of the methods of delivery used by the judiciary to projects of comparable size, scope, and geographic location procured under the Public Contract Code provisions applicable to state agencies. [26]

Beginning with SB 1732, and continuing through SB 82, SB 1407, SB 12, and SB 78, the Judicial Branch gained control over, and responsibility for, the trial courts within California. That control and responsibility extended beyond simple operations and maintenance of those trial court facilities already in existence, to the planning and execution of a new trial Court Capital Construction Program, under which $5 billion (USD) in construction projects were authorized for the construction of new court facilities. Having completed the Program master plan and five-year district plans, the Court Capital Construction Program has fully entered the execution phase of that Program, with various projects cycling through the phases of execution. This audit is intended to examine the Program to date and ultimately recommend ways in which the Program can be enhanced and improved as the Program accelerates through execution.

2.2 AUDIT OBJECTIVES, TEAM, SCOPE AND METHODOLOGY

2.2.1 AUDIT OBJECTIVES

In February 2012, the Judicial Council through the AOC engaged Pegasus-Global to conduct a management audit of the Program as executed to date by AOC's OCCM. Under that engagement the AOC issued Work Order Number 1024456, which required Pegasus-Global to conduct an audit of the Court Capital Construction Program subdivided into four discrete elements as follows:

[26] Senate Bill 78, Legislative Counsel's Digest, Part 2.5, Section 22, January 10, 2011

- Deliverable 1, Subpart a.1 (See **Part I** of this Report). An assessment of the policies, procedures and formal processes governing the management and control of the AOC Program relative to budget, scope, schedule and quality outcomes. As a formal management audit conducted under GAGAS, OCCM was provided the opportunity to respond to the findings and recommendations presented by Pegasus-Global. The AOC has provided comments in response to those findings and recommendations, which have been appended to this Report as **Exhibit B**.

- Deliverable 1, Subpart a.2 (See **Part II** of this Report). An assessment of individual project team practices in managing a project's budget, scope, schedule and quality outcomes. As a formal management audit conducted under GAGAS, OCCM was provided the opportunity to respond to the findings and recommendations presented by Pegasus-Global. The AOC has provided comments in response to those findings and recommendations, which have been appended to this Report as **Exhibit B**.

- Deliverable 1, Subpart b (See **Part III** of this Report). An assessment and recommendation concerning the structure and composition of the Program Management and individual project delivery teams, OCCM organization structure, overall staff qualifications, and the quality of project consultants, architects and engineers, and CMs and general contractors. As a consultative service provided by Pegasus-Global, OCCM is not required to, and was not asked to, provide a formal response to the recommendations made under this Deliverable.

- Deliverable 1, Subpart c (See **Part IV** of this Report). On the basis of the findings of Deliverables 1.a.1, 1.a.2, and 1.b, Pegasus-Global was asked to identify and prioritize a list of those recommendations that in Pegasus-Global's opinion will provide the greatest value to the Program and which would enable the stakeholders to execute the Program following industry standards (or best practices).

2.2.2 AUDIT TEAM

The team assembled by Pegasus-Global to conduct the audit represented a cross section of the design and construction industry and collectively possessed technical knowledge, skills and professional experience necessary to plan and conduct this audit. The Pegasus-Global audit team included the following individuals:

- Dr. Patricia Galloway
- Dr. Kris Nielsen
- Mr. Jack Dignum
- Mr. Dana Hunter
- Mr. Jason Kliwinski
- Ms. Lia Nielsen

The resumes of each audit team member are attached to this Report at **Exhibit C.**

2.2.3 EVALUATION CRITERIA AND STANDARDS

This audit was conducted from February 13, 2012 through July 2012 and was conducted in accordance with GAGAS. GAGAS standards provide a framework for conducting high quality government audit engagements with competence, integrity, objectivity and independence. Those standards contain requirements and guidance dealing with ethics, independence, auditor's professional competence and judgment, quality control, the performance of field work and reporting. Audits performed under GAGAS provide information used for oversight, accountability, and improvements of government programs and operations.

Unlike a financial audit, a *program management audit* is classified as a category of *performance audit*, which under GAGAS are defined as engagements which:

> *…. Provide assurance or conclusions based on an evaluation of sufficient, appropriate evidence against stated criteria, such as specific requirements, measures, or defined business practices. Performance audits provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.*[27]

Pegasus-Global believes that the evidence obtained provides a reasonable basis for the findings and conclusions relative to the audit objectives established.

Summarizing from the GAGAS audit standard quoted above there are two critical elements of a Capital Program Management Audit:

1. The evaluation of management is conducted by comparing the actual conditions which exist within an organization against specifically identified industry-relevant standards. While the auditors are expected to use their expertise during the planning, execution and interpretation (reporting) of the program management audit, the auditor does not allow personal preference or bias to frame the planning, execution or interpretation of the audit. To ensure that personal bias is not introduced into its audit, Pegasus-Global uses a *comparative audit technique*, under which it compares the actual conditions which exist within an organization against two benchmark sources of comparison:

    a. Applicable federal, state or local laws and regulations. If an agency of the state is required by State law or regulation to execute capital projects (or elements of capital projects) following a specific set of formal requirements then Pegasus-Global evaluates whether or not the agency under audit has performed its function in accordance with those formal requirements.

[27] Government Auditing Standards, United States General Accounting Office, July 2007, GAO-07-731G, Chapter 1, Section 1.25, page 17

b. Industry Standards of Care. There are several national and international bodies which promulgate standards of care which are generally acknowledged and accepted within the construction industry to represent those best practices enabling management to achieve its established goals and objectives. For the purposes of this audit of the Program Pegasus-Global utilized the standards promulgated by the Project Management Institute ("PMI") under its Project Management Body of Knowledge ("PMBOK"); the Construction Management Association of America ("CMAA") under its Standards of Practice for Cost, Time, Quality and Contract Administration; selected portions of the American Institute of Architect's ("AIA") project contracting documents; and selected portions of the Leadership in Engineering and Environmental Design ("LEED®") Standards.

2. The audit results are not presented as, or meant to be interpreted as, a critique of any individual, particular unit, group, division, department, or the State of California. The audit results are presented as observational comparisons against the standards identified above *solely* with the intention of providing stakeholders in the Program and individual projects with information which can be used by those stakeholders to efficiently and effectively execute the Program and the individual projects.

The second element is particularly relevant in any audit of a governmental entity that is subject to open and complete disclosure of results of any independent audit conducted of the State's operations and management. The primary goal of a program audit is to provide a sound starting point for improving operations and management and, as such, a prerequisite is that the audit first identifies those elements of operation and management which currently do not align with the accepted practices and standards in general use throughout the entire industry.

The efficiency, effectiveness and economy of a governmental operation are inherent responsibilities of those charged with its management. The overall "effectiveness" of an

organization is the determination of how well predetermined goals and objectives for a particular activity or program are achieved. Effectiveness signifies the result of effort rather than the effort itself, this is sometimes characterized as impact, results, or outcome. Efficiency focuses on the maximization of output at minimal costs or the use of minimal input of resources for the achievable output. Economy signifies the acquisition of resources of appropriate quality and quantity at the lowest reasonable cost.

The result of the audit elements conducted under this management audit are focused entirely on providing the Judicial Council, AOC and OCCM with information which can be used in their efforts to improve their management of the Program and is not intended to be used as a criticism of the current management and operation of that Program.

2.2.4 AUDIT METHODOLOGY

The audit was conducted in four phases as described in **Section 2.2.1, Audit Objectives**. When reviewing the audit objectives, Pegasus-Global developed an audit plan under which the audit was to be conducted.

The audit plan was agreed between the CFWG of the Judicial Council, the OCCM and Pegasus-Global at an initial meeting held in San Francisco the week of February 13, 2012. The general audit methodology developed with the OCCM involved conducting an analysis under which the policies, procedures, processes and practices of the OCCM would be compared against those program management policies, procedures, processes and practices recognized as “good professional practice” within the capital construction industry at large.

Pegasus-Global’s team began the audit with an expectation of governmental excellence, a benchmark that all organizations should have as a primary objective. Holding governmental entities to the highest standards of efficiency and effectiveness serves the best interests of both the citizens and government. When those expectations are not met, Pegasus-Global attempts to identify opportunities to move toward an

organization's own vision of excellence. However, this vision must be recognized, accepted and internalized before significant organizational change can occur.

It is for this reason that many of Pegasus-Global's findings and observations found in this Report are *exception-based*. That is, they are oriented towards resolving problems or concerns. Although many aspects of operations are performed efficiently and effectively, the greatest benefits to an organization are typically derived from the identification of methods to achieve excellence.

Using the documents and information gathered from the AOC and OCCM, and from direct interviews of the CFWG representatives, senior AOC and OCCM staff and personnel involved in the capital projects, Pegasus-Global next identified appropriate program management standards of care against which the policies, procedures and practices should be compared and contrasted. Ultimately Pegasus-Global identified those program management standards promulgated by the PMI, CMAA, AIA and the US Green Building Council ("USGBC") LEED® standards.

In executing the comparative audit of the program level management of the policies, procedures, and processes in place to manage and control the Court Capital Construction Program against industry standards, Pegasus-Global undertook a three-step process as follows:

1. Pegasus-Global made several document requests in order to review those formal policies, procedures and processes which exist at the program level and reviewed those documents prior to conducting a series of interviews of the Program Management staff. Documents are used to identify and analyze the formal policies, procedures and processes in place at the program level intended to guide the execution of the Program and the individual projects which comprise that Program. The documents received and reviewed are compared against the topical industry standards to identify gaps in the OCCM policies, procedures and process. **Exhibit D** to this Report identifies the documents received and reviewed by Pegasus-Global over the course of the audit.

2. Pegasus-Global identified the applicable industry standards against which the policies, procedures and processes would be compared. A summary of the selection of those industry standards is contained in **Section 4.0, Audit Standards** immediately below.

3. As part of its audit Pegasus-Global interviewed representatives from the CFWG, AOC management, OCCM Program Management, OCCM Project Management and project consultant construction management. The interviews provide additional insight into the policies, procedures and processes and usually identify additional documents which are important to Pegasus-Global's understanding of the Program and the projects. Likewise, the interviews identify inconsistencies which exist between and even among the various levels of management in connection with those policies, procedures and processes, including the interpretation of, and applicability of those policies, procedures and processes. See **Exhibit E** for a complete listing of interviews conducted Pegasus-Global during this comparative audit.

Using all of the documentation and information gathered through the interview process, Pegasus-Global compared the OCCM's management of the Program within each of the Program phases against nine functional management elements delineated within the PMI standards:

- Integration Management;
- Scope Management;
- Time Management;
- Cost Management;
- Quality Management;
- Human Resource Management;
- Communication Management;

- Risk Management; and
- Procurement Management.

Finally, Pegasus-Global examined the OCCM program policies, procedures, processes, and practices holistically in order to determine if they were:

- Uniform;
- Transparent; and
- Single Point Accountable.

This portion of the audit regarding the program policies, procedures and processes was performed between February 13, 2012 and March 30, 2012.

3.0 Program Management

3.1 THE PURPOSE OF PROGRAM MANAGEMENT

Capital program and construction management as a profession came into existence in the early 1960s in response to increasing complexity of capital construction projects and the rapidly evolving sophistication of the CM and control tools coming into existence during the 1960s, 70s and 80s. Due to the ever increasing complexity, increasing costs, and extended schedules of basic infrastructure projects within the industry, Owners shifted more of their focus to megaprojects and megaprograms, which enabled the Owner to execute an interrelated series of projects under a single unified structure, plan and funding process. With the growing emergence of megaprojects and megaprograms arose the need for more sophisticated project control tools that could better monitor and

control the more complex management environments within which such management concerns as program and project cost and schedule had to be controlled.

The more complex execution and control environment resulted in the critical need for experienced personnel who were qualified to execute programs and projects using the new sophisticated tools that emerged. For example, to undertake and complete the construction of such complex facilities as the manned space flight facilities in Florida and Texas in the 1960s and 1970s, a new method for scheduling and coordinating the work of multiple contractors and vendors over a widely dispersed geographic area all working to a set of interdependent dates for activity completion and interface was needed. The ultimate result flowing out of such complex projects was what is today called Critical Path Method ("CPM") scheduling. CPM scheduling is a very dynamic, powerful and sophisticated management and control tool which requires that someone (or several individuals) with specialized training and experience be engaged to develop, maintain and interpret a program or project schedule. As control systems like the CPM schedule grew in sophistication and complexity, Owners were faced with a decision - seek out and employ those specially trained and experienced CPM schedulers or give up attempting to schedule a program or project internally and contract that program or project management task to an outside expert.

As the sophistication of the project management control tools became more complex and technical, so did the requirements for personnel trained in the use of those project management control tools. Universities began developing undergraduate and graduate degrees specializing in construction management. Companies began to emerge that specialized in producing project management and project services. Industry associations including PMI and CMAA were formed to provide a place where companies and industries could learn and enhance their understanding of project and construction management. Certificate programs in project management and construction management were developed to assure companies retaining those individuals that they understood project management.

As the areas of program, project and construction management became more specialized, the majority of Owners recognized that they did not have the experience or expertise within their organizations to manage large complex projects. Owners thus began looking to third parties to perform these services.

As CPM scheduling became more prevalent in the 1970s, Owners commonly contracted for scheduling or cost management services from an outside source. Early on, these services were provided by the architect/engineer or the construction contracting firm engaged to actually design or construct a project. However, there were two inherent problems with contracting for those project controls to be managed by either the architect/engineer or the construction contractor:

- Conflict of interest; and
- Protection of position.

These problems became pronounced when multiple projects were to be executed concurrently by a single Owner, the megaproject or megaprogram. Thus, in order to look after multiple projects and to manage the activities of several stakeholders, the concept of program management was conceived.

The conflict of interest issue involves the question of “first loyalty” among the program and the multiple stakeholders of that program. As an example, assume that a construction contractor is also named the Program Manager, responsible to manage and control the program on behalf of the Owner. Because the individual(s) acting as the Program Manager are also employees of the construction contractor, in situations where there is a conflict between the interests of the Owner and the interests of the construction contractor, the Program Manager is placed in a position where the Program Manager must make a decision or take an action which would ultimately damage the Program Manager’s employer. In short, the ultimate interests of the Owner may be compromised by the decisions and actions of the Program Manager acting out of loyalty to its employer, the construction contractor.

The protection of position issue involves a similar situation. Assume again the named Program Director comes from the construction contractor and that a problem has arisen on a project involving the inability of the construction contractor to build to a specific design issued by the architect/engineer. The architect/engineer asserts that the design is good but that the construction contractor's work is defective. The construction contractor asserts that his work is good but that the architect's design is defective. To fix the problem will cost a substantial amount of money and delay the completion of the project. The Program Manager, an employee of the construction contractor, must determine who is responsible for the defect and, thus, who should bear the impact of that defect. If the Program Manager acts so as to protect the position of the construction contractor and the design is later proven to have been good, it is left to the Owner to defend itself from any actions taken by the architect/engineer to recover the money it cost the architect/engineer as a result of the Program Manager's decision and action.

Program and construction management were developed as a separate and distinct profession within the construction industry for two reasons: (1) to provide the expertise and experience necessary to manage and control large, complex capital construction programs and projects; and, (2) to provide Owners with a source of program and project management expertise and experience which enable the Program or Construction Manager to act in the Owner's best interest because it is independent of all other stakeholders involved in those programs and projects. Even in today's project management environment the megaproject or megaprogram introduces additional complexities and issues which must be recognized and addressed by the Owner of that megaproject or megaprogram.

3.2 MEGAPROJECTS

A megaproject is any project, or program of individual projects linked by a common funding source and integrated purpose, which typically displays the following attributes:

- A total execution cost in excess of $1 billion (USD);

- Takes more than four years to execute;
- Involves multiple stakeholder entities; and
- Involves complex management and execution process.

The Court Capital Construction Program meets all of those criteria:

- The Program has an estimated total budget in excess of $5 billion (USD);
- The Program will take approximately ten years to complete (through the first stage of priority projects);
- Involves multiple stakeholders including the State of California, Judicial Council, individual judges, the PAGs, PWB, DOF, AOC and OCCM; and
- Involves a complex program under which over 40 individual courthouses will be executed in different communities throughout the State of California.

Further complicating the execution is the fact that funding for each individual courthouse project is done by specific appropriation by the California Legislature in multiple phases, with each project phase requiring a separate appropriation as follows:[28]

- Site acquisition (continuous appropriation);
- Preliminary plans (continuous appropriation Schematic Design and Design Development);
- Working drawings; and
- Construction.

The importance of recognizing that the Court Capital Construction Program as a program of individual projects which in total represent a megaprogram[29] is that the

[28] See **Section 5.0** below for additional detail.

stakeholders must set, plan, and execute the achievement of their goals at both a program level and at the individual project level, which in itself introduces an additional level of complexity into the planning and execution of both the program and the project levels. Oversimplifying this complexity:

> Every decision made or action taken at the program level has the possibility of impacting the achievement of goals and objectives set at the individual project level. Likewise, every decision made or action taken on an individual project level has the possibility of impacting the achievement of goals and objectives set at the total program level.

For example, if at the program level money allocated to the program during an appropriation cycle is less than that needed to fully fund the projects under execution, decisions will have to be made which may require the delay or even deletion of individual projects which are planned for execution later in the overall program schedule. Conversely, if at the project level a specific project overruns its allotted budget for some unforeseen reason, the program will have to adjust its total program goals to accommodate that cost overrun. Even if such overruns are, by project, a small amount of money, a sufficient number of such small overruns may impact the ability of the program stakeholders to fully fund other projects in the total queue of individual projects to be executed later in the multi-year program.

An additional complexity is added to the Court House Construction Program in that there is not a single, unified stakeholder base for the Program or the individual projects. At the *program* level the primary stakeholders are the judiciary, the administering agencies (AOC and OCCM), certain state administrative agencies (DOF and PWB) and the California state legislature. However at the project level, the primary stakeholders are expanded to include the Presiding Judge ("PJ"), the courthouse operations and maintenance staff, the court administrative staff, the individual members of the PAG, the design consultant, the construction contractor, and, of course the public (either directly

[29] For consistency within this Report, the terms *megaprogram* or *program* are used to describe the full complement of individual courthouse projects planned and executed under the Program and not any specific project planned or executed under that Program.

or through their elected representatives). Every stakeholder has their own opinions and focus relative to the Program and/or the individual projects, and balancing those different opinions and focus is a crucial element of both the program and project management charged with executing the project and the Program. While policies, procedures, and processes cannot predict nor control stakeholder opinion or focus, standards established and promulgated through formal policies, procedures, and processes can provide the stakeholders with a point of reference from which their individual opinions or focuses will be addressed by program and project management. If such standards do not exist the program and project management will find it very difficult to proactively manage the divergent stakeholder's expectations of the program or the projects.

Because program and project goals are interdependent it is necessary for the program and project policies, procedures, processes, and practices to be aligned for consistency within program and project level planning and execution schedules. Therefore, in conducting the audit of the Court Capital Construction Program Pegasus-Global had to examine management at both the program and project levels, constantly checking to ascertain if those two critical management levels of the megaprogram are consistent and mutually supportive of both program and project goals and objectives. Where the two levels of management (program and project) were not consistent, Pegasus-Global identified and addressed those inconsistencies.

3.3 IMPORTANCE OF CONTROLS

Perhaps the most critical responsibility for any Program Manager is establishing and exercising control over the execution of the program and its component elements or projects. Without the proper management controls in place and exercised, the chances of a program actually achieving its set goals and objectives is significantly reduced. This is especially true of megaprograms consisting of multiple discrete projects, as without a uniform and comprehensive library of program management controls, the chances of the megaprogram or any specific project achieving its goals and objectives is even more

remote. The PMI Global Standard for Program Management defines program management controls as "… *activities, policies or procedures that govern the execution of the process, so that the process operates in a consistent, predictable manner*."[30] PMI lists ten critical program management control processes:

1. **Standards** – "…*widely recognized and accepted standards…Standards may also be developed specifically for the program*…"[31] Standards such as those promulgated by PMI and CMAA establish the foundation for all of the other control policies, procedures and processes which are required to exercise management control over the program and its constituent projects. In public programs, basic standards are often established in legislation and regulation, with the executing agency expanding and extending program standards in the development of program management control policies, procedures and processes.

2. **Policies and Procedures** – "…*implement standards, processes, and work methods that result in the work required by the program being performed…Organizational polices dictate required contents of a program management artifact such as a plan, specific methodology used to create the artifact, and approval process for the artifact*."[32] Artifacts are PMI's general term for those formal policies, procedures and processes which are developed and implemented to manage and control the program and its component projects. In general, PMI identifies nine topical areas within the PMBOK® which specify artifacts (formal written policies, procedures and processes) which are described in detail in **Section 4.0, Audit Standards** below.

3. **Program Plans** – "…*a program is driven by a strategic plan, which includes a statement of the business goals for the program. All work in a program should contribute to one or more business goals. Business goals are the criteria against which potential program activities are judged*." In a program consisting of multiple

[30] PMI, Global Standard for Program Management, Appendix F, page 91, 2006
[31] PMI, Global Standard for Program Management, Appendix F, Section A, page 91, 2006
[32] PMI, Global Standard for Program Management, Appendix F, Section B, page 91, 2006

constituent discrete projects strategic plans must address the standards, policies, procedures, processes, goals and objectives against which the management and control of the discrete project activities are judged. The strategic plan is usually a product of the program management plan "…*which formulates and documents the management strategy and approach for the program. The program plan comprises a number of subsidiary management plans, such as:*

a. *Cost management plan*
b. *Communications management plan*
c. *Procurement management plan*
d. *Quality management plan*
e. *Resource management plan*
f. *Risk management plan*
g. *Schedule management plan*
h. *Scope management plan*
i. *Staffing management plan*

These and other subsidiary management plans may be incorporated directly into the same document as the program management plan or may exist as individual document artifacts."[33]

4. **Reviews** – "…*are typically internal activities such as management or peer reviews with their outcomes communicated to project stakeholders…Reviews are executed as controls on numerous program management processes*…[to]

[33] PMI, Global Standard for Program Management, Appendix F, Section C, pages 91 - 92, 2006

provide insight into status and plans for each project and the impact on the overall program."[34]

5. **Oversight** – "*…by an executive review board or an individual executive may cause modifications to the program if the overarching business or strategic needs change. Executive oversight plays a key role in evaluating the proposed program management plan with respect to the business objectives and constraints*."[35]

6. **Audits** - "*…may be an internal control or may be an activity imposed by the client…the audit would require that information distributed to be substantiated by stored program information from which reports and distributions were compiled…audits could require demonstration of a process that meets certain criteria as spelled out in the contract or agreement. Types of audits may include: control point audits, financial audits, process audits, risk response audits, and quality audits*."[36] The audit performed by Pegasus-Global includes all of the types of audit listed by PMI in this Section G, and includes several procedural and process steps required by GAGAS.

7. **Contracts** – "*Standard contractual terms and conditional clauses may be pre-developed and approved for inclusion in contracts awarded by a procuring agency*." The crucial consideration under this artifact is that the contracting processes and contracts are uniform and transparent.

8. **Directories and Distribution Lists** - "*Standard lists are established and maintained to control the routing and recipients of all of the formal communications…to project stakeholders*."[37]

9. **Documentation** – "*Documentation controls may include requiring that all formal documents related to the program conform to style guides and documentation*

[34] PMI, Global Standard for Program Management, Appendix F, Section D, page 92, 2006
[35] PMI, Global Standard for Program Management, Appendix F, Section E, page 92, 2006
[36] PMI, Global Standard for Program Management, Appendix F, Section G, page 91, 2006
[37] PMI, Global Standard for Program Management, Appendix F, Section H, page 91, 2006

templates to be created and used for documentation of a repetitive nature…"[38] Following the standards provided within the PMBOK®, Pegasus-Global considers the document control system one of the most important elements of sound program and project management.

10. **Regulations** – "*Regulations may stipulate the collection of pertinent data*…[and] *may include environmental legislation, government regulations and laws, legal opinions, legislative requirements, legislative restrictions, organizational legislation, and* [other] *regulations*…"[39] Regulations may establish program standards and may even address certain policy, procedures and processes requirements for the program.

A significant element of any audit of a program is to track the management control standards, policies, procedures and processes from formation at the program level to the project implementation level. This requires that Pegasus-Global identity those program management control standards, policies, procedures and processes which exist (or should exist per the applicable SOC); determine if those program management controls meet the industry standards for the management and control of a program consisting of multiple discrete projects; and finally, determine if those management control standards, policies, procedures and process are being adopted, enforced and followed at the program and project management levels.

3.4 STANDARD OF CARE

Successful management and control of a program consisting of multiple construction projects, each with its own scope of work, budget, schedule, location, architects, construction contractors and vendors, requires that a Program Manager have multiple "project teams" managing and controlling multiple projects simultaneously. Unless those teams are working within a ***uniform*** set of policies, procedures, and processes, it would

[38] PMI, Global Standard for Program Management, Appendix F, Section I, page 91, 2006
[39] PMI, Global Standard for Program Management, Appendix F, Section J, page 91, 2006

be a practical impossibility to coordinate the management and control of the megaprogram as a whole.

Likewise, in order for the senior AOC and OCCM staff to clearly understand the meaning and importance of the data and results being generated from those policies, procedures, and processes, the manner in which the data and results are managed, captured, and reported must be ***transparent***. Transparency simply means that there is a clear, direct and recognizable path from the point at which the program or project is managed, information is generated, information is reported and, ultimately, how that information was used to reach decisions and take actions in response to specific situations.

Finally, there must be an individual identified as being ***accountable*** for the management task identified, information generated and reported, and an individual identified as being ***accountable*** for making the decisions and implementing the actions taken in response to that information. The accountability does not stop at the project level, but rises up through the organization with the Owner ultimately bearing the overall responsibility for the program. Without accountability, there is no assurance that the services to be provided are, in fact, provided as intended, by the Owner, AOC, OCCM or other participating stakeholders.

In managing a megaprogram, uniformity, transparency and accountability are even more crucial than in a single construction project. For instance, assume twelve projects of the program are executed simultaneously with six project teams each responsible for two projects. If each of those teams developed, implemented and employed its own cost management and control systems, the result would be six different cost management and control systems, each generating and reporting different cost data, making it difficult, if not impossible, to “roll the data up” into a single, meaningful cost report. The inability to roll up cost data may prevent OCCM, AOC or the Judicial Council from understanding exactly where the Program, as a whole, stands against its goals and objectives and may preclude the OCCM, AOC or the Judicial Council from making informed decisions as to actions needed to maintain the program goals and objectives.

Ultimately, lack of uniformity, transparency and accountability could seriously jeopardize the legislature's and public's trust of the information being reported out of the Program.

3.5 PROCESSES AND PRACTICES

There are two general components to every program management function: (1) Process, and (2) Practice. ***Process*** is the methodology by which the program and its individual projects are to be managed and controlled. The process is a combination of policies, procedures and systems (processes) in place to guide and support each of the management and control functions to be executed by Program and Project Managers. The policies, procedures and processes are, in effect, the tools that the Program and Project Managers have for discharging its management and control functions. ***Practices*** are how a Program or Project Manager actually manages and controls the execution of the program or project. In examining any program relative to an established SOC, Pegasus-Global examines both of those components simply because in its experience, it is entirely possible for a program or project to have excellent management and control policies, procedures and processes in place, yet during execution of the program or project those policies, procedures, and processes are not followed. Likewise, Pegasus-Global has encountered situations in which the formal policies, procedures and processes did not meet the SOC established by the industry at large or the specific needs of the program, yet in practice management followed excellent processes developed "on the fly" during the actual execution of the program and its individual projects.

During an audit Pegasus-Global attempts to identify gaps in the policies, procedures, and processes for the organization being audited; however Pegasus-Global also tries to identify those practices which, while they may not meet the formal program policies, procedures, and processes, nonetheless work and perhaps should be adopted by Program Management within the total body of the policies, procedures, and processes used to manage and control the program.

4.0 Audit Standards

Pegasus-Global's acceptance of the Judicial Council as the Owner of the Court Capital Construction Program meant that OCCM was charged with management of the Program, management the projects, design of the projects (including environmental requirements,) and the construction of the individual projects. Because OCCM was acting in all those roles Pegasus-Global had to identify those industry standards which most closely provided good industry practices in fulfilling those roles.

4.1 APPLICABLE COMPARATIVE STANDARDS

To provide a comparative standard for OCCM's role relative to its program and project management functions Pegasus-Global identified and used the standards promulgated by PMI and, to a lesser extent CMAA.

To provide a comparative standard for OCCM's role relative to its design management functions Pegasus-Global identified and used the standards promulgated by the AIA.

To provide a comparative standard for OCCM's role relative to design responsibilities specific to the California environmental requirements Pegasus-Global identified and used the following standards:

- California Code of Regulations, Title 24 ("Title 24") of the California State Code
- LEED®

In addition to industry recognized sources, Pegasus-Global also reviewed various legislative and regulatory documents, which in effect, established performance standards for the Court Capital Construction Program and generally attempted to determine whether or not program policies, procedures and processes addressed the legislative and regulatory requirements.

4.1.1 PMI PMBOK®

PMI is an international professional membership organization dedicated to the advancement and improvement of program and project management with hundreds of thousands of members globally. Over its history, PMI has assembled and published the PMBOK® through four complete editions[40] and a number of specialty project extensions, including a Construction Extension and a Global Standard for Program Management.[41] PMI and the PMBOK® have become the preeminent project management educational resource internationally, extending to the certification of Project Management Professionals ("PMP") from around the world. PMI's PMBOK®, Fourth Edition (2008)[42], coupled with PMI's second edition of its "Construction Extension" (2007)[43] to the PMBOK®, and the Global Standard for Program Management (2006) represent the most comprehensive and complete compendium of "*good professional practices*" against which to compare the program and project management functions of the Judiciary, AOC and OCCM during the execution of the Court Capital Construction Program.

According to the PMBOK®:[44]

> *A project is a temporary endeavor undertaken to create a unique product, service, or result. The temporary nature of projects indicates a definitive beginning and end. The end is reached when the project's objectives have been achieved or when the project is terminated because its objectives will not or cannot be met, or when the need for the project no longer exists.*

According to the PMBOK® Construction Extension:[45]

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[40] The PMI, Project Management Body of Knowledge, Fourth Edition (2008), was recognized by the American National Standards Institute ("ANSI") as an ANSI Standard (ANSI/PMI 99-001-2008)

[41] To avoid confusion within the report the PMI PMBOK®, the Construction Extension to the PMBOK and the Global Standard for Program Management are collectively called the "PMBOK®" except in specific situations when a distinction between those three documents is warranted.

[42] A Guide to the Project Management Body of Knowledge, Project Management Institute, Fourth Edition, 2008, American National Standard ANSI/99-001-2008

[43] Construction Extension to A Guide to the Project Management Body of Knowledge, Project Management Institute, 2007 Edition

[44] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2008, American National Standard ANSI/99-001-2008, Chapter 1, Section 1.2.1, page 5

Construction projects produce deliverables, such as: a facility that will make or house the means to make a product or provide service(s)… construction projects involve many stakeholders with varying project expectations such as public taxpayers, regulatory agencies, governments, and environmental or community groups, which many other types of projects do not include.

According to the PMI Global Standard for Program Management:

A program is a group of related projects managed in a coordinated way to obtain benefits and control not available from managing them individually.[46]

Program management is the centralized coordinated management of a program to achieve the program's strategic benefits and objectives… Managing multiple projects by means of a program allows for optimization of integrated cost, schedules, or effort; integrated or dependent deliverables across the program, delivery of incremental benefits, and optimization of staffing in the context of the overall program's needs.[47]

As summarized by PMI:[48]

The PMBOK® Guide identifies that subset of the project management body of knowledge generally recognized as good practice. "Generally recognized" means the knowledge and practices describe are applicable to most projects most of the time, and there is consensus about their value and usefulness. "Good practice" means there is general agreement that the application of these skills, tools, and techniques can enhance the chances of success over a wide range of projects. Good Practice does not mean the knowledge described should always be applied uniformly to all projects; the organization

[45] Construction Extension to A Guide to the Project Management Body of Knowledge, Project Management Institute, 2007 Edition, 2007, Chapter 1, Section 1.2.4, page 5
[46] The Standard for Program Management, Project Management Institute, Global Standard, Section 1.2, page 4, 2006 Edition
[47] The Standard for Program Management, Project Management Institute, Global Standard, Section 1.3, page 4, 2006 Edition
[48] A Guide to the Project Management Body of Knowledge, Project Management Institute, Fourth Edition, 2008, American National Standard ANSI/99-001-02008, Chapter 1, Introduction and Section 1.1, page 4

and/or project management team is responsible for determining what is appropriate for any given project.

The elements of the PMBOK® are accepted internationally as representing "good professional practices" for the management and execution of projects and programs. Pegasus-Global found that only one member of the program level staff involved in Court Capital Construction Program was intimately familiar with PMI and the PMBOK®, the Construction Extension, or the Global Program Standard. Overall there did not appear to be any detailed knowledge of PMI, PMBOK®, the Construction Extension or the Global Program Standard at the project level. However, Pegasus-Global determined that the standards promulgated by PMI were broad enough to be an acceptable basis of comparison during the Court Capital Construction Program audit even without program management staff's direct knowledge of or participation in, PMI.

The PMBOK® guide recognizes 42 processes that fall into five basic process groups and nine knowledge areas that are typical of almost all projects. The five process groups are:

1. Initiating;
2. Planning;
3. Executing;
4. Monitoring and Controlling; and
5. Closing.

The PMBOK® identifies nine key "knowledge areas" representing the best practice elements of project management:

(1) Project Integration Management – the processes and activities needed to identify, define, combine, unify, and coordinate the various program and project

management activities identified in the other eight project management elements.[49]

(2) Project Scope Management – the processes required to ensure that the program and project includes all the work required, and only the work required, to complete the program or project successfully. Managing the program and project scope is primarily concerned with defining and controlling what is - and is not - included in the program or project.[50]

(3) Project Time Management – the processes involved in planning the sequence of work (schedule) and controlling schedule so as to accomplish timely completion of the program or project.[51]

(4) Project Cost Management – the processes involved in planning, estimating, budgeting and controlling costs so that the program and project can be completed within the approved budget.[52]

(5) Project Quality Management – the activities of the performing organization that determine quality policies, objectives, and responsibilities so that the program and project will satisfy the needs for which it was undertaken.[53]

(6) Project Human Resource Management – the processes that organize and manage the program and project teams. The program and project teams are comprised of the people who have assigned roles and responsibilities for completing the program or project.[54]

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[49] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 4, Introduction, page 77
[50] A Guide to the Project Management Body of Knowledge, Project Management Institute, Fourth Edition, 2008, American National Standard ANSI/99-001-2008, Chapter 5, Introduction, page 103
[51] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 6, Introduction, page 123
[52] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 7, Introduction, page 157
[53] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 8, Introduction, page 179
[54] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 9, Introduction, page 199

(7) Project Communications Management – the processes required to ensure timely and appropriate generation, collection, distribution, storage, retrieval, and ultimate disposition of program and project information.[55]

(8) Project Risk Management – the processes concerned with conducting risk management planning, identification, analysis, responses, and monitoring and control on a project; most of these processes are updated throughout the program and project.[56]

(9) Project Procurement Management – the processes to purchase or acquire the products, services, or results needed from outside the program or project team to perform the work.[57]

Each of the nine knowledge areas contains the processes that need to be accomplished in order to achieve an effective project management program. Each of these processes fall into one of the basic process groups, creating a matrix structure such that every process can be related to one knowledge area and one process group.

During the audit Pegasus-Global compared the Court Capital Construction Program current policies, procedures, and processes against those promulgated by PMI within the PMBOK®.

4.1.2 CMAA RECOMMENDED PRACTICES

For the first 20 years of the profession (1960-1980), the practice of program and construction management was largely unorganized and unregulated, which led to a significant disparity in the quality of services offered by self-titled "Construction Managers". The CMAA was formed by representatives of 37 firms practicing program and construction management in 1982 in an effort to establish ethical and practical

[55] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 10, Introduction, page 221
[56] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 11, Introduction, page 237
[57] A Guide to the Project Management Body of Knowledge, Project Management Institute, Third Edition, 2004, American National Standard ANSI/99-0102004, Chapter 12, Introduction, page 269

performance standards of practice within the program and CM profession.[58] One of CMAA's earliest actions was to adopt a Code of Professional Ethics of the Program and Construction Manager, which every member of the CMAA must commit to abide by and uphold. For the first time the CM profession addressed two of the harshest criticisms from Owners, the first being the conflict of interest and protection of the Client's position:

1. *Client Service. I will serve my clients with honesty, integrity, competence, and objectivity, establishing a relationship of trust and confidence and furnishing my best skills and judgment consistent with the interests of my Client.*[59]

The second major issue voiced by Owners at the time was the lack of standards or uniformity in the services provided by different CM and program management firms:

3. *Standards of Practice. I will furnish my services in a manner consistent with established and accepted standards of the profession and with the laws and regulations which govern its practice.*[60]

Since 1982, CMAA has developed and updated standards for the provisions of several services provided by Program and Construction Managers that are to be applied during all phases of a program and/or project, including:

1. General Project Management:
    a. Pre-design;
    b. Design;
    c. Procurement;

[58] Capstone: The History of Construction Management Practice and Procedures, Construction Management Association of America, 2003, Section 1.2, Historical Evolution of Construction Management, page 6
[59] Code of Professional Ethics of the Construction and Program Manager, CMAA, Ethical Standard No. 1, 2005
[60] Code of Professional Ethics of the Construction and Program Manager, CMAA, Ethical Standard No. 3, 2005

d. Construction; and

e. Post Construction.

2. Cost Management;

3. Time Management;

4. Quality Management;

5. Contract Administration; and

6. Safety Management.

CMAA, beyond simply being a membership organization, also tests and certifies individuals as CM professionals.

From an overall perspective, CMAA defines program management within the construction industry as:[61]

> *…the application of construction management to large and complex capital improvement programs… There are many similarities between project management and program management. Both utilize integrated systems and procedures such as budgeting, estimating, scheduling and inspections to manage the design and construction process. The principal difference between project management and program management is the size and scope of the projects, and the range of services required… Presently in the construction industry, program management services are provided by a number of professional entities including construction managers, design-builders, designers, developers, and others… Generally, CMs, by their training and experience, possess the knowledge, skills, and abilities needed for effective program management.*

[61] CMAA, *Construction Management Standards of Practice*, 2008, page 67

Deliverable 1.a.1 was confined to the program level elements of the CMAA standards, which primarily concerns the following issues:

- The "*active role in defining objectives and concepts, and may extend to the acceptance and operation of the completed projects on behalf of the Owner*."

In effect, the standards established by CMAA for the planning and management of actual construction are applied at the program level during the development of program policies, procedures, and processes, and are intended to provide direct input into the development of those policies, procedures, and processes in order to insure uniformity, transparency and accountability throughout the program and project management structure of the program.

