

Final Report Audit of Orange County Convention Center Phase V Expansion

**Report by the
Office of County Comptroller**

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July 13, 2004

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

We have conducted an audit of the Orange County Convention Center Phase V Construction Project. The audit was limited to a review of the Construction Manager At-Risk, the Architect/Engineer, and the Program Management Services contracts. The period audited was July 1, 1999 through May 31, 2003, however, certain matters occurring subsequent to May 31, 2003 were also reviewed. Our audit was conducted in accordance with generally accepted government auditing standards, and included such tests as we considered necessary in the circumstances.

Six interim audit reports were issued during the course of the audit. This is the final report and includes Recommendations for Improvement that were not included in the interim reports. This report also includes an action plan listing all of the recommendations made as well as management's reported actions on the recommendations when the interim reports were issued.

Responses to the Recommendations for Improvements included in this report were received from the Convention Center Construction Division and are incorporated herein.

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

Martha O. Haynie, CPA
County Comptroller

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

EXECUTIVE SUMMARY

Executive Summary

We have conducted an audit of the Orange County Convention Center (OCCC) Phase V Expansion construction project. The audit was limited to a review of the contracts for the Construction Manager (CM) At-Risk Services, the Architectural and Engineering (A&E) Services, and the Program Management (PM) Services. The budgets for the CM, A&E and PM are \$520 million, \$46.5 million and \$6.5 million, respectively. Six interim audit reports issued during the audit are listed below. Additional Recommendations for Improvement, not included in the interim reports, are included in the section of this report titled "Recommendations for Improvements." The recommendations for improvement made in all the reports and their implementation status are included in the section of this report titled "Action Plan."

The interim reports issued were as follows:

Interim Report No.	Title	Date Issued
1	Audit of Orange County Convention Center Phase V Expansion Interim Report	October 2002
2	The Potential of a Budget Overrun of the Orange County Convention Center Construction (Provided by Consultants Cumming McGillivray)	February 2003
3	Potential Claims for Value Engineering Changes	April 2003
4	General Conditions – Printing and Reproduction Expenses	May 2003
5	General Conditions – Other expenses	July 2003
6	Program Manager's Expenses	September 2003

The audit disclosed issues that are described in detail in this report and in the interim reports that include recommendations for improvements in administering future contracts. As shown in the Action Plan herein, of the 48 recommendations made in the various reports, Management concurred or partially concurred with 36 and did not concur with 12. Although some opportunities for savings were not achieved, we believe if recommended actions are implemented, the County can realize significant savings on similar future construction contracts.

ACTION PLAN

Audit of Orange County Convention Center
Phase V Expansion
Action Plan

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
Interim Report No. 1						
1.	We recommend the CM Agreement be amended to change the guaranteed maximum price from \$520 million to \$490 million.	✓			Completed	
2.	We recommend the County revise the classification of costs in the CM contract Amendment No. 1 to show CM fees separate from the cost of work but included in the \$490 million GMP.	✓			Completed	
Interim Report No. 2*						
1.	We recommend, for this and future County Projects, the PMIS system should provide the project team with a timely report showing all potential costs to the project including Potential Change Orders (PCO's) in numerical order with sufficient detail as to their actual and /or expected impact.	✓			✓	
2.	We recommend the County's Project Director, the Program Manager, and the Construction Manager should closely analyze how the project intends to mitigate all outstanding PCO's including those not listed by the Construction Manager in the PCO Summary Log to the Owner. Knowing the total exposure of these impacts will help the management team to make the necessary decisions to try and correct potential overages. For this and future County Projects, the PMIS system should show all potential cost changes to avoid unforeseen cost impacts late in the project.	✓			✓	

* Issued by Cumming McGillivray, L.L.C.

