

**Limited Review of the
Orange County Sheriff's Office's
Relationship with the National
Domestic Preparedness
Coalition, Inc.**

**Report by the
Office of County Comptroller**

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April 21, 2006

Kevin Beary, Orange County Sheriff

We have conducted a limited review of the Orange County Sheriff's Office and the relationship with the National Domestic Preparedness Coalition, Inc. (NDPCI). The review was limited to a review of records available to support the determination of the total costs incurred by the Sheriff's Office in support of NDPCI. The period reviewed was January 1, 2002 through August 31, 2005. Our audit was conducted in accordance with generally accepted government auditing standards, and included such tests as we considered necessary in the circumstances.

Responses to our Recommendations for Improvement were received from the Chief Deputy and are incorporated herein. In addition, a response to the overall evaluation was received and is included as an Appendix.

We appreciate the cooperation of the personnel of the Orange County Sheriff's Office during the course of the review.

Martha O. Haynie, CPA
County Comptroller

c: Orange County Board of County Commissioners

EXECUTIVE SUMMARY

Executive Summary

The Sheriff of Orange County has the authority and responsibility for the management, direction and control of the operations and administration of the Orange County Sheriff's Office (OCSO).

The objective of the review was to determine if costs incurred by OCSO in support of NDPCI were properly accumulated by OCSO and reimbursed by NDPCI. In addition, we considered other matters that came to our attention during our review. The scope of our review was limited to an examination of the records maintained by OCSO to document the agency's Homeland Security and Critical Infrastructure Protection Sections' transactions in support of NDPCI. The period reviewed was from January 1, 2002 to August 31, 2005.

We found that OCSO did not identify and accumulate direct and indirect costs incurred in support of NDPCI activities. We were unable to determine the total number of direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. Therefore, we were unable to determine if remittances received from NDPCI were adequate to reimburse for all costs. Improvements are needed and described in detail in the Recommendations for Improvement section of our report.

The unique circumstances facing our nation after the September 11, 2001 terrorist attacks placed never before contemplated pressures on our State and Local Law Enforcement Agencies. We do not question that the end result of the relationship between OCSO and NDPCI has been of value to our community as well as to other communities outside Orange County. However, we found both entities' pervasive focus on the performance goal of creating and demonstrating a vulnerability assessment methodology overshadowed normal accountability and procedures. If OCSO had, upon the incorporation of NDPCI, maintained better records of staff's time and tasks spent in support of NDPCI, we may have been able to determine if amounts remitted by NDPCI were adequate to cover all costs borne by OCSO. Other individuals and OCSO staff involved in the project were aware of the need to formally separate the program. This is evidenced by their actions incorporating NDPCI and the subsequent filing by NDPCI of copyrights for the HLS-CAM and MD/Sharpp database applications. However, these same individuals should have kept separate records of OCSO time and costs.

Recommendations for Improvement include those for the review of the goals and objectives established for the OCSO Critical Infrastructure Protection Section to ensure that those goals and objectives are not biased to the benefit of any one entity. We also recommend the Sheriff execute a formal written contract to establish the responsibilities and levels of support between OCSO and NDPCI.

As noted, OCSO did not maintain appropriate documentation to support labor, travel, facilities, equipment, and ancillary services costs incurred in direct support of NDPCI. We recommend that OCSO ensure compliance with OCSO General Order 263: User Fees for Sheriff's Services, and maintain proper documentation of

all services provided to third parties to include contemporaneous detailed time records, appropriate vehicle and equipment usage logs, travel costs, costs of facilities provided, and overhead and/or indirect cost rates to be applied to the services provided. OCSO should establish written policies regarding OCSO ownership of developed intellectual property. We recommend OCSO develops and distributes, to all employees, and periodically reviews written policies related to works made for hire.

Our review did not include an evaluation as to whether OCSO's arrangement with NDPCI was legal, in compliance with the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), or in the best interests of Orange County taxpayers. In addition, we did not determine if the relationship between OCSO and NDPCI provides NDPCI an unfair business advantage over other private companies providing like security assessments and consulting.

The OCSO concurred with four of the five recommendations. The OCSO provided responses to each of the Recommendations for Improvement and the Overall Evaluation.