4.1.3 AIA RECOMMENDED PRACTICES

The AIA was established in 1857 by 13 architects seeking to form a professional architects association with a goal to *"promote the scientific and practical perfection of its members"* and *"elevate the standing of the profession."*[62] Beginning in 1920, the AIA began publishing a handbook, *The Architect's Handbook of Professional Practice* (AIA Handbook), which sought to be *"the definitive source of information about the business and administrative aspects of architecture practice"*[63]. Presently in its 14th edition, the AIA Handbook remains a leading industry resource for not only architects, but other parties allied with the design profession, such as engineers, consultants, and contractors.

As noted in the AIA Handbook, *"the Handbook does not contain absolute rules and procedures. Rather, it presents concepts, principles, techniques, and other fundamental information that together provide guidance for the day-to-day needs of architects and other building design professionals."*[64]

[62] History of the American Institute of Architects, www.aia.org/about/history/AIAB028819
[63] American Institute of Architects, *The Architect's Handbook of Professional Practice*, 2008, page vi
[64] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, page xii

The AIA Handbook dedicates Part 3 of its four-part handbook to the project itself. It is here where it establishes the concepts and principles that guide a project through the early stages of project definition, through the selection and implementation of a project delivery method, and to project management and quality management. Concepts explained here include:

- Defining Project Services – a clear description of services can serve as a basis for the architect's response to the Owner's programmatic requirements, facilitate the development of an effective work plan, enable negotiation of fair contract terms, and ensure adequate compensation is agreed to.[65]

- Project Delivery Methods – the organization, strategy, and responsibilities of the key players in the building process – Owner, architect, and contractor – form the project delivery method for a project. The delivery model chosen is based on which project variables – cost, schedule, building quality, risks, and capabilities – drive the project.[66]

- Design Phases – design is the keystone of architecture practice. Translating needs and aspirations into appropriate and exciting places and buildings requires great skill, as well as attention to broader public concerns.[67]

- Risk Management – effective risk management is a mind-set – a pervasive, daily, affirmative approach to architecture practice that continuously recognizes, assesses, and deals with its inherent risks. The goal is to accept, within reasonable limits, risks the architect can absorb or manage and to lessen, transfer, or reject unacceptable risks.[68]

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[65] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 11.1, Defining Project Services, page 460

[66] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 11.4 Project Delivery Methods, page 491

[67] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 12.2 Design Phases, page 520

[68] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 9.1 Risk Management Strategies, page 348

- Construction Documentation – comprehensive design development documentation, carefully coordinated by the design team and approved by the owner, provides a sound foundation for preparing the construction documentation.[69]

- Construction Cost Management – successful cost management depends on sound estimating skills. Estimating involves two basic steps: quantifying the amount of work to be estimated and applying reasonable unit prices to these quantities.[70]

- Project Controls – as the project unfolds, progress is assessed against the Owner's project goals – scope, quality, schedule, and budget – as well as the firm's services and compensation requirements.[71]

- Quality Management – quality management is a comprehensive organizational process for identifying and improving the effectiveness of products and services.[72]

- Project Closeouts – effective project closeout enable completion of unfinished work, results in a completed building delivered in acceptable condition, and facilities provision of essential post-construction documentation to the Client.[73]

4.1.4 SUSTAINABILITY REQUIREMENTS

The *California Trial Court Facilities Standards (2011)* indicate that:

[69] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 12.3 Construction Documentation, page 551
[70] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 13.5 Construction Cost Management, page 751
[71] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 13.3 Project Controls, page 718
[72] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 14.1 Quality Management in Practice, page 760
[73] American Institute of Architects, *The Architect's Handbook of Professional Practice,* 2008, Chapter 12.6 Project Closeouts, page 592

> *"All new courthouse projects shall be designed in conformance with the 2010 California Building Standards Code – Title 24, Part 11 California Green Building Standards Code…Additionally, all new courthouse projects shall be designed for sustainability and, at a minimum, to the standards of a LEED® v 3 "Certified" rating."*[74]

Examination of the *California Building Standards Code,* otherwise known as the *California Code of Regulations*, *Title 24* as well as the *LEED® Version 3.0* standards provides the background necessary to determine what policies and procedures the OCCM has in place to ensure that these standards are being met.

4.1.4.1 TITLE 24 REQUIREMENTS

The State of California, through its legislature as well as various state agencies, boards, commissions, and departments, publishes Title 24 on a triennial basis. This collection of regulations is composed of twelve parts that govern the construction of all buildings in California. For the purposes of sustainability requirements, Part 11 of Title 24, *California Green Building Standards Code* ("Cal Green"), establishes the regulations and standards that all newly constructed buildings in California (unless otherwise noted in Title 24) must comply by.

As defined in Section 101.2 of Cal Green:

> *"The purpose of this code is to improve public health, safety and general welfare by enhancing the design and construction of buildings through the use of building concepts having a reduced negative impact or positive environmental impact and encouraging sustainable construction practices in the following categories:*
>
> 1. *Planning and design*
> 2. *Energy efficiency*
> 3. *Water efficiency and conservation*

[74] Judicial Council of California, California Trial Court Facilities Standards, August 2011, page 1.3

4. *Material conservation and resource efficiency*

5. *Environmental quality"*[75]

Each of those five categories contains both mandatory and non-mandatory provisions that apply to the construction of new courthouse buildings. In the *Capital Courthouse Construction Program Management Plan: Organizational Overview* Section 3.3.16 Financial Manager notes one of the *"key functions"* of this position is *"ensure that all federal, state, and local regulations are met, **including title 24 [sic]**..."* [**Bold highlight added**].[76]

4.1.4.2 LEED® REQUIREMENTS

In the early 1990s, the USGBC recognized the growing need in the construction industry, and specifically the sustainable building industry, for a system to define and measure "green buildings". This effort formulated with the creation of the LEED® Pilot Project Program, also referred to as LEED® Version 1.0, which officially launched at the USGBC Membership Summit in 1998.[77] LEED® has continued to improve and evolve since its initial release through its current version, LEED® for New Construction Version 3.0, which was released in 2009. LEED® is designed to recognize performance in the following key areas:

- *Sustainable Sites;*
- *Water Efficiency;*
- *Energy & Atmosphere;*
- *Materials & Resources;*

[75] California Green Building Standards Code, California Code of Regulations, Title 24, Part 11, Section 101.2, June 2010
[76] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Section 3.3.16, page 26, October 7, 2009
[77] U.S. Green Building Council, LEED for New Construction & Major Renovation Version 2.2 Reference Guide, 2007, page 12

- *Indoor Environmental Quality;*
- *Locations & Linkages;*
- *Awareness & Education;*
- *Innovation in Design; and*
- *Regional Priority.*

Since 2009, LEED® certification is awarded by the Green Building Certification Institute ("GBCI"), an organization established in 2007, *"to provide professional accreditation and third-party certification related to the design and construction of sustainable buildings".*[78] Certification is achieved by first meeting Minimum Program Requirements[79], such as complying with environmental laws and meeting minimum floor area and occupancy rate requirements, and then being scored to a qualifying level. Scoring is awarded in several credits that fall within the areas listed above, with total possible points of 110. The process for achieving LEED® certification begins with registering a project, from there each credit and Minimum Program Requirements will require a unique set of documentation that must be reviewed by the project team and ultimately submitted as part of the application to the GBCI, the GBCI will then review the application and determine if certification has been achieved. **Table 4.1.4.2**, ***LEED® Certification Levels***, demonstrates the range of points necessary to achieve the different levels of certification.

[78] Green Building Certification Institute, LEED Certification Policy Manual, June 2011, page 3
[79] U.S. Green Building Council, LEED 2009 Minimum Program Requirements, January 2011

Table 4.1.4.2 LEED® Certification Levels	
Certification Level	**Points Required**
LEED Certified™	40 to 49 points
LEED Silver®	50 to 59 points
LEED Gold®	60 to 79 points
LEED Platinum®	80 to 110 points

4.2 SUMMARY

A critical ethical consideration in conducting an audit is that:[80]

> "*Auditors and audit organizations must maintain independence so that their opinions, findings, conclusions, judgments, and recommendations will be impartial and viewed as impartial by objective third parties with knowledge of the relevant information*."

Pegasus-Global's findings and recommendations were reached independently and represent Pegasus-Global's professional findings, opinions and recommendations. Pegasus-Global encountered no situation in which the CFWG, AOC or OCCM attempted to influence Pegasus-Global to substantially alter or eliminate any findings, opinions or recommendations.

The CFWG, AOC and OCCM were provided the opportunity to respond to or comment on the findings, opinions and recommendations put forth in a draft report issued by Pegasus-Global at the conclusion of the formal audit (Reported in **Parts I** and **II** of this Report). The comments received from the CFWG, AOC or OCCM have been appended to this Report in **Exhibit B**. Where appropriate, Pegasus-Global has responded to those comments within the body of this Report.

[80] Government Auditing Standards (GAO-07-731G), Comptroller General of the United States, Chapter 8, Section 83.02, page 299, July 2007

Per GAGAS, when an auditor complies with all applicable GAGAS requirements during the performance of any audit the following attestation quoted below is to be included within the report prepared and issued by the auditor. If during the planning or execution of the performance audit the auditor deviates from the GAGAS requirements those deviations are to be noted within the attestation:[81]

> "*Pegasus-Global conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that Pegasus-Global plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for Pegasus-Global's findings and conclusions based on Pegasus-Global's audit objectives. Pegasus-Global believes that the evidence obtained provides a reasonable basis for our findings and conclusions based on Pegasus-Global's audit objectives*."

There were no deviations from the GAGAS requirements during the planning or execution of Pegasus-Global's audit of the Court Capital Construction Program. Pegasus-Global was provided full and free access to personnel and document records by the CFWG, AOC and OCCM during the execution of the audit. The personnel interviewed responded fully to every issue raised and question asked by Pegasus-Global during the audit. The findings contained within this audit were based upon the documentary and oral evidence provided by the CFWG, AOC and OCCM during the execution of the audit as planned.

[81] Government Auditing Standards (GAO-12-331G), Comptroller General of the United States, Chapter 7, Section 7.30, page 173, December 2011

5.0 PART I – MANAGEMENT AUDIT OF PROGRAM LEVEL POLICIES, PROCEDURES AND PROCESSES

5.1 INTRODUCTION

Pegasus-Global reviewed the policies and procedures at the program level which guide the execution of the Capital Courthouse Construction Program. Those policies and procedures and the Program Manual under which those policies and procedures are developed are discussed below. Pegasus-Global, for ease in review of its findings, has organized its assessment as follows:

- Program Management Manual
- Capital Construction Policies and Procedures by Project Phase
- Facility Modification Policies and Procedures

Pegasus-Global has included recommendations for strengthening each policy examined, noting in particular recommendations improving the uniformity, transparency and accountability for each policy where applicable.

In some cases, various policies and procedures have been reviewed in context of subject matter for ease in understanding of the assessment of those policies and procedures within a particular topic area regardless of phase. For those particular

policies, the grouping of policies is discussed within the phase where they first appear with reference to the other project phases in which they are used.

5.2 PROGRAM LEVEL POLICIES, PROCEDURES AND PROCESSES EXAMINED

The **Audit Review Table** at **Exhibit F** summarizes the findings of this comparative audit specifically noting:

- Whether or not a specific comparative SOC within the industry is adequately addressed within the policies, procedures and processes in existence within OCCM; and,
- Whether or not a formal policy, procedure or process in existence within the OCCM is uniform, transparent and has a single point of accountability;

Pegasus-Global summarized its findings relative to those formal policies, procedures or processes which OCCM provided in response to Pegasus-Global's document requests using each of the primary SOC published by PMI, CMAA, and AIA as a basis of comparison. There are also findings relative to any SOC program policies, procedures and processes which were not in evident to Pegasus-Global during the audit within the OCCM megaprogram.

The findings which follow below represent program wide topical issues which have implications for the entire Court Capital Construction Program and all of the projects which are executed or to be executed under that Program. As such, there are issues raised which Pegasus-Global finds should be addressed as quickly as possible to ensure that the Program as a whole is executed uniformly, transparently and with clear identification of accountability.

Pegasus-Global has divided its review of the Court Capital Construction documents into program-level and project-level sections, the program-level documents were reviewed

here within **Section 5.0**, while the project-level Documents were reviewed later in **Section 6.0**. An index to the program-level documents reviewed, along with the corresponding section their review is found, is presented here as **Table 5.2**, ***Program-Level Policies, Procedures and Processes Reviewed Index***.

Table 5.2
Program-Level Policies, Procedures and Processes Reviewed Index

Part I Section	Document Name	Document Date
5.2	**Program Level Policies, Procedures and Processes**	
5.2.1	Strategic Plan	November 2009
5.2.2	OCCM Staff	Undated
5.2.3	Document Control System	Undated
5.2.4	Identification of the Program Owner	Undated
5.2.5	Delegation of Authority	Undated
5.2.6	Comprehensive and Complete Set of Program Policies, Procedures and Processes	Undated
5.2.7	Program and Project Risk Management	Undated
5.2.8	Program Management Manual	October 7, 2009
5.2.9	Court Facilities Delivery Methodologies and Contracting Policies and Procedures	N/A
5.2.10	Project Delivery Methodology and Contract Formation	N/A
5.2.10.1	Memorandum Policy 3.40	July 28, 2009
5.2.10.2	Policy 333.00 Construction Delivery Methods	April 4, 2011
5.2.11	Contracting Policies and Procedures	N/A
5.2.11.1	Court Facilities Contracting Policies and Procedures	December 2, 2007
5.2.11.2	Judicial Branch Contracting Manual	October 1, 2011
5.2.12	Management Plan and Project Definition Report	Undated
5.2.13	7.00 Project Feasibility Report (Draft)	June 6, 2011
5.2.14	AOC Change Order Process (Revised to include iProcurement)	March 4, 2011
5.2.15	Adoption of a Mitigated Negative Declaration of the New Santa Rosa Criminal Courthouse (Memo)	July 19, 2011
5.2.16	Judicial Branch AB 1473 Five-Year Infrastructure Plan Fiscal Year 2011-2012 (Adopted by the Judicial Council August 27, 2010)	August 27, 2010

Table 5.2 Program-Level Policies, Procedures and Processes Reviewed Index		
Part I Section	**Document Name**	**Document Date**
5.2.17	State Administrative Manual	Varies by Section
5.2.18	Courthouse Naming Policy	May 11, 2009
5.2.19	Prioritization Methodology for Trial Court Capital-Outlay Projects	October 24, 2008
5.2.20	Court Facilities Planning: Update to Trial Court Capital-Outlay Plan and Prioritization Methodology and Projects Funded by Senate Bill 1407 (Action Required)	October 24, 2008

5.2.1 STRATEGIC PLAN

In November 2009, the "Strategic Plan-California Courthouse Facilities Program" as released by the Director of OCCM, says the strategic plan is:

> "…*designed to set a clear direction for the California Courthouse Facilities Program, consistent with the Judicial Council's strategic goal of branchwide infrastructure for service excellence. It provides us with an important tool akin to something that many of us work with every day on behalf of our clients, the courts: a clear, detailed, and actionable blueprint to guide our work."*

The Strategic Plan document sets forth the mission of the Judicial Branch, including missions for the Judicial Council and the AOC. The mission and vision of the OCCM are also listed noting that:

> "*This strategic plan helps OCCM focus attention and effort on the guiding principles, goals, and objectives that will lead us toward achieving our vision and fulfilling our mission. Every member of the OCCM team is expected to connect his or her individual team goals, objectives, and action plans with the direction set forth in this strategic plan."*

The Strategic Plan further identifies seven strategic goals for the OCCM consisting of:

1. *Create and deliver the best courthouse facilities program in the United States.*
2. *Exceed the expectations of our key stakeholders and customers: the courts, justice system partners, and the public.*
3. *Continuously improve our relationships with regulatory, legislative, and other government agency partners.*
4. *Develop and use effective internal procedures.*
5. *Be an active resource for other courthouse facilities programs.*
6. *Execute the program in an environmentally responsible manner.*
7. *Hire and retain great people.*

The Program Management Plan ("PgMP") describes the Mission Statement and the Program Goals in its Section 1.1 and 12. However, the PgMP and the goals do not reference, list or refer to the mission and goals of the OCCM for the Program as described above. While there are Program goals listed in PgMP Section 1.2, it is unclear whether these goals are meant to be in addition to, or overlap with the Program goals described in the Strategic Plan. As discussed herein, the purpose of a Program Management Manual is to set the foundation for how the program is to be managed and identification of and reference to the policies and procedures that are to be used to execute the program to ensure uniformity, transparency and accountability. A SOC would expect that the PgMP would incorporate those program goals as outlined and discussed within the Strategic Plan for the Program and included as an Appendix thereto similar to PgMP Appendix A which is the Program organizational chart.

The specific Strategic Plan goal which is relevant to this deliverable is Goal 4: "*Develop and use effective internal procedures*." There are ten specific steps outlined under Goal 4 as follows:

a. *Maintain adequate checks and balances in all aspects of the program.*

b. *Maintain a positive, encouraging, and productive relationship with all other AOC divisions and continually improve interdivisional processes.*

c. *Establish a contracts review team drawn from all AOC stakeholder divisions to develop fair and reasonable contracts.*

d. *Ensure compliance with the conditions of all contracts, including effective management oversight.*

e. *Maintain an inclusive facility risk management program that protects both physical and personnel assets associated with the construction and operation of court facilities.*

f. *Establish an OCCM policies and procedures program.*

g. *Establish a process improvement team to update policies and procedures as needed to incorporate lessons learned.*

h. *Establish and implement Building Information Modeling program that uses technology to improve design effectiveness.*

i. *Continue to develop and maintain an accurate, efficient, and effective computer-aided facility management program.*

j. *Develop and implement an incident review and claims management program.*

Findings[82]:

- **V1-F-4.1-1** Pegasus-Global finds the specific steps outlined under Goal 4 of the Strategic Plan to be consistent with the expectations for industry practice for program goals relative to internal policies and procedures.

- **V1-F-4.1-2** Pegasus-Global also finds as discussed throughout this Report that the policy and procedure development program has not been consistent across the Program and has not yet been finalized for many of the policies and procedures.

- **V1-F-4.1-3** While the Facility Modification policies make reference to specific goals and objectives of the Strategic Plan within each of the draft policies, the capital construction policies discussed at **Section 5.3.4** below for the most part, do not.

- **V1-F-4.1-4** Pegasus-Global would expect the PgMP to tie each individual policy back to the specific Strategic Plan goal and objective, which in turn, would allow the user to understand how to use the policy to ensure uniformity, transparency and accountability of the steps and processes described within the respective policies across the Program.

Summary Conclusion:

Pegasus-Global concludes that with some minor adjustments the Strategic Plan is basically a sound foundation upon which to build the other Program policies and procedures, linking the entire body of policies and procedures to a single comment set of goals and objectives. Because that was not done early in the development of the Program and project policies and procedures, portions of the work done to date in the

[82] Finding and Recommendation numbering relate to field working reviews and thus are not meant to correlate with the Report section numbering. AOC/OCCM requested that the individual Findings and Recommendation be numbered to make it more efficient for them to respond to the findings and recommendations. The numbering convention is as follows: Findings = **V1** (Part I) -**F** (Finding) -**4.1-1** (Section 4.1 – of the Draft Report, Finding 1). Recommendations = **V2** (Part I) -**R** (Recommendation No.) -**4.1-1** (Section 4.1 – of the Draft Report, Recommendation 1)

development of those policies and procedures should be revised to align with the PgMP.

5.2.2 OCCM STAFF

Any program or project is ultimately as strong as the staff it has to execute the program or project. A strength that Pegasus-Global identified in the current Program rested in some of the attributes of the current OCCM program and project level staff as a whole. However, as PMI notes:[83]

> "*Important consideration should be given to the availability of, or competition for, scarce or limited human resources*."

There are two elements to human resource management:

1. Staffing the program and projects with sufficient qualified staff to effectively and efficiently execute the functions of the program and projects; and,

2. Using that staff actually available to in the most effective and efficient manner possible.

PMI and other industry sources essentially begin the process by identifying the functional roles required to address all of the critical requirements of the program and projects. The functional roles are then grouped into categories which group like functions into the primary structural units. Next, the primary structural units are broken into discrete activities. At that point the primary structural units are examined in a relational manner to one another to ensure that while all of the functional roles and activities critical to execution of the program and project responsibilities are accounted for none are duplicated across the primary structural units or the project management units. At this point program management identifies specific staff positions that will be necessary to execute the activities necessary to fulfill the roles necessary to execute the program and projects successfully. The final step is to prepare component organization

[83] PMI, PMBOK®, Chapter 9, Section 9.1, page 218, 2008

charts for each of the primary functional units, including identification of formal lines of communication and interaction among the primary structural units and the activity position level. All of this is captured in a formal Human Resource Plan.[84]

Pegasus-Global did not evaluate the current OCCM staff as individuals nor attempted to evaluate the staffing positions as held in the current organizational structure. The findings and recommendations expressed below address the policies, procedures and processes which Pegasus-Global finds will strengthen the planning and management of OCCM staff at both the program and project levels and will establish some uniformity, transparency and accountability for this element of the program and project management.

Findings:

- **V1-F-4.2-1** The program staff is dedicated to the execution of the Program and its individual projects, often bearing a program or project load which is at, and in certain cases beyond, the limits of an individual's reasonable span of control under the current organizational structure. This requires the hiring of various "consultants" under contract to discharge certain responsibilities which normally would fall to the Program or Project Manager and staff.

- **V1-F-4.2-2** The program staff is generally well qualified to execute the scope of their assignments at both the program levels and the individual project level.

- **V1-F-4.2-3** The program staff has a generally entrepreneurial perspective, taking initiative, ownership, and responsibility for their respective scopes of work. This perspective has enabled the staff at the program level to work around several issues which may have had an impact on OCCM's ability to deliver the new courts per the legislative mandates. Pegasus-Global does not advocate the development of a strict, unyielding set of policies, procedures or processes which would result in a diminution of the entrepreneurial perspective currently in place,

[84] PMI, PMBOK®, Chapter 9, Section 9.1, page 218, 2008

however there has to be enough structure in place to ensure the uniformity and transparency of the program operations and to enable replacement or augmentation staff that may not have the same levels of experience or perspective as the current program staff to function effectively and efficiently.

- **V1-F-4.2-4** These same strengths and attributes listed in the bullet points immediately above to some extent contribute to the lack of uniformity and transparency Pegasus-Global encountered during this audit of policies, procedures and processes. In the longer term, problems will arise for the Program as the current staff is replaced and/or augmented over time, which is a normal occurrence on every megaproject program which is executed over such an extended timeframe. Should the replacement staff or augmentation staff not have the same attributes and abilities as the current staff, the results could be significantly different than those being achieved by the current staff.

- **V1-F-4.2-5** While organizational charts were provided and explained by Program Management, Pegasus-Global was not provided a formal Human Resource Management Plan. Simply identifying positions and diagramming structural relationships is not sufficient to meet all of the expectations for human resource management set within the SOC promulgated within the industry. Equally critical to the organizational structure are the other elements of a comprehensive Human Resource Plan, as summarized above.

- **V1-F-4.2-6** While Pegasus-Global was informed, and agrees, that there was insufficient staff to execute all of the functions required for a megaproject exceeding $5 billion (USD) and over 40 individual projects, the Program Management needs to be able to demonstrate that it is making the best, most efficient and effective use of the current staff in order to demonstrate that the current staff is sufficient to execute the full functional responsibilities of the program or the projects. This is most effectively done by comparing a formal Human Resource Plan against the current staffing available to execute the required program and project functions with a review to determine whether the

current organizational structure is the most appropriate structure given the constraints placed upon the Court Construction Program. With that comparison should be an explanation of what decisions were made relative to which functional positions would remain unstaffed, giving the rational for why the staffing positions which were filled were of a greater priority to the Program or project than the unfilled positions.

Recommendations:

- **V1-R-4.2-1** OCCM should prepare and adopt a formal Human Resource Plan which follows the industry SOC.
- **V1-R-4.2-2** OCCM should, where indicated by the Human Resource Plan, realign staff to ensure it is making the most effective and efficient use of the current staff either under the current organizational structure, or an alternative organizational structure that better aligns with current resources.
- **V1-R-4.2-3** Using the Human Resource Plan OCCM should identify those vacant functional positions which are impacting OCCM's ability to achieve its functional responsibilities and showing how the decisions were made to staff some positions over other critical positions.

5.2.3 DOCUMENT CONTROL SYSTEM

One of the crucial management and control processes of any capital construction program or project is being able to communicate critical information quickly, comprehensively and effectively across the entire program and among all of the program and project stakeholders. Critical information would include such topical areas as the setting of, and status of, program and project goals, objectives, policies, procedures, processes, cost, schedule, quality, etc. In order for program and project management to make informed, prudent decisions, it must rely on accurate, timely and comprehensive information and data relative to the real time conditions of the program and the individual projects. The process, by which that information is identified, captured

and disseminated for use in formulating decisions and taking appropriate actions, is the *Document Control System*.

In a program environment, the Document Control System normally consists of two elements: The Organizational Process Assets and the Project Specific Documents. According the PMI's Global Standard for Program Management:

> "[The] *Organizational process assets, sometimes called the Process Asset Library (PAL) are composed of a set of formal and informal program management processes, related plans, policies, procedures, and guidelines that are developed, documented, and institutionalized by the organization. These assets may also include an organization's knowledge bases, such as lessons learned and historical information. Assets may exist as paper documents or in electronic form in an automated repository*."[85]

OCCM, as the Program Manager, is expected to manage documents produced and reviewed during the Program. The Program Manager, responsible for managing a program the size and complexity of the Court Capital Construction Program, should be maintaining, storing and be able to retrieve in a comprehensible and timely manner the documents created, sent and received over the course of the Program in an electronic document control system.

As the Program is funded by public funds, the Program Manager is expected to maintain a documented "paper trail" of Program execution to demonstrate that the decisions made and actions taken by Program Management and the Project Managers of the individual projects, were in accordance with the overall Program's goals, objectives, policies, procedures, processes and industry standards, and that the public monies appropriated for that Program were reasonably and prudently expended. In addition, such document control systems enable the Judicial Council, CFWG, AOC and the OCCM to make informed decisions and take considered actions relative to the Program and its projects. Equally important in the management and control of the Program is the ability to track, monitor and react in a timely fashion to issues that may

[85] The Standard for Program Management, PMI Global Standard, Chapter 3, Section 3.3.1.4, page 34, 2006

arise with the architect, CM@Risk and/or contractors for a particular project. Individual computer software programs such as Microsoft Access, Excel or Word cannot be effectively used for document control or management for a program the size and complexity of the Court Capital Construction Program.

Ultimately, the purpose of document control is to:

- Allow for efficient document storage and retrieval;
- Store and file all relevant information;
- Allow for efficient access to information;
- Maintain a complete and updated library of the formal policies, procedures and processes by which the Program and its individual projects are to be managed and controlled;
- Maintain complete and current sets of all contract and project documents;
- Allow for original documentation to be filed in a Master set of records, not the individual Project Manager's files, in order to ensure uniformity, transparency and accountability on how each of the individual projects is managed and controlled;
- Increase productivity, since documents can be easily accessed and stored on-line, reducing confusion between the field and the AOC/OCCM Program office;
- Enable better control for reviewing, monitoring and controlling job costs, change orders, contract milestones, and tracking of late or missing information, thus better managing risk exposure;
- Assist all parties to be accountable; and,
- Assist in the roll-up of individual project information regarding cost and schedule in order to ascertain any impacts of a particular project to the overall Program.

One way in which Pegasus-Global tests the efficacy of a document control system is evaluating how the organization responds to the document requests submitted by Pegasus-Global in preparing for and conducting the audit (See **Exhibit G** for the original document request submitted by Pegasus-Global to OCCM). In this instance OCCM was very open with Pegasus-Global noting that fulfilling the initial document request had proven to be difficult for a variety of reasons, among them:

- Policies, procedures and processes had not been fully completed, with some still in draft form and others non-existent;
- Policies, procedures and processes had not been centrally located (hard copy or electronically) and had to be tracked down and gathered prior to transmittal to Pegasus-Global;
- OCCM was unable to determine if it had gathered the entire body of policies, procedures and processes at the time of the response to the original document request and later during the interview process several additional policies, procedures and processes were identified and provided to Pegasus-Global;

It is of note that as late as March 27, 2012, OCCM forwarded 10 additional policies which had been cited in earlier policies received in response to Pegasus-Global's document requests or had been identified during interviews held with OCCM staff. Although Pegasus-Global very much appreciates the effort and time which OCCM staff has expended in attempting to fulfill the documentation requests, had a formal document control system been in place fulfilling the requests should have been as simple as providing Pegasus-Global access to the electronic master file system enabling Pegasus-Global to identify and request documents more efficiently and at the expenditure of far less valuable OCCM staff time.

Pegasus-Global saw evidence that critical program and project documents, such as cost reports, budgets, schedule's etc., had been generated and distributed, however the overall conclusion given the difficulty OCCM had in responding to the document requests demonstrates Pegasus-Global's finding that the generation, distribution,

management and control of program and project documents is not uniform, transparent nor are specific personnel identified as accountable for the management or control of critical program and project documents.

Findings:

- **V1-F-4.3-1** OCCM does not have a document control system which is capable of performing at the SOC expected of a megaprogram. It was confirmed by OCCM that there was no formal document control procedure, policy or process in place at the program level.

- **V1-F-4.3-2** In response to the initial document request for project level documents, OCCM noted that it was having difficulty locating all of the required documents for a number of reasons; however the most consistent reason given was lack of personnel time to file those documents in the electronic folders established for each project.

- **V1-F-4.3-3** OCCM identified a “standard file folder system” for project document retention, but OCCM had no formal policy, procedure or process for managing and controlling the content of those project file folders. Upon receipt of those standard file folders for the six test projects, Pegasus-Global found several of those folders provided to be empty, with OCCM explaining that the required documents had not been deposited in the files as of the date of Pegasus-Global’s document request and that the documents would have to be identified, found and added to those folders.

- **V1-F-4.3-4** In response questions by the audit team, program and project level staff stated that certain routine program and project documents were prepared by, and should have been filed by, consultants hired to fulfill management roles which traditionally within the industry would be discharged by the program or project management staff of an organization like OCCM. Pegasus-Global recognizes and has cited the lack of sufficient staff within the OCCM and can understand how what seems to be a clerical function would receive less attention

and be a lesser priority than the actual management of the program or the projects. However, the lack of a formal document control system actually exacerbates the document production, retention and production problems by not providing the direct program and project staff, or upper level management, structured control process to follow in managing, controlling or locating crucial program or project documents.

- **V1-F-4.3-5** A review of program and/or project documents revealed significant differences among and between the same category of document, for instance, the formal policy documents:

    - Program and project policy documents are not uniform across the Program or the projects, for example: the various policy and procedure documents provided to Pegasus-Global did not have a uniform format or content presentation (*i.e.,* a statement summarizing the reason for the policy or the accountable party for ensuring the policy was enforced). Further, some policies were issued as memos to staff while others were prepared and issued following a more formal (but not uniform) procedure template. Without a uniform template and a common numbering system it is difficult to determine which policies are being cross referenced (or should be crossed referenced).

    - All documents, including policies and procedures should be dated, and should contain a list and the date(s) of every revision to that policy or procedure. As some policy documents were dated and others were not, it was difficult to establish precedence between or among the body of the policies or procedures. At each update of a policy or procedure there should be a “Summary” of what was revised, added or deleted from the policy or procedure which resulted in issuing an update. Due to the lack of dates or identification of the changes made, Pegasus-Global had to manually compare policies in an attempt to determine which policy or procedure was the one currently in place, then try to ascertain what

alterations had been made to the "newer" version of the policy or procedure.

- Inside of the policy, some have a background statement first, others do not. Some policies provide a statement of "purpose"; some do not, but may include a statement of "goals"; (which appear to address the "purpose"); others seem to entitle the "purpose as the "intent"; and, finally, some policies seem to have nothing which provides a statement as to why the policy exists.

- Several of the policies then follow with a section for definitions of terms used within the policy, which would be an expected SOC, although not all policies have this section or the section is not complete with all definitions of terms found in the policy.

- The next sections within the policies reviewed vary depending on the specific policy, for example; some stakeholder organizations are defined by positions, groups, departments or units; other policies may have no listing of the parties involved in the policy or procedure. Several policies then lay out specific standards or procedures, followed by the process to be followed under the policy, some policies do not. Often the different policies reviewed had no common presentation, with some element missing, some elements named differently and some elements in different positions across the various policies.

- **V1-F-4.3-6** There are multiple points of accountability at the program and project level as essentially every individual within the program and project structure is responsible to generate and maintain their individual files for their individual duties and responsibilities. However, there is no specific individual responsible to manage or control document generation, storage or retrieval across the entire program or the individual projects, which contributes significantly to the lack of uniformity, transparency and accountability relative to document management and control.

- **V1-F-4.3-7** Documentation prepared during the planning and execution of a megaprogram and the attendant individual projects provide the only formal evidence that the funds appropriated to finance the megaprogram and the individual projects have been reasonably and prudently spent. While Pegasus-Global was eventually able to find some of the more critical documents during the interview process, the fact that the documents were maintained by individuals and not resident in a formal coordinated document control system meant that if the individuals in question had not been interviewed during the audit process the documents would not have been produced during the audit. Further, had those documents not been produced during the interviews Pegasus-Global would have concluded that those critical program or project documents had not been prepared or used by program or project management in their decision making process; which may have led to a significantly more serious finding insofar as OCCM's management of the Program.

- **V1-F-4.3-8** Given the documents eventually produced by OCCM during interviews and additions to the document request lists submitted by Pegasus-Global to OCCM, it is apparent that OCCM has many more critical documents than originally assumed by Pegasus-Global early in the audit process. However, those documents were not clearly identified or readily accessible in response to Pegasus-Global's requests and many appeared to be in the sole custody of the individuals that had produced the document in question. There may still be documents which Pegasus-Global has not seen in relation to this audit. Beyond those documents provided by OCCM in response to the document requests or during individual interviews, Pegasus-Global has no way to determine whether or not additional documents of interest for the Capital Program audit may exist. Had there been a document control system in place Pegasus-Global could have refined its document request based on the index of that document control system and the OCCM would not have encountered the difficulty it had identifying, locating and producing those documents to Pegasus-Global.

- **V1-F-4.3-9** Pegasus-Global found that OCCM has not met the standard of care within the industry for document management and control. Pegasus-Global found that the management and control of program and project documentation was not uniform or transparent and did not reflect a single point of accountability.

Recommendations:

- **V1-R-4.3-1** OCCM should adopt a formal, electronic document control system, preferably one of the commercially available systems which can be quickly installed. While various industry entities and agencies have developed and installed custom programmed electronic document control systems, it is expensive and time consuming to undertake such an effort. Given the urgent need to install and populate such a matrixed electronic system and the need to quickly train the users of the system, the commercially available systems represent a much more reasonable approach for the Court Capital Construction Program.

- **V1-R-4.3-2** There should be a standard format for cross referencing the policies which site any function or create any link between the policy under review and all other intersecting policies.

- **V1-R-4.3-3** Similar documents should have a common format, for example:

  Each policy should have on its front cover the policy name and, if the policies are to be numbered, a logically flowing numbering scheme, as the current numbering scheme for those with numbers does not provide a logical flow among policies or procedures. Then the original approval date, followed with any revisions and the revision dates should be added to the cover sheet of the policy. A standard policy template for the Program should be developed and agreed by AOC and OCCM – in short, the content sections should be identical across every policy. Once the standard template has been developed, all policies should be revised to be consistent with this standard template. It is recommended that this effort be done upon completion of the

Program Management Manual so that the uniformity between policies can be done at the same time as the gap review between the policies and the Program Management Manual for efficiencies and to avoid any duplication of effort.

- **V1-R-4.3-4** Pegasus-Global was given the policies and procedures in two formats: electronically by policy and in hard copy in two three ring binders. Neither the electronic or hard copy of policies and procedures were provided in a uniform organized structure. Polices should be filed (electronically and hard copy) in an order of precedence so that the reviewer is able to quickly and efficiently determine the order of precedence among multiple policies and procedures. The primary foundation document – the Program Management Manual – should include an Appendix which lists all subsequent policies and procedures in precedent number order, giving the policy or procedure title and showing the most current revision date.

- **V1-R-4.3-5** OCCM should take action to identify, gather and organize those documents critical to the Process Access Library ("PAL"), the Program Level operational requirements (*i.e.,* Site Acquisition, Appropriations and Planning, etc.) and project execution for installation into an electronic document control system. This will serve two functions: (1) creation of a full catalogue of the critical program and project documents, and (2) enable OCCM to establish the structure and organization of the electronic document control system.[86]

- **V1-R-4.3-6** OCCM Program Management should develop and issue a document preparation, management and control procedure which will ensure the timely and comprehensive preparation, distribution and capture (filing) of critical program and project document sets [there is no evidence that such a policy and procedure exists]. The document control requirements should include policy statements addressing the preparation and retention of program and project documents, the

[86] Note that even though commercially available electronic document control systems generally come with an established control matrix, most are to some extent customizable to the purchasers needs.

procedures by which program and project documents are prepared, distributed, captured and retrieved, and the processes for preparation, distribution, capture and retrieval of program and project documents. The document control guidelines should clearly identify the party accountable for preparation, distribution, capture and retrieval of program and project documents, and just as importantly, identify those individuals empowered to edit, revise or update critical program or project documents (*i.e.,* the Five-Year Plan, the DOF required reports, the project execution budget, etc.).

- **V1-R-4.3-7** Policies and procedures which address similar topical areas (*i.e.,* estimating, cost management and control, invoicing and project/program cost status) should be linked within the electronic and/or hard copy files and, if possible have a numbering order or format which enables the reviewer to efficiently pull all of those policies without having to review the titles or attempt to guess the relationship between the policies and procedures (*i.e.,* the linked cost policies could have a predecessor number of "29", followed by a unique policy number – for example "estimating" could have a number of 29-001).

Within the industry at large, document management and control are identified as the primary basis from which the uniformity, transparency and accountability of a program or project can be established; however the only real demonstrable evidence of any of those three fundamental management standards is captured by formal documents which are easily identifiable, locatable and producible.

5.2.4 IDENTIFICATION OF THE PROGRAM OWNER

There is no uniform understanding (or acceptance) of the Program or project "*Owner*" within the program stakeholder organizations. As noted earlier above the Owner is one of the three critical positions in executing any megaprogram, along with the Program Manager and the Project Managers. During the document review portion of this phase of the audit, Pegasus-Global found that legislation specifically identified the Judicial Branch, through the Judicial Council, as the Program Owner, with full responsibility to

fulfill an Owner's typical roles, authorities and responsibilities under both the SB 1732 and SB 1407 legislation. However, during its review Pegasus-Global found that the "Owner" of the Program (and thus the individual facility projects) was variously identified at both the program and project management levels as any one of the following entities:

- The State of California;
- The Judicial Branch;
- The Judicial Council;
- The individual "Judges" of the facility under execution;
- The AOC;
- The OCCM; and
- The Project Manager.