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NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
3.	We recommend, for all future Change Order Transfer Authorization (COTA) settlements made by the County in this and other contracts, the County requests in writing that the CM exclude any references that specifically allows potential future requests for time and compensation due to the result of cumulative effects of the resolved change order in association with other changes. Wherever possible, the County should request that specific language in the signed settlement forms state, "The agreed value of this change represents full and complete compensation for all costs associated with the cost of work including any schedule impacts and other impacts, cumulative or otherwise, associated with this change to scope of work." This language should be incorporated into the settlement agreements, wherever possible, to negate the potential impact of claims at the end of a project.			✓		
Interim Report No. 3						
1.	We recommend the verbal agreement that the CM will not share in the planned \$30 million savings be formalized. Further, an appropriate amendment to the CM contract should be considered.		✓		Completed	
Interim Report No. 4						
1. A)	We recommend the County negotiates an equitable credit with the CM to reverse the change orders totaling \$700,000 for restoration to the Owner's Contingency account.			✓		
B)	We recommend, the County for this and future CM At-Risk Agreements with a GMP, ensures adequate justification is provided (in writing) when utilizing funds from the Owner's Contingency.		✓			

Audit of Orange County Convention Center
Phase V Expansion
Action Plan

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
2. A)	We recommend the County establishes policies and procedures to ensure that the review of invoices for the printing and reproduction of drawings include an adequate assessment of the reasonableness of the services provided.	✓			✓	
B)	We recommend the County reviews past paid invoices for printing and reproduction of drawings for reasonableness, identify instances where services provided are questionable or should have been paid by the A&E, investigate them and request credits where applicable.	✓				✓
3.	We recommend the County establishes policies and procedures to ensure that only the CM commits funds and incurs expenses for the printing and reproduction of drawings where such expenditures are to be paid from General Conditions' funds.	✓				✓
4. A)	We recommend the County ensures that the CM formalize, in writing, fees for printing and reproduction services and a written schedule of such fees made a part of the contract with the printer.	✓			Completed	
B)	We recommend the Program Manager and the County obtain a copy of the schedule of printing and reproduction fees from the CM and use it as the basis of their review of invoices for future printing services.	✓			Completed	
5.	We recommend, for this and future contracts, the County establishes policies and procedures to ensure that the A&E use blue line paper instead of bond paper in instances where the drawings are needed as working copies and not for archival purposes.			✓		

Audit of Orange County Convention Center
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		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
Interim Report No. 5						
1.	We recommend, for future GMP At-Risk agreements, the County formalizes a budget for General Conditions expenses as a specific component of the GMP.			✓		
2. A)	We recommend the County ensures that invoices adequately describe the activities performed, show the date and time spent on each activity, identify the level of personnel performing the activity, and show the rates of compensation. Such rates should comply with the terms of the legal services agreement.	✓			✓	
B)	We recommend the County requests a credit adjustment for the \$30,000 paid for the period July to December 1999.	✓			✓	
3.	We recommend the County ensures invoices contain adequate descriptions of materials and services and are supported by evidence that these materials are supplied and services performed.	✓			✓	
4. A)	We recommend the County obtains a copy of the contract between the CM and the subcontractor, ascertain what items are included in the multiplier, and ensures that future billings do not include these items as separate amounts.			✓		
B)	We recommend the County reviews past billings, identify items and amounts billed separately which were already included in the multiplier, and request a credit adjustment from the CM.	✓			✓	
5. A)	We recommend the County requests and reviews contracts between the CM and the General Conditions' subcontractors and, on a sample basis, verifies the accuracy of the amounts being paid for payroll and other services.	✓			✓	

Audit of Orange County Convention Center
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NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
5. B)	We recommend the County ensures that future agreements with contractors entitle the County to have access to and make copies of contracts between the contractor and subcontractors.			✓		
6. A)	We recommend the County ensures the CM establishes a consistent method of compensating General Conditions' subcontractors for overtime. All future contracts should specify whether overtime should be paid as well as the rate and basis of computation if allowed.	✓			✓	
B)	We recommend the County determines the amount of overstated overtime costs reimbursed for this subcontractor and request a credit for the amount from the CM.	✓			✓	
C)	We recommend the County requests the CM to advise the medical services subcontractor to review its records and submit revised billings for overtime worked but not billed.	✓			✓	
7. A)	We recommend the County requires the CM to ensure that the medical trailer is staffed at all times in accordance with the terms of the Medical Services Contract.	✓			✓	
B)	We recommend the County ensures that billings and supporting daily reports identify employees' qualifications and that compensation rates are in accordance with Medical Services Contract terms for these positions.	✓			✓	
C)	We recommend the County reviews quarterly treatment reports prospectively to ensure that applicable discounts allowed in the Medical Services Contract are not lost.	✓			✓	
D)	We recommend the County reviews quarterly reports retroactively and determine if discounted medical service rates were applicable. If they were, determine overpayment and seek a refund from the CM.			✓		

