

**Audit of the Orange County
Convention Center Phase V
Expansion
Interim Report**

**Report by the
Office of County Comptroller**

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**Report No. 319
October 2002**

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October 1, 2002

Richard T. Crotty, County Chairman
And
Board of County Commissioners

We are in the process of conducting an audit of the Orange County Convention Center Phase V Expansion. This interim report is limited to a review of the Construction Manager's Guaranteed Maximum Price. Our audit was conducted in accordance with government auditing standards and included such tests as we considered necessary in the circumstances.

Responses to our Recommendations for Improvement were received from the Orange County Convention Center Construction Division and are incorporated herein.

We appreciate the cooperation of the Division during the course of the audit.

Martha O. Haynie, CPA
County Comptroller

c: Ajit M. Lalchandani, County Administrator
Tom Ackert, Director, Orange County Convention Center
John Morris, Manager, Orange County Convention Center, Construction Division
Johnny M. Richardson, Manager, Purchasing and Contracts Division

INTRODUCTION

**Background**

On May 11, 1999, the Board of County Commissioners (Board) accepted the Martinez Convention Center Commission Report. The Report recommended, “the Board of County Commissioners direct staff to proceed with all deliberate speed with the issuance of Request for Proposals for completion of Phase V so as to maintain a construction schedule which will insure a completion date consistent with honoring space commitments for May 2003.”

The Purchasing and Contracts Division then issued a Request for Qualifications (RFQ Y9-818-JO) with a due date of June 11, 1999, for Construction Manager At Risk services for the Orange County Convention Center Phase V Expansion. Four firms responded, however, one firm later withdrew their response from consideration. An evaluation team determined that the remaining three firms were qualified. These firms made oral presentations to the Board of County Commissioners on June 24, 1999. The Board ranked the firms and instructed staff to enter into contract negotiations for the Construction Manager At Risk services provided the amount did not exceed the \$520 million budget for construction. The joint venture of Huber, Hunt & Nichols/Clark/Construct Two was ranked first.

The overall budget for the Phase V expansion project was \$748 million broken down as follows:

COMPONENTS	AMOUNT (in millions)
Land Acquisition	\$ 69.0
Out Parcels	21.5
Mitigation	8.5
Improve Existing Facilities	18.5
Transportation	25.0
Program Management	6.5
Design	46.5
Testing	6.0
Construction (with CM fee)	520.0
Owner Controlled Costs	26.5
Total	\$748.0

The Board appointed a Citizens’ Oversight Committee (COC) on July 21, 1999 to oversee the project, on its behalf, and provide reports and recommendations to the Chairman and the Board. Subsequently, the County entered into a

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contract for Architectural and Engineering Services with Helman, Hurley, Charvat, Peacock (HHCP) effective August 5, 1999. On November 22, 1999 the County also executed an agreement with O'Brien Kreitzberg for Program Management Services (Program Manager).

On March 24, 2000, the County entered into an agreement, effective retroactively to January 1, 2000, with Huber, Hunt & Nichols/Clark/Construct Two for the Construction Manager (CM) At Risk services. Subsequently, this group changed its name to Hunt/Clark/Construct Two, Joint Venture. Components of the construction budget of \$520 million were delineated in Exhibit B of the agreement. The Notice to Proceed was issued to the CM on March 31, 2000. On February 19, 2001, the Guaranteed Maximum Price (GMP) was formalized in Amendment No. 1.

The Convention Center's Project Director is responsible for controlling the budget, contract administration, coordination of the various firms and related teams, day-to-day oversight, and providing reports to the COC, County Chairman and Administration, and the Board. The Purchasing and Contracts Division, with input from the Project Director, is responsible for contract documentation and amendments.

The Program Manager, the Project Director, the CM, and other individuals provide monthly updates on construction activities and progress to the COC. Copies of these reports and minutes of these meetings are provided to the Board.

Scope, Objectives, and Methodology

The overall audit scope includes a limited review of the Architectural and Engineering Services, the Program Management, and the Construction Manager (CM) At Risk agreements with emphasis on contract administration, compliance, and certain related matters. The audit period is July 1, 1999 to May 31, 2003. This interim report covers the construction GMP in the CM At Risk agreement.

The objective of this audit segment was to verify the accuracy of the GMP for the project. To achieve our objective, we reviewed the initial CM At Risk agreement, the

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amendment to the agreement, the CM's GMP letter, oral presentations and written reports to the COC and the Board. In addition, we interviewed the Project Director, the Program Manager, and the Manager of the Purchasing and Contracts Division.