The failure to have a uniform and transparent identification of the Program Owner, and the lack of definition relative to the roles, responsibilities and authority of the Program "Owner", results in confusion as to which stakeholder operating within the Program is ultimately responsible for establishing Program goals and objectives and, ultimately responsible for the achievement of those goals and objectives. Further, the level of inconsistency in identification of the Program "Owner" found by Pegasus-Global leads to a lack of uniformity across the program and project level as to who ultimately controls the Program and each project within the Program.

As a matter of standard industry practice all policies, procedures and processes developed and implemented at both the program and project levels must be founded on and driven by the decisions and actions of the Owner in setting program and project goals and objectives, and in the Owner specifying, or confirming, those specific policies, procedures and processes to be followed during the execution of the program and the individual projects. SOC within the industry is to consider the Owner the ultimate point of accountability for the achievement all program and project goals and objectives, and

as such, is the only entity empowered to set the parameters which establish those policies, procedures and process that guide the management, control and execution of the Program and the projects.

Finding:

- **V1-F-4.4-1** There is no universally acknowledged agreement or understanding within the Program (at any level) as to the ultimate Owner of the Program.

Recommendation:

- **V1-R-4.4-1** The Judicial Council in consultation with the AOC and in recognition of the legislative actions in effect, should clearly establish the ultimate Owner of the Program and all of the projects which comprise that megaprogram.

5.2.5 DELEGATION OF AUTHORITY

Delegations of authority and responsibility have not been formalized nor codified within many of those policies, procedures or processes which exist within the Program. During the audit Pegasus-Global found inconsistency across the Owner, program and project management levels relative to who (by position, not individuals) within the total stakeholder organization had the authority to, and responsibility for, making certain decisions and taking certain actions critical to the management of the Program. For example, there were individuals which asserted that the Project Manager had the complete responsibility and authority to make all decisions concerning design and construction of a court facility project, while others noted that the local PJs controlled the design elements of “their” court project, with the Project Manager having responsibility to meet the design elements set and manage the construction of the court facility.

In a megaprogram authorities and responsibilities must be specifically defined and delegated, starting with the Owner and flowing through both the program and project levels. Otherwise each project becomes an independent enterprise under which

authorities and responsibilities are *assumed and interpreted* by individuals rather than by set by *definition and delegation*. The absence of clearly defined and delegated authorities and responsibilities contributes to a lack of uniformity, transparency and accountability within the program and the project management levels.

Finding:

- **V1-F-4.5-1** There is no formal delegation of authority and responsibility at either the Program or project levels. This has resulted in confusion and some disagreement as to who within the Program and project structures are accountable for the decisions made and actions taken on behalf of the Program and each project.

Recommendation:

- **V1-R-4.5-1** Once the identification of the Owner has been resolved, the Owner, working with the AOC and OCCM should establish formal, detailed delegations of authority which clearly delineates the party within the Program and projects with the authority to make decisions and take actions on behalf of the Owner. Those delegations must also specifically identify the limits of each delegated authority.

5.2.6 COMPREHENSIVE AND COMPLETE SET OF PROGRAM POLICIES, PROCEDURES AND PROCESSES

As discussed earlier, a megaprogram is unique in that there are two levels of management beyond the Owner; program management and project management. As a result there should be a cohesive and comprehensive set of *program* policies, procedures and processes which set the foundation for the *project* specific practices. In order to ensure uniformity, transparency and accountability of those sets of policies, procedures, processes, and practices all policies, procedures and processes must be coordinated and mutually supportive at both the program and project levels. Pegasus-Global found that the condition at the program level management was generally

following certain policies, procedures and processes in executing its primary program functions; likewise the condition at the project level management was generally following certain policies, procedures and processes in executing its primary project functions. However, Pegasus-Global found no direct, transparent link between the two sets of policies, procedures or processes nor uniformity in how policies, procedures and processes are being practiced. For example, the goals and objectives contained in the Program's Strategic Plan are not uniformly reflected in the project-level policy goals and objectives.

Findings:

- **V1-F-4.6-1** Pegasus-Global's review of the existing policies, procedures and process found a number of them to be incomplete or identified as in "Draft" form. Certain policies, procedures and processes which Pegasus-Global expected to see were not found or had not been identified by program level management or project level management (See **Section 5.3** below). OCCM acknowledged gaps in its formal policies, procedures and processes but explained the cause for the existence of those gaps as follows:

    - The Program was initiated on a very fast track under SB 1732 and was significantly expanded under SB 1407. During that period there were a number of major requirements within the legislation which had a higher priority than the development of program or project level policies, procedures or processes (*i.e.,* the transfer of the county trial courts to the Judicial Branch, development of the Prioritization Methodology, the development of the Five-Year Plan, the establishment of the OCCM as the executing agency, establishing basic operational relationships and processes with other state agencies, etc.). Almost immediately work specific to certain projects authorized under SB 1732 was initiated by the OCCM. The drive to meet all of the legislative and pure operational requirements and needs made the codification of policies, procedures and

processes a secondary priority, where it has essentially remained to the present day.

- Due to funding constraints, the OCCM has never staffed to the planned levels or for all of the operational positions identified. The lack of staff since the inception of the Program resulted in a further prioritization of tasks, focusing the existing staff even more on a limited number of what were considered the more critical elements of the Program.

While Pegasus-Global fully acknowledges both of those conditions and accepts the basis of the cause upon which Program Management set its priorities in the face of a demanding schedule and a lack of staffing, Pegasus-Global has experience within the industry which demonstrates that the potential effect of megaprograms without complete, concise, uniform, and transparent policies, procedures and processes is that they may ultimately fail to meet all of the goals and objectives established for the megaprogram.

- **V1-F-4.6-2** Pegasus-Global found it difficult to follow the relationship and progression of policies, procedures and processes as they transitioned from the program level through the project level of the Court Capital Construction Program (See **Section 5.3** below). For example, Pegasus-Global identified some decisions and actions taken by the OCCM at the program level which were guided by California SAM procedures and processes; however, adherence to those procedures and processes was at least in part described by program level staff as “voluntary.”

  Attempting to follow a direct link between the voluntarily accepted procedures and processes adopted by the program management level to the individual project management level proved difficult, requiring explanation by program and project management level staff, which occasionally provided different explanations as to why and how those program level procedures and processes guided or were relevant to an individual project. As a result, Pegasus-Global was, in some instances, unable to confirm that there was uniformity across those

procedures or processes, which in turn, made it difficult to confirm the transparency of those procedures or processes. In any project environment, but most particularly in a megaprogram environment it is essential that a direct transparent relationship between program level procedures and project level procedures be easily identifiable and traceable.

Recommendation:

- **V1-R-4.6-1** OCCM should finalize and in some cases develop or reissue its policies, procedures and processes in order to provide a complete set of relevant program and project policies, procedures and processes for the Court Capital Construction Program and its constituent projects. Such action will address a number of the issues raised by Pegasus-Global relative to the uniformity, transparency and accountability during this audit.

5.2.7 PROGRAM AND PROJECT RISK MANAGEMENT

SOC within the industry for any major construction project is to undertake, complete and manage the project using a full risk management plan which identifies the risk elements which have the potential to impact the achievement of project goals and objectives. In a megaproject comprised of multiple independent projects such a risk program is viewed as an important element of SOC. According to PMI project risk management plans:

> "…*increase the probability and impact of positive events, and decrease the probability and impact of negative events in the project*."[87]

The PMI PMBOK® contains an entire chapter to the details on how to develop a risk management program and how to manage and control a project using that risk management tool. From a program perspective a risk management planning and management:[88]

[87] PMI PMBOK®, Chapter 11, pages 273, 2008
[88] PMI Global Standard for Program Management, Chapter 3, Section 3.5.12, page 48, 2006

"…*is the process of deciding how to plan and analyze risk management activities for a program, including risks identified in the individual program components* [in this instance construction projects].

Ultimately the Owner is responsible to ensure that an adequate risk management program is installed and used within its megaproject and each of the projects which comprise the total program scope.

Pegasus-Global did not find a comprehensive risk management program in place at either the program or project levels of the Court Capital Construction Program. While there was a limited risk checklist contained in a Project Description Template, such checklists are not appropriate for large complex construction programs or projects. There was also a specific Risk Management Template, however it was limited to an examination of the security risk elements which must be considered when designing a courthouse (Note however that the risk program used within that Security risk management template did employ many of the elements of a typical risk management program in identifying, quantifying the impact of risk elements should they occur, and establishing risk mitigation plans).

Finding:

- **V1-F-4.7-1** Pegasus-Global did not find a formal risk management program in place for the Court Capital Construction Program, which would be expected in a megaprogram as a critical element for management and control.

Recommendation:

- **V1-R-4.7-1** Establish a formal, comprehensive risk management program for the Court Capital Construction Program that extends through the Program to the project level.

Summary Conclusion:

The industry SOC recognizes the magnitude of the risks which can impact the achievement of goals and objectives set for individual projects and further recognizes that megaprogram goals and objectives can be impacted both as a result of the risks that impact individual projects and the risks that are inherent at the program level in every megaprogram. The industry's response to that high level of risks is to anticipate the risk elements, quantify the impact of those risks to the program and project goals and objectives, then establish plans to enable program and project staff to mitigate the impact of those risks should they occur.

5.2.8 PROGRAM MANAGEMENT MANUAL

According to PMI:

> "*The project management plan integrates and consolidates all of the subsidiary management plans and baselines from the planning processes and includes but is not limited to:*
>
> - *The life cycle selected for the project and the processes that will be applied to each phase,*
> - *Results of the tailoring by the project management team as follows:*
>   - *Project management processes selected by the project management team.*
>   - *Level of implementation of each selected process,*
>   - *Descriptions of the tools and techniques to be used for accomplishing those processes, and*
>   - *How the selected processes will be used to manage the specific project, including the dependencies and interactions among those processes, and the essential inputs and outputs.*

- *How the work will be executed to accomplish the project objectives,*
- *A change management plan that documents how changes will be monitored and controlled,*
- *A configuration management plan that documents how configuration management will be performed,*
- *How integrity of the performance measurement baselines will be maintained,*
- *Need and techniques for communication among stakeholders, and*
- *Key management reviews for content, extent, and timing to facilitate addressing open issues and pending decisions."*[89]

According to the PMI Global Standard for Program Management, a program management plan involves:

"*…the process of consolidating the outputs of the other Planning Processes, including strategic planning, to create a consistent, coherent set of documents that can be used to guide both program execution and program control. This set of plans includes the following subsidiary plans:*

- *…*
- *Communications management plan*
- *Cost management plan*
- *Contracts management plan*
- *Interface management plan*
- *Scope management plan*

[89] PMI PMBOK®, Chapter 4, Section 4.2.3.1, pages 81 and 82, 2008

- *Procurement management plan*
- *Quality management plan,*
- *Resource management plan,*
- *Risk response plan,*
- *Schedule management plan*
- *Staffing management plan*."[90]

The CMAA also has issued standards for a Program Management Plan:

> "*One of the mainstays of program management is a written plan, approved by the Owner, which establishes the direction of the program. The* [program management plan] *sets the procedures and standards that will be enforced during the life of the program. It establishes the framework for conducting business. The* [program management plan] *is the master reference document for the program management team and provides guidance to the consultants engaged throughout the program. The* [program management plan] *is a compilation of procedures and standards, schedules, project descriptions, budgets, and strategy papers that address administrative as well as technical issues from a global perspective*."[91]

Ultimately the Program Management Plan establishes the entire foundation for the program and all of the projects to be undertaken and executed under that program. To that end, the Program Management Plan must be comprehensive and coordinated with all of the policies, procedures and processes which should enable the program management organization to establish and execute the program and its projects so as to meet all legislative and regulatory requirements while achieving the Owner's program goals and objectives.

[90] PMI, The Standard for Program Management, Global Standard, Chapter 3, Section 3.5.1, page 40, 2006
[91] CMAA, CM Standards of Practice, Chapter 8, Section 8.2, page 69, 2008

In response to a Pegasus-Global document request OCCM produced a document entitled "*Capital Courthouse Construction Program Management Plan: Organizational Overview*", dated October 2007. According to the forward to the OCCM PgMP:[92]

> "*This document was written as a guide for organizing individual court projects into a program to gain efficiencies and economies of scale and to support the mission of the Office of Court Construction and Management, which is to create and maintain court buildings that reflect the highest standards of excellence*."

In the executive summary to the PgMP it noted that:[93]

> "*The purpose of this Program Management Plan (PgMP) is to delineate an organizational framework and the overall roles and responsibilities of key management participants for implementing all of the capital projects managed by the Administrative Office of the Courts (AOC), Office of Court Construction and Management (OCCM). This includes all of the projects identified under SB 1407 and projects under way before that legislation was enacted*."

Section 1.3 of the PgMP stated that:

> *This Program Management Plan… is written at the strategic program level. It describes the organization that will apply program management to each of the projects and key functions and responsibilities as they related to program management*…[94]
>
> *The overarching PgMP will help AOC OCCM develop projects of the highest standard. It describes the organizational structure, roles, responsibilities, and approaches to key procedures that will best take advantage of the common*

[92] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Forward, page 1, October 7, 2009
[93] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Executive Summary, page 2, October 7, 2009
[94] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Chapter 1, Section 1.3 1, page 3, October 7, 2009

characteristics and requirements of the individual projects within the Program, and it continually incorporates lessons learned and industry best practices."[95]

Finally, OCCM states that the PgMP is:[96]

"…*an evolving document and may be updated at any time under the direction of the Program Manager. As the PgMP is implemented, new insights will be realized and improvements to the PgMP will be determined …*

In order for the PgMP to be a functional tool, it must be updated as appropriate. The Program Manager is responsible for keeping the document up to date… In addition, the Program Manager will rely on the continuous improvement function, as shown on the organization chart, to review the document and propose revisions or updates as appropriate as part of the program's continuous improvement process."

The PgMP addressed the following topical areas:

- **Section 2 – Background**, provided a legislative history of the Program and a summary of the funding process from appropriation through construction funding.
- **Section 3 – Organizational Overvie**w, provided a summary of the Management Strategies, Roles and Responsibilities for the following:
    - Regional Offices
    - Program Management Team
    - Project Delivery Team
    - Organizational Chart

[95] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Chapter 1, Section 1.3 1, page 4, October 7, 2009
[96] Capital Courthouse Construction, Program Management Plan: Organizational Overview, Chapter 1, Section 1.4, page 4, October 7, 2009

  - Key Position Descriptions (Note that some of the positions had named individuals while others noted the individual was *To Be Determined* ("TBD")

- **Appendices A – F**
  - A – Capital Construction Program Organization Chart
  - B – Capital Construction Program Strategy Flow Chart
  - C – Pre-SB 1407 Capital-Outlay Projects
  - D – SB 1407 Capital-Outlay Projects
  - E – Regional Acquisition Teams Organizational Chart
  - F – Project Manager Organization Charts

Pegasus-Global examined the PgMP in detail and compared the content of the PgMP against the SOC established by PMI and CMAA for a Program Management Manual. To the best of Pegasus-Global's knowledge the PgMP provided by OCCM has not been updated or expanded since its original release in October 2009.

Findings:

Pegasus-Global reviewed and evaluated the PgMP prepared and provided by OCCM in response to its document request and determined that the PgMP did not fully meet the SOC established for a Program Management Manual within the industry. Although the current version of the PgMP contains the primary organizational structure and functional description of the various positions and is a starting point for a full Program Management Manual, it does not yet contain all of the information or materials necessary to manage or control the Program or the independent projects being executed under the Program, in general:

- **V1-F-4.8-1** The PgMP does not provide a list nor a discussion regarding the various policies and procedures which have been drafted or are in use for

various aspects of the Program. The PgMP should serve as the foundation document that links the various program policies and procedures to the respective sub-units and the respective position that is accountable for ensuring that the respective policy or procedure is being implemented as written. In some instances the PgMP identified the position accountable for the development and implementation of program and project policies, procedures and processes; however the PgMP in general does not clearly define nor specifically identify those policies, procedures and processes for which the position is accountable by name or reference to any specific policy, procedure or process.

- **V1-F-4.8-2** The PgMP is incomplete and has not been routinely updated to reflect actual Program and project conditions, as required within the PgMP itself.

- **V1-F-4.8-3** The PgMP is not uniform or transparent, with some internal inconsistencies and no direct link to any policies, procedures or processes actually developed and employed during the management of the Program or the execution of the individual projects.

- **V1-F-4.8-4** The PgMP provides little guidance as to how the program policies and procedures are developed and updated, nor provides any reference as to where the policies and procedures can be located. Because the PgMP does not address the policies and procedures being used (or to be used) to execute the Program or align those policies and procedures with the respective sub-units and positions accountable, the policies and procedures currently in existence lack uniformity, which may result in gaps or inconsistencies among those policies and procedures.

- **V1-F-4.8-5** The PgMP has not been updated since its original release although the PgMP states that the PgMP is a “living” and “evolving” document. For example, a number of the key positions either state that the position has not been filled (TBD) or lists no individual as responsible for that key position. The PgMP was also to be edited to reflect the “policies and procedures” under which the Program and individual projects were to be executed or the “lessons learned”

by OCCM during execution of the Program and the individual projects as a means to increase the effectiveness and efficiency of the Program and projects; however Pegasus-Global did not identify any update to the PgMP which addressed changes or additions to policies and procedures, or adopted lessons learned. During interviews it was noted that while most OCCM staff had read the PgMP at some point in time, no one relied on the PgMP as a comprehensive or complete source document for the management or control of the Program or projects.

- **V1-F-4.8-6** The PgMP lacks comprehensive definitions of key positions, structural divisions and certain key management and control tasks, for example:
    - The introduction introduces the term “Project Team”, however the term is not defined, the composition and responsibility of the Project Team is not clearly established and there is no structural or organizational process provided. In addition, the composition of the Project Team does not appear consistent with the individual management roles defined later in the PgMP.
    - The Executive Summary discussion of the role of the Project Manager does not contain a detailed definition of that role in the Program and in some regards conflicts with a more detailed description of the role contained later in the PgMP.
    - The Executive Summary also refers to the “appropriate manager”, yet does not name or identify the “appropriate manager” by position.

  The lack of full definitions and continuity relative to definitions given in different sections of the PgMP impact both the uniformity of the PgMP and the transparency of the PgMP as it currently stands.

- **V1-F-4.8-7** There is no discussion of program or project data and information gathering or reporting within the PgMP, including what data and information is to be gathered and disseminated; who (by position) is responsible and accountable

for the gathering and dissemination of that data and information; how the data and information generated at the program or project level is "rolled" up into a cohesive statement of the progress of the Program and projects and the status of the program and project goals and objectives; and, there is no mention made of a document control system under which the data and information can be retained and recalled.

- **V1-F-4.8-8** There are incomplete and to some extent conflicting messages within the PgMP, for example:

    - The mission statement indicates that the "highest standards" are met through state-of-the-art planning, design, and project execution. Without a definition of state-of-the-art, that phrase can be interpreted to mean anything, without any consideration of cost, effectiveness or efficiency, which are discussed as program goals elsewhere in the PgMP.

    - The PgMP states that its goals are consistent with expected industry standards, without identifying the source of industry standards for the "goals" established for the Program or the projects.

    - The PgMP discusses capture and dissemination of "lessons learned" over the course of the Program and project execution, noting that those lessons will be added to later versions of the PgMP. However, the PgMP does not describe the process by which the lessons learned will be identified, documented and shared within the Program or the project management. While the PgMP makes reference to a lessons learned database it does not describe how the lessons learned process is to function, noting only that it is one of the Project Managers most significant responsibilities. Concerning lessons learned, Pegasus-Global noted other statements within the PgMP which were not uniform or transparent:

        - At Section 3.3.8 it was noted that the Program Planning Manager was responsible for documenting lessons learned, updating the

policy development and be the communication liaison with the project level of the program. However it was not clear from documents reviewed or the interviews conducted that the process was in place; that the assignment was being executed in the manner identified in the PgMP; or that the lessons learned were actively referenced during the planning and execution of a project.

- At Section 3.3.12 the PgMP notes relative to lessons learned that "*In order for the project delivery process to continually improve over time it is imperative that every project manager document lessons learned. Throughout the life of the project, excellent communication, document control, and reporting will allow the recording of information back into the lessons learned database during the project and at its close. This is one of the project manager's most important responsibilities*." However, the PgMP provides no guidance concerning how the Project Manager is to record the lessons learned, or how those lessons are to be disseminated and used to improve the planning or execution of the Program or the individual projects.

- **V1-F-4.8-9** The PgMP identifies the position of "Design and Construction Manager" as responsible for "*ensuring that design and construction are executed efficiently, cost-effectively, and safely. This position is responsible for ensuring the consistent application of program-level design and construction standards of excellence across all projects*" (Section 3.3.10). However no guidance is provided as to how the Design and Construction Manager is to ensure that design and construction are executed efficiently, cost-effectively and safely or that there is consistent application of program level design and construction standards of excellence. The PgMP provides no guidance or definition of "efficiently", "cost-effective" or "safe" which can be used by the Design and Construction Manager in judging whether or not there is consistent application of program-level design and construction standards of excellence.

- **V1-F-4.8-10** The PgMP does not provide guidance or a procedure for rolling up individual project information or data from the individual project schedules and budgets into program level report summaries. The PgMP does not provide any mechanism to assure that such information is accurately captured and reported.

- **V1-F-4.8-11** In Section 3.1.1 the PgMP states that "*At this point, many commonly understood program management techniques are already in place as a result of using sound management practices. Consequently, this PgMP focuses on discrete, additional program management techniques that will help achieve the previously stated program-level goals of efficiency, economies of scale, consistent application of resources, capturing and applying best practices and lessons learned, and becoming the owner of choice.*" Pegasus-Global noted the following:

    - There was no identification of the "*commonly understood program management techniques*" already in place, which impacts the transparency of the PgMP and the basis of those "*commonly understood program management techniques*".

    - There was no identification of "*sound management practices*" upon which those commonly understood program management technique are based. This again impacts the transparency of the PgMP. There are other OCCM policies and procedures in existence, as noted in the Audit Review Table at **Exhibit F**. However, there is no reference to those other policies and procedures within the PgMP, nor does the PgMP cite any link to any other repository of "*sound management practices*" or "*commonly understood program management techniques*".

    - Pegasus-Global did find reference to program goals of efficiency, economies of scale, consistent application of resources, capturing and applying best practices and lessons learned later in the PgMP; however those were addressed as goals assigned to various positions within the PgMP. Those goals were not defined (*i.e.,* what is meant by "*economies of*

scale") nor were the processes by which those goals were to be set or judged ever specified or identified within the PgMP.

- Finally, there is no context within which to define "owner of choice" as used in Section 3.1.1 of the PgMP. As summarized earlier and addressed in more detail within of this Report, there is no consistent definition or understanding as to who actually is the "Owner" of the Program and its individual projects.

- **V1-F-4.8-12** The PgMP requires that the Program and the individual projects meet unspecified goals set for such things as efficiency, budget, schedule, economy, etc. however no guidance, or project template is provided which are specifically aimed at assisting program and project personnel to establish quantifiable goals and objectives against which success can be measured as to the achievement of those goals or objectives. Setting quantifiable goals and objectives which can be evaluated and measured across a megaprogram of multiple projects requires that, at a minimum, a template exists which enables the program and project to establish quantifiable goals and objectives uniformly across all projects.

- **V1-F-4.8-13** Section 3.3.3 of the PgMP states that the program goals are consistent with the program design standards and "… *should reference a methodology to accurately analyze and estimate operational costs of facility management and security labor in order to keep the courts fully appraised of their operational budget responsibilities when the courthouse facility is completed and operational*."

  The PgMP does not give any guidance as to what methodology is to be referenced; how that methodology is to be applied to or translated by the design or construction consultants; and how the data to be reported to and used by the Judicial Branch.

- **V1-F-4.8-14** Section 3.3.3 of the PgMP states that OCCM will develop "… *prototypical designs for building components of common function across the program to reduce costs and improve quality through standardization*". There was no further definition of "prototype designs for building components of comment function" to guide Program and Project Managers attempting to apply this requirement. During the audit Pegasus-Global identified no prototype designs being applied to the projects executed.

- **V1-F-4.8-15** Within the PgMP the placement of certain staff positions relative to Program Management and Project Management within the organizational structure that appear to be incomplete. For example, the relationships between the positions identified below have not been fully defined:

    - Communications Specialist;
    - Legal Specialist;
    - Business Services Manager;
    - Technical Support Manager; and
    - Facilities Manager.[97]

  The authority, organizational relationships and spans of control among all OCCM personnel should be comprehensively defined within the Program Management Manual.

- **V1-F-4.8-16** The discussion of Technical Resources in Section 4 of the PgMP generally meets the industry SOC, however, it is unclear how these support services are achieved within the Program, who is responsible, and who is accountable for ensuring that the technical services identified are implemented.

[97] Note: the PgMP identified Fred Stetson as the Facilities Manager, yet during the audit Pat McGrath was identified as the Facilities Manager. This is another indication that the PgMP was not being updated as required within the PgMP itself.

Recommendations:

- **V1-R-4.8-1** The PgMP should be finalized, expanded and updated to reflect the following:
    - Expanded and consistent definitions across and throughout the PgMP with regard to positions, functions, responsibilities, etc., based on the current operational parameters in effect (or to be developed) within the Program and projects.
    - Specific positions with roles and responsibilities should be defined along with a complete and comprehensive organizational chart that can be easily modified and be included as an Appendix to the PgMP in replacement of an earlier organizational chart.
    - A specific listing with dates of original approval and any revisions should be included for all regulatory requirements, policies, procedures and processes currently in place and those regulatory requirements, policies, procedures and processes yet to be finalized, updated or developed in the future along with anticipated date of completion.
- **V1-R-4.8-2** Specific, measurable goals and objectives for the Program and the projects should be included in the PgMP.
- **V1-R-4.8-3** Specific, measurable goals and objectives for each position identified within the PgMP should be included in the PgMP.
- **V1-R-4.8-4** The PgMP should define, formalize, and specify in greater detail the roles and functions of each of the Program sub-units, noting specific requirements, standards, and expectations for each Program sub-unit. The PgMP should contain statements of the relationship to, and interaction among, the various Program sub-units, which clearly delineate those functions which intersect and the required coordination with among the various Program sub-units.

- **V1-R-4.8-5** The PgMP should provide each functional position with direction to those policies, procedures and processes applicable and necessary to the achievement of that position's functions and responsibilities.

- **V1-R-4.8-6** The PgMP should identify each of the functional systems in place and use to manage the Program and projects, in particular the following:

    - Document Control System;
    - General Program Procedures;
    - General Program Structure (*i.e.,* relationship of OCCM to the Judicial Council and CFWG, AOC, regional offices, etc.);
    - Cost and Budget Control System;
    - Schedule Control System;
    - Design Phase Procedures;
    - Construction Phase Procedures;
    - Furnishings, Fixtures and Equipment ("FF&E") Procedures;
    - Scope Control System;
    - Quality Control System;
    - Claims and Dispute Procedures;
    - Procurement Control System; and
    - Contracting Control System.

- **V1-R-4.8-7** A review of the PgMP should be undertaken to determine what gaps and/or inconsistencies exist among the issued and draft policies and procedures against the final approved PgMP.

Summary Conclusion:

The Program Management Manual is perhaps the single most important management and control document on a megaproject as it serves as the foundation to every other policy, procedure and process developed and implemented to manage and control the program and the individual projects. In addition, the Program Management Manual sets the goals and objectives for the program as a whole and each of the individual projects and provides the roadmap through the policies, procedures, processes and relationships among the various sub-units which make up the megaproject planning and execution organization.

Expanding and finalizing the Program Management Manual should be one of the first improvement actions implemented by the OCCM, taking advantage of the work already done within the Program and at the project level (*i.e.,* lessons learned, processed developed, etc.) as the Program Management Manual is expanded and finalized.

5.2.9 COURT FACILITIES DELIVERY METHODOLOGIES AND CONTRACTING POLICIES AND PROCEDURES

According to the PMI PMBOK®:

> "*A contract represents a mutually binding agreement that obligates the seller to provide the specified products, services or results, and obligates the buyer to provide monetary or other valuable consideration. The agreement can be simple or complex, and can reflect the simplicity or complexity of the deliverables and required effort.*
>
> *A procurement contract will include terms and conditions, and may incorporate other items that the buyer specifies to establish what the seller is to perform or provide. It is the project management team's responsibility to make certain that all*

procurements meet the specific needs of the project while adhering to organizational procurement policies."[98]

The Construction Extension to PMI's PMBOK® notes that a sound contracting plan involves the following:[99]

- Procurement Documents;
- Evaluation Criteria; and
- Contract Statement of Work,

The PMI Global Standard for Program Management states that:[100]

"*Program contract administration is the process of managing the relationship with sellers and buyers at the program level, excluding such processes performed at the component level. The process includes purchases and procurement of outside resources that span the program domain and that are not covered by a specific project.*

The program management team must be aware of the legal, political, and managerial implications during implementation, since contractual issues can affect deadlines, have legal and costly consequences, and can produce adverse publicity. The team must communicate with [stakeholders]*, governing bodies and the project and program management teams.*

At the program level, program contract administration relies on the interaction of other program and project processes."

CMAA devoted an entire manual, "*Contract Administration Procedures*", to the topic of contract management and control. In summary, CMAA noted that to achieve project objectives construction management is:[101]

[98] PMI PMBOK®, Chapter 12, page 315, 2008
[99] PMI PMBOK® Construction Extension, Chapter 12, Section 12.3, page 109 – 110, 2007
[100] PMI Global Standard for Program Management, Chapter 3, Section 3.7.12, page 64

"…*systems, policies and procedures necessary to ensure adequate project controls are in place. Specifically, the CM must understand the basic responsibilities and interrelationships of all team members; i.e. the Owner (both project management and user), the Designer(s), the Contractor(s), and others, such as consultants and the CM. Additionally, the CM must have the functional knowledge to define the interrelationships between such management components as time, cost, information, quality, safety, and risk*."

Each of those industry standards go into detail relative to procurement, contract methodologies, selection of the appropriate contracting methodology, and management and control of the contracting process and contract execution.

Pegasus-Global was provided four overlapping contracting policy and procedure documents by OCCM:

- *Court Facilities Contracting Policies and Procedures (December 7, 2007);*
- *Policy 3.40 Court Delivery Method and Contractor Selection (DRAFT, July 28, 2009);*
- *Policy 333.00 Construction Delivery Methods (April 4, 2011); and*
- *Judicial Branch Contracting Manual (October 11, 2011, submitted to the legislature as of January 1, 2012).*

Two of those policies address the *contracting delivery methods* (July 28, 2009 and April 4, 2011) and are referred to as the "delivery method policies" in this audit section.

Two of those policies address *contracting policies and procedures* (December 7, 2007 and October 11, 2011) and are referred to as the "contracting policies" in this audit section.

[101] CMAA Contract Administration Procedures, Chapter 6, Section 6.1, page 1

Because of the overlap between those policy and procedure documents; because all those policies and procedures appeared to be still in force; and because all those policies were produced by OCCM as the contracting policies and procedures, Pegasus-Global reviewed them by topical subject matter simultaneously in **Sections 5.2.10 and 5.2.11** of this Report.

5.2.10 PROJECT DELIVERY METHODOLOGY AND CONTRACT FORMATION

5.2.10.1 MEMORANDUM POLICY 3.40 (JULY 28, 2009)

According to CMAA, "*A project delivery method is a system design to achieve the satisfactory completion of a construction project from conception to occupancy*".[102] In summary a delivery methodology identifies the primary execution parties (Owner, designer, constructor, etc.) and their respective roles and positions within a project. CMAA identifies four basis types of delivery methods:[103]

- Traditional (Design-Bid-Build);
- At-Risk Construction Management (CM@Risk);
- Multiple-Prime Contracting; and
- Design-Build (also for larger facilities Engineer-Procure-Construct ("EPC")).

While CMAA acknowledges that there are variations on each of the methodologies, most of them have their foundation in one of those four methodologies.

As noted earlier above OCCM issued two policies which address delivery method polices:

[102] CMAA, Capstone: The History of Construction Management Practices and Procedures, Chapter 2.0, page 15, 2003
[103] CMAA, Capstone: The History of Construction Management Practices and Procedures, Chapter 2.0, page 15, 2003

1. A memorandum from S. Ernest Swickard to Design and Construction ("D&C") Staff, dated July 28, 2009, with the subject matter identified as "*Delivery Method and Contractor Selection*", 3.40 Policy

2. Policy 333.0 *Construction Delivery Methods*, dated March 1, 2011, by OCCM.

The 2009 Policy 3.40 states that:[104]

> "*These procedures involve selecting how to deliver a complete court construction project and who will deliver it… OCCM management will determine which delivery method is best*."

The 2009 Policy 3.40 proceeds from that point to present the following four delivery methodologies and the process by which the work will apportioned, advertised for bids, bids reviewed and awards made by OCCM. The four allowable delivery methods were identified as:

- Design-Bid-Build (Traditional);[105]
- Design-Build;[106]
- CM@Risk;[107] and
- Indefinite Delivery/Indefinite Quantity ("ID/IQ").[108]

For each of the delivery methods Policy 3.40 contains a very detailed process by which the consultant and contractor bids will be solicited, reviewed, and contracted. It is in total a very structured and comprehensive 21-page presentation of a delivery methodology policy. However, beyond simply stating that OCCM management will chose the delivery methodology to be used, there is no presentation of the factors which

[104] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section A, page 3
[105] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section D, page 3
[106] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section E, page 3
[107] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section F, page 15
[108] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section G, page 18

will govern the choice or specifically who in the OCCM management structure will make that decision.

Findings:

- **V1-F-4.10.1-1** Policy 3.40 is identified as a "*DRAFT*", and Pegasus-Global found no indication that the policy was ever formally adopted or enforced at any time after its distribution on July 28, 2009. While some of the "Design and Construction Staff" to whom the memo was addressed knew of and recalled the memo, others were not aware of its existence.

- **V1-F-4.10.1-2** According to Policy 3.40: "*It is the intent of OCCM that a project delivery method be selected which results in the best value for the court, the Judicial Branch and all Californians*."[109] However, the memorandum actually does not elaborate a procedure by which a particular project delivery method will be judged to be the "best value" for each of those parties listed. Pegasus-Global found no indication of the actual factors to be considered during the process by which the delivery method selection was to be made.

- **V1-F-4.10.1-3** The statement that "*OCCM staff and management will determine the appropriate delivery method for each project"* does not establish uniformity, transparency or accountability for the approval of the delivery method for a project.[110]

- **V1-F-4.10.1-4** The statement that "*The selection of the delivery method will be based on the overall complexity and cost of the project*" does not establish the uniformity of the decision making process across the entire Program.

- **V1-F-4.10.1-5** The project delivery method definitions provided in Policy 3.40 match those in use throughout the industry.

[109] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, page 2
[110] S. Ernest Swickard to Design and Construction Staff, July 28, 2009, Procedure 34.0, Section C, page 2

- **V1-F-4.10.1-6** While the procedures for bidding, reviewing and awarding the various delivery methodologies is addressed in some detail within Policy 3.40, there is no indication of how these procedures align with the AOC procedures or the SAM, both of which are cited in other procedures as the source of procurement and contracting policies, procedures and processes.

5.2.10.2 POLICY 333.00 CONSTRUCTION DELIVERY METHODS (APRIL 4, 2011)

Policy 333.00 was issued in the form generally use across most of the formal OCCM policies, noting that:[111]

> "*Selecting a project delivery method is a strategic decision made by OCCM management. Once decided, a project manager determines the selection criteria and proceeds with the solicitation and selection process. The Court Facilities Contracting Policies and Procedures grants flexibility to OCCM in both delivery methods and the selection process*."

Interestingly, Policy 333.00 has the identical statement of intent as that provided in the Memorandum of July 28, 2009, cited directly above: "*It is the intent of OCCM that a project delivery method be selected which results in the best value for the court, the Judicial Branch and all Californians*."[112] However, unlike Policy 3.40, this Policy 333.00 does not address the actual procurement processes or procedures, limiting its content to a definitions of, and diagrams for, each of five allowable delivery methods:

- Design-Bid-Build;
- Design-Build;
- CM@Risk;
- Public Private Partnerships; and,

[111] OCCM, 333.00 Construction Delivery Methods, page 3, March 2011
[112] OCCM, 333.00 Construction Delivery Methods, page 4, March 2011

- ID/IQ.

Findings:

- **V1-F-4.10.2-1** This policy contains only a definition of each of the five acceptable delivery methods and beyond statements that (1) unidentified (by name or position) OCCM management staff will decided which delivery method is to be used on a project and (2) that the Project Manager will decided how to bid, review, award and contract for the project. Ultimately, Policy 333.00 is not actually a policy or procedure as understood within the industry as it gives no guidance, procedure or process by which the delivery method will be chosen or the procurement action will be executed.

Recommendations:

- **V1-R-4.10-1** Policy 3.40 should be formally retired as the acceptable delivery methods have been expanded by Policy 333.00.

- **V1-R-4.10-2** Policy 333.00 should be expanded to provide the factors to be considered and the process by which the delivery method will be selected for each project. Policy 333.0 should include specific delegations of authority (by position) for each decision to be made and each action to be required in the process. Without that information Policy 333.00 serves no function other than to define the various delivery methodologies.

Summary Conclusion:

Although both of the delivery method policies define the construction delivery methodologies correctly, neither addresses how the actual decision is to be made in order to provide "*the court, the Judicial Branch and all Californians*" with the best value. These two policies are not uniform, transparent or identify a definitive point of accountability relative to the selection of a construction delivery method.

5.2.11 CONTRACTING POLICIES AND PROCEDURES

5.2.11.1 COURT FACILITIES CONTRACTING POLICIES AND PROCEDURES (DECEMBER 2, 2007)

The *Court Facilities Contracting Policies and Procedures* (December 7, 2007) provided to Pegasus-Global in response to a document request noted that the document contained:[113]

> "…*procedures that the AOC will typically follow when seeking to contract for planning, acquisition, design, construction, operations, and/or maintenance of court facilities. These procedures are intended to assist the AOC in its evaluation of Proposer's products or services and qualifications in order to contract with firms and individuals having the demonstrated capacity to reliably meet contractual obligations thereby securing the best value for the AOC and the public*."

The December 7, 2007 contracting policies and procedures addressed the following topical areas:

- Policy Statement;
- Background;
- Definitions;
- Process (Selection and Contracting);
- Contract Types;
- Contract Award; and
- Contract Notice to Proceed.