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8. A)	We recommend the County requires the CM to obtain revised billings showing the correct rates of compensation and pay amounts that were under-billed to the security firms involved.	✓			✓	
B)	We recommend the County reviews past General Conditions' billings submitted by the security providers, determine the amount of overpayments based upon the terms of the contract, and requests a credit adjustment from the CM.	✓			✓	
C)	We recommend the County requests the CM to establish necessary controls to ensure that future pay requests are for amounts that are in compliance with contractual arrangements.	✓			✓	
D)	We recommend the County ensures rates used to compute labor costs in future billings submitted by subcontractors to the CM conform to contractual rates.	✓			✓	
9. A)	We recommend the County ensures future contracts with A&Es specify who is responsible to pay for on-site office space for A&Es.	✓				✓
B)	We recommend the County ensures all arrangements, subsequent to the execution of the contract, affecting A&E contract terms, are documented in addenda or amendments to the contract.	✓				✓
C)	We recommend the County ensures the Dell laptop computer is recovered from the A&E sub consultant and, if not needed, forwarded to Property Accounting for redistribution to other County Departments that are in need of such equipment.			✓		

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		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
Interim Report No. 6						
1.	We recommend that a revised Amendment No. 4 to the PM Contract 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.			✓		
A)	We recommend, for future contracts, the County reviews the scope of services in detail to ensure that only one contractor is assigned responsibility for specified scope of work.	✓				✓
B)	We recommend, for future contracts, the County submits contract amendments in cases where certain contracted services and employee positions are no longer needed; but different services and new positions are needed.			✓		
C)	We recommend, for future contracts, the County adheres to contract schedules for labor classification, number of individuals in the classification, hours, and rates.			✓		
D)	We recommend, for future contracts, the County ensures that accurate information is provided to the Board on contract amendments.	✓				✓
2.	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.	✓				✓

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NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
Final Report						
1.	We recommend, for future similar type contracts, the County implements procedures to perform the following:					
A)	Reviews all major trade contract proposals prior to issuance to ensure that unit rates are reasonable; and		✓		✓	
B)	Reviews all change orders to trade contracts (that do not affect the GMP) above a predetermined dollar limit to ensure the reasonableness of the prices.			✓		
2.	We recommend, for future contracts, the County ensures that contracts include a clear and comprehensive audit clause. The clause should include, but not be limited to, provisions to make it clear that: the owner has the right to audit all aspects of the contract, including change orders; the owner has access to all documents relative to the contract and subcontracts; and, the contractor maintains records for at least three years after the contract has been completed.		✓			✓
3.	We recommend, for future similar contracts, the County ensures that the amount of fee credits for a change order deduction conforms to the contract provisions and that modifications to the percentage of markup are in writing and agreed upon prior to contract signing.	✓				✓
4.	We recommend, for future A&E contracts, the County ensures that the contracts are written clearly and reference existing and consistent clauses.	✓				✓
5.	We recommend the Purchasing and Contracts Division establishes criteria to limit oral agreements to specific situations. These criteria should be incorporated into the County's Purchasing Procedures.	✓			✓	

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 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 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 (now URS) 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 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 provided monthly updates on construction activities and progress to the COC. Copies of these reports and minutes of these meetings were provided to the Board.

