

**Audit of the Orange County
Convention Center Phase V
Expansion
Interim Report No. 6 –
Program Manager’s
Expenses**

**Report by the
Office of County Comptroller**

**Martha O. Haynie, CPA
County Comptroller**

County Audit Division

J. Carl Smith, CPA
Director

Christopher J. Dawkins, CPA
Deputy Director

Edward T. Brennan, CIA, Audit Supervisor
In-Charge Auditor

Glenn R. Tingling, CPA, Audit Supervisor
Lisa Fuller, CIA, Auditor
Staff

**Report No. 337
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November 13, 2003

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 certain program management expenses under the Program Manager's contract with the County. 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 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. On November 22, 1999 the County also executed an agreement with O'Brien Kreitzberg (now URS) for Program Management Services (PM). Components of the construction budget of \$520 million were delineated in Exhibit B of the CM agreement. The Notice to Proceed was issued to the CM on March 31, 2000.

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 Citizen's Oversight Committee (COC), County Chairman and Administration, and the Board of County Commissioners (Board). The Purchasing and Contracts Division, with input from the Project Director, is responsible for contract documentation and amendments.

The PM, 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. Architectural and Engineering (A&E) services are provided by Helman Hurley Charvat Peacock / Architects, Inc.

The initial PM's Contract amount of \$5,980,077 was increased subsequently by Amendments No. 1, 2, and 4 to \$6,663,733. Amendment No. 3 assigned the PM's contract from O'Brien Kreitzberg to URS Corporation.

Scope, Objectives, and Methodology

The overall audit scope includes a limited review of the A&E Services, the PM, and the CM 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 (No. 6) covers expenses paid by the County for program management services performed under the PM's contract with the County.

The objectives of this audit segment were as follows:

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- A) To determine whether there was any duplication of scope of services in the PM's contract and the CM Agreement.
- B) To determine whether payments and supporting invoices for program management services were accurate and prepared in compliance with provisions of the contract.
- C) To determine reasonableness of the amount requested in Amendment No. 4 for extension of program management services.

To achieve our objective, we performed the following:

- Compared the scope of services in the PM's contract with the CM Agreement and quantified any duplication found;
- Reviewed Agenda item memo from the Purchasing and Contracts Division to the Board for Amendment No. 4 and analyzed the change order request and supporting information and schedules;
- Performed a preliminary review of billings submitted by the PM for its own employees against the background of the funds provided in the original contract, Amendment No. 2 and Amendment No. 4;
- Verified actual hours worked for the two positions noted in the supporting documents and calculated funds needed for extension of services to December 31, 2003, and compared results to the amount requested in Amendment No. 4; and
- Performed a comprehensive review of billings submitted by the PM to determine total actual hours worked and amounts billed for each entity as well as each authorized position.

Overall Evaluation

Based upon the work performed, we noted the following:

- The requirement for the establishment and maintenance of the Program Management Information System valued at approximately

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\$400,000, was duplicated in both the PM's and the Construction Manager's contracts. However, it appears no actual services were duplicated.

- Payments reviewed for program management services were accurate and in compliance with the provisions of the contract. However, we question certain payments for additional individuals authorized by the Project Director but not included within the contract exhibit, which provided a contract control.
- Funds requested in Amendment No. 4 for extension of program management services to December 31, 2003 were overstated by approximately \$138,000.

Recommended improvements are noted herein.

RECOMMENDATIONS FOR IMPROVEMENT

**1. Certain Contract Administration Procedures
Should Be Modified**

Relating to the provision of program management services and the use of contracted funds, we have the following concerns:

- A) Services involving the development, implementation and maintenance of a Project Management Information System (PMIS) totaling \$413,953 were included in both the PM's and the CM's contracts with the County. These services were required by Exhibit A, Paragraph No. 2 of the PM's Contract and Article 2.2.1(4) of the CM contract. Although the PM contract contained \$413,953 for the PMIS, only \$14,178 was spent by the PM on the PMIS, and it does not appear that this work duplicated any work performed by the CM. The actual work was performed by the CM and paid for out of his General Conditions budget. The balance of \$399,775 for the unperformed PMIS services was used to help pay for other services performed by additional employees as noted in B below.

- B) We noted that the Project Director did not utilize certain contracting controls included within the PM contract while administering the contract. Exhibit B, of the PM Contract, lists the tasks, labor classifications (positions), total projected hours, hourly rates, and total cost for each position. The total projected hours noted were for one full time individual working in each position for the duration of the project (45 months). The Project Director informed us that Exhibit B was prepared at the request of the County's Purchasing and Contracts Division to support the dollar amount of the contract. During our review, we noted that in some cases, the Project Director authorized the PM to utilize more persons in a particular position than was included on Exhibit B. Thus, the Project Director authorized and paid approximately \$850,000 more than the amount

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budgeted for these positions as of December 20, 2002.