[113] Court Facilities Contracting Policies and Procedures, AOC, Section IV, page 9, December 7, 2007

There followed a fairly detailed, yet concise set of the procedural steps through which the procurement of services necessary to the execution of a court construction project would pass.

Findings:

- **V1-F-4.11.1-1** Although somewhat brief, Pegasus-Global was able to track all of the processes through the procurement and contracting process which would be expected per the industry general SOC.
- **V1-F-4.11.1-2** While the process injected uniformity and transparency into the policy and process, there were no statements which identified a formal delegation of authority or the point of accountability other than simply stating the authority rested with "*the AOC*".

Recommendations:

Pegasus-Global has no formal recommendations relative to this policy or procedure.

5.2.11.2 JUDICIAL BRANCH CONTRACTING MANUAL (OCTOBER 1, 2011)

As required under SB 78 (2009) the Court Capital Construction Program was to generally follow the policies and procedures codified under the SAM, until the Judicial Council developed and submitted its own Contracting Manual. According to SB 78, the Judicial Council Contracting Manual was to be submitted by January 1, 2012. Pegasus-Global was informed during the audit that the Contracting Manual had been produced and submitted as required by SB 78 by the date required. OCCM provided Pegasus-Global with a copy of the Judicial Council Contracting Manual for examination during this audit. According to the Judicial Council Contracting Manual:[114]

[114] Judicial Branch Contracting Manual, Introduction, Section 2, page 3 of 7, October 1, 2011

"*Development of this Manual was guided by the principles reflected in the findings and declarations of the Legislature in enacting the PCC* [Public Contract Code]*, which express the legislative intent to achieve the following objectives as set forth in PCC 100:*

- *To clarify the law with respect to competitive bidding requirements;*
- *To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds;*
- *To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices; and*
- *To eliminate favoritism, fraud, and corruption in the awarding of public contracts.*

In addition, the Legislature has declared that California public contract law "should be efficient and the product of the best of modern practice and research (PCC 101) and that, to encourage competition and to aid in the efficient administration of public contracting, "to the maximum extent possible, for similar work performed for similar agencies, California's public contract law should be uniform."

The Judicial Council Contracting Manual covers the following content in at a significant level of detail:

- Purchasing Authority;
- Procurement Planning;
- Socioeconomic and Environmental Programs;
- Competitive Solicitation;
- Non-Competitively Bid Procurements;

- Leveraged Procurement;
- Protest and Post-Award Disputes;
- Contracts and Contract-Related Documents;
- Disbursements and Payment Programs;
- Receiving, Inspection, and Acceptance/Rejection of Goods and Services;
- Contract Administration; and
- Reporting Requirements.

Note that in **Subsection 5.2.1.10** directly above Pegasus-Global reviewed the AOC Contracting Policies and Procedures (2007); this manual appears to be separate and apart from the Judicial Council Contracting Manual (2011) reviewed in this **Subsection 5.2.1.11**. Pegasus-Global is uncertain of the relationship between those two policies, if any.

Findings:

In general, the Judicial Council Contracting Manual was consistent with the industry established SOC. Pegasus-Global's observations relative to those two separate Contracting Policies and Procedures include:

- **V1-F-4.11.2-1** It appears that the Judicial Council Contract Manual (2011) supersedes the earlier AOC Contracting Manual (2007); however Pegasus-Global was somewhat confused by the wording included within the Judicial Council Contract Manual, which appears to supersede all AOC procurement procedures except for the Capital Court Construction Program:
    - "… *this Manual supersedes (a) the AOC Policy Regarding Legal Review of Procurement Matters, and (b) AOC Policy "7.2.1, Procurement of Goods and Services, for all procurement and contracting purposes except*

as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities."[115]

- "*Finally, this Manual supersedes the **Court Facilities Contracting Policies and Procedures**, adopted by the Judicial Council December 7, 2007, for all facilities-related procurement and contracting purposes <u>except</u> for planning, design construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities*."[116] [**Bold Highlight Added; Underline Added**]

- "*The Manual does not address*:

  - *Procurement and contracting for planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities, as those activities are expressly excluded from coverage under Part 2.5 by PCC 1920(c);*

  - *Procurement and contracting specific to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities other than trial court facilities and maintenance of facilities, as those activities are the responsibility of the AOC and will be addressed in the AOC's Local Contracting Manual …*"[117]

Reading those provisions, Pegasus-Global is unsure of the relationship between the Judicial Council Contracting Manual to the AOC Court Facilities Contracting Policies and Procedures. However, Pegasus-Global notes that the Judicial Branch Contracting Manual is by far the most comprehensive and complete of the two contracting documents reviewed concerning contracting and contract administration.

[115] Judicial Branch Contracting Manual, Introduction, Section 5, page 5 of 7, 2011
[116] Judicial Branch Contracting Manual, Introduction, Section 5, page 5 of 7, 2011
[117] Judicial Branch Contracting Manual, Introduction, Section 5, page 4 of 7, 2011

- **V1-F-4.11.2-2** Pegasus-Global assumed that the Judicial Council Contracting Manual is intended to replace the AOC Contracting Policies and Procedures; however, if that is not the case, then the two documents need to be aligned as both address some of the exact same processes and procedures, and the AOC contracting procedures do not appear to have been updated since December 7, 2007. If the two documents are to be mutually supportive of the contracting policies, procedures and process – and given the later release of the Judicial Council Contracting Manual (2012) – this would be a propitious time to realign the AOC Contracting Policies and Procedures to conform to the much more detailed Judicial Council Contracting Manual.

- **V1-F-4.11.2-3** The two contracting policy documents are not aligned or specific relative to whom (Judicial Council, AOC or OCCM) is delegated authority and responsibility for the various decisions and actions identified within or among each of the policy documents. While those policies taken as a whole do address all of the SOC contracting best industry practices, the unit or position of authority and accountability should be clarified in order to be more uniform and transparent.

- **V1-F-4.11.2-4** Exceptions to the policies and procedures are defined within each policy document; however, those exceptions appear to be somewhat inconsistent. For example, within the Judicial Branch Contracting Manual it states: "*Procurement of Goods and Services, for all procurement and contracting purposes except as those policies apply to planning, design, construction, rehabilitation, renovation, replacement, lease, or acquisition of trial court facilities."*

Recommendation:

- **V1-R-4.11-1** Of the two separate sources of contracting policies and procedures the Judicial Council Contracting Manual is by far the more comprehensive and complete, and generally meets the industry SOC. However, given the wording of some of the provisions contained within the Judicial Branch Contracting Manual it

may not be applicable to certain elements of the Court Capital Construction Program. If the Judicial Branch Contracting Manual is not applicable to the Court Capital Construction Program, at a minimum the AOC Court Facilities Contracting Policies and Procedures should be updated, aligned, and coordinated with the Judicial Council Contracting Manual.

5.2.12 MANAGEMENT PLAN AND PROJECT DEFINITION REPORT

The Management Plan and Project Definition Report ("Project Definition Report") is actually a template issued by OCCM Program Management "… *to serve as a guide for the administration of* [a] *project*."[118] While not identified as a formal policy, procedure or process, the document does provide a structure for the various elements to be addressed during the planning and execution of a specific project. The Project Definition Report also addresses certain requirements, formats, processes, goals and objectives that could be taken to be, or are indicative of policies, procedures or processes for a specific Court Capital Construction project. Because of the unique structure of the Project Definition Report it most closely addresses SOCs focused on Scope Control at a very high level.

According to the PMI's PMBOK®:[119]

> "*Project Scope Management includes the processes required to ensure that the project includes all the work required, and only the work required, to complete the project successfully. Managing the project scope is primarily concerned with defining and controlling what is and is not included in the project*."

PMI defined scope as: "*The process of developing a detailed description of the project and the product* [courthouses]."[120] PMI defined scope control as: "*The process of*

[118] Management Plan and Project Definition Report, Memorandum, paragraph 1, undated
[119] PMI PMBOK®, Chapter 5, page 103, 2008
[120] PMI PMBOK®, Chapter 5, Section 5.1, page 103, 2008

monitoring the status of the project and product scope and managing changes to the scope baseline."[121]

The Construction Extension to the PMBOK® states that:[122]

> "*For a construction project to be successful, project scope planning should involve all the key players at all levels, the owner, the consultant, the general contractor, subcontractors, and suppliers. Although each will only be involved in their respective areas, success increases with interactive involvement*."

Pegasus-Global found that the Project Definition Report delineated and to some extent defined all of the project stakeholders, with a significant portion the Project Definition Report summarizing the respective areas of responsibility. According the Project Definition Report:[123]

> "*The Project Manager is responsible for the management of all activities to ensure that the project is constructed within the approved project scope* …"

Even though the Project Definition Report does not lend itself to a direct comparison to an industry SOC concerning the management and control of program or project scope, Pegasus-Global undertook a review of the Project Definition Report to provide observations raised following the review of the document in order to (1) acknowledge the existence of the Project Definition Report; and, (2) to provide the CFWG, AOC and OCCM with feedback relevant to the document and its place in the among the formal policies, procedures and processes formalized by OCCM.

Findings:

- **V1-F-4.12-1** The Project Definition Report is undated and provides no information as to its distribution or use. Thus, it is unclear when this template was prepared, whether it has been updated based on lessons learned, to whom it has been

[121] PMI PMBOK®, Chapter 5, Section 5.5, page 103, 2008
[122] PMI PMBOK® Construction Extension, Chapter 5, Section 5.1, page 37, 2007
[123] AOC - OCCM, Management Plan and Project Definition Report, Section 11, page 13, (undated)

distributed, how the template is to be used or how the process for using this process document is monitored at the program or project levels.

- **V1-F-4.12-2** The Project Definition Report states that it is intended to be a "… *single source manual that provides*:
    - *Description of the origin and purpose of this project*
    - *Project goals*
    - *List of project participants and their responsibilities*
    - *Lines of communications*
    - *Schedule information*
    - *Budget information*
    - *Description of quality control procedures*
    - *Procedures for making changes"*

  While Pegasus-Global finds that the content of the Project Definition Report provide an excellent summary definition of the individual project, it does not reference those policies, procedures and processes which govern the planning, management or execution of the project. There are a number of policies, procedures and processes which are applicable to the execution of the project and which actually govern the planning, management, control and execution of a project.

- **V1-F-4.12-3** There appears to be some inconsistencies with the content of the Project Definition Report and the body of the policies, procedures and processes currently in place within the OCCM. For example, under "Design" the Project Definition Report states only that "*The Courthouse will function equally well as a setting for the delivery of justice, as a public services center, as a community landmark and as a statement of the community's heritage*." While these are

laudable goals this statement does not limit a courthouse project design to the design requirements established within the "*California Trial Court Facilities Standards*" ("Design Standards") first adopted by the Judicial Council on April 21, 2006 and amended on March 1, 2010.

- **V1-F.4.12-4** The Project Definition Report contains no description addressing how the individual elements contained within the Project Definition Report were established, who participated in establishing each element and process by which the individual elements were adopted. For example: how were the project goals established, who participate in establishing those project goals, and how were those project goals adopted?

- **V1-F-4.12-5** The Project Definition Report provides for the PJ, the Executive Officer of the Court, the principle architect, the principle CM@Risk, the Assistant Division Director of the OCCM for Design and Construction and the Project Manager assigned from OCCM to sign off on the management plan. There is no indication as to who among those individuals was delegated the actual authority to approve the template as completed for implementation. In a typical project that responsibility and authority would be the sole province of the Owner; however, there should be one specifically named position accountable for approving the Project Definition Report.

- **V1-F-4.12-6** The Project Definition Report addressed the contracting plan and agreements that are expected to be executed for the Project, but does not reference the various contracting policies and procedures which define the procurement strictures which have been developed and adopted at the program level.

- **V1-F-4.12-7** The Project Definition Report identifies six Project Management Teams, providing information relative to each team's roles and responsibilities:

    - The Executive Team;

    - The Project Advisory Group;

- The Management Team;
- The Design Team;
- The Funding Team; and
- The Construction Team.

Pegasus-Global found this element of the Project Definition Report very helpful and a good addition to the Project Definition Report. However, in this instance Pegasus-Global is not aware of a consolidated program level policy which establishes that full team structure or the roles and responsibilities of each Project Team.[124] The plans, policies and procedures adopted at the project level should link to and be supported by policies and procedures developed and promulgated by Program Management.

- **V1-F-4.12-8** There is an organizational chart provided within the Project Definition Report, which could be enhanced by addressing the following:
  - Add formal lines of communication among the various positions identified in the organizational chart.
  - Identify the formal reporting deliverables, such as the Monthly Progress Report, should be reflected in the organizational chart to identify the position responsible to prepare and disseminate the report; the distribution of the report; and when the report is to be prepared and distributed.
  - There should be a specific, clear "chain of command" reflected in the organizational chart. For example, who has the final approval authority for decisions made by the Project Management Teams; who is responsible for resolving disputes among which might arise within the various Project Teams, or among the different Project Teams.

[124] Note that in some instances, such as the establishment of the PAG, there is formal legislation and/or OCCM policies governing the formation and membership of Management Project Teams.

- **V1-F-4.12-9** The process would be strengthened of it contained the following:
    - Identification as to which Management Team or position is responsible for preparing the project master schedule, (a combination of the site acquisition schedule, the design schedule and the construction schedule).
    - Identification as to which Management Team or position is responsible to review and monitor the schedule to ensure that the project stays on schedule.
    - Development of a uniform process or procedure which addresses how the master schedule is to be prepared or the system/tool which is to be used to develop the master project schedule. The inclusion of this level of detail would improve the development of the schedule and provide a significant level of schedule management and control over the execution of the project to a definitive schedule.
- **V1-F-4.12-10** The exact same observations that are raised relative to schedule in V1-F-4.12-9 above can be made concerning the project cost and budgeting procedures adopted for the project.
- **V1-F-4.12-11** The change section of the template is only one paragraph and provides no specifics relative to the change management process to be followed during the execution of the project (*i.e.,* delegations of authority to receive, review or approve/reject changes submitted, estimation of the scope, cost, and schedule impacts changes flowing from such changes, etc.
- **V1-F-4.12-12** The specifics of the various project phases of a project are briefly defined, however, additional detail should be provided with those definitions.[125] It would improve uniformity and transparency if the project phase definitions included a reference to the formal policies, procedures and processes at the program level which govern the project phases. For example, the site acquisition

[125] Note: The design phase definition does include a chart which addresses the review and approval responsibilities by individual organization.

phase has a very good formal policy, procedure and process developed at the program level which identifies the procedure and process for the specific steps that are required during acquisition of property for the project.

- **V1-F-4.12-13** Pegasus-Global noted that the Facilities Maintenance Group ("FMG") is not cited as a member of the Design Team and the phase description provided does not cite any role for the FMG during the design phase (FMG is cited as a member of the Superior Court Team but with no definition of its role or responsibility as a member of that team). As policies issued by the Judicial Council specifically state that the FMG is to provide input during design to ensure that facility maintenance is considered during design some reference to the role and responsibility to be filled by the FMG should be included.

- **V1-F-4.12-14** For each of the phase descriptions there should be a named position within the Project Team with the authority delegated and accountability for the work of that team during the various project phases. This could be done in a summary table which also identified the basic responsibilities of the Project Teams, cite references to existing or foundation program policies, procedures and processes and identify the position accountable for the work of that Project Team. Such a table would assist in improving the uniformity with other Project Team assignments and the relevant program level policies, procedures and processes.

- **V1-F-4.12-15** The construction phase includes a discussion relative to the lessons learned database, indicating that all members of the Project Teams are required to participate in the lessons learned program and every project is to contribute at least one lesson learned to the lesson learned database per month. However, there are no specifics provided as to who collects the lessons learned, who has final approval of the lessons learned to be included in the database, and who is accountable for seeing that the lessons learned program is implemented during the execution of the project.

- **V1-F-4.12-16** Quality control has only a single paragraph in the Project Definition Report, which at a minimum should reference to the program level quality control policies, procedures and processes. **Section 5.3.4.3** below contains additional findings relative to Quality Control including those quality control elements contained in the California Trial Court Facility Standards.

- **V1-F-4.12-17** Environmental compliance appears insufficient for an activity which is so heavily stressed and visible within the program level policies, procedures and process and so visible to the public in California in general. Any section on environmental compliance should reference to the program level environmental policies, procedures and processes, including those contained in the California Trial Court Facility Standards.

- **V1-F-4.12-18** There is a section on facility performance evaluation entitled "survey"; however the Project Definition Report does not provide any detailed information about, or a template summarizing the survey requirements such as:

    - What is required to be surveyed;
    - Who conducts the survey;
    - To whom is the survey produced and who is responsible to produce the survey;
    - What is the form of the survey report;
    - Who determines if the building met its goals and functional needs (and if not, why not);
    - Who identifies the actions necessary to formulate and follow up on corrective actions;
    - Finally, there is no discussion of how the survey information rolls up into the overall program and what impacts, if any, the survey results may have on the overall program (*i.e.,* lessons learned).

- **V1-F-4.12-19** The Project Definition Report notated that OCCM is responsible for preparing and updating (as needed) the Project Definition Report, including a directory of project stakeholders and their contact information. However, there is no identification as the actual position(s) delegated the authority to prepare or update the Project Definition Report, nor is detail provided as to the process by which the Project Definition Report is to be reviewed and updated as necessary.

Recommendations:

The observations given above contain a number of recommendations for improving the Project Definition Report. Those recommendations which follow below represent what Pegasus-Global has determined are the recommendations which would have the most beneficial impact on the Project Definition Report.

- **V1-R-4.12-1** The Project Definition Report should have a section devoted to the establishment, management, and control of project scope. This is a critical element of any project and as such should involve all of the stakeholders identified within the Project Definition Report. Specific attention should be paid to the following scope elements:
    - Setting the scope of the project, including goals, objectives, size, budget, schedule, etc.
    - Communicating the project scope to Program Management and all stakeholders identified within the Project Definition Report.
    - Identifying the roles and responsibilities that each stakeholder identified within the Project Definition Report assume relative to managing and controlling project scope.
    - Defining “scope change” within the Project Definition Report and the role that each of the stakeholders assume relative to monitoring, reviewing and acting relative to proposed scope changes.

  - Identifying those processes by which the Program Manager and other stakeholders will manage and control scope.

- **V1-R-4.12-2** Reference those program level policies, procedures and processes which govern the tasks enumerated within various sections of the Project Definition Report. By citing the program level policies, procedures and processes the volume of the Project Definition Report would increase only slightly, but critical information would be included in the Project Definition Report which would lay the foundation and provide a control source for many of the activities identified in the Project Definition Report.

- **V1-R-4.12-3** Ensure that the contents of the Project Definition Report are consistent with the policies, procedures and processes which exist at the program level. This includes consistency of content, terminology, direction and limitations.

- **V1-R-4.12-4** Identify the party (or parties) with the delegated authority to make decisions and be accountable for those decisions. This would include identification of any limitations on that decision making authority.

- **V1-R-4.12-5** Adding of a table that includes a summary of the responsibility and authority given to each Project Management Team, identification of the individuals within the Project Team(s) which are accountable for the decisions and actions of the Project Team(s) and citations to the program level policies, procedures and processes which guide the execution of each project team's scope of work and authority.

Summary Conclusion:

In general Pegasus-Global found the Project Definition Report to be helpful in explaining the organization and structure of the individual projects. The most notable elements missing within the Project Definition Report was a reference to the listed requirements, duties, and responsibilities back to those program level policies, procedures and

processes which provide the foundation and requirements which govern the operations of the Project Teams, and any formal delegations of authority and accountability.

5.2.13 POLICY 7.00 PROJECT FEASIBILITY REPORT (JUNE 6, 2011 DRAFT)[126]

According to Policy 7.00 (Feasibility Report):

> "*Project Feasibility Reports determine the feasibility of a new project*."[127]

For the reasons noted in Findings, below, Pegasus-Global was unable to conduct any comparative analysis of Policy 7.00 (Feasibility Report).

Findings:

- **V1-F-4.13-1** The policy is identified as a "Template Draft", and as such appears to be a very early draft (actually only an outline) of the Feasibility Report and process. The draft given to Pegasus Global still contains internal comments in redline form, such as:[128]

  > "*Comment [PM9]: Sometimes it may be useful to look at more than one stacking configuration, two floors v. three floors for example, and thus more than one site program as the building footprint changes*."

- **V1-F-4.13-2** Through interviews Pegasus-Global is aware that OCCM does conduct feasibility reviews of proposed projects. However, there was nothing contained within Policy 7.0 for Pegasus-Global to review or evaluate.

[126] Note: Pegasus-Global received two policies, both with the number 7.0 one covering the COBCP and this policy covering the Project Feasibility Report
[127] OCCM, 7.0 Project Feasibility Report, Section 1, page 4, June 2011
[128] OCCM, 7.0 Project Feasibility Report, Section 1.2.6, page 4, June 2011

Recommendations:

- **V1-R-4.13-1** This appears to be a situation that, while everyone understands the importance of this procedure and process, here-to-for has not developed, codified or distributed a formal policy, procedure or process covering that requirement. This policy, procedure and process should be completed by OCCM.

Summary Conclusion:

The document provided to Pegasus-Global is not, in fact, a policy, procedure or process which can be reviewed and evaluated.

5.2.14 AOC CHANGE ORDER PROCESS (REVISED TO INCLUDE IPROCUREMENT) (MARCH 4, 2011 STANDALONE DOCUMENT)

Pegasus-Global was given a single sheet of paper entitled "*AOC Change Order Process revised To Include iProcurement*" within the formal set of policies provided by OCCM for the purposes of this audit. According to the document:[129]

> "*Through the collaborative efforts of the represented parties of the AOC change order committee (OCCM, BP, Finance, Contracts, OGC [Office of the General Counsel]) the change order process outline as developed, reviewed and accepted by all parties as follows*:…"

What follows that statement is a list of 13 items, which start with a meeting to "*get a concurrence on the Change Order Form… and associated default cost and funding codes*" and ends with "*Contracts proceeds to get Accounting Certification and sends appropriate documentation to the State Controllers' Office ("SCO") and AOC Accounts Payable*." However, there is no context provided within which enables Pegasus-Global to compare the document supplied by OCCM to the formal change management and

[129] OCCM, AOC Change Order Process Revised to Include iProcurement, March 4, 2011

control to the formal SOC change order process and procedure which is generally accepted within the industry.

Findings:

- **V1-F-4.14-1** The relationship of this document to Policy 4.20 is unclear. This one page policy or procedure does not reference any formal change management policy or procedure. As a result it is not possible to determine exactly how two change management documents reviewed for this program management audit are linked or related.

- **V1-F-4.14-2** The presentation follows none of the formats (memo or formally identified policy document) used to distribute formal policies.

Recommendation:

- **V1-R-4.14-1** Without a frame of reference for the document Pegasus-Global has no recommendations to suggest.

Summary Conclusion:

Too little is known or understood relative to this single page document to reach any summary conclusions.

5.2.15 ADOPTION OF A MITIGATED NEGATIVE DECLARATION OF THE NEW SANTA ROSA CRIMINAL COURTHOUSE (JULY 19, 2011 MEMO)

Pegasus-Global is unclear as to whether this memo represents an actual policy; or is indicative of a standard memo addressing California Environmental Quality Act ("CEQA") standards that is required for each project; or is a unique request for an exception to a policy CEQA. As a result Pegasus-Global did not have sufficient information from which to review or evaluate this memo.

5.2.16 JUDICIAL BRANCH AB 1473 FIVE-YEAR INFRASTRUCTURE PLAN FISCAL YEAR 2011-2012 (ADOPTED BY THE JUDICIAL COUNCIL AUGUST 27, 2010)[130]

The Five-Year Plan is required by the California legislature (under SB 1407) to be submitted annually by the Judicial Council. As a result it is up to the Judicial Council and the legislature to establish the parameters of the Five-Year Plan and agree upon an acceptable template and content for the Five-Year Plan.

Any examination for the purposes of this audit would require Pegasus-Global to compare the actual contents of the Five-Year Plan against the policies, procedures, processes and templates agreed between the Judicial Council and the legislature. Pegasus-Global has not seen or been provided a policy, procedure, process, or template which governs the development, preparation or content required for the development of the Five-Year Plan, and thus is unable to provide any Findings or Recommendations as to whether or not the Five-Year Plans meet the requirements established.

Summary Conclusion:

Since the Five-Year Plan has been adopted by the Judicial Council each year for submission to the legislature, and since the legislature has apparently accepted each Five-Year Plan as filed Pegasus-Global assumes that the Five-Year Plans as prepared and submitted have been fulfilling the intent of the requirement as established within the applicable legislation.

5.2.17 STATE ADMINISTRATIVE MANUAL

The State of California, through the Department of General Services ("DGS"), created the SAM in 1953 to *"respond to the need by Government to effectively provide uniform*

[130] Pegasus-Global understands and has received the updated Five-Year Plan for Fiscal Year 2012-2013; however, the Five-Year Infrastructure Plan for Fiscal Year 2001-2012 was the Five-Year Plan which was contained in the hard copy binders of policies that were received from OCCM.

guidance to State Agencies in their fiscal and business management affairs…"[131] Part of the policies and procedures turned over for Pegasus-Global to examine included selected sections of the SAM, the bulk of these selected chapters relate to the administrative process for the acquisition, planning, design, construction, and equipping of capital projects. Pegasus-Global further examined in greater detail portions of the SAM, particularly Chapter 6800, which is indicated by the overview contained in Section 6801 to be divided into five parts:[132]

1. *"An **overview of capital outlay** and **capitalized asset financing** (SAM Sections 680-6809);*
2. ***Budgeting** capital projects (SAM Sections 6810-6839);*
3. *The administrative approval process for **implementing** acquisition, planning, design, construction, and equipping of capital projects (SAM Sections 6840-6868);*
4. ***Long-term financing** of capitalized assets (SAM Sections 6870-6888); and*
5. ***Glossary** and cross-index of capital outlay terminology, acronyms, and forms (SAM Section 6899)"*

[Bold emphasis in original]

This composes of the following list of sections:

- 6801 Overview of Capitalized Assets
- 6805 Capitalized Assets: Who Does What
- 6806 Capital Outlay Versus State Operations and Local Assistance
- 6807 Minor Capital Outlay

[131] State of California, State Administration Manual, foreword
[132] State of California, State Administration Manual, Section 6801 Overview of Capitalized Assets

- 6808 The Capital Outlay Process in Brief
- 6809 Legal Citations for Capitalized Assets and Financing
- 6810 Capitalized Assets Planning and Budgeting
- 6812 Capitalized Asset Budget Development Highlights
- 6814 Budget Preparation and Enactment Timetable
- 6816 Documents Required to Request Capital Outlay Funding
- 6818 Capital Outlay Budget Change Proposals (“COBCP”)
- 6820 Five-Year Capitalized Asset Plan
- 6821 Prototype Development/Changes
- 6822 Historical Resources
- 6823 Use of Consultants
- 6824 DGS’ Feasibility Review
- 6826 Scope Meetings
- 6828 Budget Package Preparation, Budget Estimates
- 6830 Budget Hearings, Final Budget Document Preparation
- 6832 Governor’s Budget and Legislative Approval
- 6834 Capital Outlay Reappropriations
- 6837 Ten-Year Survey of Capital Outlay and Infrastructure Needs
- 6839 Capital Outlay Coding Structures

- 6840 Administration of the Capital Outlay Program
- 6841 Methods of Project Delivery
- 6842 State Public Works Board Overview
- 6844 Monthly Public Works Board Process
- 6845 Standard Information Required When Requesting PWB or DOF Action
- 6846 Typical Project Phases, Related Forms and Board Items
- 6847 Starting Projects
- 6848 Studies
- 6849 Site Selection and Acquisition
- 6850 Environmental Impact Review Process
- 6851 Preliminary Plans Review
- 6852 Approve Working Drawings and Proceed to Bid
- 6853 Award Construction Contract
- 6854 Construction
- 6855 Equipment
- 6856 Project Completion
- 6860 Board Items for Interim Financing and Bond Sale
- 6861 Augmentation, Additional Costs (Within Appropriation) and Recognition of Deficits
- 6862 Bid Savings, Project Savings, and Reversions

- 6863 Scope Changes
- 6864 Quarterly Report
- 6865 Inmate Day Labor
- 6866 Condemnations (Exercise of Eminent Domain)
- 6867 Energy Service Contracts
- 6868 Transfer of Funds to the Architecture Revolving Fund (“ARF”)
- 6870 Capitalized Assets Financing
- 6871 General Obligation (“GO”) Bonds
- 6872 Lease-Revenue Bonds
- 6873 State Public Works Board Lease-Revenue Bond Programs
- 6874 Joint Powers Authority (“JPA”) Lease-Revenue Bond Programs
- 6876 Financing Leases Versus Operating Leases/Contracts
- 6878 Interim Financing
- 6800 The Bond Sale
- 6882 Post-Sale Activities
- 6884 Continuing Disclosure
- 6886 Client Department’s Responsibilities
- 6888 Budget Treatment of Lease-Revenue Debt Service Payments

SAM Chapter 6800 has a logical flow of the included sections and each provides clear information to its respective subject. In addition, relevant "illustrations" are included (typically these are examples of forms) to further explain the process being covered.

Findings:

- **V1-F-4.17-1** It is unclear whether the SAM is a document that is to be followed as a procedure, or if it merely provides a guideline that is used to fill in gaps in existing procedures within the OCCM.

- **V1-F-4.17-2** In some cases there is a SAM Section that directly overlaps an OCCM procedure, for example the COBCP:

    - SAM Section 6818 COBCP is a thorough explanation of the COBCP process, covering: an overview of the COBCP; when it is required; timing of submittals and updates; instructions for COBCP completion; and, a sample COBCP.

    - OCCM Procedure 7.00 Capital Outlay Budget Change Proposal (COBCP) [examined in **Section 5.3.5.2**] identifies the COBCP the steps taken by the OCCM in completing a COBCP, but appears to be an early draft providing few details for the individual steps.

    OCCM Procedure 7.0 indicates the COBCP is to include, among other things, the project cost estimate, with the only detail being that the project cost estimate is to be provided by OCCM D&C. SAM Section 6818 notes the COBCP is to include: approximate cost by phase, indicating the basis on which the estimate was prepared; the proposed funding source for each phase; and, a complete funding history – including past project history and future funding requirements. OCCM Procedure 7.0, in its draft form contains no mention of the SAM Section 6818 or any indication that SAM 6818 is to be followed.

- **V1-F-4.17-3** During interviews with various AOC and OCCM personnel, Pegasus-Global inquired about the use of SAM within the OCCM Program.

Responses indicated the utilization of SAM was "voluntary" further suggesting that there is no formal method for the implementation or integration of SAM.

Recommendations

- **V1-R-4.17-1** As the SAM is a document created by the DGS outside of the AOC, Pegasus-Global does not provide recommendations to the specific procedures within the SAM. Pegasus-Global does recommend the role of the SAM as it is used by the OCCM be clearly established either by an over-arching policy statement, if possible, or by use of specific reference within the individual procedures that correlate to SAM policies, such as the COBCP examined above.

Summary Conclusion

The SAM creates an effective policy that presents uniform guidelines to the various state agencies. However, in order for it to effectively align with the procedures created and followed by the OCCM, the OCCM must clearly define how and when the SAM is to be utilized.

5.2.18 COURTHOUSE NAMING POLICY (MAY 11, 2009)

To Pegasus-Global's knowledge there is no SOC within the industry as to the naming policy of a facility. As a result no direct comparative evaluation was possible. However, Pegasus-Global offers that following findings/observations relative to this policy.

Findings:

- **V1-F-4.18-1** The Courthouse Naming Policy appears without an indication as to a procedure number, which was one of the inconsistencies identified within many of the policies and procedures reviewed by Pegasus-Global.

- **V1-F-4.18-2** The policy makes no reference to any other document, additionally has no indication as to the timing of using the procedure other than when *"the council has financed, in whole or in part, where the judicial branch is the facility*

owner or majority tenant." Adding, *"[t]hese standards also will apply to existing courthouses"*.[133] It is unclear when an existing courthouse (which presumably has previously been named) would need to change or update its name.

- **V1-F-4.18-3** The policy outlines the process to be followed for naming a courthouse from beginning to the presentation of a recommendation to the Judicial Council, only missing what outside occurrence initiates this activity.

- **V1-F-4.18-4** The policy provides all the definitions that are relevant to this procedure, including defining the Court Facilities Working Group and the Subcommittee on Courthouse Names, which are the primary groups involved in the naming of courthouses.

- **V1-F-4.18-5** The policy sets forth a very clear outline of the naming standards to be followed for trial and appellate courthouses, including the use of examples and explaining when different name preferences (location, deceased person, or living person) can be used.

Recommendations:

- **V1-R-4.18-1** To make this policy uniform, it should be either incorporated to an existing procedure or provided a procedure number system that would establish where it fits in the overall Program.

- **V1-R-4.18-2** Expand the application of this policy to explain when it would be used on an existing courthouse and indicate the timing of using it on a new courthouse facility.

Summary Conclusion:

As there is no comparative SOC, Pegasus-Global's findings/observations and recommendations are somewhat general; OCCM has established a sound policy for the naming of a courthouse, and when taken with the findings/observations and

[133] Courthouse Naming Policy, May 11, 2009, page 2

recommendations noted here could make a policy that would provide benefit to the Program execution.

5.2.19 PRIORITIZATION METHODOLOGY FOR TRIAL COURT CAPITAL-OUTLAY PROJECTS (OCTOBER 24, 2008)

This document is included as an attachment within Court Facilities Planning: Update to Trial Court Capital-Outlay Plan and Prioritization Methodology and Projects Funded by Senate Bill 1407 (Action Required) (October 24, 2008) and is an update to the methodology adopted August 25, 2006.

The three main components listed for this methodology are:[134]

- *Establish criteria that furthers the main objectives of the trial court capital-outlay program;*
- *Develop prioritized groups of projects rather than an individually ranked projects list; and*
- *Establish guidelines for recommending capital-outlay projects for funding consistent with Senate Bill 1407.*

The objectives of the Program are to improve security, reduce overcrowding, correct physical hazards, and improve access to court services. Projects were rated on those criteria and ultimately categorized into five groups to develop a prioritized list of trial court capital projects.

Findings:

- **V1-F-4.19-1** This procedure was submitted for adoption by the Judicial Council in late 2008. A review of the documents provided to Pegasus-Global gave no indication that it has even been officially adopted.

[134] *Prioritization Methodology for Trial Court Capital-Outlay Projects*, October 24, 2008, page 1

- **V1-F-4.19-2** The procedure provided the relevant definitions and a suitable explanation of the scoring process that is applied to the trial court capital projects, including examples of the scoring in each of the criteria that are evaluated.

- **V1-F-4.19-3** Although it is not clear who among the AOC staff has the responsibility to complete the scoring and evaluation of the projects, the process is fairly well explained, but it is only indicated that AOC staff is responsible. In addition, the list of projects is said to be included in the Five-Year Infrastructure Plan adopted annually by the Judicial Council and submitted to the DOF, suggesting that the process is to be completed at least once per year, but that is not clearly expressed.

- **V1-F-4.19-4** The procedure utilizes the *Review of Capital Project* ("RCP") ratings that were tabulated in 2004, and were *"based on information from the Task Force on Court Facilities (the task force) and the 2002-2003 Facilities Master Plans (Master Plans)."*[135] There is no indication to when or how these ratings are to be updated, except to note *"Courts and counties may provide updated information on current area through the Senate Bill 1732 facility transfer process or when conditions have changed."*[136]

Recommendations:

- **V1-R-4.19-1** The procedure should be expanded to more clearly identify who is accountable for and who is delegated the authority to perform the scoring and evaluate, and update the prioritization methodology.

- **V1-R-4.19-2** The RCP ratings, which are the foundation for the scoring and evaluation are explained fairly well, including examples of the RCP forms used, however it is unclear who has the delegated authority to perform the RCP ratings and when they are to be updated. It would be beneficial to

[135] *Prioritization Methodology for Trial Court Capital-Outlay Projects*, October 24, 2008, page 2
[136] *Prioritization Methodology for Trial Court Capital-Outlay Projects,* October 24, 2008, page 2, footnote 3

establish a formal policy for assigning the RCP ratings to be performed at a set interval by a specific team.

Summary Conclusion:

The *Prioritization Methodology for Trial Court Capital-Outlay Project* is a useful procedure that should be updated to address the recommendations above and ultimately be formally adopted as an official procedure.

5.2.20 COURT FACILITIES PLANNING: UPDATE TO TRIAL COURT CAPITAL-OUTLAY PLAN AND PRIORITIZATION METHODOLOGY AND PROJECTS FUNDED BY SENATE BILL 1407 (ACTION REQUIRED) (OCTOBER 24, 2008)

This document is a report produced by the OCCM for the Judicial Council. In essence it was produced in response to the passage of SB 1407 which was enacted on September 26, 2008 and authorized $5 billion in lease revenue bonds for trial court facility construction. This report recommends certain measures be taken to plan and implement SB 1407, including:

- an updated *Trial Court Capital-Outlay Plan*;
- an updated *Prioritization Methodology for Trial Court Capital-Outlay Projects;*
- a list of 41 trial court capital projects to be funded by SB 1407;
- authority to the Administrative Director on when to submit projects from the list above to the DOF for funding approval; and,
- direction to the AOC to present an updated plan, with any technical updates, in the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for FY 2010-2011 and the selected FY 2010-2011 funding requests for trial court capital projects;

  - Both the *Judicial Branch AB 1473 Five-Year Infrastructure Plan* for FY 2010-2011 and any funding requests submitted to the DOF in mid-2009.

Six attachments are included with the report, including:

- Milestones in California's Courthouse Capital Planning and Funding (October 24, 2008);
- Expanded Rationale for Recommendation 1: Reevaluation of One Project and Addition of Another Project;
- Trial Court Capital-Outlay Plan, October 24, 2008: Sorted by Total Score and Sorted by Court;
- *Prioritization Methodology for Trial Court Capital-Outlay Projects* (October 24, 2008);
- List of Trial Court Capital Projects to be Funded by SB 1407;
  - Attached list of 41 projects recommended for funding from SB 1407 including 25 Immediate Need and 16 Critical Need projects;
  - 12 of these projects were previously approved by the Judicial Council for submission to the executive and legislative branches for FY 2008-2009 and FY 2009-2010;
  - AOC intended to initiate these 41 projects over a period of three to four funding years; and,
- Immediate and Critical Need Projects Not Funded by SB 1407.

Findings:

- **V1-F-4.20-1** The Court Facilities Planning policy has not been updated to reflect any changes to that policy which may have occurred since October 2008.

- **V1-F-4.20-2** The Court Facilities Planning policy was generally uniform and transparent.