The final cost of the construction project will not be known until all Potential Change Orders (PCOs), contractor claims, and insurance claims are settled. The budgeted and actual costs as of January 2004 are shown in the table on the following page:



Budget vs. Actual Cost Costs (in Millions)			
	Budget	Actual	
Construction			
Trade contracts	\$361	\$329	(1)
Direct Purchases	70	81	(1)
CM Staffing & Fees	44	45	(1)
General Conditions	<u>15</u>	<u>30</u>	(1)
Sub-Total	490	485	
Owner's Contingency	<u>30</u>	<u>32</u>	(2)
Total	520	517	
Potential Change Orders		<u>16</u>	(3)
Total Conceivable			
Construction Cost		<u>533</u>	(4)
Design	45	45	(5)
Program Management	7	7	(5)
Owner Controlled Cost (not part of audit scope)	<u>176</u>	<u>170</u>	(5)
Grand Total Phase V	<u>\$748</u>	<u>\$755</u>	(4)

- (1) Source – various data provided by OCCC CD staff dated December 03 and January 04.
- (2) \$32 million of change orders to trade contracts funded by Owner's contingency. Contingency budget was \$30 million plus \$4 million added from sales tax savings, balance is \$2 million.
- (3) Amount as of June 1, 2004 provided by Project Management.
- (4) Total cost does not include the effect of contractor claims that may be deemed valid at a later date or insurance payments, a portion of which may eventually accrue to the County.
- (5) Source – Amounts committed as of September 30, 2003 as stated in the Citizen's Oversight Committee's final report to the Board of County Commissioners.

**Scope, Objectives,
and Methodology**

The overall audit scope includes a limited review of the CM, A&E and PM contracts with emphasis on contract language, contract administration, internal controls and other related matters.

The specific objectives and the methodology to achieve the objectives relative to the six interim audit reports are

INTRODUCTION



delineated in those reports. The objective of this final report is to list Recommendations For Improvements that were included in the Interim Reports and to specify additional Recommendations for Improvements that were not covered in the Interim Reports. The audit period was July 1, 1999 to May 31, 2003, however, certain matters occurring subsequent to May 31, 2003 were also reviewed.

Overall Evaluation

In our opinion, the language in the various contracts, contract administration and the system of internal controls utilized were adequate except as noted in this and in the various Interim Reports.

RECOMMENDATIONS FOR IMPROVEMENT

RECOMMENDATIONS FOR IMPROVEMENT



1. **County Staff Should Review Unit Rates in Trade Contract Proposals and Change Orders That Do Not Affect the GMP**

County staff should review change orders that do not effect the GMP

The County construction staff performs comprehensive reviews of change orders that add or deduct from the Guaranteed Maximum Price (GMP). However, change orders to trade contracts that do not affect the contract's GMP are not reviewed by either the County construction staff or the contracted PM for the reasonableness of prices. These change orders are funded by the CM from the CM's contingency or from other areas of the contract where budgeted funds were not needed and where the change orders do not increase the contract's Guaranteed Maximum Price (GMP).

Many of the change orders are priced based on unit rates included in the trade contracts. Neither the County nor the PM reviews these rates prior to the award of the trade contracts nor do they review the overall documentation supporting these change orders. This function is left to the CM contractor to perform.

Some unit rates in trade contracts were higher than comparable rates in the area

However, the CM contract includes a clause whereby the County is entitled to 60 percent of savings that occur if the final cost of the project is less than the GMP. Thus, the County should ensure that these change orders are reasonably priced. If the price of these change orders can be reduced, the final costs of the project would be lower and 60 percent of the resultant savings could accrue to the County.

A consultant who assisted the audit team reviewed a sample of these rates and stated that in his opinion some were 18 to 43 percent higher than the prevailing rates for similar type work done throughout the area. Higher rates could result in additional significant costs to a project.

In our view, an important control such as reviewing high dollar trade contracts change orders should not be left entirely to the CM contractor. The County should establish a predetermined dollar amount above which the County staff

RECOMMENDATIONS FOR IMPROVEMENT



should review the unit rates proposed in trade contracts prior to award, and when used to support the pricing of change orders. These reviews would be performed to ensure that unit rates included in the trade contracts are reasonable compared to locally prevailing rates.