Overall Evaluation

Based upon the work performed, it is our opinion that the GMP in Amendment No.1 to the agreement does not reflect the intent of the County and is not in the best interest of the County.

RECOMMENDATIONS FOR IMPROVEMENT

1. A New Amendment Should Be Executed Specifying That the GMP Is \$490 Million

Article 7.1 of the CM agreement states,

“...Within 90 days after the Design Development Documents for the Work are completed, as agreed to by the Construction Manager and Owner, the Construction Manager will establish and submit in writing to the Owner for approval a Guaranteed Maximum Price (“GMP”) as well as a guaranteed Date of Substantial Completion...”

In accordance with this requirement, on September 29, 2000, the CM submitted a GMP of \$490 million to the County’s Project Director for approval. Article 3.2 of the Agreement granted sole authority to the Project Director to approve the GMP. However, on February 19, 2001, the County issued Amendment No.1 showing the GMP as \$520 million, thereby adding the Owner’s Contingency to the GMP, (details of the GMP of \$520 million are shown in Recommendations for Improvement No. 2, which follows.) The owner’s contingency was to be controlled and used by the County to meet any unforeseen changes in the project scope.

Although the agreement was amended (Amendment No. 1) to show a GMP of \$520 million, the Project Director and the Program Manager, in their monthly reports to the Citizen Oversight Committee (COC) and the Board, continue to report the GMP as \$490 million.

Exhibit B, of the initial agreement between the County and the CM, provides for an estimated GMP of \$490 million. Also, Sec 1.4 of this agreement states that the Construction Budget of \$520 million should not be construed as the GMP.

We were informed by the Project Director and the Manager of the Purchasing and Contracts Division that since the Board had already approved a budget of \$520 million, the GMP was set at \$520 million in Amendment No. 1 so as to allow staff to spend up to the full amount of the \$520 million

RECOMMENDATIONS FOR IMPROVEMENT



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budget without going back to the Board for additional approvals.

Changing the GMP from \$490 million to \$520 million resulted in the County extending the CM another \$30 million to complete the work since the "at risk" threshold became \$520 million instead of \$490 million. Under a GMP of \$490 million, the CM is responsible for any unauthorized costs in excess of \$490 million. But, under a GMP of \$520 million, the County is responsible for all costs up to \$520 million and the CM is only responsible for costs that exceed \$520 million.

Further, Sec. 11.11 of the agreement states,

Upon Final Acceptance of the Work, should the sum of the Cost of the Work plus the Construction Manager's Fees be less than the GMP, as the GMP may have been adjusted by Change Orders, such savings shall be shared by the Owner and the Construction Manager with the owner receiving sixty percent (60%) of such savings and the Construction Manager receiving forty percent (40%) of such savings.

Therefore, in accordance with this section, the increased GMP of \$520 million allows the CM to share in Owner's Contingency and sales tax savings. And finally, there is an effect upon the CM's share in any savings from value engineering. Per the agreement, value-engineering savings are to be shared 50/50 between the County and the CM and treated as an addition to the Owner's Contingency and the CM's contingency. As such, with the CM receiving a portion of any savings in the Owner's Contingency, the CM effectively will gain a total share of 70 percent (40% of the 50% added to the Owner's Contingency plus their own 50% share).

As of the end of July 2002, there were approximately \$20 million of authorized change orders issued which increased the GMP to \$540 million.

**RECOMMENDATIONS
FOR IMPROVEMENT**



Exhibit A illustrates the amount of potential cost that the County will avoid if the GMP is revised to \$490 million. As Exhibit A shows, the costs projected to be avoided are \$12 to \$30 million depending on the actual costs of the project.

Since the actual costs of the project will not be known until the project is complete, the projected costs in Exhibit A are shown as examples illustrating the effect of the \$490 million GMP.

We Recommend the CM agreement be amended to change the Guaranteed Maximum Price from \$520 to \$490 million.

MANAGEMENT’S RESPONSE:

Concur. The Second Amendment to the Orange County / Construction Manager Agreement has been executed by all parties and states that the GMP is \$490 million. An executed copy of this Amendment is attached [Exhibit B]. In addition, Convention Center Construction concurs with the information generated by the Auditors in the Interim Report Exhibit A- Potential Cost Avoidance to the County.