Recommendations:

- **V1-R-4.20-1** The prioritization methodology should be updated to reflect that SB 1407 indicates funds are applied to both Immediate Need and Critical Need Priority Group projects (*i.e.,* previously Immediate Need had priority over Critical Need).
- **V1-R-4.20-2** SB 1407 emphasized economic opportunity, as such Pegasus-Global recommends the prioritization methodology be updated to give preference to projects with one or more economic opportunities, and only if assured that the economic opportunity is viable and can be realized.
- **V1-R-4.20-3** The Judicial Council may wish to consider delegating authority to the Administrative Director on when to submit projects from the list of 41 to the executive branch for funding approval, based on the updated methodology and the availability of project funding.
- **V1-R-4.20-4** The Administrative Director should report to the Judicial Council annually at a minimum, and other times as deemed necessary as to whether or not the Prioritization Methodology reflects the current program objectives and goals as set by the Judicial Council.

Summary Conclusion:

The Court Facilities Planning was a sound policy and procedure and, if updated, provides information as to how decisions have been made concerning the prioritization of projects.

5.3 PROJECT LEVEL POLICIES, PROCEDURES AND PROCESSES

The project level policies and procedures reviewed include those identified in **Table 5.3, *Project-Level Policies, Procedures and Processes Reviewed Index.***

Table 5.3
Project-Level Policies, Procedures and Processes Reviewed Index

Part I Section	Document Name	Document Date
5.3	**Project Level Policies, Procedures and Processes**	
5.3.1	***Site Selection and Acquisition Phase***	
5.3.1.1	Site Selection and Acquisition Policy for Judicial Branch Facilities	June 29, 2007 / August 14, 2009
5.3.1.2	Court Facilities: Rules and Regulations for Relocation Payments and Assistance Regarding Real Property Acquisition	November 19, 2010
5.3.2	***Preliminary Plans Phase***	
5.3.2.1	The Gross Areas of a Building: Methods of Measurements	Varies
5.3.2.2	California Trial Court Facilities Standards	August 2011
5.3.2.3	Design Plan Check Process (Draft)	May 10, 2010
5.3.3	***Working Drawings Phase***	
5.3.3.1	Policy 4.15 Selection, Procurement and Installation of Furniture (Draft)	January 19, 2012
5.3.4	***Construction Phase***	
5.3.4.1	Policy 4.10 Construction Management (Draft)	June 23, 2009
5.3.4.2	333.20 Construction Manager at Risk (CM@Risk) Process (Conversion from 3.40 D&C Document)	April 4, 2011
5.3.4.3	D&C Quality Assurance Consultant Management (Draft)	October 5, 2011
5.3.4.4	1106.00 Facility Performance Evaluation Program (Draft)	February 19, 2010
5.3.4.5	1106.10 Post Occupancy Evaluation (“POE”) (Draft)	February 19, 2010
5.3.4.6	1302.10 Informal Inspection Process (Draft)	September 27, 2010

Table 5.3 Project-Level Policies, Procedures and Processes Reviewed Index		
Part I Section	**Document Name**	**Document Date**
5.3.4.7	1302.20 Inspection Request Process (Draft)	May 27, 2010
5.3.4.8	1302.30 Final Verified Report Process	November 1, 2010
5.3.4.9	Procedure 4.20 Change Order Process	May 26, 2009
5.3.4.10	Risk Assessment for [NAME] Courthouse, [NAME] County (Template)	2011
5.3.4.11	Project Safety Program Manual	February 2011
5.3.4.12	Owner Controlled Insurance Program	Undated
5.3.5	***Overlapping Policies, Procedures and Processes***	
5.3.5.1	Invoice Payment Procedure (Policy Number 2.1)	October 26, 2010
5.3.5.2	7.00 Capital Outlay Budget Change Proposal (COBCP) (Draft)	April 27, 2010
5.3.5.3	OCCM Approval Process for Augmentation and 20-Day Letter Requests (Memo)	September 20, 2010
5.3.5.4	Progress Report Template	Undated
5.3.5.5	Project Description	Undated
5.3.5.6	Preparing Oracle Reports – Expenditures	Undated
5.3.6	***Facility Modification Policies, Procedures and Processes***	

Pegasus-Global reviewed the project specific policies, procedures and processes by phase of the project life cycle as defined by OCCM:

- Site Selection and Acquisition;
- Preliminary Plans;
- Working Drawings; and
- Construction.

In instances where a policy, procedure or process appears to overlap life cycle phases they have been addressed beginning at **Section 5.3.5** of this **Part I**.

5.3.1 SITE SELECTION AND ACQUISITION PHASE

5.3.1.1 SITE ACQUISITION POLICY FOR JUDICIAL BRANCH FACILITIES

Although there is no specific industry SOC specifically addressing site selection and acquisition against which Pegasus-Global can compare the policies, procedures and processes as practiced by OCCM, Pegasus-Global reviewed the Site Selection and Acquisition Policy ("SSAP") to determine if the SSAP met the generally accepted elements involved in setting standards and establishing processes by which site selection and acquisition were established and executed. According to PMI a standard:[137]

> "…*provides guidance for managing multiple programs (that is multiple project and non-project activities within a program environment). The processes documented within* [a] *standard are generally accepted as the necessary steps to successfully manage a program. In addition* [a] *standard provides a common lexicon leading to a detailed leading to a detailed understanding of program management among the following groups to promote efficient and effective communication and coordination:*
>
> - *Project managers…*
> - *Program managers…*
> - *Portfolio managers…*
> - *Stakeholders…*
> - *Senior managers…*

PMI defines a process as a series of discrete elements:[138]

[137] PMI, Global Standard for Program Management, Chapter 1, Section 1.1, pages 3 – 4, 2006
[138] PMI PMBOK®, Chapter 8, Section 8.1.3, page 201, 2008

"***Process boundaries***. *Describes the purpose of processes, their start and end, their inputs/outputs, the data required, the owner, and the stakeholders.*

Process configuration. *A graphic depiction of processes, with interfaces identified, used to facilitate analysis.*

Process metrics. *Along with control limits, allows analysis of process efficiency.*

…

Pegasus-Global applied those definitions when reviewing the SSAP produced by OCCM.

Findings:

- **V1-F-5.1.1-1** This policy was originally issued on June 29, 2007 and was updated on August 14, 2009. A comparison of the 2007 and 2009 SSAP revealed the following:
    - The 2009 SSAP had been reorganized to present a better flow outlining the goals, the definitions, roles and responsibilities, the criteria, and the process.
    - The 2009 SSAP includes additional definitions of the terms used in the SSAP.
    - The 2009 SSAP includes additional decision making authority of the AOC and the role of the PAG in the selection and acquisition of the site.
    - The 2009 SSAP has a new section on the evaluation and selection of site types including downtown sites, sites near jail facilities, green field sites and conditions and characteristics of sites that will not be selected, including:

- "*5.5.6 Will result in cost increases to the project that will not be paid for by either another entity or the current property owner and would, therefore, result in a reduction to project scope;*

- *5.5.7 Create schedule delays that will unreasonably negatively affect court operations and potentially increase construction costs*."

  - The 2009 SSAP addresses the use of eminent domain as well as selection of competitive sites for PWB approval.

  - The 2009 SSAP adds steps to site evaluation, selection and acquisition processes, including site investigation and due diligence, the AOC approval of the site selected, selection of sites and presentation to the SPWB and the AOC for site acquisition.

  - The 2009 SSAP provides additional detail to the site selection criteria, completely revised the ranking and approval form, and is more user friendly.

- **V1-F-5.1.1-2** The 2009 SSAP is a good guide and sets good policy. However, there are some sections where Pegasus-Global suggests improvement:

  - Section 9.1 entitled "Use of Standardized Site Criteria", does not define who within AOC is delegated the authority to, and accountability for, establishing the priority and full set of criteria prior to conducting any property identification of solutions. For example, in the 2007 SSAP the Project Team was listed as the accountable individual but the 2009 SSAP simply established AOC as the acting (and therefore accountable) party. Section 9.1 also states that the PJ will approve the weighting system and does not address under what exceptions the PJ can alter the weighting system from that established by AOC.

- **V1-F-5.1.1-3** Both the 2007 and 2009 SSAP discuss controversial sites involving unresolved issues or disputes about criteria, location and potential impacts that

are raised by the staff of AOC, PAG, the court or local and regional jurisdictions. However, the policy does not identify who has been delegated the authority to, and responsibility for, negotiating and approving decisions, actions or resolution of such “unresolved issues”.

- **V1-F-5.1.1-4** Neither the 2007 or 2009 SSAP policy provide any insight as to how impacts to budget or schedule in the site acquisition phase are then transferred to an overall master budget and schedule for the Program in order to determine impact to the Program as a whole.

Recommendations:

Ultimately the 2009 SSAP meets the SOC for the establishment of policies and procedures within the Program consisting of multiple independent projects. As a result, Pegasus-Global determined that the only recommendations would be to address the last two bullet points in the Findings section regarding:

- **V1-R-5.1.1-1** Controversial sites and the process by which the controversy can be remedied and who has the ultimate authority to resolve and act to select a site when such controversies arise.

- **V1-R-5.1.1-2** How impacts to budget and schedule which occur during the site selection and acquisition are managed, especially relative to the project budget and schedule. For example, Pegasus-Global was informed of one site selection and acquisition which took six years from start to final acquisition (which coincidently involve a controversial site selection). Such a delay had to have an impact on the project budget and schedule, and, ultimately may have impacted the program budget and schedule, which in turn may have impacted the ability of the program to meet some of the goals and objectives set for the Program.

Summary Conclusion:

Overall the SSAP meets the industry definition for establishing policies and processes. Pegasus-Global found the SSAP to be uniform, transparent and has, with one possible

exception (resolution of controversial site selection), a formally delegated single point of authority and accountability. Despite the Findings noted earlier in this Section, this policy could stand as written as among the best practices currently followed within the industry and is the most uniform and transparent policy and procedure currently in use within the Court Capital Construction Program.

5.3.1.2 COURT FACILITIES: RULES AND REGULATIONS FOR RELOCATION PAYMENTS AND ASSISTANCE REGARDING REAL PROPERTY ACQUISITION (NOVEMBER 19, 2010)

This document is a report produced by the AOC for a meeting with the Judicial Council that took place on December 14, 2010. The report provides as an attachment [Attachment A] a document titled *Rules and Regulations for Relocation Payments and Assistance for Judicial Branch Capital-Outlay Projects.* Within this document is a recommendation to the Judicial Council that Attachment A be adopted as a new section to the *Site Selection and Acquisition Policy for Judicial Branch Facilities*. The report also provides an attachment [Attachment B] entitled *Reference Government Codes and Regulations,* this contains:

- California Government Code Section 7267.8, which stipulates that all public entities are to adopt rules and regulations that implement relocation payments and administer relocation advisory assistance.
- California Government Code Section 7272.3, which stipulates any public entity may make any relocation assistance payment in an amount which exceeds the maximum amount authorized if the making of such payment is required under federal law to secure federal funds.
- California Code of Regulations Title 25 § 6002, which provides a guideline to assist public entities in the development of regulations and procedures that implement relocation assistance.

The basis for the recommendation of these proposed rules is that without their implementation, the AOC must rely on local redevelopment agencies to make relocation payments for those displaced by site acquisition activities; a problem arises when a preferred location is unsuitable because the local government is unable to afford the cost of relocation. Further, the AOC determined that *"to engage its own relocation consultants and administer its own relocation activities would also be more cost-effective than to incur the cost of relocation staff and administrative fees that another public entity would charge."*[139]

Findings:

- **V1-F-5.1.2-1** It is unknown if these rules were adopted since the way they were presented to Pegasus-Global as part of a report suggest that they may not yet have been formally adopted.
- **V1-F-5.1.2-2** Provides a thorough description of the eligibility requirements and financial relocation benefits available to individual persons or businesses.
- **V1-F-5.1.2-3** Provides the processes to be taken by the AOC, through a relocation consultant, to provide relocation advisory assistance to the displaced individuals or businesses.
- **V1-F-5.1.2-4** Notes that the AOC issues the financial relocation benefits; however, it does not establish a specific position that is accountable for this disbursement.
    - Also notes that the Administrative Director of the Courts is authorized to approve additional assistance and payments based on AOC staff analysis.
- **V1-F-5.1.2-5** Establishes that receipts of issued payments are to be maintained in a relocation case file; however, it is not clear what other documentation will be

[139] Court Facilities: Rules and Regulations for Relocation Payments and Assistance Regarding Real Property Acquisition, November 19, 2010, page 4

placed in this file, nor is it clear who is accountable for maintaining the file and what becomes of the file when the relocation process is complete.

Recommendations:

- **V1-R-5.1.2-1** In order for the policy to address delegated authority and accountability, the positions within the AOC that are responsible for its implementation, including who engages the relocation consultant, who reviews and approves claims for payment, and who manages and disburses any relocation payments need to be identified. Additionally, elaborating on the "relocation case file" will provide for stronger document control on this policy.

Summary Conclusion:

This is a generally comprehensive policy that addresses potential conflict between the acquisition of new sites and the California codes and regulations that direct reimbursement advisory assistance and payments to be provided for displaced individuals and businesses. With the noted recommendations taken into account it will meet industry standards and will fit appropriately in the *Site Selection and Acquisition Policy for Judicial Branch Facilities* as suggested by the report that contains these rules.

5.3.2 PRELIMINARY PLANS PHASE

5.3.2.1 THE GROSS AREAS OF A BUILDING: METHODS OF MEASUREMENTS

According to PMI:[140]

"*A quality metric is an operational definition that describes, in very specific terms, a project or product attribute and how the quality control process will measure it*."

[140] PMI, PMBOK®, Chapter 8, Section 8.1.3.2, page 200, 2008

One quality control metric used in the construction industry is the area (square footage) of the structure or facility to be constructed. OCCM provided Pegasus-Global with three documents which addressed calculation of building area calculations:

- "The Gross Areas of a Building, Methods of Measurement", by the Building Owners and Managers Association (BOMA) International (2009)[141]
- A BOMA Gross Area Summary Table (2009)[142]
- Procedure 3.11, Building Area Calculations (March 4, 2010)[143]

OCCM Procedure 3.11 states that:[144]

> "*Accurate and timely calculations of building area are essential to keeping check on the designed area of a building as a building is being defined. Periodically the current designed area of a building must be compared to the authorized Building Gross Square Feet (BGSF) as specified in the project's COBCP. If the designed area is not within the authorized BGSF, the design team must modify the design to conform with the BGSF prior to proceeding to the next phase of work*."

The procedure then establishes when the BGSF calculations are to be done:[145]

- During the acquisition phase
- During the preliminary plans phase
- At the completion of the working drawings phase

The procedure identified the BOMA 2009 standard cited above as the method by which all BGSF calculations were to be executed.

[141] The Gross Management of a Building, Methods of Measurement, BOMA, 2008
[142] The Gross Management of a Building, Methods of Measurement, BOMA, 2008
[143] S. Ernest Swickard to Design and Construction Services Staff, Policy 3.11, March 4, 2010
[144] S. Ernest Swickard to Design and Construction Services Staff, Policy 3.11, page 1, March 4, 2010
[145] S. Ernest Swickard to Design and Construction Services Staff, Policy 3.11, page 2, March 4, 2010

Finally, the procedure identified the “Project Team” as responsible to meet the requirement.

Findings:

- **V1-F-5.2.1-1** It is neither unusual nor uncommon for policies and procedures to cite to or even adopt outside sources as an internal policy or procedure; therefore Pegasus-Global finds that OCCM’s adoption of the BOMA methodology represents a sound industry standard practice. This injected both uniformity and transparency into the procedure and process.

- **V1-F-5.2.1-2** Pegasus-Global found that by specifying the points at which the BGSF calculations would be executed OCCM had established a sound quality control tool which provided it with sufficient time to make corrections to the design prior to the initiation of construction. Once again this enhanced the uniformity and transparency of the procedure and the process.

- **V1-F-5.2.1-3** Pegasus-Global does not find that simply stating the “Project Team” is responsible for ensuring the calculations of BGSF are correctly run or that the “Project Team” is responsible for ensuring that the calculations are executed at the phases identified adequately identifies the delegated authority to make decisions or the single point of accountability normally required of policies, procedures and processes.

Recommendation:

- **V1-R-5.2.1-1** OCCM should identify by positions the party with the formally delegated authority to make decisions and the responsibility to execute the calculations in alignment with the BOMA process and at the scheduled points in the project phases.

Summary Conclusion:

In all but one instance, as noted in the last bullet above, this policy and procedure meets the industry SOC.

5.3.2.2 CALIFORNIA TRIAL COURT FACILITIES STANDARDS (AUGUST 2011)

This edition of the *California Trial Court Facilities Standards* (2011) replaces the prior edition which was adopted by the Judicial Council in April 2006.

As noted above in the **Executive Summary**, the *California Trial Court Facilities Standards* indicate that all new courthouse projects are to be designed in conformance with Cal Green as well as be designed at a minimum to the standards of a LEED® Certified™ rating. It expands to note that:

> *"Depending upon the project's program needs and construction cost budget, projects may be required to meet the standards for a LEED v 3 'Silver' rating. Projects designed to achieve a LEED 'Silver' rating shall do so without an increase in the authorized project budget or long-term operating costs. At the outset of a project, the AOC will determine whether a project will participate in the formal LEED certification process of the [USGBC]".*[146]

The specific design criteria and performance goals listed in the *California Trial Court Facilities Standards* are said to be applicable to *"all court buildings"* and *"shall provide a direct benefit to building occupants and reduce ownership costs".*[147] Additionally, this document is to be utilized *"with professional care as defined in the Agreement for Services between the AOC and consultants retained for specific projects, and shall be*

[146] Judicial Council of California, California Trial Court Facilities Standards, August 2011, page 1.4
[147] Judicial Council of California, California Trial Court Facilities Standards, August 2011, page 1.4

used in conjunction with applicable code and project requirements as the basis of design for new court facilities in California."[148]

Findings:

- **V1-F-5.2.2-1** Although mentioned as an update to the prior document, *California Trial Court Facilities Standards* (2006), it appears that the updated standard had not been officially adopted by the Judicial Council as of the date of this audit.
    - The 2006 version also is referenced by the *Management Plan and Project Definition Report* (template) under "Project Goals".[149] Other than this brief reference, it is unclear how this document is integrated into the other policies and procedures of the OCCM.
- **V1-F-5.2.2-2** The AOC and the affected court for an individual project establish an advisory group (in accordance with California Rules of Court, Rule 10.184(d)) that assists the AOC with implementing these Facilities Standards in that building.
- **V1-F-5.2.2-3** In the General Principles section under Objectives, it notes the minimum design standards to be met (LEED® Certified™ and Cal Green), but says some projects may be required for LEED Silver®. It is unclear who is delegated the authority to make this decision, the basis for the decision reached, and what process has been established to ensure the design meets the standard in these cases where the project moves beyond LEED Certified™ to LEED Silver®.
- **V1-F-5.2.2-4** The document is divided into two primary sections, Design Criteria and Technical Criteria. This is a logical categorization of the key elements that go into a trial court facility. Additionally, while the document is divided into sections, which, in turn, are divided into chapters, it maintains an overall integration with

[148] Judicial Council of California, California Trial Court Facilities Standards, August 2011, page vi
[149] Superior Court of California, Management Plan and Project Definition Report (template), Undated, page 3

the document as a whole as well as with the referenced codes, standards, and guidelines.

- Design Criteria generally establishes the basis for a trial court facility design and includes such chapters as: Site Design, Courthouse Security, and Jury Facilities and Court Administration, among others. Each of these chapters includes a description of its scope, with the majority of the chapters including objectives and well explained definitions of the relevant areas, for example:
  - Chapter 5 – Court Set contains:
    - A brief description of the court set, which is defined to include courtrooms, judicial offices, chambers support space, jury deliberation rooms, witness waiting, attorney conference rooms, evidence storage, and equipment storage. This includes a figure showing a typical courtroom floor plan to demonstrate how these areas can be laid out.
    - Courtroom objectives, which provides who the users of a courtroom are, and what the design shall do to accommodate their various needs.
    - The courtroom itself, which explains basic courtroom types (multipurpose, large, arraignment being the most common, specialized courtrooms are also mentioned) and provides typical dimensions for the basic types, as well as factors for considering courtroom entries and the location of the courtroom within the facility.
    - Accessibility to the courtroom, which is to ensure that all of the courtroom users have sufficient access to and throughout the courtroom as necessary.

- Components of the courtroom, for example the judge's bench, jury box, or spectator area. Each component is well defined with the requirements and necessary specifications.

- Figures are provided that illustrate examples of courtroom layouts that clearly illustrate the components that were defined earlier.

- Technical Criteria, as the name suggests, contains the technical aspects of trial court facility design. It is laid out similar to the Design Criteria with each of the chapters including a description of its scope, with the majority of the chapters including objectives and well explained definitions of the relevant components and requirements. For example:

  - Chapter 15 – Electrical Criteria contains:

    - A brief overview of the scope of the chapter.

    - Objectives of this chapter, which explains what the electrical system design is to be based upon.

    - Electrical criteria, including the minimum load power requirements and spare capacity requirements for the various elements of the courthouse facility.

    - Specific detail of the electrical system components, such as: *"All wire and cable for secondary power distribution shall be 600 volt insulated type THHN, or THWN for #8 and smaller…"*[150]

    - Emergency and standby power requirements, with a description of the scope of this sub-process as well as specific requirements and what is to be evaluated.

[150] Judicial Council of California, California Trial Court Facilities Standards, August 2011, page 15.4

- **V1-F-5.2.2-5** This document takes on the massive task of bringing together the numerous codes, standards, and guidelines that must be taken into account with the design of each courtroom facility. To put this in perspective, the Telecommunications Standards and Reference Documents listed in the Appendix under 21.F include 24 separate documents.
    - A note attached to the Appendix indicates some of the standards, guidelines and codes are available as a separate PDF from the AOC website, one is attached within the Appendix itself, and others are not indicated as to where they are found.
        - The only code, standard, or guideline attached to this document is the "Integrated Architecture Network Diagram"

Recommendations:

- **V1-R-5.2.2-1** Officially adopt the 2011 version of the California Trial Court Facilities Standard to replace the prior 2006 version to eliminate any possible confusion in regards to which document is to be used.
- **V1-R-5.2.2-2** Include other codes, standards, and guidelines as attachments, specifically those designed by or for the AOC, for example, the "Office of Court Construction and Management Facilities Design Guidelines – Instrumentation and Control for Heating, Ventilating Air Conditioning Systems – Building Automation Systems: Direct Digital Control, July 27, 2010 Program Requirements Overview" could easily be an attachment to this document.
- **V1-R-5.2.2-3** Integrate with other project policies and procedures. For example:
    - The Judicial Council issued a report which included "Guidelines for Energy Conservation in California Court Facilities"[151], which addresses energy usage and should be aligned with the requirements in the *California Trial*

[151] Judicial Council Policy on Energy Conservation in the Courts Report, July 3, 2011, Attachment "Guidelines for Energy Conservation in California Court Facilities"

Court Facilities Standards to ensure the energy conservation goal from both documents does not result in a conflict or additional and unnecessary work.

- The *Capital Outlay Budget Change Proposal* (April 27, 2011 – Initial Draft) is said to describe the project and the amount of the funding request.[152] This could include designating whether the project is going to be LEED® Certified™ or LEED Silver®.

Summary Conclusion:

Pegasus-Global found that the *California Trial Court Facilities Standards* (2011) is a well formulated document that provides the needed descriptions of implementing the standards that are followed when designing a courtroom facility. This document includes substantial references to other codes, standards, and guidelines to help ensure that each facility meets or exceeds all applicable standards and codes, as well as meets the requirements of Cal Green and LEED Certified™.

5.3.2.3 POLICY 1301.30 DESIGN PLAN CHECK PROCESS (MAY 10, 2010 DRAFT)

According to OCCM Policy 1301.30 is intended to:[153]

"*Ensure that construction documents comply with applicable code*."

According to the California Trial Court Facilities Standard (2011):[154]

"*All new facilities designed and constructed using the Facilities Standards shall comply with the following codes, standards and guidelines, and any other applicable nationally recognized code, standard and guideline*."

[152] COBCP, Scope Statement, page 3
[153] OCCM, Policy 1301.30, Design Plan Check, Purpose, page 3, May 10, 2010
[154] California Trial Court Facilities Standard, Appendix 21, page 21.2, 2011

While PMI, CMAA and AIA all address design reviews and, to different extents, code compliance in designs, the applicable standard is that set within the California Trial Court Facilities Standard. In Appendix 21 to the California Trial Court Facilities Standard the specific codes to be met are enumerated in detail and, because Appendix 21 is presented as a "*shall comply*" requirement of design, it is OCCM's ultimate responsibility as the Judicial Council's executing agent to assure that the codes listed and applicable are met within the designs prepared by the consulting architects. Checking designs for code compliance is generally identified as a specialized element of the quality control/quality assurance function which is guided by the applicable codes required rather than by a standard industry practice.

Findings:

- **V1-F-5.2.3-1** Policy 1301.30 does not contain any definitions for terms used in the policy.
- **V1-F-5.2.3-2** While Policy 1301.30 identifies the Project Manager as the initiator of the design process, there is no identification of the OCCM person that is accountable for overseeing managing, controlling and completing the design plan check.
- **V1-F-5.2.3-3** This policy is identified as an "initial draft" and is presented in what appears to be outline form with a presentation of 30 "*Process Steps*" to be followed in conducting a design plan check. Given the very high level of the process steps outlined, there is a significant amount of work to be done to meet the seminal requirement that all designs "*shall*" meet all of the applicable codes identified in Appendix 21. For example, at Process Step 1.30.2.6 it states:

  "*Is the appropriate Plans check contract in place?*"

  That implies that OCCM has decided to outsource the plan check to a third party agent. However, the process for that outsourcing, including the position delegated the authority to make the decision to outsource the plan check and select the firm to whom the plan check is outsourced, is not addressed in Policy

1301.30. Nor does Policy 1301.30 address how the third party agent will be instructed, directed, managed or controlled in such a way as to achieve the requirement that all designs "*shall*" meet the required codes.

Recommendation:

- **V1-R-5.2.3-1** Expand, enhance and complete Policy 1301.30 as currently outlined and drafted to finalize and formalize the procedures and processes, including specific delegation of authority to decide to outsource the plan check, choose the firm to whom the plan check will be outsourced, give direction to the outsource firm as to how the plan check is to be executed, and ultimately accept or reject the results of the plan check.

Summary Conclusion:

Pegasus-Global found that Policy 1301.30 should be expanded as noted above in order to establish a more comprehensive policy, procedure or process for management or control a formal design compliance check.

5.3.3 WORKING DRAWINGS PHASE

Pegasus-Global found only two policies which specifically addressed the Working Drawings Phase of a project:

- The California Trial Court Facilities Standards, discussed previously in **Section 5.3.2.2** above; and

- Policy 4.15 discussed immediately below.

Ultimately relative to both of the design phase policies, procedures and process Pegasus-Global found no document which actually addresses the design phases to the level of detail which was reflected in the Construction Phase and which was expected by Pegasus-Global. Policies, procedures and processes should address and delineate the goals and objectives for design and how OCCM intends to manage and control the

design scopes of work. The policies, procedures and processes do not address those items in specific detail.

5.3.3.1 POLICY 4.15 SELECTION, PROCUREMENT AND INSTALLATION OF FURNITURE (JANUARY 19, 2012 DRAFT)

To Pegasus-Global's knowledge there is no SOC within the industry as to the selection, procurement and installation of furniture. As a result no direct comparative evaluation was possible. However, Pegasus-Global suggests the following general findings/observations relative to this Policy.

Findings/Observations:

- **V1-F-5.3.1-1** As with some other OCCM policies and procedures this Policy 4.15 was not issued in the format by which other OCCM policies were issued; rather it was issued as a memo from the Assistant Division Director for Design and Construction to his staff. As noted elsewhere policies and procedures need to be developed and issued in a standard format and following a standard template to ensure uniformity, transparency and accountability.

- **V1-F-5.3.1-2** As with some other OCCM policies and procedures this Policy 4.15 is marked as a "DRAFT" dated June 19, 2011, with no indication that the policy has been completed or adopted by OCCM.

- **V1-F-5.3.1-3** Policy 4.15 does not have any definitions of terms used within the policy.

- **V1-F-5.3.1-4** Refers to the Judicial Council's Contracting Policies and Procedures (December 7, 2007) for the selection procedure. However, the Judicial Council recently issued its "Judicial Council Contracting Manual"

(October 2011). Pegasus-Global is unclear as to why a 2007 policy would be used as a reference rather than the 2011 Policy.[155]

- **V1-F-5.3.1-5** Although the selection (identification and evaluation criteria) and procurement are well-defined in Policy 4.15, some aspects remain unclear, such as:
    - The AOC Business Services team is to execute procurement of furniture for major capital-outlay projects with furniture budgets under $4 million on a *"case-by-case basis as established by OCCM and Business Services."* Similarly, the CMAR is responsible for budgets over $4 million, except on a case-by-case basis. The parameters of the case-by-case basis are unclear. There was no indication as to who had been delegated the authority to make decisions on a "case-by-case" basis.
- **V1-F-5.3.1-6** Policy 4.15 refers to a "Project Cost Responsibility Matrix" that is said to be included with the memo as an attachment, but was not produced to Pegasus-Global as part of this policy. Likewise there is reference to a "Furniture Evaluation Criteria Matrix, which was also missing from Policy 4.15 as received.

Recommendations:

- **V1-R-5.3.1-1** Policy 4.15 should be finalized and issued as a formal policy.
- **V1-R-5.3.1-2** As with all policies reviewed by Pegasus-Global, there should be a definition of terms used within the policy.
- **V1-R-5.3.1-3** OCCM may want to examine the 2007 Judicial Contracting Policy and the 2011 Judicial Council Contracting Manual to ascertain what, if any differences there are between those two documents, and if there are such differences, how best to address those differences.

[155] Note that in Section 4.4.2.2 Pegasus-Global stated that the relationship of the 2007 and 2011 contracting procedures is unclear and this finding is indicative of that relationship issue.

- **V1-R-5.3.1-4** While it is possible that the two matrices cited in the Findings exist, as cited components of the policy the document control system should maintain all of those documents in a common Policy 4.15 common electronic folder and/or physical location.

Summary Conclusion:

As there is no comparative SOC as a basis for any comparative analysis of Pegasus-Global's findings and recommendations, which are very general; OCCM may wish to consider adopting those recommendations as OCCM moves to finalize this policy.

5.3.4 CONSTRUCTION PHASE

5.3.4.1 POLICY 4.10 CONSTRUCTION MANAGEMENT (JUNE 23, 2009 DRAFT)

According to CMAA:[156]

"*The Construction Management Plan typically establishes the project scope, budget, schedule environmental conditions, and the basis systems to be utilized and the methods and procedures to be followed. …*

A typical Construction Management Plan includes the following basic components:

- *Project description*
- *Milestone Schedule*
- *Master Schedule*
- *Quality Management Approach*
- *Reference to project documents*

[156] CMAA, Construction Management Standards of Practice, Section 2.2, pages 17 – 18, 2008

- *Project organization chart and staffing plan*
- *Explanation of roles, responsibilities and authority of team members*
- *Project budget/work breakdown structure*
- *Environmental/archaeological considerations*
- *Reference to the Project Procedures Manual*
- *Management information system*
- *Communications protocol*
- *Bid packaging and contracting strategy*
- *Site mobilization and utilization phase.*"

CMAA then delineated each of those basic components within its body of standard practices.

OCCM Policy 4.10 was issued on June 23, 2009, as a memo to "Design and Construction Staff" noting the procedure was to be immediately implemented. Procedure 4.10 stated that:[157]

> "*Responsibilities described are considered typical for large projects. The procedures may be scaled down to match the complexity of a particular project. Each project has its own unique circumstances and negotiated contract. The project circumstances and the signed contracts control the project. These procedures are to assist the OCCM staff or contracted Construction Management firm assigned construction management duties in the overall thoroughness and consistency regardless of the scope of a the particular project*."

Under the heading "Intent" OCCM noted that:[158]

[157] S. Ernest Swickard to Design and Construction Services Staff, Policy 4.10, page 2, June 23, 2009

"*It is the intent of the OCCM to use industry accepted methods to manage, integrate, coordinate and leverage construction project delivery systems for the benefit of the court*."

Pegasus-Global used the CMAA standard as a reference during the reviews of the OCCM Policy 4.10, Construction Management.

Findings:

- **V1-F-5.4.1-1** As with some other OCCM policies and procedures this Policy 4.10 was not issued in the format by which other OCCM policies were issued; rather it was issued as a memo from S. Ernest Swickard to his Design and Construction Staff. As noted elsewhere policies and procedures need to be developed and issued in a standard format and following a standard template to ensure uniformity, transparency and accountability.

- **V1-F-5.4.1-2** As with some other OCCM policies and procedures this Policy 4.10 is marked as a "DRAFT" dated June 23, 2009, with no indication that the policy was ever completed or formally adopted by OCCM.

- **V1-F-5.4.1-3** In the "Background" section is the statement that "*Responsibilities described are considered typical for large projects.*[159] *The procedures may be scaled down to match the complexity of a particular project*." There were no parameters or metrics provided to give guidance of when a project's CM requirements can be "scaled down". There is no indication as to who has the authority to determine that the complexity of any project is such that the procedures contained in Policy 4.10 can be "scaled down" for that project, or who has the delegated authority to approve any such "scale down".

- **V1-F-5.4.1-4** The primary focus of Policy 4.10 appears to be a listing of "Typical Responsibilities of the CM during Construction", with minimal guidance as to how those responsibilities are to be undertaken or executed. There are some specific

[158] S. Ernest Swickard to Design and Construction Services Staff, Policy 4.10, page 2, June 23, 2009
[159] S. Ernest Swickard to Design and Construction Services Staff, Policy 4.10, page 2, June 23, 2009

references to other policies and procedures, however too many of the responsibilities simply state the CM is “responsible for” or “must submit” or “shall approve” or “process” something without providing any detail as to how those responsibilities, submissions or approvals are to be conducted and executed.

- **V1-F-5.4.1-5** According to Policy 4.10 the project CM can be:
    - The Project Manager
    - A different OCCM staff member
    - An individual contracted by OCCM to fulfill the CM role
    - A contracted Construction Management firm
    - Full time (projects over $50 million) or part-time (projects under $50 million)

  One of the projects reviewed by Pegasus-Global noted that there was both a CM@Risk and a contracted CM engaged on the project. During the interviews, the CM@Risk was unable to identify the difference between what the CM@Risk and the contracted CM were each assigned to do or for which each was ultimately responsible. However, given the tenants of Policy 4.10, it was entirely possible and acceptable for such a situation to occur. Such duplication of duties, authority, responsibilities, etc., impacts the uniformity and transparency of the CM@Risk’s and/or CM’s actual delegated authority and responsibility during the project, and ultimately makes it difficult to allocate or enforce duplicative contract provisions in the event of any issue arising a project involving impacts to scope, cost, schedule or quality.

- **V1-F-5.4.1-6** The policy does not provide any definitions for terms used within the policy. Terms including the OCCM filing system, are undefined and thus unclear as to what the filing system is, where it is located, how it is accessed, and who is responsible for maintaining the system.

- **V1-F-5.4.1-7** While the CM is required to attempt to resolve claims, there is no process outlined on how the CM "will attempt" to resolve those claims nor any clear path to resolution and approval of any such resolution. There is no clear delegation of authority naming who within the Program or project may approve any such resolution of claims. The only limit as to the CM's authority to resolve claims is that the CM "*must consult with the OCCM Project Manager or the OCCM Regional Manager regarding the resolution of claims*."

Recommendations:

- **V1-R-5.4.1-1** Policy 4.10 should be updated, expanded and issued as a formal statement of policy, with specific procedures and processes contained within the policy or cross referenced with to other relevant policies.

- **V1-R-5.4.1-2** A definitive process should be set for the CM relative to their role in the resolution of claims to ensure uniformity in the process and then to provide a point of contact for resolution should the CM not be successful. It should align with the chain of command defined in the Program Management Manual which would typically follow a step process through a specific line of communication through the Project Manager, and then at a higher authority should the Project Manager not be able to resolve. In addition, there is typically a dollar level of authority for change order and resolution of claims with increased authority required for increased claim amounts. Further a dispute resolution process is typically tied to the Change Order policy.

- **V1-R-5.4.1-3** The updated CM policy should be based on lessons learned during the execution of the initial Court Capital Construction projects.

- **V1-R-5.4.1-4** The updated CM policy should contain a clear delegation of authorities and responsibilities with specific limits set on the CM's approval and acceptance authorities. The authorities and responsibilities should not duplicate nor impinge on the authorities or responsibilities of the Project Manager or Program Management.

Summary Conclusion

Policies, procedures and processes should be established which ensure that there cannot be both a CM@Risk and a contract CM assigned to the same project. A CM@Risk has certain guaranteed (at risk) performance requirements, which if impinged by an entirely separate CM hired by OCCM to essentially fulfill many of the same functions puts the clarity of the CM@Risk contract in jeopardy. Ultimately, assigning both a CM@Risk and an agent CM to a project creates confusion as to "whose really in charge of, and responsible for management of the construction phase of the project." Such confusion often leads to construction contract claims and counter-claims among the OCCM, the CM@Risk and the agent CM; all too often such complex contractual issues are cannot be resolved except through formal litigation or arbitration.

5.3.4.2 POLICY 333.20 CONSTRUCTION MANAGER AT RISK (CM@RISK) PROCESS (APRIL 4, 2011 CONVERSION FROM 3.40 D&C DOCUMENT)

This policy appears to be an expansion of Policy 333.00 which identified and defined the five acceptable Construction Delivery Methods; however this Policy 333.20 expands on the basic definition contained in Policy 333.00, including the following:[160]

- The process by which the CM@Risk will be selected (Section 1.2.1);
- A summary listing of CM@Risk pre-construction services (Section 1.2.2);
- The CM@Risk bid process (Section 1.2.3) ; and
- The CM@Risk Construction Services (Section 1.2.4).

Pegasus-Global has previously addressed Policy 333.00, Construction Delivery Methods (April 4, 2001) and will not repeat those findings. In addition **Section 5.3.4.1** above summarizes Pegasus-Global's findings relative to OCCM Policy 4.10, which

[160] OCCM, 333.20 Construction Manager at Risk (CM@RISK) Process, March 1, 2011

specifically examines Construction Management from a basic project responsibility perspective. The findings for all three policies should be examined in tandem by OCCM.

Findings:

- **V1-F-5.4.2-1** The number 333.20 assigned to this policy reflects back to the foundation Policy 333.00 and thus provides an excellent demonstration of how policies addressing a common topic should be linked by both numbering and content. Such numbering makes it relatively simply for any reviewer to quickly identify and gather all of the policies which have a direct relationship to one another, making the entire review process more efficient and effective.