ACTION PLAN

**LIMITED REVIEW OF THE ORANGE COUNTY SHERIFF'S OFFICE'S
RELATIONSHIP WITH THE NATIONAL DOMESTIC PREPAREDNESS COALITION, INC.
ACTION PLAN**

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
		1.	We recommend the goals and objectives established for the OCSO Critical Infrastructure Protection Section be reviewed to ensure that such goals are not biased to the benefit of any one entity.	✓		
2.	<p>We recommend the Sheriff ensures agreements between OCSO and other entities are formally documented through written contracts. Specifically, agreements for the provision of services by OCSO employees and/or for the use of OCSO equipment, facilities, and ancillary services should be documented to include, at a minimum:</p> <ul style="list-style-type: none"> • Service levels (direct labor) and support anticipated, • Financial responsibilities of each party, the method of compensation to be made to the OCSO and any associated costs to be borne by the OCSO; and, • Term of the agreement (contractual dates). <p>Additionally, the Sheriff should assign independent staff to monitor and administer such agreements.</p>	✓				✓

**LIMITED REVIEW OF THE ORANGE COUNTY SHERIFF'S OFFICE'S
RELATIONSHIP WITH THE NATIONAL DOMESTIC PREPAREDNESS COALITION, INC.
ACTION PLAN**

NO.	RECOMMENDATIONS	MANAGEMENT RESPONSE			IMPLEMENTATION STATUS	
		CONCUR	PARTIALLY CONCUR	DO NOT CONCUR	UNDERWAY	PLANNED
3.	We recommend OCSO ensure compliance with General Order 263: User Fees for Sheriff's Services, and maintain proper documentation of all services provided to third parties to include contemporaneous detailed time records, appropriate vehicle and equipment usage logs, travel costs, costs of facilities provided, and overhead and/or indirect cost rates to be applied to the services provided.	✓				✓
4.	We recommend OCSO remit all remunerations as provided by law to Orange County on a monthly basis.			✓		
5.	We recommend OCSO develops and distributes, to all employees, and periodically reviews written policies related to works made for hire: A) Informing employees that any intellectual property, (including methodologies, programs, spreadsheets and software applications), developed on the OCSO's time and equipment are the property of the OCSO; and, B) Requiring documentation of all user developed reports, spreadsheets, models, programs, and software application.	✓				✓

INTRODUCTION

Background

Following the terrorist attacks of September 11, 2001, our Nation, State, and all local communities were called upon to re-examine their law enforcement focus, and to develop strategies to minimize the risk of future terrorist threats, as well as domestic preparedness for disaster events stemming from any and all sources (including environmental and/or natural disasters, and terrorism to weapons of mass destruction). Strategies to address the possibilities of these future threats and to assess the vulnerability of our communities were sought.

In Florida, multi-agency coordination was encouraged and established by the Florida Department of Law Enforcement (FDLE) as directed by the United States Office of Homeland Security. FDLE established seven Regional Domestic Security Task Forces (RDSTF). Co-chairs, one a local law enforcement officer and the other a FDLE representative, head each task force. Orange County is within the Central Florida Regional Domestic Security Task Force jurisdiction, with the Orange County Sheriff acting as a co-chair of the task force.

FDLE representatives informed us that the task forces were asked in late 2002 and early 2003 to share input on methodologies and strategies for critical infrastructure protection. It is our understanding that the relationships between the Orange County Sheriff's Office (OCSO), FDLE, RDSTF, and the National Domestic Preparedness Coalition, Inc. (NDPCI) developed based on the need for vulnerability assessment tools.

The Sheriff of Orange County is the chief law enforcement officer in the County. The Sheriff's authority is derived from Article VIII, Section 1(d) of the Florida Constitution, and Chapter 30, Florida State Statutes. The Sheriff is empowered to appoint deputies to act under him, who shall have the same power as the Sheriff.

The Sheriff in General Order 201 provides the General Duties and Responsibilities of his office as:

The Sheriff of Orange County, as the Chief Executive Officer, has the authority and responsibility for the management, direction and control of the operations and administration of the Orange County Sheriff's Office. Under that authority, the following duties and responsibilities are delegated to all sworn personnel:

- a. Protect the Constitutional rights of all persons.
- b. Do everything within our power and authority to prevent criminal behavior from occurring in Orange County.
- c. Reduction of fear within our communities in Orange County.
- d. Order maintenance within Orange County.
- e. Provide effective disaster response to our community through proper disaster preparedness.
- f. Problem solving, to include the identification, analysis, design and implementation of action to thwart crime inducing or enabling conditions.
- g. Provide a professional service resulting in community satisfaction.
- h. Strive for public accountability and shared, community responsibility for crime control.
- i. Apprehend violators of the law.
- j. Conduct thorough, logical and professional investigations.

OCSO is an accredited law enforcement agency, and has adopted the Standards for Law Enforcement Agencies, Fourth Edition published by The Commission on Accreditation for Law Enforcement Agencies, Inc. OCSO has a codified comprehensive set of issued General Orders, Special Orders, and Training Bulletins that provide the core policies and procedures for OCSO operations and administration. The Professional Standards Section is responsible for the recording and maintenance of these agency adopted policies and procedures.

OCSO describes its Homeland Security and Critical Infrastructure Protection Sections (the Sections) as responsible for domestic preparedness of Orange County,

and for the coordination of interagency responses to critical events. The focus of these sections is on the protection of the citizens and visitors of Orange County, along with the protection of critical facilities and infrastructures from crime, disaster and terrorism.