2. The County Should Revise the Classification of Costs in Amendment No. 1 to Show CM Fees Separate From the Cost of Work but Included in the \$490 Million GMP

Amendment No. 1 is in conflict with the CM Agreement with respect to the cost of work. The amendment classifies the project costs as follows:

CM Design Phase Fee	\$2,400,000
CM Construction Phase Fee	17,000,000
CM Staffing Costs	24,800,000
Other Construction Costs	445,474,096
OCIP Credit	(15,154,639)
CM’s Contingency	<u>15,480,543</u>
Cost of Work	<u>490,000,000</u>
Owner’s Contingency	30,000,000
GMP	<u>\$520,000,000</u>

As noted from the above, the amendment shows that “cost of work” includes the \$19,400,000 CM Fees (Design and

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Construction Phase Fees). However, Sec. 11.11 of the agreement says that if the cost of work *plus* the CM Fees are less than the GMP, the difference would be shared 60 percent to the owner and 40 percent to the CM. Since the CM Fees are already included in the cost of work in the Amendment, adding the CM Fees to the cost of work could potentially allow for double counting of the CM Fees.

We Recommend the County revise the classification of costs in Amendment No. 1 to show CM fees separate from the cost of work but included in the \$490 million GMP.

MANAGEMENT'S RESPONSE:

Concur. The Second Amendment to the Orange County/ Construction Manager Agreement has been executed by all parties and shows the CM Fees separated from the cost of the work, but included in the GMP. An executed copy of this Amendment is attached [Exhibit B].

Exhibit A –
Potential Cost Avoidance to the County

Potential Cost the County Will Avoid as a Result of Lowering the Guaranteed Maximum Price (GMP) to \$490M

(All amounts are shown in millions)

Authorized Change Orders (COs) issued as of July 31, 2002 equal \$20 million ⁽¹⁾

If Actual Cost of Construction Including Changes Equals ⁽⁴⁾ :	Amendment No. 1 ⁽²⁾ \$520 GMP + \$20 COs = \$540 Adjusted GMP				Proposed Amendment No. 2 ⁽³⁾ \$490 GMP + \$20 COs = \$510 Adjusted GMP				Potential Cost Avoided By County With Proposed Amendment ⁽⁶⁾
	Shared Savings ⁽⁵⁾	Lesser of Actual Cost Or GMP	40% of Shared Savings	Total Cost to County	Shared Savings ⁽⁵⁾	Lesser of Actual Cost or GMP	40% of Shared Savings	Total Cost to County	
\$490	\$50	\$490	\$20	\$510	\$20	\$490	\$8	\$498	\$12
500	40	500	16	516	10	500	4	504	\$12
510	30	510	12	522	0	510	0	510	\$12
520	20	520	8	528	0	510	0	510	\$18
540	0	540	0	540	0	510	0	510	\$30

Notes:

- ⁽¹⁾ Authorized change orders increase the GMP and the County's liability for the Construction project. As of July 31, 2002, authorized change orders totaled approximately \$20 million. The amount of change orders could increase as the construction project progresses but will not affect the amount of costs avoided.
- ⁽²⁾ Amendment No. 1 incorrectly specifies the effective GMP at \$520m.
- ⁽³⁾ Amendment No. 2 is County Audit's proposed adjustment to the GMP.
- ⁽⁴⁾ The actual construction costs are not yet known. The actual costs shown are examples used to illustrate the financial effect.
- ⁽⁵⁾ The shared savings is the difference between the actual cost and the total of the GMP plus authorized change orders. The CM agreement specifies that this difference is to be shared 60% to the County and 40% to the Construction Manager (CM). However, should the actual construction cost exceed the GMP then the CM is responsible for the difference.
- ⁽⁶⁾ Does not consider the effects of costs savings due to value engineering.

Exhibit B –
Management's Attachment

SECOND AMENDMENT
to the
CONSTRUCTION MANAGER AGREEMENT

between
**Hunt Construction Group, Inc., The Clark Construction Group, Inc.
and Construct Two Construction Manager, Inc., a joint venture
(the “Construction Manager” or “CM”)**
and
**Orange County, Florida
(the “Owner”)**

CONTRACT NO. Y9-818-JO

WHEREAS, the Construction Manager and the Owner entered into the Construction Manager Agreement (the “Agreement”) as of January 1, 2000; and

WHEREAS, pursuant to Article 7 of the Agreement, the Construction Manager submitted and the Owner approved a Guaranteed Maximum Price and a Date of Substantial Completion for the Project; and

WHEREAS, the parties agreed to both the Guaranteed Maximum Price and the Date of Substantial Completion by means of a first “Amendment to the Construction Manager Agreement” (the “First Amendment”) which the parties entered into as of January 1, 2001; and

WHEREAS, the parties intend now to clarify an ambiguity that has arisen between the Agreement and the First Amendment.