- **V1-F-5.4.2-2** There was a second policy which also has a bearing on construction management, Policy 4.10, which delineates the roles and responsibilities for construction management, but is not cross referenced within Policy 333.00 or 333.20. As noted in the review findings for Policy 4.10, there is some confusion between the role of the "CM@Risk" and the "CM" designated in Policy 4.10. Policy 4.10 also addresses the basic functions of a CM on a project, and that policy is not identified as a common topical policy to either Policy 333.00 or 333.20. Although Policy 4.10 is not specific to a CM@Risk within the industry the operational functions typical of a CM or a CM@Risk are essentially identical; the only real difference is that a CM@Risk has placed some portion of its fee "at risk" against meeting certain cost, schedule and/or quality goals set for the execution of the project.

- **V1-F-5.4.2-3** The policy does not provide any definitions of terms.

- **V1-F-5.4.2-4** This policy has a goal, scope and purpose, whereas other policies may have just a purpose or just a goal section. Again, there needs to be consistency and uniformity between and among the policies.

- **V1-F-5.4.2-5** In general, while the information provided within Policy 333.20 is a good start for a more detailed (or coordinated) process and responsibility

perspective (*i.e.,* selection and services), there is almost no information provided as to when a CM@Risk delivery method will be used, why a CM@Risk delivery method is an appropriate choice for a specific project, how the Project Manager will manage and control the CM@Risk using the contract agreement put in place and, finally, the roles, responsibilities and authorities of the CM@Risk throughout the execution of the project.

- **V1-F-5.4.2-6** At Section 1.2.4 CM@Risk Construction Services it states that the *"CM@R performs ordinary oversight as a General Contractor for the construction, according to the approved construction documents* ... [and the] *CM@R may not self-perform any of the construction*."[161] The second provision, that a CM@Risk cannot self-perform any of the work, is typical of the industry CM@Risk contracts, as confirmed by CMAA:[162]

  "The agency CM does not perform design or actual construction work."

  However, reducing the CM@Risk's role to that of a General Contractor appears to Pegasus-Global to defeat the purpose of engaging a CM@Risk and may further explain why on a single project it is possible to have both a CM@Risk and a contracted CM representing OCCM. As noted by CMAA:[163]

  "…*the CM is acting as the Owner's principal agent*."

  Part of the issue relative to a CM or a CM@Risk is that in Policy 333.20 OCCM has determined that once the Design Phase is over and the Construction Phase starts, the CM@Risk ceases to be CM and is relegated to the role of General Contractor. This switch from CM to General Contractor assumes that the CM@Risk is no longer acting as the Owner's *principal agent* and thus calls into question whether or not a CM@Risk, once striped of its CM roles and responsibilities, can still be held accountable to meet those goals set if that

[161] OCCM, 333.20 Construction Manager at Risk (CM@Risk) Process, Section 1.2.4, page 6, March 1, 2011
[162] CMAA, Construction Management Standards of Practice, Section 1.1, page 2, 2008
[163] CMAA, Construction Management Standards of Practice, Section 1.1, page 2, 2008

CM@Risk no long has the authority or responsibility to act as the Owner's principal agent on the project.

Within the industry it is difficult to hold a consultant, CM, or contractor to a penalty clause if it can be shown that the consultant, CM, or contractor had no control over the issue or circumstance which was the root cause leading to the invocation of that penalty. For example, Clause 1.2.3.3.5 of Policy 333.20 states:[164]

> "*The CM@R shall guarantee to the OCCM that the project shall be built for no more than the available construction budget where the aggregate of all trade contractor bids, including alternatives, shall be less than, but close to the construction budget, and within the construction duration identified*."

In reality, how does one impose a penalty on a CM@Risk, when that CM@Risk no longer has the authority to develop and execute plans, give direction, enforce actions or make changes in execution to meet changing circumstances? By reducing the CM@Risk to the status of a General Contractor and allocating the agency CM role to a third party (whether an OCCM employee or a contracted consultant) the CM@Risk no longer has the ability to execute the project as the Owner's (agent), which means that decisions made by the third party CM which may be the root cause of the cost increase or the schedule delay cannot lead to the imposition of a penalty on the risk.

- **V1-F-5.4.2-7** Another reason to cross reference Policy 4.10 to this Policy 333.20 is the depth and detail of the duties, responsibilities and authorities listed in Policy 4.10 is significantly more than the more general statements contained in Policy 333.20. Although Policy 4.10 is focused on construction management as a function, and Policy 333.20 is focused on the CM@Risk, the functions listed in Policy 4.10 would be those expected of a CM@Risk as the Owner's agent,

[164] OCCM, 333.20 Construction Manager at Risk (CM@RISK) Process, Section 1.2.3.3.5, page 6, March 1, 2011

(notwithstanding the conversion of the CM@Risk to a General Contractor, someone has to discharged the functions listed in Policy 3.10).

Recommendations:

- **V1-R-5.4.2-1** As noted previously in this audit and immediately above, the policies and procedures for management of construction are confusing, and based on Pegasus-Global's experience do not conform within the industry standards from a number of perspectives, which have been discussed at length within the body of this Report. The OCCM needs to re-consider all of its current policies and procedures regarding the "CM", the "CM@Risk" and the actual roles and responsibilities necessary to manage, control, and execute a project through design and construction to completion.

- **V1-R-5.4.2-2** Once OCCM has determined the full role of a CM@Risk (or has decided to drop the CM@Risk delivery method), a set of consolidated, coordinated policies and procedures needs to be developed which when linked will lay out the entire construction management process, from determination of construction management methodology to be adopted, through engagement of the CM (or CM@Risk), to actual construction management, and ultimately, to project close out and acceptance.

Summary Conclusion:

Construction management and control are among the least developed and least coordinated of the OCCM formal policies and procedures. As a result, there is built into those existing policies and procedures an opportunity for confusion, misunderstanding, duplication of effort (*i.e.,* a CM@Risk and a CM assigned to the same project) and inefficiency. Regardless of the methodology adopted, a formal delegation of the authority and responsibility to manage and control construction, guided by a comprehensive and coordinated set of procedures and processes.

5.3.4.3 D&C QUALITY ASSURANCE CONSULTANT MANAGEMENT (OCTOBER 5, 2011 DRAFT)

According to PMI, quality assurance at the program level is:[165]

> "…*is the process of evaluating overall program performance on a regular basis to provide confidence that the program will comply with the relevant quality policies and standards. It is performed throughout the life cycle of the program*."

According to PMI, quality assurance at the project level is:[166]

> "…*the process of auditing the quality requirements and the results from quality control measurements to ensure appropriate quality standards and operation definitions are used*."

According to PMI's Construction Extension quality assurance involves the planning and execution of quality audits, which involve conducting structured and independent reviews of whether or not performing organizations are complying with the project quality control policies, procedures and processes. The ultimate purpose of quality assurance audits:[167]

> "…*are used to effect changes and improvements to those elements of the project management system that are not performing satisfactorily*."

CMAA devotes an entire manual to quality management noting that quality assurance is:[168]

> "*The application of planned and systematic reviews which demonstrate that quality control practices are being effectively implemented*."

[165] PMI, Global Standard for Program Management, Chapter 3, Section 3.6.2, page 52, 2006
[166] PMI, PMBOK®, Chapter 8, Section 8.2, page 2008
[167] PMI, Construction Extension to the PMBOK®, Chapter 8.2.2.2, page 65, 2007
[168] CMAA, Quality Management Guidelines, Chapter 5, Section 5.1.6, page 2, 2008

Although the AIA does not specifically address quality assurance as a separate function, it notes that quality management programs:[169]

> "*Quality cannot be improved without a way to measure improvement, yet this step is often overlooked.*
>
> …
>
> *"Auditing is critical… because it helps identify problem areas and successes, and can be used to verify adherence to [Quality Management] policy requirements*."

OCCM Policy 341.00 is actually directed toward the engagement of an independent quality assurance consultant:[170]

> "*Quality Assurance for a construction project requires a team of specialists led by the construction inspector. Whenever possible the construction inspector will be an OCCM staff member, but when that is not possible, the construction inspector may be a contract inspector to OCCM*."

Policy 341.00 does not actually address quality assurance as it is to be defined and executed at either the program or project levels.

Findings:

- **V1-F-5.4.3-1** Pegasus-Global found no indication that Policy 341.00 had been completed or formally adopted. In some instances, requirements are unknown, as demonstrated by the content of Section 5 of the policy, which states:

  > "*What is critical to the internal/external customer of this process? How do you know?*"
  >
  > "*How do you know the performance quality of this process? What are the critical measurements that define the quality of this process?*"

[169] AIA, The Architect's Handbook of Professional Practice, Part 3, Chapter 14, page 764, 2008
[170] OCCM, Policy 341, D&C Quality Assurance Consultant Management, Section 1, page 4, October 5, 2011

"*What are the industry benchmarks? What is the baseline for this process or the best past performance measure?*"

To date OCCM has not identified or defined what it is the quality assurance consultant is to examine or audit, how those undefined elements to be audited are to be measured, or what does the industry expect in terms of quality performance.

- **V1-F-5.4.3-2** Pegasus-Global found that OCCM has not yet fully developed a quality management program that meets the industry SOC to manage and control quality across the entire Court Capital Construction Program. As addressed later below, there are certain policies and procedures promulgated by OCCM that address discrete elements of quality management and should be included into a comprehensive quality management program address in both quality control and quality assurance.

Recommendation:

- **V1-R-5.4.3-1** OCCM should develop a comprehensive, formal quality management program consisting of linked and mutually supportive policies, procedures and processes for both the Program and project level which addresses both quality control and quality assurance as practiced within the industry at large. PMI, CMAA and AIA have all addressed quality management at some length and Pegasus-Global suggests that OCCM reference to those three standards as a guide while expanding and completing a quality management plan for the Program at- large and the individual projects.

Summary Conclusion:

Pegasus-Global found that Policy 341.00 does not meet the industry SOC for a quality management policy, procedure or process either at the Program or the project levels. The absence of a formal, comprehensive quality management program is necessary to

conform to industry SOC in executing megaprojects like the Court House Construction Program.

5.3.4.4 POLICY 1106.00 FACILITY PERFORMANCE EVALUATION ("FPE") PROGRAM (FEBRUARY 19, 2010 DRAFT)

According to OCCM Policy 1106.00:[171]

> "*The purpose of the FPE program is to convey the characteristics of buildings that work well and best and focus on the ones that should not be repeated in future designs of buildings. The major focuses of the program are to better understand the impact of early design delivery decisions on long term efficiency and effectiveness of building. Also to better understand the impact of building delivery processes and decisions on customer responses both initially and over the lifecycle of the building.*
>
> *The desired outcome is to improve the design, construction and operations of court facility modifications and new capital projects.*"

This is in effect a specific element of what the industry generally terms a lessons learned procedure. Both PMI and CMAA formally address lessons learned programs within their respective SOCs, although not strictly from a post construction completion functional perspective. Later in Policy 1106.00 OCCM uses the term "lessons learned" in describing the expected outcome of the process.[172]

Findings:

- **V1-F-5.4.4-1** Policy 1106.00 is identified as an "Operational Draft" and is being used by the Program and projects. However, among the provisions included in the Operational Draft Pegasus-Global took specific note of the following statement:

[171] OCCM, Policy 1106.00, Facility Performance Evaluation, Purpose, page 4, February 19, 2010
[172] OCCM, Policy 1106.00, Facility Performance Evaluation, Section 1.6.24, page 57, February 19, 2010

Sections 1.1 through 1.6, which identify each of the project phases to be examined is the same statement under each provision:[173] "*Future implementation*".

Pegasus-Global found the policies, procedures or processes contained in Policy 1106.00 were not complete and had not been formally adopted by OCCM. Incomplete, informal policies, procedures and processes call into question the uniformity, transparency and accountability of the management or control of the requirement in question.

- **V1-F-5.4.4-2** The policy does not define terms used in the policy.
- **V1-F-5.4.4-3** The policy indicated that it was:
    - A guidance document for any person involved in large facility modification or capital construction project that can benefit from a Post Facility Occupancy Evaluation.
    - A directional document for all OCCM staff and construction partners embarking on a new project.

  Pegasus-Global is unsure of the distinction between a guidance document and a directional document.
- **V1-F-5.4.4-4** Pegasus-Global noted that all of the elements of an effective and comprehensive lessons learned program were identified within draft Policy 1106.00 and believes it is a good basis for finalizing a comprehensive lessons learned program.

Recommendation:

- **V1-R-5.4.4-1** Complete Policy 1106.00 as currently outlined and drafted to finalize and formalize the procedures and processes. Pegasus-Global also recommends that OCCM examine the lessons learned SOCs promulgated by

[173] OCCM, Policy 1106.00, Facility Performance Evaluation, Sections 1.2 – 1.6, page 5, February 19, 2010

PMI and CMAA as a check guide of standard industry practices while completing Policy 1106.00.

Summary Conclusion:

Pegasus-Global found that Policy 1106.00 was not complete to the point where it represents a comprehensive policy, procedure or process for management or control a formal lessons learned program.

5.3.4.5 POLICY 1106.10 POST OCCUPANCY EVALUATION (POE) (FEBRUARY 19, 2010 DRAFT)

According to Policy 1106.10:[174]

"The purpose of the POE is to identify the characteristics of buildings that work well and best, and understand what should not be repeated in future designs of buildings. Also, to better understand the impact of building delivery processes and decisions on occupants over the lifecycle of the building.

The desired outcome is to improve the design, construction and operations of court facility modifications and new capital projects."

With the exception of one sentence and a slight wording change, Policy 1106.10 and 1106.00 are nearly identical insofar as the purpose is defined. The difference is in the fact that Policy 1106.00 appears to primarily focus on the execution of the project through to commissioning and turnover while Policy 1106.10 appears to primarily focus on how the facility actually operates once turned over for occupancy. Again the primary goal appears to develop a set of lessons learned which can be entered into the lessons learned data base for use in future projects.

[174] OCCM, Policy 1106.10, Post Occupancy Evaluation, Purpose, page 4, February 19, 2010

Findings:

- **V1-F-5.4.5-1** Policy 1106.10 is identified as an "Initial Draft", however during its audit Pegasus-Global found that the POE had been used for the six projects examined during this management audit. Policy 1106.10 consists of a series of 22 "steps" which effectively make up the POE survey process. Most of those steps are describe with a single sentence, for example:

  "*6.1.4 The Quality Staff (QS) makes contact with the court liaison to introduce survey*"

  There is little explanation given for each of the steps, the process by which each step will be executed, managed or controlled, or how the steps interrelate to one another. That lack of detail raised some questions for Pegasus-Global, the most important being how (or if) the results of the survey were actually being analyzed for commonly identified strengths and weaknesses in the opinion of the ultimate residents of the facility and were those common strengths and weaknesses being captured in the lessons learned database and used as a tool to improve future projects (*e.g.,* a basis for revising the Court Facilities Standards).

- **V1-F-5.4.5-2** The procedure does not appear to present a strictly sequential set of steps, providing no reference to timing, links between steps, etc.

- **V1-F-5.4.5-3** There is no link between Policy 1106.00 and 1106.10 presented in either Policy 1106.00 or 1106.10. As the two policies share a comment purpose the interrelationship between the two polices should be developed and presented.

- **V1-F-5.4.5-4** The policy does not provide a point of accountability for ensuring the post evaluation is completed, and input into the program system and then used for future projects.

Recommendation:

- **V1-R-5.4.5-1** Complete and expand Policy 1106.10 as currently outlined and drafted to finalize and formally adopt the procedures and processes summarized in the policy. Pegasus-Global also recommends that OCCM examine the lessons learned SOCs promulgated by PMI and CMAA as a check guide of standard industry practices while completing Policy 1106.10.

Summary Conclusion:

Pegasus-Global found that Policy 1106.10 was not complete to the point where it represents a comprehensive policy, procedure or process for management or control a formal lessons learned program. However, as currently in practice the POE appears to be capturing valuable information on the strengths and weaknesses identified by the ultimate occupants of the facility, which could be addressed and improvements applied to subsequent projects.

5.3.4.6 POLICY 1302.10 INFORMAL INSPECTION PROCESS (SEPTEMBER 27, 2010 DRAFT)

According to Policy 1302.10, it is intended to provide a process formalizing:[175]

> "*Informal inspections* [which] *seek to proactively identify and resolve problems in the shortest amount of time, and ensure compliance with the approved plans and the applicable codes*."

From the review of this policy it appears that the informal inspections involves only the construction portion of the project and not the design phase of the project. According to Policy 1302.10:

> "…*if an observation is made of questionable construction, this will prompt further action*."

[175] OCCM, Policy 1302.10, Informal Inspection Process, Purpose, page 3, September 27, 2010

That “further action” is defined in Section 2.10.2.5 as a Notice of Non-compliance to the contractor followed by a “Notice of Correction”. Pegasus-Global assumes that at the point a formal Notice is transmitted to the contractor that the inspection is no longer “informal”.

This particular process appears to be another element of quality control and quality assurance but is not addressed as such in this policy. As such the SOCs promulgated by PMI and CMAA provide the basic elements of quality control/quality assurance program.

Findings:

- **V1-F-5.4.6-1** Policy 1302.10 is presented as an “Initial Draft” and basically presents a series of high-level steps and reactions to conducting an informal inspection (right up until some defect is identified). Working under draft, incomplete policies, procedures and processes may impact the uniformity, transparency and accountability for that policy.

- **V1-F-5.4.6-2** The policy does not contain any definitions for terms used in the policy.

- **V1-F-5.4.6-3** The policy does not identify who within OCCM has been formally delegated the authority and responsibility for the management and control of the informal inspection process, including the decision to elevate the informal findings into the more formal Notice of Non-compliance.

Recommendation:

- **V1-R-5.4.6-1** Expand, enhance and complete Policy 1302.10 as currently outlined and drafted to finalize and formalize the procedures and processes, including specific direction as to how the plan check is to be executed, when it is to be executed, by whom it will be executed, etc.

Summary Conclusion:

Pegasus-Global found that Policy 1302.10 was not complete to the point where it represents a comprehensive policy, procedure or process for management or control for an informal inspection process.

5.3.4.7 POLICY 1302.20 INSPECTION REQUEST PROCESS (MAY 27, 2010 DRAFT)

As noted in **Section 5.3.4.6** directly above, Policy 1302.20 is also a policy statement which appears to address a process which most closely falls within the industry definition of a quality management program, as the purpose of the policy is to:[176]

"*Ensure that construction complies with the applicable code*."

Unlike Policy 1302.10 which was, at least in part, devoted to informal inspections, Policy 1302.20 is focused on a formal inspection process. While the title would suggest that the policy is limited to the process by which a request for any inspection would be submitted and acted upon, the policy covers not only the request process but also certain steps to be taken after the inspection has actually been conducted and completed. At Section 2.20.2.3 the process step is identified simply a "*Physically inspect the work described in the* [Inspection Request Form]."[177]

This policy and process appears to be another element of quality control and quality assurance, but is not addressed as such in this policy. For OCCM's consideration both PMI and CMAA provide the basic elements of the generally accepted industry SOC for a quality control/quality assurance program.

Findings:

- **V1-F-5.4.7-1** The policy does not define terms used within the policy.

[176] OCCM, Policy 1302.20, Inspection Request Process, Purpose, page 3, May 27, 2010
[177] OCCM, Policy 1302.20, Inspection Request Process, Section 2.20.2.3, page 4, May 27, 2010

- **V1-F-5.4.7-2** Policy 1301.20 is presented as an "Initial Draft". As stated previously working under draft, incomplete policies, procedures and processes may impact the uniformity, transparency and accountability for that policy.

- **V1-F-5.4.7-3** Policy 1301.20 contains some references which are too cryptic to assist someone not familiar with OCCM effectively or efficiently use the procedure. For example at Section 2.20.1 it notes that the "*Inspection Request Process begins with the Inspection Request Form*…" and then at some undefined point in the process "*Larry completes inspection*".[178]

Recommendation:

- **V1-R-5.4.7-1** Expand, enhance and complete Policy 1301.20 as currently outlined and drafted to finalize and formalize the procedures and processes, including specific direction as to how the inspections are to be executed, when they are to be executed, and by whom it will be executed.

Summary Conclusion:

Pegasus-Global found that Policy 1301.20 was not complete to the point where it represents a comprehensive policy, procedure or process for management or control a formal inspection process. However, taken in concert with other policies identified above, this policy could form part of the basis for a more complete and comprehensive quality management program.

5.3.4.8 POLICY 1302.30 FINAL VERIFIED REPORT PROCESS

Policy 1302.30 is intended to:[179]

> "… *clearly establish the termination of an assignment, to provide quality assurance, and document that the inspections were personally witnessed by the individual and establish their scope of technical observations*."

[178] OCCM, Policy 1302.20, Inspection Request Process, Section 2.20.2.1, page 4, May 27, 2010
[179] OCCM, Policy 1302.30, Final Verified Report Process, Purpose, page 4, November 1, 2010

Unlike the policies discussed above (341.00, 1106.00, 1106.10, 1301.30, 1301.10 and 1302.20) Policy 1302.30 is not identified as a draft but as a final policy. However, like those policies it is actually presented as a series of general steps required to achieve inspection closeout with minimal detail provided for each of those steps. While the document is identified as a final draft, Pegasus-Global found a note that indicated a link to a "(…*larger formal project closeout process; document XXXX.XX Title*) but noted that the actual document number and title had never been identified.[180]

This policy appears to be another element of quality control and quality assurance but is not addressed as such in this policy.

Findings:

- **V1-F-5.4.8-1** The policy does not define terms used within the policy.
- **V1-F-5.4.8-2** While the policy implies that the Inspector of Record ("IOR") is responsible for and accountable for the Final Verified Report, there is no detailed provided as to whom the IOR is, who they report to or who they are responsible to within OCCM. From interviews Pegasus-Global understood that the IOR could be a contracted consultant, in which case there should be some link between this requirement and the consulting contract in place, yet there is no mention of such an arrangement within this policy. The identification, authority, responsibility and lines of reporting for this IOR needs to be addressed in more detail in either this policy or in a policy which is clearly linked to this Policy 1302.30.
- **V1-F-5.4.8-3** Pegasus-Global's review of Policies 341.00, 1106.00, 1106.10, 1302.30, 1302.10 and 1302.20 leads to the conclusion that each of those policies address some procedure which in context is part of what should be an overall quality control/quality assurance processes (the quality management program) to be followed for the Court Capital Construction Program. However, those policies are presented as discrete procedures rather than within the larger, broader context of quality management and control. When taken together those policies

[180] OCCM, Policy 1302.30, Final Verified Report Process, Section 2.30.2.12, page 5, November 1, 2010

actually provide a sound basis for the detailed elements of a more complete and comprehensive quality management program, and as such could effectively be melded into a total quality management and control policy, procedure and process.

Recommendation:

- **V1-R-5.4.8-1** Rather than simply completing each of the policies which have been potentially identified by Pegasus-Global as elements of a broader quality management program as individual pieces, Pegasus-Global recommends that OCCM consider merging Policies 341.00, 1106.00, 1106.10, 1301.30, 1301.10, 1302.20 and 1302.30 into a more complete and comprehensive quality management program under which each of those discrete policies could be expanded and, to some extent, merged into a full quality control/quality assurance program.

Summary Conclusion:

As noted above, as a group those policies addressed in **Sections 5.3.4.3** though this **Section 5.3.4.8** of this Report all appear to be addressing various elements of what is a full quality management program. By working on those disparate policies as a group, and combining those policies with additional policies yet to be identified by Pegasus-Global or developed by OCCM, a comprehensive quality management program could be formulated and issued which would meet the industry SOC.

5.3.4.9 PROCEDURE 4.20 CHANGE ORDER PROCESS (MAY 26, 2009)

According to PMI:[181]

"*One of the most important aspects of plan execution in construction is the control of changes to the project.*

[181] PMI, Construction Extension to the PMBOK®, Chapter 4, Section 4.6, page 33, 2007

…

In construction, ultimate control or approval of changes is usually the responsibility of the owner, who is often the source of changes to the project."

PMI defined integrated change control as:[182]

"… the process of reviewing all change requests, approving changes and managing changes to the deliverables, organizational process assets, project documents and the project management plan… Change Control… is conducted from project inception through completion. The project management plan, the project scope statement, and other relevant deliverables are maintained by carefully and continuously managing changes, either by rejecting changes or by approving changes thereby assuring that only approved changes are incorporated into a revised baseline."

Establishing and enforcing strict change management policies, procedures and processes are the only viable check against changes in design, scope, construction, cost and schedule. Those change management policies, procedures and processes must apply to every stakeholder involved in a major project and change control must be managed at all levels of the program or project, beginning with the owner and flowing right down through to the architects, consultants, contractors and individual vendors and suppliers. Managing and controlling change on a single project is difficult; however managing and controlling change across a megaproject consisting of multiple discrete projects is even more difficult, but much more critical, as every change made to a single project may have ripple impacts on other projects within the full Program.

PMI identifies seven activities which are core to change management:[183]

- "*Influencing the factors that circumvent integrated change control so that only approved changes are implemented;*

[182] PMI, PMBOK®, Chapter 4, Section 4.5, page 93, 2007
[183] PMI, PMBOK®, Chapter 4, Section 4.5, page 93, 2007

- *Reviewing, analyzing, and approving change requests promptly, which is essential, as slow decision making may negatively affect time, cost, or the feasibility of a change;*
- *Managing the approved change;*
- *Maintaining the integrity of baselines by releasing only approved changes for incorporation into the project management plan and project documents;*
- *Reviewing, approving, or denying all recommended corrective and preventative actions;*
- *Coordinating changes across the entire project (e.g., a proposed schedule change will often affect cost, risk, quality, and staffing); and,*
- *Documenting the complete impact of change requests*."

As an additional check on changes over a *program of multiple projects* PMI recommends that the formal integrated change management procedure contains process controls under which:[184]

> "… *the approval and refusal of requests for change, escalates requests in line with authority thresholds, determines when changes have occurred, influences factors that create changes, and makes sure those changes are beneficial and agreed-up, and manages how and when the approved changes are applied*."

Finally from a program perspective PMI stressed that:[185]

> *"Stakeholder management is an important factor in implementing successful organizational change. In this context, program plans should clearly show an understanding of an integration with general accepted methods of organizational change management. This includes identifying the key individuals who have an interest in or will be affected by the changes and ensuring they are aware of,*

[184] PMI, Global Standard for Program Management, Chapter 3, Section 3.7.1, page 56, 2006
[185] PMI, The Standard for Program Management – Second Edition, Chapter 14, page 227, 2008

supportive of, and part of the change process. To facilitate the change process, the program manager must communicate to stakeholders a clear vision of the need for change, as well as the initiative's specific objectives and the resources required. The program manager must utilize strong leadership skills to set clear goals, assess readiness for change, plan for the change, provide resources/support, monitor the change, obtain and evaluate feedback from those affected by the change, and manage issues with people who are not fully embracing the change."

CMAA's Cost Management Procedures note there is no exact solution to the issue of change control, but does lay out some elements of successful change management, including:[186]

- Written notice requirements – *The contract documents should have strong, strict and enforceable written notice requirements. That is, whenever the contractor believes it has been directed to make a change…it is required to notify the CM in writing and await the CM's direction…*

- Written change order requirement – *Contract language should be included which states the contractor is not entitled to payment for changed work unless it is in receipt of a properly executed change order or a written directive to proceed with the changed work. This is intended to stop "verbal changes"…the CM and the owner will be required to create a set of change documents and use them promptly when they want changed work performed.*

- Project warrants - *Each project team member authorized to deal with the contractor should have a "warrant" (written document) signed by the owner setting forth their duties and responsibilities…The concept is to let everyone on the project know who has the authority to direct changes and who does not, a point that is delineated in the project's procedures manual.*

- Delegation of authority – *Delay in the decision making process concerning changes can be very expensive in the long run. To avoid such situations, the CM*

[186] CMAA, Cost Management Procedures, Chapter 7, Section 7.7, pages 42-43, 2001

and the owner may negotiate a delegation of authority policy. For example, a field project manager may have authority to issue change orders with a value not to exceed $25,000 on their own signature…The idea is that if delay in change orders can be reduced, the cost of the changes can also be kept down.

- Change Control Board – *On some megaprojects, Change Order Control Boards are created for the specific purpose of reviewing and approving the larger, more complex, design-related changes…Such Boards are generally made up of senior staff involved in project design and operations, along with top management officials from the owner staff who have ultimate budget authority and responsibility…The role of the CM in situations such as this is most likely to be limited to preparing revised budget and schedule estimates for the Board…*

- Change Order Policy – *Some owners have established a policy that whoever proposes the change order has to personally appear before the owner's decision – making body to justify why the change should be made.*

- Budget contingency – *All CMs are aware that change is going to happen during construction. Most owners know this as well. However, some owners fail to establish a budget contingency at the time of award to handle the cost of changes…The CM should work with the owner during the time between bid opening and contract award to establish a management reserve or budget contingency to handle changes to the work. A process also should be in place to refill the budget contingency if, during the course of the project, the initial contingency funds are entirely depleted.*

Ultimately the management of change must be done from an anticipatory position which stresses avoidance of change first and reaction to change a distant second. Industry practice to control change in a program is by identifying the most likely sources and reasons for change across the program and then eliminating as many of those sources and reasons as possible at a program wide level. Part of any "lessons learned" program should be focused on capturing a changes made during the execution of every project being executed under the megaprogram. Using those lessons learned will aid the

Owner and other stakeholders to identify those common categories of change which are arising on across the megaprogram projects and ultimately assist in establishing responses to those changes from an anticipatory perspective for the subsequent projects to be executed under the megaprogram.

However, even with a strong anticipatory change control process in place there will still be changes during construction projects and in response to those unavoidable changes the Owner (and its agent) must have an equally strong change management system in place during the execution of all phases of a project.

The PMI PMBOK®, the Construction Extension and the Global Program Standard, together with the CMAA Cost Management Procedures contain extensive information relative to industry standards of care addressing change control and management. In addition, there are multiple sources of SOC addressing change management throughout the industry, including those published by the Construction Industry Institute ("CII"), a research institution which has studied the impact of changes during construction projects and programs extensively.

The OCCM Project Definition Report are essentially silent on the issue of change control and management. OCCM Policy 4.10, Construction Management addresses change management at a summary level, noting that the CM is responsible to: [187]

> "… [manage] … *Change Orders*…"
>
> *Process requests for Change Orders*".
>
> *Maintain a Change Order log that includes a cumulative total of changes to the contract, and reconcile the Change Order costs with contractor payment requests.*"

Policy 4.10 also states that the CM's "… *responsibilities regarding Change Orders*" are contained in Procedure 4.20, Change Order Process.[188] Pegasus-Global reviewed

[187] OCCM, Policy 4.10, Section 3, items N, O and Q, page 5, June 23, 2009
[188] OCCM, Policy 4.10, Section 4, page 6, June 23, 2009

Policy 4.20 against the basic change control and change management SOC generally accepted within the industry.

Findings:

- **V1-F-5.4.9-1** Procedure 4.20 was issued on May 26, 2009 as a memo from the Assistant Division Director of Design and Construction to the Design and Construction Staff. As noted previously within this Report, policies and procedures should be issued using a standard format and content presentation to promote uniformity across and among the entire body of policies, procedures and processes under which the Program and the individual projects are to be managed and controlled.

- **V1-F-5.4.9-2** Procedure 4.20 included a general description of what a change order does, also noting this process was developed through collaborate efforts of the "*AOC change order committee (OCCM, BP, Finance, Contracts, and OGC [Office of General Counsel])*".[189] By restricting the distribution to the parties specifically named other primary stakeholders in the Program, including the Judicial Branch participants, the PAG and others that have a critical role to play in controlling and managing change, appear to have been excluded from the process.

- **V1-F-5.4.9-3** As noted above, the industry SOC acknowledges the crucial role that all stakeholders must fill at every level to control and manage change and the importance of involving all stakeholders in the control and management of change. In limiting the involvement in developing the change order process to the "*AOC change order committee*" OCCM has effectively eliminated an opportunity to enlist the active cooperation of other Program and project stakeholders into the control and management of change from either the Program or individual project perspective.

[189] OCCM, Policy 4.20, Background, page 1, May 26, 2009

The party with the greatest interest in and the most control over change at either a program and project level is presumed within the industry at large to be the program/project Owner. If one accepts that AOC or OCCM is the Owner of the Court Capital Construction Program, as was stated by some individual's interviewed, then those parties were involved in the formation of Policy 4.20; however, if one accepts the Owner as the Judicial Council, as was stated by other individuals and as appears to have been established through legislation, then the most important stakeholder of the Program was not directly involved the development of Policy 4.20.

- **V1-F-5.4.9-4** Policy 4.20 is a reactive change management procedure, limited to how a change will be managed once it is identified and/or actually manifest on a project. According to Policy 4.20 change will be managed through a series of steps:[190]
    - Initial Meeting to establish the Change Order Form and codes;
    - Identification of the Proposed Change in Writing;
    - Review of the Change/Comparison to Contract Documents;
        - If proposed change is not within the scope of the project or requires an augmentation of project funds, the change order must first be discussed with the Regional Design and Construction Manager (D&C Manager).
        - If proposed change is within the scope of the project, and funds are available, the Project Manager begins preparation for a change order and its related package documents.
    - Development of Proposed Change Order;
    - Proposed Change Order sent to Contractor;

[190] OCCM, Policy 4.20, Procedure, pages 2-4, May 26, 2009

- Review Contractor's Proposal (cost and schedule);
    - If the proposal is accepted, agree to proceed on a not to exceed basis (if proposed work is difficult to quantify), negotiate with contractor for an agreed cost and schedule impact, or prepare unilateral change order (if other options do not work).
- Revise Budget to Reflect Cost of Change;
- Prepare the Official Change Order;
- Approve the Official Change Order; and
- Distribute the Official Change Order for Execution.

Policy 4.20 does not address anticipatory (proactive) based decisions or actions which may be taken to control changes (preplanned avoidance actions) or manage changes (preplanned mitigation actions). The process steps identified in Policy 4.20 are essentially an administrative response to a situation where a change has already occurred (at least from the contractor's perspective) and must therefore be processed following the procedural steps established.

- **V1-F-5.4.9-5** Policy 4.20 does not establish any formal authority thresholds for approval or rejection of a proposed change, which is not normal within a megaprogram consisting of multiple projects. While Policy 4.20 identifies a number of "discussions" taking place among varies entities during the administrative process, if the change is determined by the Project Manager to be "*within the scope of the project and sufficient funds are available*", then the Project Manager can prepare and issue the Propose Change Order but has to "*work closely with the OCCM Budget Analyst to confirm fund coding and verification*". There are two primary concerns with this element of the process:
    - First, the fact that the budget (which Pegasus-Global interpreted to mean the budget contingency) ***could*** support a change does not automatically

mean that the available contingency budget ***should*** be expended on that change. While from a *project perspective* such an action may be reasonable, from a *program perspective* where decisions and choices must constantly be adjusted to fit funding realities, even seemingly minor amounts of money can impact decisions regarding other projects. For example: assume that a change for a large project is found to be "within scope" and the contingency is available to fund that change at a cost of $100,000. Assume further that the change while desirable exceeds the original scope set for the project. Then assume that a smaller project that is later in the execution queue goes through preliminary design only to find it is $100,000 short of meeting its true estimated functional cost. The question facing *program management* is should the change to the larger project costing $100,000 be approved even if that change is more for aesthetics than function, or should that change be rejected in order to reserve those funds in order to fully fund the true functional cost of the subsequent smaller project.

- Second, in a megaprogram consisting of multiple projects, each with its own needs and functional requirements, it is the ***Owner*** that must determine where the limited funds available are to be invested. From the legislation it appears to Pegasus-Global that the legislature specifically empowered and required the Judicial Council to perform as the Owner of the Program, and in logical extension, of each project within that Program. One of the fallouts of the fact that the Program has not clearly or formally established who owns the Court Capital Construction Program (and therefore all of the individual projects within that program) is that the actual ***Owner*** may not be exercising its responsibility to examine and make those crucial funding decisions from a *program perspective*. While the Judicial Council may delegate its authority and responsibility to the AOC and OCCM to act as its agent, under the industry SOC the ultimate responsibility to manage and control Program investment decisions would **not** be delegated to another party, expect in very limited and controlled

situations (*i.e.,* a dollar limited delegation of authority). Certainly the Owner may charge the agent with collecting data and making recommendations, however the ultimate authority as to where and when to invest the capital is and always has been exercised by the Owner throughout the industry.

- **V1-F-5.4.9-6** As written, Policy 4.20 implies that the contractor is the source of changes to a project. In reality the single biggest generator of change in a project is the generally the Owner, followed by the contractor and designer. Policy 4.20 makes no mention of how changes directed by the Owner or the designer of record will be managed, controlled or administered.

- **V1-F-5.4.9-7** As written, Policy 4.20 does not address (or cite to) a process which will be followed if a request for change is rejected by the Project Manager and a protest or actual claim is subsequently filed by the requesting party. In programs of this magnitude the SOC provides that some type of ultimate authority such as an independent review committee or board to which a protesting party can appeal the initial ruling.

Recommendation:

- **V1-R-5.4.9-1** Although Policy 4.20 is in many respects an acceptable administrative process it does not meet the industry SOC regarding management or control of change on a project. For that reason Pegasus-Global recommends that Policy 4.20 be expanded with the full input of the primary stakeholders (Judicial Council, AOC, and OCCM) during the development, formalization and adoption of a change control and a management program. As noted earlier, both PMI and CMAA have addressed change management and control at some length, setting forth the elements of what constitutes a change management and control system which meets the expected SOC.

Summary Conclusion:

The current change policies, procedures and processes do not meet the industry SOC for a change management and control system expected in a megaprogram. As controlling change is a critical element of every construction program and project Pegasus-Global recommends that the current procedure be expanded to meet the industry SOC.

5.3.4.10 RISK ASSESSMENT FOR [NAME] COURTHOUSE, [NAME] COUNTY (2011)

This policy is not a risk assessment as traditionally defined within the construction industry; rather it is a template form intended to provide recommendations for a specifically named project relative to:[191]

> "… *architectural/physical and electronic security measures or elements … prepared by the Office of Emergency Response and Security (OERS). This report will be provided to and reviewed with the Office of Court Construction and Management project manager prior to finalization. Upon request, OERS can develop a security assessment that addresses operational policies and procedures*."

As a template for a security report it addresses such issues as:

- A general asset, threat, vulnerability and risk identification;
- Users of the facility including judicial staff, Sheriff's Department, Attorney's, Plaintiffs, Defendants, etc.;
- Equipment;
- Infrastructure;
- Threat Identification;

[191] OCCM, Risk Assessment for [NAME] Courthouse, [Name] County, page 2, 2011

- Vulnerability Identification;
- Specific Risks, Mitigation Strategies, and Recommendations; and
- Summary of Findings.

Pegasus-Global has not reviewed the policy from a technical, expert view regarding security risks or responses and whether the policy is technically complete. However, there are some general findings from a management audit perspective concerning this policy.