In addition, a project scheduler was authorized by the Project Director and paid \$68,942 but no labor classification for this existed within Exhibit B. A good control to help costs stay within contracted amounts of a large personal services contract involving millions of dollars is to include a budget for positions to be utilized to fulfill the scope of the contract. In this case, a schedule (Exhibit B) was included but not followed.

- C) On February 19, 2002, the Board approved \$291,207 in Amendment No. 2 for the addition of a Project Engineer. Supporting documents provided to the Purchasing and Contracts Division states the Amendment would, "add a Project Engineer from March 2002 through December 2003 for negotiation, coordination and monitoring of services of external organizations such as OUC, Universal Studios, transportation projects, etc., Coordinates engineering for utilities/service agreements." In addition, the Agenda Item Memo to the Board described the position as providing

...Engineering expertise...[and that] these additional services were originally anticipated to be performed by County staff, however, a decision was made to obtain these services from the Program Manager in order to take advantage of a larger pool of experienced professionals at more advantageous and cost effective prices.

However, no Project Engineer was added to the project. Yet, when approval was requested on January 28, 2003, for a further \$377,959 in Amendment No. 4, the Agenda Item memo incorrectly informed the Board that Amendment No. 2 "...added a project engineer from March 2002 through December 2003." According to the Project Director, funds approved for the Project Engineer position were

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being used to pay for a second Contracts/Control Manager. The second Contracts/ Control Manager position is not listed in Exhibit B of the contract. The individual filling this position was hired eighteen months prior to the request for Amendment No. 2 authorizing the Project Engineer. This individual has a degree in economics and performs non-engineering duties. As a result, the engineering expertise that would have been added to the program management capabilities with this position was not realized.

- D) The requesting memo to the Purchasing and Contracts Division, the Agenda Item Memo to the Board and other supporting documents for Amendment No. 4 to the PM's contract with the County did not provide accurate information and did not adequately justify the request for the additional funding of \$377,959. This Amendment extended program management services to October 31, 2003. Services were to be performed by the PM, the Contracts/Control Manager, and the Project Engineer. The Board approved this Amendment on January 28, 2003. Regarding this Amendment, we note the following:
- In subsequent discussions with the requesting Division, the Project Director informed us that errors were made in the agenda item memo requesting Board approval. According to him, the Amendment should have been for an extension of services for two positions: the PM and the Contracts/Control Manager; not three (as was approved), and the extension of services to December 31, 2003, not October 31, 2003.
 - An incorrect number of hours was used in determining the funding required to extend the services. These included an overstatement of the actual hours worked (594 for the Contracts/Control Manager) and the use of 2,080 hours instead of

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1,920 hours¹ in projecting the number of hours to be worked in the calendar year for one full-time individual. However, even using the incorrect hours of 2,080 per year, the request would still have been overstated by \$90,082. Even a schedule provided by the Project Director to justify the amount requested, indicated that the request was overstated by \$32,239.

Our recalculation of the funding requested to extend services for the two positions to December 31, 2003, showed the correct amount to be \$239,233. Thus, the \$377,959 approved by the Board in Amendment No. 4 provides excess funding of \$138,726.

We Recommend that a revised Amendment No. 4 reflecting accurate information, including the reduced amount, is submitted for approval. If the Project Director anticipates the additional amount will be needed to fund future needs, a contract amendment reflecting the correct total should be prepared and approved. In addition, for future contracts, we recommend the County perform the following:

- A) Review the scope of services in detail to ensure that only one contractor is assigned responsibility for specified scope of work.
- B) Submit contract amendments in cases where certain contracted services and employee positions are no longer needed; but different services and new positions are needed.
- C) Adhere to contract schedules for labor classification, number of individuals in the classification, hours, and rates.
- D) Ensure that accurate information is provided to the Board on contract amendments.

¹ The original contract excludes payment for vacations, sick days, and holidays.