NOW THEREFORE, in consideration of the mutual covenants contained herein and in the Agreement, the parties agree as follows:

1. Section 11.11 of the Agreement is revised to read as follows:

11.11 Shared Savings – Upon Final Acceptance of the Work, should (i) the sum of the Cost of the Work (as adjusted by Change Orders) plus the Construction Manager’s Fee (as adjusted by Change Orders) be less than (ii) the GMP (as adjusted by Change Orders), such savings shall be shared by the Owner and the Construction Manager on a 60-40 basis, with the Owner receiving sixty percent (60%) of such savings and the Construction Manager receiving forty percent (40%) of such savings. At any time prior to Final Acceptance of the Work, should the Construction Manager transfer any portion of the Construction Manager’s contingency to the Owner, such

savings shall be similarly shared by the Owner and the Construction Manager. The Construction Manager shall be entitled to payment for its portion of the savings at that time, and thereafter, the GMP shall be deemed decreased by the amount transferred.

2. The GMP set forth in paragraph 1 of the First Amendment is clarified and restated to be Four Hundred and Ninety Million Dollars (\$490,000,000).
3. The breakdown of the GMP, which was set forth in paragraph 6 of the First Amendment, is revised and clarified to be as follows:

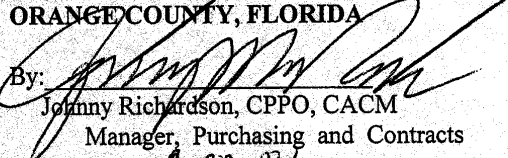
Cost of Work		
CM staffing costs	\$ 24,800,000	
Other construction costs	445,474,096	
CM’s contingency	15,480,543	
OCIP credit	<u>(15,154,639)</u>	\$470,600,000
CM Fee		
Design-phase fee	\$ 2,400,000	
Construction-phase fee	<u>17,000,000</u>	<u>19,400,000</u>
Guaranteed Maximum Price		\$490,000,000

The CM and Owner acknowledge (i) that the above-stated GMP is that to which the parties agreed as of January 1, 2001, and (ii) that Change Orders approved by the parties since January 1, 2001, have resulted in a net decrease in both the Cost of the Work and the CM’s Construction-Phase Fee, and therefore a net decrease in the GMP, as of the date of this Second Amendment.

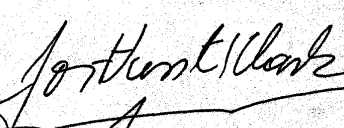
4. Notwithstanding section 7.3 of the Agreement, for purposes of section 11.11 of the Agreement the GMP does not include the Owner’s Contingency.
5. The provisions of this Second Amendment will govern in the event of any inconsistency between it and either the Agreement or the First Amendment, or both. In all other respects, the Agreement and the First Amendment are ratified and confirmed.
6. Any terms defined in the Agreement and the First Amendment shall have the same meaning in this Second Amendment.

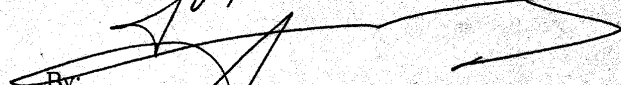
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WHEREFORE, this Second Amendment is entered into as of the 30th day of August, 2002.

ORANGE COUNTY, FLORIDA
By: 
Johnny Richardson, CPPO, CACM
Manager, Purchasing and Contracts
8-30-02

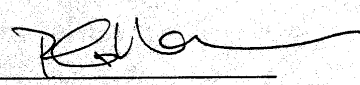
Division

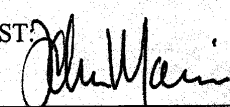
ATTEST: 

By: 
Name: Jose Penknagura
Title: General Counsel

HUNT CONSTRUCTION GROUP, INC.,
THE CLARK CONSTRUCTION GROUP,
INC. and CONSTRUCT TWO
CONSTRUCTION MANAGERS, INC., a
joint venture

By: Hunt Construction Group, Inc.
Managing Partner

By: 
R.G. Hunt, CEO

ATTEST: 
By: JOHN MORRIS
Name: JOHN MORRIS
Title: OCCC PROJECT DIRECTOR

Reviewed & Approved by
J. M. Penknagura