Findings:

- **V1-F-5.4.10-1** From the pure layman's perspective the policy appears to be well thought out, comprehensive and detailed relative to the security risks anticipated for a specific courthouse.
- **V1-F-5.4.10-2** The risk policy contains all of the standard elements of any risk management plan in that it:
    - Identifies the specific risk element;
    - Quantifies the likelihood that any specific risk element (threat) will occur within the facility and prioritizes those risk elements by likelihood and impact ratings; and
    - Identifies specific mitigation actions which will reduce the impact of any risk element (threat) should it actually occur within the facility.
- **V1-F-5.4.10-3** The risk policy template meets the SOC for a risk management program and plan, not just as practiced in the construction industry, but as practiced in most industry settings.

Recommendations:

- **V1-R-5.4.10-1** Pegasus-Global has no recommendations relative to this specific Risk Assessment Template.

Summary Conclusion:

The Risk Assessment template meets the industry standard of care and is uniform, transparent and identifies the accountable parties responsible to both executing the risk assessment and completing the template.

5.3.4.11 PROJECT SAFETY PROGRAM MANUAL (FEBRUARY 2011)

According to the PMI Construction Extension to the PMBOK®:[192]

> "*Project Safety Management processes include all activities of the project sponsor/owner and the performing organization which determine safety policies, objectives, and, responsibilities so that the project is planned and executed in a manner which prevents accidents, which case, or have the potential to cause, personal injury, fatalities, or property damage*."

PMI then lists the primary constituents of a sound safety management program, among them:[193]

- Establishment of safety policies and procedures, setting contractual safety requirements, and establishing and implementing a safety assurance program.
- Developing a project safety plan, including a safety staffing plan, a safety budget, safety reporting and documentation requirements, identification of key site safety concerns and agreed safety performance and acceptance criteria.
- Finally, monitoring and controlling safety on the project including conducting safety assurance reviews and audits, identifying specific hazards, performing

[192] PMI, Construction Extension to PMBOK®, Chapter 13, page 119, 2007
[193] PMI, Construction Extension to PMBOK®, Chapter 13, page 119 through , 2007

routine safety inspections, conducting safety training and, capturing and reporting safety metrics.

CMAA advocates an "aggressive" and "proactive" approach to project safety which begins during the initial organizational stages of the project (even prior to final design) and continues through to the completion and turnover of the project for operations.[194] CMAA then identifies the safety related activities which should take place at each phase of the project. Some of the activities identified by CMAA include the following:

- Establish the Owner's level of commitment to project safety;
- Develop the project safety organizational structure and staffing plan;
- Prepare a project safety plan with specific written requirements (*i.e.,* compliance with OSHA and or state safety laws, rules, regulations, etc.);
- Identify safety planning and programs as a bid requirement during procurement;
- Draft contractual safety provisions;
- Prepare the required routine safety reports to be prepared and routinely submitted during the project;
- Audit safety during the execution of the project; and
- Impose and/or take action to remove safety hazards during the execution of the project.

There are numerous organizations which promulgate standards of safety on construction projects, from the very formal such as Occupational Safety and Health Administration ("OSHA") to the more educational such as those released by CII. OCCM provided Pegasus-Global with the "Judicial Council of California Administrative Office of the Courts Courthouse Construction Program Project Safety Manual" ("Project Safety Manual") dated February 2011 for the purposes of this audit.

[194] CMAA, Construction Management Standards of Practice, Chapter 7, Section 7.1, page 59

Findings:

- **V1-F-5.4.11-1** Immediately noticeable is that the Project Safety Manual does not follow the formats of any of the other policies developed by OCCM. However, Pegasus-Global generally found that the Project Safety Manual was clear, concise and relatively easy to follow. The Project Safety Manual immediately identified the entities to whom the policy and procedure applied, which enhanced the transparency of the policy as well as making it clear what was expected of each of those parties. Likewise, the Project Safety Manual unambiguously identified specific responsibilities for various parties executing the Project. For example:[195]

  "*The Contractor is to incorporate the provisions of this Manual into its Project Safety Program*."

- **V1-F-5.4.11-2** The Safety Manual immediately set the link to the Program Owner Controlled Insurance Program ("OCIP"), noting that AOC would assign an OCIP Safety Consultant to, among other things, "*Act as the AOC's safety representative at the Project Site*."[196] The scope of the AOC OCIP Safety Consultant was explained in some detail, including representing AOC in discussions as to any portions of the Project Safety Manual or the OCIP program. However, it was specifically stated that:[197]

  "*By performing a review of the Contractor's Project Safety Program, the OCIP Safety Consultant's review in no way relieves any Contractor of their total and complete responsibility for accident prevention and safety related to their work at the Project Site*."

[195] Judicial Council of California Administrative Office of the Courts Courthouse Construction Program Project Safety Manual, Section 3.2, page 7, 2011
[196] Judicial Council of California Administrative Office of the Courts Courthouse Construction Program Project Safety Manual, Section 3.3, page 7, 2011
[197] Judicial Council of California Administrative Office of the Courts Courthouse Construction Program Project Safety Manual, Section 3.5, page 8

Provisions such as that cited above are critical in establishing clear lines of both authority and responsibility under any policy, and as such greatly improve the transparency and points of accountability for the execution and enforcement of policies, procedure and processes.

- **V1-F-5.4.11-3** The Project Safety Manual contained clearly delineated statements of responsibility as it applied to all participants to project execution, while retaining the right and responsibility to set the general site safety requirements to be met by those participants.[198]

- **V1-F-5.4.11-4** The Project Safety Manual consistently cited to industry generated safety standards which were to be applied during the execution of the project, for example at Section 6.14, (d) it was specifically noted that "*High visibility/reflective vests (i.e. ANSI certified Class 2) or attire should be worn by any worker who is exposes to public vehicular traffic, construction vehicle operations or traffic, or involved with crane activities*." Citing to specific industry established standards greatly enhances the uniformity and transparency of a policy, while simultaneously establishing an industry accepted agency as the source of the requirement (rather appearing to rely solely on personal preference in setting such policies).

- **V1-F-5.4.11-5** The Project Safety Manual ends by providing a complete list of reporting and recordkeeping requirements, with template copies of each required report along with instructions on how to prepare and submit those reports.

Recommendations:

- **V1-R-5.4.11-1** The only recommendation is that the format used for all policies, procedures and processes across all topical or issues areas should be uniform across the entire Program. Although Pegasus-Global had no issues with the format used for the Project Safety Manual and found that the contents included

[198] Judicial Council of California Administrative Office of the Courts Courthouse Construction Program Project Safety Manual, Section 6.0, page 17, 2003

what Pegasus-Global would expect in a program policy and procedure manual, and further found that the format used had a logical flow and was easy to navigate, it is up to the Judicial Council and AOC to determine the format and template to be applied to all policies, procedures and processes.

Summary Conclusion:

The Project Safety Manual met the SOC established within the industry for safety management and control and was internally uniform, transparent and identified specific points of accountability.

5.3.4.12 OWNER CONTROLLED INSURANCE PROGRAM

According to CMAA:[199]

> "*The Owner … must decide … which types and amounts of* [insurance] *coverage are to be provided by the Owner, Contractor's and others*."

There are a variety of ways in which insurance can be packaged for a project or across a program consisting of multiple projects. For many megaprojects the only viable way to ensure that there is adequate insurance coverage for each of the individual projects in the program is for the Owner to essentially "self-insure" the projects through OCIP. Within the industry an OCIP is defined as:[200]

> "*Insurance obtained by an owner to cover a large, complex project typically involving many participants. Covers all risks and obviates the need for contractors and subcontractors to obtain their own insurance. It is presumed to promote safety on projects and efficient claims handling*."

A megaprogram of multiple projects involving literally hundreds of contracts and subcontracts is simply too big and too complex to expect one agency such as OCCM to

[199] CMAA, Capstone: The History of Construction Management Practice and Procedures, Chapter 5, Section 5.3, Insurance Requirements for Projects, page 169, 2003
[200] Fundamentals of Construction Law, American Bar Association, Carina Y. Enhada, et al, Appendix G, Glossary, page 345, 2001

attempt to manage, control or "deal with" differing insurance requirements involving multiple insurance agents covering a host of contractors and subcontractors. By far the simpler and more efficient insurance program is one that gives the Owner the control of the program, as is confirmed by the American Bar Association:[201]

> "*The major goal of* [an OCIP] *is to eliminate or minimize problems or disputes that arise all too frequently on major projects as a result of inadequate limits, and restrictive, overlapping or lapses in coverage, indemnity provisions, and problems related to 'additional insured' status*.
>
> [OCIPs] *may also be financially advantageous, both in terms of overall premiums paid and due to more efficient administration of claims. Typically, however,* [OCIP] *insurance programs are implemented only on certain large-scale projects*."

It would be highly unusual to find any megaproject, and in particular a megaprogram consisting of multiple projects of varying size, cost and complexity, which was not under an OCIP. According to documents provided by OCCM:[202]

> "*The State of California acting by and through the Judicial Council of California and its administering agency the Administrative Office of the Courts (AOC) has elected to implement an Owner Controlled Insurance Program (OCIP) for Enrolled Contractors providing direct labor at the project site*."

As is normal within the industry, the Judicial Council and AOC engaged an insurance agent to establish and administer the OCIP on its behalf across the entire Court Capital Construction Program and the individual projects. The agent selected was Willis Insurance Services of California, Inc. ("Willis"). While Pegasus-Global has not seen the contract which exists between the Judicial Council and Willis, the documents reviewed in relation to the OCIP are typical of those Pegasus-Global has reviewed on other megaprojects. As an agent with superior knowledge, it would be normal for the Judicial

[201] Fundamentals of Construction Law, American Bar Association, Chapter 12, Construction Insurance: An Introduction, James P. Wagner, Section I. D, page 298, 2001

[202] Owner Controlled Insurance Program Manual, Judicial Council of California, Administrative Office of the Courts, by Willis Insurance Services of California, Inc, Section 1, Introduction, page 1, undated

Council through AOC to essentially pass the responsibility for administration of the OCIP to an agent such as Willis, and from the documents provided that appears to be what was done by the Judicial Council and AOC.

Pegasus-Global received a total of four documents which can definitively attributed to Willis, although it is entirely possible that Willis prepared or at a minimum assisted in the preparation of the Project Safety Manual reviewed in **Section 5.3.4.11** of this Report directly above; it is normal within the industry for there to be a very close link between project safety programs and project insurance programs. The other four documents consisted of the following:

- Owner Controlled Insurance Program Manual by Willis (undated);
- Owner Controlled Insurance Program Manual by Willis (Rev. 9, "updated by Eddie 06-08-11");
- Owner Controlled Insurance Program Pre-Bid Information by Willis (Pre-Bid Packet Template 10-03-11); and
- AOC – OCIP Standard Operating Procedure Overview, author unknown but assume Willis (undated).

Pegasus-Global was unable to establish the point in time when the OCIP was officially adopted, contracted for and put into place.

Findings:

- **V1-F-5.4.12-1** Pegasus-Global has not reviewed this policy relative to its technical compliance to standard industry OCIP insurance programs. However the documents reviewed are consistent with those OCIP policies Pegasus-Global has reviewed during other program management audits and, as a result Pegasus-Global found no reason to question the accuracy or comprehensiveness of those documents provided to Pegasus-Global.

- **V1-F-5.4.12-2** From the point of view of uniformity, transparency and accountability Pegasus-Global encountered no problems understanding or following the policies, procedures or processes presented in those documents.

- **V1-F-5.4.12-3** The flow of responsibility was from the OCCM Senior Facilities Risk Manager to Willis, the agent named as the OCIP Program Manager and thence to the individual insurance carriers providing the specific coverage purchased. However, the exact relationship between the OCIP principles (Judicial Council, AOC, OCCM and Willis) was not fully described in the documents reviewed, which would have improved the transparency of the program relationships and responsibilities.

- **V1-F-5.4.12-4** There was no indication of the date at which the program went into effect, which would again improve the transparency of the program.

Recommendations:

- **V1-R-5.4.12-1** Pegasus-Global recommends that OCCM prepare a short introductory document which describes the reason an OCIP was put into effect; the benefits expected from establishing an OCIP; the process by which OCCM (or AOC) solicited for and OCIP agent; in broad terms the responsibilities assigned to each of the OCIP parties (including the Judicial Council, AOC, OCCM, PM's, Willis, etc.); and, finally the date the OCIP was adopted. This recommendation is made as a way of expanding the transparency of the decision and the process followed in developing, adopting and installing the OCIP.

Summary Conclusion:

Everything reviewed by Pegasus-Global from a project and program management perspective appeared to meet the SOC currently followed within the industry for large, complex programs or projects.

5.3.5 OVERLAPPING POLICIES, PROCEDURES AND PROCESSES

5.3.5.1 INVOICE PAYMENT PROCEDURE (POLICY NUMBER 2.1, OCTOBER 26, 2010)

According to AIA an invoice is simply: "*A bill, usually itemized, received or sent for goods or services*."[203] AIA also notes that "*Requirements for billing – how often invoices are prepared, what they include, the amount of time the owner has to pay them, interest rates on overdue invoices, and related matters*…" are included in the contract(s) executed between the Owner and the consultant or contractor.[204] Perhaps the most important element of any Owner invoicing and payment procedure is:[205]

> "…*the ability to verify that* [the Owner] *has received the value of goods and services for which you authorize payment. Project management procedures should include provisions*… [which] *enable the* [Owner] *to evaluate in detail whether* [the Owner has] *received what* [was] *asked for at the quality level*… *specified, when*… *scheduled that it should be received*. *Contractually there is little practical recourse once a payment is made*. [The Project Manager should] *spend the time to carefully review requests for payment, and conduct tests as necessary to verify that the* [deliverables] *meet specifications*."

An invoice is simply the document which enables the exchange of money between the Owner and its consultants and contractors on a construction project. The Owner sets the invoice and payment policies, procedures and processes by which the invoices are prepared and submitted for payment. The Owner also sets the conditions against which an invoice is reviewed and accepted (or rejected) and the process by which payment is authorized from the established program or project budget. Most governmental

[203] AIA, The Architect's Handbook of Professional Practice, Appendix E, page 994, Fourteenth Edition, 2008
[204] AIA, The Architect's Handbook of Professional Practice, Part 3, page 724, Fourteenth Edition, 2008
[205] The Engineer's Cost Handbook, Chapter IV, Section D, page 510, 1999

agencies have standard, regulated invoicing and payment policies, procedures and processes. According the to the Invoice Payment Procedures (October 26, 2010):[206]

> "*This* [invoice payment] *process is maintained in the Business and Finance Unit and includes administrative coordinators, general staff, budget analysts, and the AOC Accounting Unit. The Administrative Coordinator Team is responsible for movement of all invoices throughout the approval process.*
>
> *Once the invoice is processed and approved, the administrative coordinator sends the invoice to the AOC Accounting Unit. The AOC Accounting Unit reviews and approves before sending the invoice batch to the State Controller's Office. The State Controller's Office issues warrants payment for each invoice and sends to the vendors*."

From and organizational flow perspective the process steps described above are typical of governmental programs and projects.

Findings:

- **V1-F-5.5.1-1** There is no statement which identifies to whom this procedure is applicable, for example, is it applicable to all external parties engaged in program execution, including consultants, architects, CM@Risk, contactors, vendors, suppliers?

- **V1-F-5.5.1-2** Invoice payment procedures are normally a subsection of the program cost control policy and procedure; however, this policy and procedure is identified as a stand-alone procedure, without links to estimates, budgets or progress reporting. The industry SOC is to record the links between all related procedures in order to provide a *transparent* relational link between all of the elements which address related procedures, both identifying the relationship and referencing the procedural flow of the related polices (*i.e.,* how the invoice

[206] OCCM/AOC, 2.1 Invoice Payment Procedures, page 3, October 26, 2010

process is linked to the project budget and monthly cost reports, and what the transitional process flow is between those two procedures).

- **V1-F-5.5.1-3** If the procedure applies to all of the above parties, then which party is accountable for which elements of the procedure? For example, does the architect receive, review and verify the invoice from the CM@Risk is "correct and payment is authorized" or is that the sole responsibility of OCCM or AOC accounting? The SOC would be to define specific delegations of authority, responsibility or accountability within the invoice procedure.

- **V1-F-5.5.1-4** There is no clear presentation of the sequence of actions or decisions which the user of this procedure should follow. While there is a "checklist" it is unclear if that checklist is in sequential order; in summary from the point of preparation of the invoice how does it move through the various process steps? For example, while Section 2.1.1.2 indicates that the Administrative Coordinator is responsible to distribute the invoices to "BANCRO" and "SRO", prior to that listing of responsibility in Section 2.1.1.2 is Section 2.1.1.1 which says that "BANCRO" and "NCRO" and "SRO" each have a designated team to open, date stamp, and distribute the mail on a daily basis. If "BANCRO" and "SRO" open, date stamp and distribute the mail (presumably including invoices) then why is it necessary for the Administrative Coordinator responsible for distributing the invoice to "BANCRO", "NCRO" and "SRO"?

- **V1-F-5.5.1-5** There is no definition of acronyms provided which leaves a reviewer (or first time user of the procedure) with no idea of who certain parties are or their position in the process (sequentially). For example:

    - Who is "BANCRO", "NCRO", or "SRO"?

    - Who is the administrative coordinator, what agency do they work for, what is their function (and does it extend beyond receiving invoices)?

    - What "staff" receives an invoice "directly": the Project Manager, someone in OCCM or AOC, someone in DOF?

- Who makes up the Administrative Coordinator Team?
- What are the elements of the approval process?
- Etc.

Unless one is intimately knowledgeable as to what or who is involved, when they are involved, and what they do relative to an invoice it is not possible to follow the flow of the invoice through the submittal, review, approval and payment process, which affects the transparency of the procedure

- **V1-F-5.5.1-6** Some of the information contained in the process is incomplete for example:
  - Section 2.1.1.3 Invoice Logs does not show the "path" within which the "separate logs" are to be filed (or defines what a "log" is or its purpose); the space is left blank.
  - Section 2.1.1.3.3 Phone Invoices indicates that this portion "(may be taken out later)":
    - What is a phone invoice?
    - Why might it be taken out later?
    - Was it ever taken out?
  - Section 2.1.2.3 "*Scan and save here*" is blank.
  - Section 2.1.2.3 "*Invoices should be scanned before approvals are obtained by appropriate staff and budget analysts*." Who is the "appropriate staff"?
  - Section 2.1.2.3 "*Final invoices should be scanned to replace the original scan once the invoice is approved. (Save in CAFM?)*" [Computer Aided Facility Management System]. Was a scan location ever identified?

- Section 2.1.2.3 "*Invoices that do not need to be scanned and saved to G: Drive. Dependent on what is scanned into CAFM and what is and what is not retained as a hard copy*." This exemplifies the lack of a comprehensive document control system.

All policies and procedures should be complete before the issuance of the procedure. It is dangerous to issue any policy or procedure in draft form or incomplete, if for no other reason than the author may leave or the press of greater priorities may result in the policy or procedure remaining incomplete, which results in newly hired staff being unable to determine what it is they are responsible for or how the full, coordinated process is intended to work. There are a number of such blanks and unresolved procedural steps in this procedure, which should be addressed as the procedure is finalized and formally adopted.

Summary Conclusion:

The Invoice Payment procedures represent a workable start to the development of a comprehensive policy and procedure. However, there remains a significant amount of work remaining to be done before the policy and procedure meets the industry SOC for cost management and, in particular the process by which invoices are received, reviewed, acted upon (accepted or rejected) and payment is rendered.

5.3.5.2 POLICY 7.00 CAPITAL OUTLAY BUDGET CHANGE PROPOSAL (COBCP) (APRIL 27, 2011 DRAFT)[207]

According to Policy 7.00 (Capital Outlay):[208]

> "*The COBCP is the official funding request to the State Department of Finance for Judicial Branch projects*."

[207] Note: Pegasus-Global received two policies, both with the number 7.0 one covering the COBCP and this policy covering the Project Feasibility Report

[208] OCCM, 7.00 Capital Outlay Budget Change Proposal (COBCP), page 3, April 27, 2011

For the reasons noted in Findings, below, Pegasus-Global was unable to conduct any comparative analysis of Policy 7.00 (Capital Outlay).

Findings:

- **V1-F-5.5.2-1** The policy is identified as a "Template Draft", and as such appears to be a very early draft (actually only an outline) of the Capital Outlay Budget Change Proposal policy. The draft given to Pegasus Global still contains internal comments in redline form, such as:[209]

  "*Comment [KB10] The following page is layout of Sections, Subsections, and the numbering methodology. The number of Sections and Subsections will be determined by the topic*."

- **V1-F-5.5.2-2** Through interviews Pegasus-Global is aware that OCCM does use the COBCP process to request funding for the Court Capital Construction Program by individual project. However, there was nothing contained within Policy 7.0 for Pegasus-Global to review or evaluate.

Recommendations:

- **V1-R-5.5.2-1** This appears to be a situation where everyone understands the critical importance of this procedure and process, but here-to-for has not developed, codified or distributed a formal policy, procedure or process covering that requirement. Given the critical importance of requesting a change in budget it is imperative that this policy, procedure and process be completed as quickly as possible.

Summary Conclusion:

The document provided to Pegasus-Global is not a policy, procedure or process which can be reviewed and evaluated.

[209] OCCM, 7.00 Capital Outlay Budget Change Proposal (COBCP), Redline Comment, page 4, April 27, 2011

5.3.5.3 OCCM APPROVAL PROCESS FOR AUGMENTATIONS AND 20-DAY LETTER REQUESTS (SEPTEMBER 20, 2010 MEMO)

According to the OCCM Approval Process for Augmentations and the 20-Day Letter Requests is a procedure:[210]

> "… *needed to ensure that any changes to project scopes or budgets be thoroughly examined by the project teams and then reviewed and approved by the Director of the Office of Court Construction and Management (OCCM). This memorandum sets forth this process*."

The procedure consists of a single page which essentially sets out the following:

- That the weekly Director and Assistant Division Director ("AD") meetings will include a standing agenda item to review all proposed augmentations and 20-day letter requests for review and approval decision.
- The fact that "*one or more ADs will need to be thoroughly briefed*" by the Project Manager on any propose augmentation or 20-day letter requests in advance of the meeting.[211]
- The goal is to "*ensure that not only all budget, schedule and scope issues are articulated and considered, but that the written augmentation or 20-day letter request itself is reviewed and approved by one or more as before it is sent to DOF…*".[212]

[210] Lee Willoughby to OCCM Management Team, OCCM Approval Process for Augmentations and 20-Day Letter Requests, page 1, September 20, 2010
[211] Lee Willoughby to OCCM Management Team, OCCM Approval Process for Augmentations and 20-Day Letter Requests, page 1, September 20, 2010
[212] Lee Willoughby to OCCM Management Team, OCCM Approval Process for Augmentations and 20-Day Letter Requests, page 2, September 20, 2010

- The policy does define "*augmentation*", the "*20-day letter*" and "*scope changes*".[213]

    - Pegasus-Global notes that there is a formal process in place for project augmentation (SAM Chapter 6861) and assumes that this policy is a precursor to the SAM requirement for augmentations to the project scope.

    - The only reference to 20 days, is the SAM requirement that "*If the request* [for augmentation] *requires* [PWB] *action (i.e. not delegated to PWB staff, it must be submitted to DOF 20 working days preceding the PWB meeting*."[214]

    - Pegasus-Global notes that there is a formal process in place for project scope changes (SAM Chapter 6863) and assumes that this policy is a precursor to the SAM requirement for the submittal of formal scope change requests.

As Pegasus-Global reads the memorandum it is not strictly a policy, procedure or process encompassing the entire Program; rather it appears to be a management direction to OCCM Assistant Division Directors.

Finding:

- **V1-F-5.5.3-1** Pegasus-Global assumed this to be a process directive to staff and not a formal statement of program policy or procedure.

Recommendation:

- **V1-R-5.5.3-1** As a process directive it should be included in the formal policies, procedures and processes which address augmentation and scope change decisions and actions taken by the OCCM under the SAM requirements.

[213] Lee Willoughby to OCCM Management Team, OCCM Approval Process for Augmentations and 20-Day Letter Requests, page 2, September 20, 2010
[214] SAM Chapter 6861, page 3

Summary Conclusion:

To preserve the process directive beyond the memorandum it should be formally adopted into those policies, procedures and processes which address project augmentation and/or project scope change.

5.3.5.4 PROGRESS REPORT TEMPLATE (UNDATED)

According to the PMI PMBOK® project performance involves the process:[215]

> "… *of collecting and distributing performance information, including status reports, progress measurements, and forecasts … The performance reporting process involves the periodic collection and analysis of baseline versus actual data to understand and communicate the project progress and performance as well as to forecast the project results*."

The PMI Global Standard for Program Management generally agrees with the PMBOK® but from the perspective of a program of individual projects:

> "*Performance reporting is the process of consolidating performance data to provide stakeholders with information about how resources are being used to deliver program benefits.*
>
> *Performance reporting aggregates all performance across projects and non-project activity to provide a clear picture of the program performance as a whole*."

CMAA states that a progress report is part of a:[216]

> "… *management information system that will keep the team informed as to the overall status and forecast of the project compared to the established Construction Management Plan*. … *The system should provide a sound basis for managing the project and identifying and evaluating problem areas and variances*."

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[215] PMI, PMBOK®, Chapter 10, Section 10.5, page 266, 2008
PMI, Global Standard for Program Management, Chapter 3, Section 3.7.10, page 62, 2006
[216] CMAA, Construction Management Standards of Practice, Chapter 2, Section 2.2, pages 18-19, 2008

The common factors among those SOCs include:

- Collection of information and data in real time during the execution of the program and/or project;
- Actual progress is measured against the original project plans, goals and objectives;
- The progress to-date is used to forecast the conditions of the project at completion and compare that forecast to the original project goals and objectives set for the project upon achieving completion; and
- Progress and forecast information is used by program and/or project management to identify potential problems or issues in a timely manner in order to enable program and/or project management to formulate and implement corrective actions which will enable the program or project to achieve the ultimate goals and objectives set for the program and/or project.

OCCM's Monthly Progress Report ("MPR") is essentially a template Monthly Progress Report presumably to be used to report progress on a specific Court Capital Construction project.

Findings:

- **V1-F-5.5.4-1** The MPR is not dated so there is no indication of when the template was adopted and first put into use. The version supplied to Pegasus-Global included strikethroughs, redlines and additions to the template; however, it is not known when, or if, those alterations to the document were made, if they were adopted and if they ever went into effect as there is no revision history within the template.
- **V1-F-5.5.4-2** There is no definition of terms used within the MPR, leaving the untrained reviewer to puzzle out what data is being reported and against what that data it is being compared.

- **V1-F-5.5.4-3** It appears that not all data is being compared against the original planned data (*i.e.,* "Currently Authorized BGSF"), which does not meet the SOC which measures progress (or status) against the original, planned data metrics. This is not true for all data, as schedule and cost are reported against both the originally approved amount and the currently approved amount. This comparison to the originally planned amount is critical for Owners and Program Managers who are responsible for identification of Program-wide variances to the Program plan, which should always be measured against the original plan goals and objectives. Without that data neither the Owner nor the Program Management can identify impacts to the Program (or subsequent planned projects) without being able to ascertain where the Program is in relation to the original Program plan.

- **V1-F-5.5.4-4** There are acronyms used in the MPR which are not defined or explained, which again to the untrained reviewer are difficult to understand.

- **V1-F-5.5.4-5** There is no policy statement provided with the MPR which establishes how the information is to be identified and gathered, when the information is to be gathered (or by whom), how the information is to be verified, how the information it to be analyzed and when the MPR is to be submitted.

- **V1-F-5.5.4-6** Pegasus-Global found no reference to how, for if, the data from the individual projects would be rolled up into a Program-wide MPR which would enable the Owner and Program Management to identify issues critical to the Program as a whole, thus enabling Program Management to develop and implement mitigation plans to those Program issues and concerns in a timely and effective manner.

- **V1-F-5.5.4-7** The MPR template had a section for reporting progress but no section for reporting concerns, issues or problems on a project which should be brought to the Program Manager's attention.

- **V1-F-5.5.4-8** The MPR template contained no forecast sections (or information) under which the forecast at completion data or information was to be calculated and reported.

- **V1-F-5.5.4-9** As currently formulated the MPR is, in essence, a high level summary of "to date project conditions" with little analysis included beyond gross figures. It would be entirely possible for someone not familiar with a project to assume that because the "numbers" all balanced in the MPR the project was being executed to the original plan, when in fact the actual progress if measured against the original plan might impart a much different conclusion.

Recommendations:

- **V1-R-5.5.4-1** The SOC for reporting Program and project progress are easily available within various published industry sources and easily customized to the needs of a megaprogram like the Court Capital Construction Program. Pegasus-Global recommends that OCCM identify a suitable set of MPR standards and templates, and then customize those templates so as to meet both the Project Management and Program Management needs.

- **V1-R-5.5.4-2** The MPR templates for the projects and the Program should be presented as part of a full, detailed statement of policies, procedures and processes so that there is a full understanding of not only how to fill in the blanks in a specific project MPR, but also how to use that report to forecast conditions at completion, how to anticipate problems before they fully manifest and how to develop specific mitigation actions in response to those potential problems.

- **V1-R-5.5.4-3** While the MPR is founded on reporting data from the past (the month just past) an MPR's greatest value is as a predictor of the future; simply reporting historical events has little real time anticipatory management or control value to project or Program Management.

- **V1-R-5.5.4-4** Because it is simply a template for reporting data from a specific project it has limited value to the Owner or Program Management as they attempt to make mid-Program decisions in an effort to preserve the goals and objectives of the entire Program. For that reason, the Monthly Project Report and the resulting Monthly Program Report should be aligned so that critical data can be efficiently and effectively "rolled up" to the program level from the project level. There must be a transparent link between the Monthly Project Reports and the Monthly Program Reports so that the Owner and management at all levels can clearly identify negative trends and events and react in time to mitigate those trends and events. To that end a consolidated Progress Reporting Policy, Procedure and Process Manual should be developed.

Summary Conclusion:

The current MPR does not fully meet the SOC within the industry for reporting current conditions and forecasting conditions at completion. Rather than simply addressing the MPR template in isolation it should be addressed as part of a program-wide progress and forecasting policy, procedure and process document. As it currently stands the procedure is uniform from the perspective of the project level. The data contained within the MPR is not transparent or easily convertible into program relevant data. There is no single point of accountability as Pegasus-Global was informed during interviews that a wide range of positions from the Project Manager to the contracting CM to the CM@Risk may be responsible for preparing and submitting the MPR.

5.3.5.5 PROJECT DESCRIPTION (UNDATED)

Pegasus-Global is unsure as to the purpose of this report relative to management of the Program or the individual project. Likewise Pegasus-Global is not sure of the link of this policy to the Project Definition Report addressed earlier in this Report. The Project

Description template provides a numbered series of project topical areas (13 in total) which are to be filled out which includes the following information, for example:[217]

- Project Description (no content specified);
- Project Address;
- Project Design and Construction Contractors;
- Current Phase Summary;
- Program (no content specified);
- Costs;
- Project Milestones;
- Etc.

There is no identification as to the position delegated the authority or responsibility to prepare this document.

Parts of the template require a narrative response while other parts of the template are checklists of various project attributes. The last topical area appears to require the submittal of project progress photographs and drawings. On the cover of the Project Description Template it states that the document content is:[218]

"*Derived from the newest copy of the Project Managers' Monthly Progress Reports*"

As the information in this template is apparently derived from the MPRs Pegasus-Global is uncertain as to whether or not this Project Description is duplicative of the project MPR.

[217] OCCM, Template Project Description, pages 2 through 5, Undated
[218] OCCM, Template Project Description, Cover Page, Undated

Findings:

- **V1-F-5.5.5-1** The Project Description report does not contain the information needed to determine the purpose of the document, for whom the document is intended or who is accountable for completing the template (though Pegasus-Global assumes it is the Project Manager). This is an instance where the formats of the various policies, procedures and processes are not uniform, which also impacts transparency.

- **V1-F-5.5.5-2** There are two documents – the project MPR and the Project Plan and Definition Report - which seem in certain respects to duplicate the information contained in the Project Description Template, yet none of those three documents are cross referenced or appear to be part of a common subset of procedures.

- **V1-F-5.5.5-3** Some of the information to be contained within the Project Description Template suggests the existence of other project documents, for example: known project related risk features.[219] However, Pegasus-Global has not seen a policy or procedure addresses a formal project risk management and mitigation system (with the exception of the security risk management template).

The procedure is not uniform to other policies and procedures which appear to address the some of the same topical areas. The procedure is not transparent as it did not include a statement of purpose or intent, nor was there any identification of the intended recipient. There was no single point of accountability, though Pegasus-Global assumes the ultimate accountable party is the Project Manager.

Recommendations:

- **V1-R-5.5.5-1** The Project Description Template should be reviewed in conjunction with other policies which at least in part seem to be duplicative of the

[219] OCCM, Template Project Description, page 3, Undated

procedure. If possible those duplications should be deleted in order to reduce such duplication of effort by OCCM staff.

- **V1-R-5.5.5-2** The Project Description Template should be revised and expanded to include information which will improve the uniformity and transparency of the procedure.

Summary Conclusion:

While the document as a template for recording and reporting information is reasonable, as part of a total body of policies, procedures and processes it appears to be duplicative, and therefore to some extent redundant, of other policies and procedures which provide the same or very similar information.

5.3.5.6 PREPARING ORACLE REPORTS – EXPENDITURES (UNDATED)

This document simply states that it is a procedure for "*Preparing Oracle Reports – Expenditures*".[220] The procedure has no introduction of any kind which provides any context relative to who issued the procedure, to whom or what is the procedure applicable, the intent, purpose, or bases for requirement (if it is in fact a required report), etc. All that can be ascertained from the document is that the report is populated in a preformatted Oracle database, the apparently involves some type of expenditure report named CRARF (there is no definition as to what the acronym CRARF stands for).

The sum total of the procedure as received by Pegasus-Global is a list of 12 steps for preparing an Oracle Report of expenditures; a list of 4 steps for preparing an Oracle Report of Unliquidated Encumbrances; a list of six steps for updating the CRARF report; a list of two steps for reporting ARF Transfers; and a list of three steps for Finalizing the CRARF report.

[220] Issuing Agency Not Specified, Procedure for CFARF Reports, page 1, Date Unknown

Findings:

- **V1-F-5.5.6-1** Without a context which includes information relative to such things as why this procedure exists, what this procedure is intended to do, and to whom this procedure applies, Pegasus-Global is unable to develop any meaningful findings relative to the actual content of the procedure.

Summary Conclusion:

The Procedure for CRARF Reports appears to be a directions or instructions for completing a specific report and not a general program or project policy, procedure or process.

5.3.6 FACILITY MODIFICATION POLICIES

There were a series of policy documents provided to Pegasus-Global that specifically dealt with the modification to existing facilities. Because of their unique topical subject Pegasus-Global decided that the best way in which to address these policies was as a single unique category of policy. Because the Facility Modification ("FM") policies appear to have been developed at approximately the same time and follow a consistent template as discussed below, these policies will be discussed as a whole in this Section of this Report.

Findings:

- **V1-F-5.6-1** Unlike the capital construction policies discussed above, these policies have been drafted according to a SOC to provide a logical progression of policies that walk the users working on Facility Modifications through the various steps for a Facility Modification starting with the identification of FM Candidates through to Close out of a FM project and finally the update and preventative maintenance process for a FM as shown in **Table 5.3.6, *Facility Modification Policies*** below.