We Recommend, for future similar type contracts, the County implements procedures to perform the following:

- A) Reviews all major trade contract proposals prior to issuance to ensure that unit rates are reasonable; and
- B) Reviews all change orders to trade contracts (that do not affect the GMP) above a predetermined dollar limit to ensure the reasonableness of the prices.

Management's Response:

- A) Partially concur. This may not be workable when the delivery method is contract at risk for GMP.
- B) Do not concur. This seems unnecessary, as what it recommends has been the ongoing practice when the change order would affect the GMP.

Auditor's Comment:

- B) The auditors recognize that this is the practice for change orders that affect the GMP. However, the recommendation is to expand this process to include the review of high dollar change orders that do not affect the GMP. The contract specifies that if the actual cost is lower than the GMP the resultant savings are to be shared 60 percent for the owner and 40 percent for the CM. Therefore, a comprehensive review of change orders that do not affect the GMP (but may be overpriced) could result in significant savings to the county.

2. CM Contracts Should Contain a Clear and Comprehensive Audit Clause

The CM contract lacked a clear and comprehensive audit clause. This resulted in some confusion during the early phases of the audit due to a misunderstanding on the part of the Project Director, County staff, and the CM regarding the auditor's requests for copies of trade contracts and other data.

Contracts
should contain a
clear and
comprehensive
audit clause

Paragraph 2.2.4 (f) of the CM contract states that the CM agrees to allow the owner or his designated representatives reasonable access to any and all documents. Paragraph 11.7 includes a statement that the owner reserves the right to audit the work except for the Construction Manager's fees and prescribes that records for the work should be retained for a period of two years after final payment.

Other paragraphs in the contract contain language that can cause confusion as to the right of the owner to obtain copies of documents needed to perform a comprehensive audit as quoted below:

Article 2.2 states:

Notwithstanding anything contained herein, it is expressly understood that the Construction Manager's Project Contract Systems, including, without limitation, estimating, scheduling, purchasing, cost reporting and project management systems, and all modifications, additions, or alterations thereto, are and shall remain the sole property of the Construction Manager.

Article 2.4.6 (6) states:

The Construction Manager shall include, prominently in all bid packages submitted for inspection by prospective Trade Contractors who may bid the Work, a statement or statements to the effect that the Trade Contracts to be awarded by the

RECOMMENDATIONS FOR IMPROVEMENT



Construction Manager to the Trade Contractors are not public works contracts. Therefore, such contracts are not subject to the provisions of Chapter 120 – Florida Statutes, or any state statute or Owner ordinance concerning public procurement and, accordingly, any Trade Contractor submitting a bid waives all rights to protest the award of any Trade Contract by the Construction Manager.

All contracts should include a clear and comprehensive audit clause to avoid confusion and disputes as to what elements of the contract or project are subject to audit.

A clear and comprehensive audit clause is necessary in order for the County to evaluate whether:

- The contractor is in compliance with the various terms and conditions of the contract;
- Change orders, and claims are valid and priced equitably; and
- Contract administration is being carried out efficiently and effectively by County Officials.

We Recommend, for future contracts, the County ensures that contracts include a clear and comprehensive audit clause. The clause should include, but not be limited to, provisions to make it clear that: the owner has the right to audit all aspects of the contract, including change orders; the owner has access to all documents relative to the contract and subcontracts; and, the contractor maintains records for at least three years after the contract has been completed.

Management's Response:

Partially concur. Project Management believes that the audit provisions of the existing CM contract are adequate. It was drafted by the County Attorney's office with great care.

3. The Percentage of Costs for Markup on Change Orders Should Be in Writing and Agreed to Before Contract Signing

Many change orders are decreases to the scope of work. The Contract between the County and the CM allowed the CM to apply an additional percent to all change orders for additional fees; thereby, increasing the GMP by this percent (in addition to the cost of the actual work). Subparagraph 9.4.2 of the Agreement states:

Credits for
markup
should be in
accordance
with contract
provisions

The Construction Phase Fee will be increased by ten percent (10%) of the Cost of the Work for Change Order Work performed by the Construction Manager's forces and five percent (5%) of the Cost of the Work for Change Order Work by Trade Contractors.