MANAGEMENT'S RESPONSE:

- A) I concur, with reservations. It is important to note that the \$399,775 not used for PMIS development was, instead, applied to other PM services which were necessary and within the scope of services authorized in the PM contract.
- B) I do not concur. The essence of your finding is that I, as Project Director, "authorized and paid approximately \$850,000 more than the amount budgeted for" certain positions. This is highly misleading, and is based solely on your interpretation that the PM Contract precluded me from using multiple persons to perform an authorized task if Exhibit B estimated one person would be needed. I disagree with that interpretation. In fairness, it should be affirmatively acknowledged by you that: (1) savings realized in certain areas were used to obtain additional PM services in other areas where needs exceeded the amounts estimated in Exhibit B; (2) that all PM services were paid for at the rates specified in Exhibit B; (3) that all PM services were within the scope authorized by the PM Contract; (4) and that the PM fee is capped by a not-to-exceed limit which has not been exceeded.

You also take exception to the use of a "project Scheduler" simply because that exact title does not appear in Exhibit B. (you must concede that Exhibit B does call for the PM to "Manage project contracts, controls, scheduling and cost.") This points up another aspect of interpretation on which we evidently do not agree. I believe that, when the PM Contract is read and interpreted as a whole, the sole function of Exhibit B was to establish hourly rates for a number of specific job descriptions. Those hourly rates have not been exceeded.

- C) Do not concur. You evidently have concluded that the term "Project Engineer" is synonymous in meaning with the term "licensed professional engineer." I

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disagree. The services referred to in the Draft Report do not require, and in fact would not warrant the expense of a licensed professional engineer.

- D) I concur, with reservations as to the second paragraph. Your comments present calculations which utilize 1,920 hours per year per position to project the cost of needed services. The PM's projection utilized 2,080 hours per year, and that is the sole basis for your comment that "the \$377,959 approved by the Board in Amendment No. 4 provides excess funding of \$138,726." This is somewhat misleading, in that you really mean \$138,726 less would have been projected had 1,920 hours per year per position been utilized. I believe no "excess funding" was provided, in that: 1) the County has paid only for services needed and within the authorized scope of services, (2) at the rates authorized by Exhibit B to the PM Contract, and (3) the sum authorized by the County Commission will not suffice in actuality to continue the PM's services through December 31, 2003.

AUDITOR'S COMMENTS:

- A) The \$399,775 available from the reduction in the scope of services in lieu of the unperformed PMIS was used to fund other services performed by additional employees not authorized in Exhibit B of the contract.
- B) Where provided and incorporated as part of the contract, as was the case in this contract by Exhibit B, contractual controls should be utilized. The Contract including Exhibit B was approved by the Board and should have been used to control the project costs. The use of more than one individual in positions where funding is projected based upon one person for the duration of the project results in the funds being used up before the project is completed or the project having to do without certain contracted services.

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- C) Irrespective as to whether the intent was to bring on board a licensed engineer or not; no additional persons were added as a result of the Board request. The funds were used to pay for a non-engineering employee that was hired eighteen months prior to the request for funding of the engineering position.
- D) Based upon the incorrect information provided to the PCD and the Board, excess funding was approved by Amendment No. 4. If additional funding is needed, as addressed in our recommendation, a revised amendment or new request for additional funds should be sent to the Board for approval. A basic concept of good business practice and internal control is that documentation provided for approval of a contract amendment or change order should accurately support the requested amount of funds. In this case the documentation indicated that the amendment was overstated by \$138,000. The fact that the amount authorized is a not-to-exceed amount is not relevant to the issue of providing accurate information to justify funding requests.

2. Scope of Services Performed Should Be Shown on Invoices

During our review of a sample of five of the 35 invoices submitted by the PM to the County for program management services we noted that the scope of services performed was not shown on the supporting timesheets or the individual invoices submitted by each subcontractor. The five invoices reviewed totaled \$686,501. Of these, invoices totaling \$664,417 (97%) did not include descriptions of the scope of services performed. Section II of the Program Management contract dealing with payments requires that "all requests for payment must identify that portion of the scope of services described in Exhibit A for which payment is requested." Exhibit A details the scope of services to be performed. Without compliance with Section II, we could not track the scope of services being performed, or determine whether the County was being billed appropriately.

RECOMMENDATIONS FOR IMPROVEMENT



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We Recommend the County ensures the PM and its subcontractors comply with the terms of the contract and identify the scope of services performed on all invoices for program management services.

MANAGEMENT'S RESPONSE:

I concur. It is noted, however, that the billing format utilized by the PM conforms to the guidelines/format promulgated by Orange County.

AUDITOR'S COMMENTS:

There are no procedures or "guidelines/format" promulgated by Orange County that allows departments to deviate from, or disregard, contract terms or provisions. If in any instance County guidelines conflict with the terms of a specific contract, the contract terms should apply.