Table 5.3.6 Facility Modification Policies		
Policy Name	**Policy Date/Revision**	**Policy Summary**
501.00 Identify Facility Modification (FM) Candidates	Final Draft January 13, 2010 August 1, 2011 [Operational Draft, Annual Rev. 1.3] *Note: Appears nearly complete*	• Strategic goal is to *"differentiate service requires entered into the Computer Aided Facility Management System (CAFM) into the correct work type…"* • The process of services entering CAFM is somewhat explained, but there should be somewhere else that explains in more detail the CAFM system itself. • Policy relies on the Priority 1-6 identified/explained in the *Priority Methodology for Facility Modification*, but doesn't call this policy out as a source. • Discusses when process ends and which policies follow next depending on final decision within policy. • This policy also notes that using Best Practices will provide consistency and a common voice. • Assures fairly that modification work descriptions are consistent and measureable. • Indicates to avoid words such as "maintenance" as implies a facility and not a facility modification. • The policy also notes that all Facility Modifications created as of 6/15/2011 that do not adhere to the format described in the Quality Assurance of Work Description Policy, will be returned via CAFM. • Section 1.4 notes that not all steps included within the policy are yet defined or fully developed. • Section 1.5 is Proven Performance Metrics with questions, however, no other information as to who asks, how information is obtained, and what is done with the information once obtained.
501.10 Facility Modification Naming Convention: Quality Assurance of Work	April 8, 2011 [Final]	• Though Pegasus-Global has reviewed a few Quality Assurance procedures, this procedure establishes the proper method for documenting facility modification requirements, such as word

Table 5.3.6 Facility Modification Policies		
Policy Name	**Policy Date/Revision**	**Policy Summary**
Descriptions		usage and format. • Does contain a statement that policy overrides any and all previous guidance on titling Facility Modifications. • Purpose is to adhere to a standardized description format that is recognized to all stakeholders. Other purposes are to "ensure consistency", "implement measurable quality assurance effort", and to "provide reporting capability."
502.00 FM Scope: Facility Modification Coordination Committee & Conceptual Estimate Process (FMCC &CE)	2nd Draft January 21, 2010 August 1, 2011 [Operational Draft, Annual Rev. 1.2] *Note: Outline only*	• Outline of process used to route facility modifications relevant to cost criteria, and to estimate the cost of facility modifications believed to be over $25k (if preliminary cost estimate is over $50k, a conceptual estimate will be developed). • Primarily an administrative step outline. • Process ends with direction of what policy to go to next depending on actions taken. • Several sections provide an action, but no discussion of that item. For example, Section 2.2.2 provides that FMCC members review and comment; however, there is no guidance of what to look for in the review. How is uniformity and transparency maintained? Similarly, Section 2.2.6 notes a question as to whether all FMCC issues are resolved. However, there is no prior step that discusses issues. What kind of issues? What is the process for resolving issues? Section 2.2.7 discusses that comments received from FMCC are updated by the FM Administrator into CAFM. However, how does this input get used? What happens once comments are entered into CAFM? Section 2.2.11 notes the FM enters into Progen. However, there is no definition of Progen or how it might be useful to those using this policy. Section 2.2.14 mentions the

Table 5.3.6
Facility Modification Policies

Policy Name	Policy Date/Revision	Policy Summary
		Conceptual Estimate however, there is no mention of a policy which describes how the Conceptual Estimate is performed nor how the Conceptual Estimates are uniform in their preparation across all projects. Likewise, Section 2.2.17 notes that the Project Manager reviews the Conceptual Estimate as appropriate. What is the Project Manager reviewing within the Conceptual Estimate and what does "appropriate" mean? • Section 2.4 highlights many of the outstanding work to still be done as discussed above on the policy and which steps in the policy require this action. • Section 2.5 contains the same questions under Process Performance Metrics as shown in Policy 501.00 however, as discussed above, there is no discussion as to who asks the questions and of whom, how the information is obtained, what is done with the information once gathered, how and where does the information go and what is done with it once captured.
503.00 FM Ranking & Scoring (Prioritization)	January 21, 2010 [2nd Draft] *Note: Outline only*	• Uses the procedures defined by the *Trial Court Methodology for Prioritizing and Ranking Facility Modifications* to list unfunded projects and prepare a recommendation for the Trial Court Facility Modification Working Group. • Outline only. • Main benefit listed is the fair and equitable distribution of available FM funding across all unfunded FMs. • Section 3.1.1 discusses that initial score may be submitted in earlier Policies 501 and 502. • Draft policy contains comments from reviewers within policy and could not be in position to use this policy at this time (March 2011).
503.10 Trial Court	January 13,	• Describes the TCFMWG and the process they

Table 5.3.6
Facility Modification Policies

Policy Name	Policy Date/Revision	Policy Summary
Facility Modification Working Group ("TCFMWG") Meeting	2010 [Final Draft] *Note: Appears nearly complete*	use for determining which facility modifications from the list created in Policy 503.00 (above) to decide on the funding. • Defines composition of TCFMWG. • Discusses when complete what policies to go to next depending on decisions made. • Provides to who the policy is for information, for guidance and describes in detail the process for preparing for the working group meeting. • References Appendix B which is titled *"Trial Court Methodology for Prioritizing and Ranking Facility Modifications".* Upon review, this Appendix appears to replace the policy discussed later in this table. However, the dates and adoption for both of these policies makes this unclear. For example, Appendix B is more detailed than the Prioritization Policy discussed later and includes similar verbiage. It was also adopted by the TCFMWG on February 20, 2009 and refers to a Judicial Council report dated December 2, 2005. However, the later Prioritization Policy says it was adopted by the Judicial Council on April 24, 2009, two months later, and says it replaces the policy adopted on December 2, 2005. • Although this is marked as a final draft and appears to be one of the most detailed and complete policies within the Facility Modification set of policies, Step 3.10.4 Predetermined and Non-Formal Processes notes "*Some of the steps included in this procedure are complex and/or not well established and need further clarification, which will be defined or developed in a future project."* (It then lists the specific steps needing more definition).
504.00 FM Funding	2nd Draft January 21,	• Divided by the type of facility modification and funding source: Court Funded Requires (CFR);

Table 5.3.6 Facility Modification Policies		
Policy Name	**Policy Date/Revision**	**Policy Summary**
	2010 July 5, 2011 [Process Cycle, Rev. 2.0 of 2nd Draft] *Note: Outline only*	Funding source other than OCCM, FMU [Facility Management Unit], or Court; or, Approved by TCFMWG. • References Policy 1301.10 Project Notification Process (included in the Capital Construction Policies). • Is in outline form only. Please refer to comments noted for Policies 502, 503, and 503.10 regarding state of completion.
504.10 Shared Cost Approvals	Initial Draft 2011 March 22, 2012 [Final Draft Review, Rev. 1.7] *Note: Appears nearly complete*	• Describes in detail the process used to inform the county of the shared cost they are responsible for on a facility modification (after it has been approved by TCFMWG), covers the entire process from how to address the letter to the county, to handling the response if approved or denied. • Purpose is to provide tracking process that multiple parties can follow start to finish • Ensures that Finance is able to invoice the County by having the correct documentation.
505.00 FM Contracting	January 19, 2010 [2nd Draft] *Note: Outline only*	• Identifies contracting method to be used, and process for selected method. • Purpose is to ensure the proper protocol is followed to ensure a valid contract is in place and that the proper authorizing entities have signed the contract making it a legal and binding contract. • Process ensures all appropriate contract documents are distributed and archived. • Outline form only. • Section 5.4 notes several steps that are not yet defined or complete. • Section 5.5 provides the same questions regarding process performance metrics, however, no further information is provided as discussed in Policy 502 above.

Table 5.3.6 Facility Modification Policies		
Policy Name	**Policy Date/Revision**	**Policy Summary**
506.00 FM Execution	January 25, 2010 [2nd Draft] *Note: Outline only*	• Purpose of this policy is to manage every aspect of the facility modification execution phase. Includes team assembly, billing, inspections, documentation, and more. • Sketchy outline only. • Still includes reviewer comments within policy.
507.00 FM Close Out	January 27, 2010 [2nd Draft] *Note: Outline only*	Note: this procedure is similar (outline only) to the capital construction policy • Purpose is to finalize a facility modification, including payment to contractor, capturing lessons learned, updating CAFM status, identifying new assets, capturing project documentation, and more. • Outline form only with many comments from reviewers still included within sections of the policy. • Section 7.4 notes: *"There are noticeable gaps between the completion of 3.6 Execution and the finalization of the project in 3.7 Close-Out."*
507.10 FM Asset Update & Preventative Maintenance Process	January 25, 2010 [2nd Draft] *Note: Outline only*	• Tracks any new assets in place as a result of a facility modification. • Includes a preventative maintenance procedure with note that it is technically not a part of the asset update sub-procedure, although it is in the title of this policy. • Outline only. • *"The desired outcome using the asset update process is to allow for proper and accurate documentation of the mainstream history and ongoing condition of building assets."* • This policy is the last step in the Policies for Facility Modification.

Table 5.3.6 Facility Modification Policies		
Policy Name	**Policy Date/Revision**	**Policy Summary**
Prioritization Methodology for Modification to Court Facilities	April 24, 2009 *Note: No initial page as other modification procedures with dates of drafts, etc. However, appears to be replaced by Appendix B to Policy 503.10 Trial Court Modification Working Group (TCFMWG) Meeting*	Note: this policy has been seen before in the Capital Construction Program Policies • Although similar in name to *Prioritization Methodology for Trial Court Capital-Outlay Projects* (October 24, 2008), the process is somewhat different. For example, the rating system for Modification defines what the results could be (Immediately or Potentially Critical, Recommended, etc.), where the Capital-Outlay defines what the objectives are (Overcrowding, Physical Condition, etc.). ○ Modification has a "Priority 1-6" rating system and also uses the services of a "Trial Court Facility Modifications Working Group". ○ Capital-Outlay uses a *Review of Capital Project* (RCP) rating system and is based on: improving security, reducing overcrowding, correcting physical hazards, and improving access to court services. This leads to the development of "priority groups". • See discussion on FM Policies relative to this version of this policy.

- **V1-F-5.6-2** Policy Template

The policies have been developed in a manner consistent with SOC industry practice and as recommended are undertaken for the capital construction policies discussed earlier. The FM policies follow a consistent template across all FM policies for development using a title page for the Policy with its title and latest date. While Pegasus-Global has made some observations below

regarding the information contained in the Revision Management Section, Pegasus-Global observes that each FM policy is uniform regarding the information about the respective policy development. Inside each policy provides a page with the revision management information identifying:

- Responsible Office;
- File Location on server;
- Author;
- Approved by;
- Process Owner;
- Process Review Cycle; and
- Revision number, description, date and who the revision was by.

- **V1-F-5.6-3** Strategic Goal, Scope and Purpose

  Each policy has a clear Table of Contents followed by a Strategic Goal, Scope and Purpose Statement. This introduction section is followed by a Preliminary Considerations and/or Requirements Section and then a Section describing the steps and processes in the policy/procedure. Each policy then concludes with an Appendix that contains a flow chart visualizing the process described in the policy.

  Under the Strategic Goal, Scope and Purpose Statement, each policy references the applicable goals of the California Judicial Branch and the applicable goals of the OCCM Strategic Goals and allows the user to be aware upfront of the expectations of the OCCM Program Management in execution of this policy in order to meet the goals and objectives of the overall Program.

  The scope clearly outlines for each policy the respective users of the policy and their role with respect to information, guidance or direction; and the logical

progression through the next policies to be used once the process within the respective policy has been completed. The purpose of each policy also clearly and simply states the purpose of the policy.

- **V1-F-5.6-4** Policy Development

  Review of the policy development dates of the policies reveals that the effort undertaken for the development of the FM policies appears to have taken place over the period of December 2009 through January 2010. However, with the exception of Policy 501.10, *Facility Modification Naming Convention: Quality Assurance of Work Descriptions*, none of the policies show the policy as "Final". All appeared to remain in some draft form. There are three additional policies, Policy 501.00 *Identify Facility Modification (FM) Candidates*, 503.10 *Trial Court Facility Modification Working Group (TCFMWG) Meeting*, and Policy 504.10 *Shared Cost Approvals*, which appear nearly complete and also appear to possibly being currently used. However, none of the policies have been formally adopted, although Appendix B in the 503.10 *TCFMWG Meeting* policy does indicate it has been adopted by the TCFMWG.

  Appendix B and its adoption by the TCFMWG raises some confusion as identified in **Table 5.3.6**, as there is another FM policy, unnumbered and drafted similarly to what Pegasus-Global observed in the capital construction policies, which appears to be similar to Appendix B in 503.10. However, it is unclear which policy is actually in affect and being used. For example, Appendix B refers to a Judicial Council report dated December 2, 2005 and notes that it was adopted by the TCFMWG on February 20, 2009. Adoption typically signifies that the policy is in use. However, the similar unnumbered policy with essentially the same title but significant less detail, notes that it was adopted by the Judicial Council on April 24, 2009 and replaces the policy dated December 2, 2005. The questions that remain are, "Does the TCFMWG know that there is a similar policy, but with much less detail that is shown as being adopted by the Judicial Council two months later than the policy the TCFMWG adopted and is apparently

using?" and "Who submitted the apparently older and less detailed Prioritization Policy to the Judicial Council for their adoption of the policy?" and finally, "Does the Judicial Council know that there is another more detailed policy adopted by and being used by the TCFMWG?"

While the policies remain in draft form, revision numbers are being applied to the latest draft reflecting work conducted on some of the policies in 2011. This is unconventional language and not standard in the industry, as policies and procedures before they are put out for use, should be finalized and approved, typically by the Director of the Division ultimately responsible for the projects/program being executed based on the polices, before they can be used for execution. The user then recognizes that a formal process of review and approval has been undertaken for the policy and that the policy then reflects a uniform, transparent and accountable means of executing the work defined within that particular policy.

It is unclear to Pegasus-Global why the policies have not been finalized or adopted for use on the Program, especially for the four specific policies that are either noted as "final" or nearly complete. Use of un-adopted policies and procedures and use of policies and procedures which are not final or complete may lead to potential confusion with users as to whether they should or should not follow what is currently included and/or can lead to inconsistencies in the execution and application of particular steps so outlined in the draft policy as sufficient detail does not exist to provide for the expected SOC of uniformity, transparency and accountability.

- **V1-F-5.6-5** Revision Management

Pegasus-Global also observes within the Revision Management Section of the draft FM policies that the author noted is often "FM Staff Collaboration". While this may actually be the way the policy was developed, there must be a specific individual that becomes accountable for the policy, including its development and revisions. First, someone must take responsibility for ensuring the policy is

actually complete before approval. Second, that same individual must be available should questions arise from users and further as recommendations are made which then need to result in potential revisions to the policy. It would appear that this step has been applied with the specific policy revisions as a specific name is typically provided by the Revision number and date.

Pegasus-Global also noted that the policies have been in nearly if not all, approved by Gerald Pfab, Senior Manager, Facility Management Unit. It would be SOC for the ultimate approval of all OCCM policies to be approved by the OCCM Director. This assures that the OCCM Director has seen all OCCM policies and procedures for the entire Program and has assured that all policies and procedures are uniform, transparent and accountable across all projects whether they are capital construction projects or FM projects. Without this approval, it is unclear whether the OCCM Director has read or agrees with the processes so described within the policies.

The Process Owner within the Revision Management Page is sometimes noted as simply a position within the FM Unit, or sometimes lists a name along with the position. As is discussed earlier in this Report, it is preferable to only note the position that is responsible for the policy and not a specific individual name as over the life of a program, specific individuals may come and go.

- **V1-F-5.6-6** Policy Completion

  As discussed in **Table 5.3.6**, nearly all the FM policies remain to be completed and nearly all have a section which contains a similar statement, *"Some of the steps included in this procedure are complex and/or not well established and need further clarification, which will be defined or developed in a future project."* The section then continues with a listing of those steps within the policy that fall into that category.

  Nearly every policy also contains a section titled "Process Performance Metrics" which contain the following questions:

- *"How do we know the process is working efficiently?"*
- *"What is critical to the internal/external customer of this process?"*
- *"What are the critical measurements that define the quality of this process?"*
- *"Are there any baseline metrics available or industry benchmarks?"*

These are excellent questions to be asking for each policy. However, it is unclear as to whether this section is to provide specifics to these questions respective to each policy, in which case that information would need to be developed for each policy, or whether each policy intends to reach out to the users of the policy to obtain information that can be input into a database for lessons learned and applied to future projects. If so, additional information would also need to be defined as to who and how this information is obtained, how it is then captured into the system and then how it would be used for future projects.

Several of the FM policies contain actual observations and comments from various reviewers of the policy and remain unanswered. As the FM policies are in essence only in outline form, with the exception of the one that is final and the other three which appear nearly complete, it is difficult to compare the policy against industry standards as there is insufficient information from which to compare. Thus, as noted earlier, Pegasus-Global finds that the development work to date is good and the development process of the FM policies does follow a process for policy development that follows an expected SOC practice and should continue accordingly in their finalization.

Recommendations:

- **V1-R-5.6-1** The FM policies would benefit from a Definitional Section following the Goal, Scope and Purpose Section which would define the various terms applicable and used within the specific policy. This would also include the various

units that are discussed in the Scope Section that would be informed by the policy, would be guided by the policy or would be directed by the policy.

- **V1-R-5.6-2** An overall recommendation of the FM policies in development completion is the need for specific identification of positions within the various steps outlined in the policies that is accountable for assuring the overall policy and the various steps are actually undertaken and performed in accordance with the steps outlined in the policy.

- **V1-R-5.6-3** Pegasus-Global recommends that the FM policies be finalized and adopted for use on the Program which will provide a uniform and transparent set of policies that will provide the accountability of execution of each step within the FM process and within each policy of the FM process.

5.4 PART I SUMMARY

Pegasus-Global found that while several of the Program level policies, procedures and processes had been drafted, few had been completed and/or formally adopted as of the date of this management audit. As a result, there was a lack of uniformity, transparency, and consistency within and across those policies, procedures and processes. As was determined during Pegasus-Global's review of the Project level practices the lack of uniformity, transparency, and consistency at the Program level resulted in the Project management and control practices were also not uniform, transparent, or consistent.

The Court Capital Construction Program faces a significant change in the execution environment as a result of the economic conditions being experienced in the State of California. To mitigate the impact of those environmental conditions the CFWG, AOC and OCCM will have to focus on increasing the effectiveness and efficiency of the respective organizations, which will in great part depend upon establishing a coordinated, mutually supporting set of program policies, procedures and processes to govern the management and control of both the Program and the projects.

6.0 PART II – MANAGEMENT AUDIT OF INDIVIDUAL PROJECT TEAM PRACTICES

6.1 INTRODUCTION

In this **Part II** of the Court Capital Construction Program Management Audit Pegasus-Global presents its findings and recommendations in accordance with audit **Deliverable 1.a.2** relative to how the individual projects are planned, managed and controlled during the execution of those projects based on Pegasus-Global's selected audit projects identified in its work plan.

Audits of multiple projects within a megaproject program are, by necessity, limited to tests of various management practices spread over a selected number of individual test projects in accordance with GAGAS. This is primarily due to the fact that a comprehensive, detailed audit of every project within a megaprogram would be both prohibitively expensive and take an inordinate amount of time to complete. As a result findings cannot and should not be attributed to any one project or group of projects; the findings are limited to those which are the most critical to the execution of projects in a megaprogram but which may not be an attribute which was common among all the test projects reviewed.

Pegasus-Global would have been unable to conduct this phase of the management audit without the full cooperation and participation of managers and staff members of OCCM. Pegasus-Global found that Program and Project Managers interviewed were

willing to answer questions in a very open and comprehensive manner, without regard to how those answers might reflect on either the specific project under audit or the program as a whole. Likewise the Program and Project Managers acknowledged what they considered to be gaps in the governance of the Program and the projects, often sharing suggestions which they believed would strengthen both the program and the projects.

At the same time the Program and Project Managers were not unanimous in their positions relative to management strengths and weaknesses they felt existed at the program or project levels. For example, Project Managers differed in their opinions relative to what procedures and processes should be more formalized. One set of Project Managers was of the opinion that there should be almost complete autonomy for the Project Manager to act as they saw fit, to the point of stating that the Project Manager was the ultimate “Owner” of the project and as such should have complete authority to act as they believed proper at all stages of the project. Other Project Managers felt that there needed to be additional structure to the Program and the projects within the Program; their position was that they felt that the lack of more formalized guidance left them at the whim of competing stakeholder groups, with few checks and balances established at the Program Management level.

As noted in **Part I**, policies, procedures and processes do not need to be so stringent as to leave the Project Manager with no ability to respond to the uniqueness of their projects; however, there must be boundaries set on that autonomy if the Program as a whole is to meet the Program objectives.

To be effective and efficient at the project level, Program Management must adopt the tools and techniques which are necessary to manage and control the Program and its projects, while at the same time be willing to adapt policies, procedures and processes to the actual conditions which arise (and to some extent have already arisen) during the execution of the Program and projects. This is not an easy balance to strike on any megaprogram, primarily due to the large number of stakeholders directly involved in the programs and the projects; however it is a critical for the ultimate success of the

program for that task to be undertaken before moving much further into execution of the current round of projects.

6.2 RELATIONSHIP BETWEEN THE PROGRAM AND PROJECT MANAGEMENT LEVELS

There are four objectives which are common to every capital construction program:

1. **Scope** – completing the full scope of work necessary to meet the intended purpose of the facilities that, in total, comprise the program.

2. **Cost** – completing the entire program within the budget established for that program.

3. **Schedule** – completing the entire program within the time set for execution of that program.

4. **Quality** – completing the program that meets the functional standards established for the program.

The individual projects which comprise the program must meet, or exceed those same objectives as set for the individual project in order for the program to successfully attain those four objectives. Every project which does not meet any or all of its four objectives may directly impact the program's successful achievement of those same four objectives at the program level. In fact, the relationship between the program level objectives and project level objectives is reciprocal. To repeat the example given in **Part I**:[221]

> *Every decision made or action taken at the program level has the possibility of impacting the achievement of goals and objectives set at the individual project level. Likewise, every decision made or action taken on an individual project level has the*

[221] State of California, Judicial Council of the Courts, Administrative Office of the Courts, Court Capital Construction Program Management Audit, Pegasus Global Holdings, Inc. Section 3.2, page 37, July 2012.

possibility of impacting the achievement of goals and objectives set at the total program level.

Regardless of this reciprocal objective relationship, when any of those four objectives are not met, either at the program or project level may be attributed to ***Program Management's*** perceived (or actual) inability to manage and control the execution of the individual projects. Even though Program Management may have delegated the authority to manage and control a specific program task or the entire execution of a specific project to a staff position, and even though Program Management may hold a staff position responsible and accountable for achieving the program or project objectives, the Owner and investors in the program may hold program management directly responsible for the inability to achieve program or project objectives.

There are any number of management concerns and issues which need to be addressed by Program Management relative to the planning and execution of a program consisting of multiple discrete projects. In addition to developing and disseminating those policies, procedures and processes necessary to govern the execution of the program and its constituent projects, there are three primary functions which Program Management must fulfill to improve the chances of successfully meeting the program objectives:

- Establishing a reasonable span of control within the program and projects.
- Testing the implementation of policies, procedures and processes at the project level.
- Instituting a continuous improvement loop which strengthens the program as lessons are learned on every project executed.

Those three elements are discussed briefly below to establish the context of the relationship between program and project management and control. That relationship is, in part, a critical element of any program, but especially a megaprogram where the expectations at both the program level and the project level are directly tied to the ultimate success of the program.

6.2.1 SPAN OF CONTROL WITHIN THE PROGRAM AND PROJECTS

Having noted above that Program Management is ultimately held responsible for the inability to achieve program or project objectives, the issue becomes what the industry refers to as program and project management's actual ***span of control*** over the program and the individual projects. As defined by the *Economist*: [222]

> "*A manager's span of control is the number of employees that he or she can effectively be in control of at any one time*."

Prior to the growth in the number, size and complexity of construction megaprojects and megaprograms, management theory held that:[223]

> "… *an effective span of control is five to seven people* [or functional positions]."

That traditional limit on span of control results in a *vertical organizational structure* composed of multiple layers of management within which each manager manages and controls a specifically limited number of responsibilities and staff positions.

According to the Economist:[224]

> "*Over the years … there have been so many differing views about the optimum span of control that the unavoidable conclusion is that it is a matter of horses for the courses. The ideal span is partly determined by the nature of the work involved*."

A vertical organization relies on multi-layered tiers of management with each descending layer of management having authority, control and responsibility limited to less and less of the total program or project management responsibility required to successfully achieve program objectives. At each layer down through the vertical

[222] The Economist, November 9, 2009, adopted from "The Economists Guide to Management Ideas and Gurus", Tom Hindel (Profile Books)

[223] Project Management, A Systems Approach to Planning, Scheduling and Controlling, Harold Kerzner, John Wiley and Sons, Sixth Edition, Chapter 3, page 122,1998

[224] The Economist, November 9, 2009, adopted from "The Economists Guide to Management Ideas and Gurus", Tom Hindel (Profile Books)

organization managements function and control sphere is confined to an ever shrinking set of authorities and responsibilities.

The traditional theories relative to span of control and a vertical, multi-tiered management structure simply do not work effectively or efficiently in a megaprogram or megaproject setting. In a megaprogram context each added layer of (vertical) management significantly adds to the cost and complexity of managing and executing the megaprogram or megaproject, which by their very definition are larger and more complex than any traditional construction project. For example, one of the most critical elements in every megaprogram consisting of multiple projects is the effective, efficient and timely collection and dissemination of program and project status information. There are several impediments to effective, efficient and timely communication of critical program and project information in a vertical management structure, among them:

- The filtration of information as it travels through the management layers. At each management level the information being communicated is filtered by that management layer to align with that management layer's *interpretation* of the information. With each interpretation the information becomes more and more diluted, to the point where the urgency and import of the original communications may be lost.

- Vertical management structures inevitably delay the movement of communications up through the organization, with a similar delay imposed as the response to those communications pass back down through the organization. The delay is part processed based, as each management level imposes its own communications processes to move communications through the organization; and, part of the delay is that at each management level management must formulate and implement a response to the communication (*i.e.,* pass the communication upward or sideways through the management structure or develop a proposed response to the communication prior to moving the communication forward for final action).

Time is the enemy of every construction project, but loosing time in a megaprogram can have a devastating effect on the program or projects ability to successfully identify and take actions that may enable the project to avoid or mitigate an impact to the successful attainment of project objectives.

The reliance on the traditional, vertical management structure in construction megaprograms and megaprojects began to change in the early 1960s as the industry began to adopt horizontal management structures which were more efficient and cost effective than a traditional vertical organizational structure. However, the adoption of a horizontal management structure was not immediately or completely successful:[225]

> "*The span of control has expanded* [and] *the results have ranged from mass confusion in some companies to complete success in others*."

One of the reasons for the "mass confusion" which was evident in the early years of the switch to a horizontal organization was that:[226]

> "*Flatter organizations mandate better communications, more cooperation, and an atmosphere of trust. In other words, mature project management organizations advocate flatter structures mainly because of the presence of multidirectional, cooperative work flow*."

Successfully achieving that cooperative work flow requires that program and project management is given:[227]

> "…*authority and power … in written form; formal project management policies and procedures … and* [the] *documentation* [that] *is necessary even for simple tasks.*

The successful adoption of the horizontal organizational structure became more widely achievable with:[228]

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[225] Project Management, A Systems Approach to Planning, Scheduling and Controlling, Harold Kerzner, John Wiley and Sons, Sixth Edition, Chapter 21, page 1016,1998

[226] Project Management, A Systems Approach to Planning, Scheduling and Controlling, Harold Kerzner, John Wiley and Sons, Sixth Edition, Chapter 21, page 1016,1998

[227] Project Management, A Systems Approach to Planning, Scheduling and Controlling, Harold Kerzner, John Wiley and Sons, Sixth Edition, Chapter 21, page 1016,1998

"The coming of the virtual organization… In a virtual organization people work as independent self-contained units, either individually or in small teams. They have access to (electronic) information that lays down the boundaries within which they can be autonomous. But at the same time they are allowed to be completely free within those boundaries. In such an environment, the ideal span of control can be very large. Indeed, it can scarcely be called a span of control any longer; it is more a span of loose links and alliances."

Virtual management is organized in a horizontal structure within which there are far fewer management levels, but with each level having management and control responsibility and authority over a wider set of functions. The horizontal organization essentially depends on fewer people controlling and managing the same amount of work required of any megaprogram. There are two keys to a successful horizontal structure in a megaprogram, as summarized from the sources quoted above:

- Access to ***electronic information*** in order to install and maintain the effective, efficient, and timely communication of critical program and project information; and,

- The ***establishment of boundaries*** within which each manager acts autonomously to execute their delegated authorities.

Electronic information is not confined to such tasks as scheduling or cost control systems, but requires careful development and implementation of a document control system which provides a Program or Project Manager with the sophisticated tools necessary to fulfill a number of retention and communication functions which in the past would have required much more management attention and higher support staff levels. In **Part I** of this audit Pegasus-Global identified the critical role of the electronic document control system primarily because sound document control can enable a single manager to not only store critical information, but also enables the project and

[228] The Economist, November 9, 2009, adopted from "The Economists Guide to Management Ideas and Gurus", Tom Hindel (Profile Books)

program to integrate and speed communication of critical project and program information and data.

Boundaries in a megaprogram are established in the development, distribution and enforcement of policies, procedures and processes and the formal delegations of authority by Program Management. Enabling a manager to act autonomously does not mean Program Management cedes total control and authority over any element of the megaprogram or its various management elements, including total control or authority over any individual project within that megaprogram. As noted above in this **Part II**, Program Management (which in this instance includes the Owner) may ultimately be held responsible for the success or the inability to meet goals or objectives of the program and each of its constituent projects. For that reason, Program Management must clearly and formally (in writing) define both the ***expectations*** for the program and each individual project, and the ***boundaries*** within which those program and project managers have the authority and responsibility to make decisions and take actions in executing their specifically assigned functions including the execution of the individual project levels.

Autonomy in a megaprogram setting works if:

1. Program Management has ***clearly defined and formally delegated authority*** to the Project Management to make decisions and take actions during their execution of a project, which includes formally setting the limits on those delegated authorities. Program Management cannot simply tell a Project Manager that they are solely responsible for the successful execution of a particular project; Program Management must specifically list those decisions and actions delegated to the Project Manager within which the Project Manager may act with autonomy.

2. The formal delegations of authority must clearly cite any ***limitations to the autonomy*** for making decisions and taking actions. Those limitations should be based on Program Management's need to protect the entire program from any impacts at the project level which could have a reciprocal impact on the

entire program. If Program Management does not formally delegate to the Project Manager authority to act and/or does not establish the limitations within which the Project Manager has the authority to act with autonomy on a given project, then Program Management cannot expect the Project Manager to be accountable for any decision made or action taken on a project which ultimately impacts the program as a whole.

Project Managers acting autonomously without limitations on their autonomy will naturally base their decisions and actions on the needs of their project(s) without regard for the broader needs of the program; and that is how it should be. Conversely, Program Managers must put the needs of the program above the needs of any one project; and that also is how it should be. To achieve both project and program objectives those two layers of management must have a very clear understanding of how they will work in concert to achieve both project and program goals. In short, both levels of management must understand and accept the delegations of authority and the boundaries set on those delegated authorities.

OCCM was essentially forced into a horizontal organizational structure by its limited staffing; however such horizontal organizational structures are actually becoming more and more accepted and prevalent in megaprograms primarily due to the advances in electronic management support systems. OCCM's selection of personnel to fill its horizontal positions was sound from the perspective of that staff's ability to perform demanding tasks with a professional and personal dedication to the successful completion of functions, projects and the Program as a whole. Pegasus-Global found that the individuals filling crucial roles did not "work the clock" (to the traditional work day hours required); worked with an entrepreneurial perspective (focusing on maximizing the benefits achieved to the costs invested); and took full responsibility for every decision made or action taken in fulfillment of their functional roles.

Pegasus-Global also found that the current core staff positions of the Court Capital Construction program and projects had immersed themselves into the Program execution quickly even through the program essentially had literally no ramp-up phase,

which traditionally enables program management to establish and implement those policies and procedures which formally delegate authority and set the boundaries on autonomy for each functional Program and Project Manager. Since the initiation of the Program in 2002, OCCM has initiated work (site acquisition funded) on 59 projects with a total budgeted value of $6.6 billion. During that same period OCCM has completed eight projects with a total budgeted value of $300 million. Pegasus-Global observes that while the number of completed projects through the first ten years of the Program sounds low, to have initiated and completed that many projects representing that level of investment is an accomplishment not typically expected for a megaprogram the size of the Court Capital Construction program.

Industry practice agrees on the importance of investing a significant amount of time establishing the foundation upon which a megaprogram and the individual projects will be managed and controlled prior to initiating any execution of the individual projects. The period during which the foundation of the megaprogram is laid is referred to as program “ramp-up”; which includes planning, staffing and setting the policies, procedures and practices within which the program and its projects will be managed and controlled.

The depth and length of the ramp-up phase of a megaprogram is determined by the intricacy and complexity of the management and control functions required by the megaprogram. Within the industry the generally accepted sequence of management actions during program ramp-up for a megaprogram is as follows:

- Set the program objectives from all perspectives and with a maximum of stakeholder input;
- Perform a formal risk review to identify and quantify the risk elements which have the potential to impact the successful attainment of the program objectives;
- Identify and establish the functional management roles and responsibilities necessary to fulfill management and operational control tasks and

successfully overcome risks and impediments to the successful execution of those functional requirements;

- Prepare preliminary program management and execution plans;
- Establish formal policies, procedures and processes under which the program and project management will function to successfully meet the program obligations and objectives. This includes setting and formalizing delegations of authority and boundaries on autonomy for each functional management position at both the program and project management levels.
- Recruit and hire staff that has the background and qualifications necessary to fill the functional positions at both the program and project management levels given the objectives of the program, the risk profile of the program and under the delegations of authority and boundaries on autonomy set for the functional program and project management positions.

The Judicial Council mandate from the legislature was to immediately initiate work at both the Program and project levels, including the transfer of all trial courts to the Judicial Branch, the creation of a prioritization methodology to identify the immediate and necessary trial court projects, and actually initiate execution of individual capital projects. All of those tasks were initiated within such a compressed timeframe that AOC and OCCM did not have the luxury to fully complete the traditional ramp-up phase expected in the life cycle of a megaprogram before embarking on the execution of projects identified for the Program. As a result, the Judicial Council, AOC and OCCM had to focus primarily on those actions that were deemed critical to achievement of the immediate objectives set for the Program and its individual projects. Ultimately, Program Management had to choose where to focus its attention with the limited time and staff resources available, and chose to focus on the actions which would most quickly meet the objectives mandated, in the most expeditious manner possible.

However, in doing so, a large number of the policies, procedures and processes necessary to effectively and efficiently manage and control a megaprogram comprised

of numerous independent projects has not yet been fully completed, integrated or implemented. Accordingly, formal delegations of authority and boundaries on autonomy as set forth in those policies, procedures and processed have not yet been fully developed or implemented. In addition, the electronic document control systems to support Program and Project Management in a horizontal organizational structure have also not been fully developed or implemented. While the OCCM has not yet been able to fully complete and thus implement the draft policies, procedures and processes currently in place (including written delegations of authority and boundaries set on autonomy), the Program has essentially fulfilled its primary mandates including initiating work on 59 projects and completing eight projects.

Pegasus-Global credits this accomplishment to the staff currently occupying the functional Program and Project Management positions. However, as the Program enters its next phase, in the longer term the Program cannot depend solely on its choices in staffing those critical positions to ensure the successful attainment of program or project objectives. Based on its findings, Pegasus-Global recommends that Program Management complete the development, and implementation of standardizing policies, procedures, processes, formal delegations of authority and boundaries to autonomy (in total, “program governance documents”) as discussed in **Part I** to ensure that the current success not only continues, but improves the effectiveness and efficiency of the management processes necessary within a horizontal management structure.

As discussed in **Part I**, the foundations for many of those program governance documents already exist, but still need to be expanded, formalized, completed and integrated. Two advantages that Program Management has relative to completing the program governance documents for the Capital Court Construction Program at this point in the Program are:

- Program Management now has specific lessons learned at both the program and project levels which can be used during the finalization and formal implementation of those governance documents;

- Program Management now has experienced management staff at both the program and project levels that have been executing their functional responsibilities since the inception of the Program and can provide valuable perspectives from their experience and assist in development of those governance documents

The findings which follow in this **Part II**, in accordance with GAGAS, identify the gaps between the program governance documents and the actual project practices being followed in the field. Likewise this **Part II** identifies instances where decisions, processes and actions taken by different Project Managers are not uniform or consistent across all projects audited. Pegasus-Global finds that the gaps and inconsistencies identified in project management are primarily due to gaps which exist in the current program governance document set, as delineated in **Part I** of this Report. Recognizing that the set of governance documents is not yet fully complete and implemented, Pegasus-Global did not find it unusual that individual Project Managers developed their own methodologies and practices for executing their assigned projects. In fact, one of the strengths of the current Program is that the Project Managers actually moved to fill those gaps and take responsibility for their decisions and actions instead of pushing all authority and responsibility back onto Program Management.

Ultimately however, that very individuality which is currently present at the Project Management level may also prove to be a significant weakness in the Program in the future if steps are not taken to complete and implement the current draft policies, procedures and processes. This is primarily due to the extended duration of megaprograms such as the Court Capital Construction Program. During extended megaprojects managers leave and new managers take their place. Pegasus-Global cautions that OCCM should not assume that those new managers will have the same skill sets or perspectives that exist in its current management staff. Likewise, OCCM cannot afford to have every manager added to the Program (through either replacement or augmentation) develop and implement their own governance practices. For this reason Pegasus-Global recommends that OCCM complete and implement a

comprehensive set of governance documents based on the recommendations set forth in **Part I**.

Pegasus-Global also observes that even in horizontal management structures there is a limit on how much any management or staff functional position can effectively manage and control. During the audit Pegasus-Global encountered several instances where program or project management and control staff appeared to be at or beyond a reasonable level of control and responsibility. During the interviews, no one expressed any inability to execute their respective scope of work or responsibilities. Pegasus-Global observed that staff at every management level was having to make hard decisions relative to what was, and was not critical to their respective scopes of work. This accounts for much of the difference in the management practices observed at the project management and control level and the fact that formal communications and document control were one of the major weaknesses identified by Pegasus-Global at both the program and project management levels. For example, management at every level acknowledged that sound, formal communications and document control were important program management tools, yet almost every manager noted that the preparation of formal documents and control of those documents was at best a secondary issue to what were considered the more critical demands upon their actual available time.

6.2.2 TESTING IMPLEMENTATION OF POLICIES, PROCEDURES AND PROCESSES AT THE PROJECT LEVEL

As noted in **Section 6.2.1** directly above, boundaries are set through the formalization of policies, procedures and processes which are promulgated and enforced by Program Management. As noted in **Part I**, to be effective the policies, procedures and processes which are established at the program level must be uniform, transparent and reflect a single point of accountability. Part of the reason for building ***uniformity*** into every policy, procedure and process is to give the Project Manager a clear path though the various policies, procedures and processes which taken as a whole, establish the boundaries of the Project Managers autonomy relative to management and control of

their specific project(s). Uniformity also reflects the boundary within each Project Manager is free to exercise autonomy in their decisions and actions in managing and controlling the project(s) for which they are accountable and responsible.

Part of the reason for ***transparency*** into each policy, procedure or process is to:

- Establish how and why those policies, procedures and processes were developed;
- How and when they are to be applied; and,
- How the functional manager is to execute their functional assignments within the boundaries set by those formal policies, procedures and processes.

Transparency also enables Program Management to review and evaluate the execution of all projects against a standard set of governance documents, which enables Program Management not only to maintain ultimate control over the projects, but also enables Program Management to adjust those policies, procedures and processes if and when necessary to increase the effectiveness and efficiency of the program and the project management and control.

Accountability identifies those elements of a project for which a Project Manager will be held responsible as delineated within the authorities and boundaries established at the program level. Given the current level of autonomy granted to each Project Manager under a horizontal organizational structure it can be difficult for Program Management to demonstrate accountability if there are no formal, clear authorities delegated and boundaries set within the policies, procedures and processes that have been implemented. Remembering that policies, procedures and processes are in place to establish the boundaries on the autonomy exercised by a Project Manager, Program Management must judge a project or functional manger against those delegated authorities and boundaries established within the governance documents and not simply on a personal opinion as to whether or not the Program Manager believes the Project Manager has done a good job or poor job during the execution of a project.

Ultimately, unless expectations relative to performance are set and the Project Manager formally delegated authority (with boundaries) within which that performance is to be accomplished it is very difficult to hold a functional or Project Manager accountable for the results actually achieved.

Just as important to Program Management is the ability to judge whether or not the authorities delegated and boundaries established within the policies, procedures and processes are working as intended, or need to be modified to be effective in enabling Project Management in meeting both the project and the program objectives.

In the case of program level functional management positions, Program Management has direct supervisory control over the decisions made and actions taken by the staff assigned specific program management and control tasks; and as a result Program Management should have intimate and almost immediate knowledge of any violation of, or weakness in, those policies, procedures or processes.

At the project level however, the Project Manager has much more autonomy as most of the decisions made and actions taken on a project are allocated (formally or by default) to the Project Manager. However that autonomy is not (or should not be) limitless and Program Management cannot simply grant autonomy to the Project Manager without evaluating the results of the level of autonomy granted to a Project Manager.

Effective and efficient management of a megaproject requires there be some level of autonomy; however, it is up to Program Management to ensure that the level of autonomy is reasonable and that the Project Management staff is operating within the level of autonomy granted by Program Management. Pegasus-Global has found that the best way for Program Management to ensure that the boundaries established on that autonomy are reasonable (via the governance documents established) and are being followed at the project level is to audit performance on each project at certain critical points during the planning and execution of that project.

Typical audit programs are focused on determining if the actual practices being implemented and followed at the Project Management level conform to the formal