During our review, we found that the CM, for changed work done by subcontractors, applied this five percent markup on all change orders that increased the GMP. However, on the scope changes that reduced the GMP, the CM reduced the Trade Contractor's change orders by only two percent for fees, thus decreasing the GMP by only two percent. A sample of nine change orders resulted in lost credits to the County of approximately \$16,000.

Although the contract is silent regarding the percent for fees that should be applied on reductions of the scope of work (decreases in the GMP), an Assistant County Attorney opined "...a reduction in the cost of work would also reduce the Construction Manager's fees by either 10% or 5% in accordance with subparagraph 9.4.4(2)."

By allowing only two percent credit for fees, the County has received less credit than is due by contract. However, the Program Manager (with the consent of the Project Director) made an oral agreement with the CM to allow the two percent multiplier on reductions of scope rather than five percent in exchange for the CM agreeing to waive that portion of paragraph 9.4.2(2) that states that burden, fringe

RECOMMENDATIONS FOR IMPROVEMENT



benefits, salaries and wages will be added to all change orders based on costs incurred.

We Recommend, for future similar contracts, the County ensures that the amount of fee credits for a change order deduction conforms to the contract provisions and that modifications to the percentage of markup are in writing and agreed upon prior to contract signing.

Management's Response:

Concur.

4. Language and Provisions in Architect and Engineering (A&E) Contracts Should Be Clear and Consistent

Language in
A&E contracts
should be clear
and consistent

Certain aspects of the language included in the A&E Contract are inconsistent and confusing. For example paragraph 10.3.2 states:

If the time initially established in Paragraph 11.4.1 is exceeded or extended through no fault of the Architect, the Architects compensation shall be equitably adjusted for services required as a result of such time being extended.

However, there is no paragraph 11.4.1 in the contract. Also, paragraph 11.1.2 states, "...Owner shall promptly process and pay said invoice in accordance with Paragraph 11.4.2." However, there is no paragraph 11.4.2 in the contract.

In order to effectively administer a contract, all contract provisions, in particular the provisions regarding payments, need to be clear and consistent.

County staff informed us that the contract was considered to be a lump sum contract and Paragraphs 10.3.2 and 11.1.2 were inadvertently left in the contract when using a standard contract form. Confusion in the language in a major contract

RECOMMENDATIONS FOR IMPROVEMENT



such as the above can lead to contract disputes that are difficult and costly to resolve.

We Recommend, for future A&E contracts, the County ensures that the contracts are written clearly and reference existing and consistent clauses.

Management's Response:

Concur. Project Management concurs, while noting that the A&E contract has been administered by both parties as a "lump sum" contract without incident or misunderstanding.

5. Agreements Between the County and Contractors Should Be in Writing, Preferably as Amendments to the Contracts

Agreements
between the
County and
contractors
should be in
writing

The Project Director made oral agreements with contractors that in some cases materially changed the provisions of the contracts. All changes (especially those that materially change the contract) should be put in writing.

Examples of oral agreements that should have been formal written changes to the contracts are described in Recommendations for Improvements No. 3 in this report and in the various Interim Reports.

By not detailing in writing the types of changes described above, the County is more vulnerable to high dollar and unnecessary claims that can arise from misunderstandings.

We Recommend the Purchasing and Contracts Division establishes criteria to limit oral agreements to specific situations. These criteria should be incorporated into the County's Purchasing Procedures.

Management's Response:

Concur. The Purchasing and Contracts Division Manager stated, "I am taking action to include specific language in the Purchasing Procedures Manual as follows: Oral

RECOMMENDATIONS FOR IMPROVEMENT



modifications/change orders must only be used for (1) emergency requirements and/or (2) to ensure the continuity of critical elements of contract performance. All oral modifications/change orders shall be reduced to writing within five (5) calendar days after they are issued to a contractor.”

It should be noted that the Project Manager also concurred with this recommendation.