The Sections' mission is to focus resources from the OCSO toward mitigation, prevention, response, and recovery from incidents of terrorism and weapons of mass destruction. The Sections are designed to assist in assessing vulnerabilities in our community. The Homeland Security and Critical Infrastructure Protection Sections coordinate efforts to detect, plan, prevent, and prepare for the effects of natural and manmade disasters, terrorism and crime in general.

OCSO reports that much of these Sections' efforts are in establishing partnerships. Coordinated security efforts are being established between the Sheriff's Office, business and industry, as well as other aspects of government and other law enforcement agencies. The Sections are an augmentation to OCSO's tactical resources such as SWAT, Hazardous Device Team, Hostage Negotiation Team, and Emergency Response Team.

The National Domestic Preparedness Coalition, Inc. (NDPCI) was incorporated January 17, 2003. NDPCI's Articles of Incorporation state that the "...corporation is organized exclusively for research and development in connection with homeland security and to publish and distribute manuals and to train law enforcement and military personnel, emergency responders, and civilians in the maintenance of homeland security, and to engage in such activities as is proper for an organization which qualifies under Section 501(c) (3) of the Internal Revenue Code of 1986 or corresponding section of any future federal tax code."

It is our understanding that NDPCI has not yet received a letter of determination from the Internal Revenue Service as to the status of its request to be recognized as a tax exempt organization under Section 501, (c), 3 IRC.

During the period of our review and as of September 6, 2005, NDPCI described itself (on its Internet website at <http://www.ndpci.org>) as “a non-profit, public/private partnership, whose leadership includes the Orange County Sheriff’s Office, Orange County, Florida, the West Virginia School of Medicine, and the West Virginia National Guard.”¹ The copyright for the Homeland Security Comprehensive Assessment Model (HLS-CAM) is held by NDPCI. NDPCI’s stated mission is to help enable the work of organizations charged with protecting citizens, facilities, and infrastructure from terrorism and hostile criminal activity.

The four individuals listed as the initial Directors for NDPCI’s first year in 2003 included the Sheriff, two OCSO employees, and a physician with the West Virginia University School of Medicine. The composition and number of directors has changed since NDPCI’s incorporation; however, the initial four directors continued to hold director’s positions through our audit period.

Subsequent to the start of our review, the Sheriff and one of his employees resigned from serving on the NDPCI Board of Directors. The third employee tendered a letter of resignation to OCSO, dated November 23, 2005 and was granted use of accumulated paid leave, to begin December 4, 2005 with an effective resignation date of April 12, 2006 to accept the position as NDPCI’s Chief Executive Officer.

The Sheriff and certain employees engaged in NDPCI activities received additional compensation directly from NDPCI in December 2004 for consulting services performed during that calendar year.

Section 112.313, (8), Florida Statutes governs the conduct of public employees in dealing with outside entities. Also, public service requires public officers and their employees to

¹ Subsequent to September 2005, NDPCI revised its website advising, “...www.ndpci.org is no longer the official site of the National Preparedness Coalition, Inc. If you are interested in purchasing or need information about HLS-CAM Software, please contact Intelliorg, Inc. at www.intelliorg.net.” It informs the reader “Intelliorg, Inc. is also the only company that can train or sell training on its HLS-CAM software.” NDPCI’s current website can be found at www.ndpci.us.

**Scope, Objectives,
and Methodology**

place loyalty to the law and ethical principals above private gain.

The scope of our review was limited to an examination of the records maintained by the Orange County Sheriff's Office (OCSO) to document the agency's Homeland Security and Critical Infrastructure Protection Sections' transactions in support of the National Domestic Preparedness Coalition, Inc. (NDPCI). The period reviewed was from January 1, 2002 to August 31, 2005. The objective of the review was to determine if costs incurred by OCSO in support of NDPCI were properly accumulated by OCSO and reimbursed by NDPCI. In addition, other matters that came to our attention during our review were also considered during testing.

We spoke with OCSO personnel to gain an understanding of the association and relationship between OCSO and NDPCI. To identify costs we requested and reviewed the provided payroll and fiscal records including but not limited to:

- Supporting detailed timesheets,
- Duty/on-call rosters,
- Support for travel and training costs (voucher packages from OCSO Finance Division with Travel Authorization Request Forms and Actual Travel Reports),
- Vehicle assignments and associated vehicle cost records,
- Telecommunication, computer, office and audio-visual equipment assignments; and,
- Utilization of facilities for OCSO employees identified as participating in NDPCI activities.

We spoke with NDPCI's legal counsel. We inquired, requested, and received certain information from NDPCI through their attorney related to support for remittances to OCSO, a schedule of travel, and statements as to the availability of certain records.

We reviewed the audio recordings of the FDLE's interviews with certain OCSO employees regarding the FDLE

Management Review of HLS-CAM Contract, Case EI-73-6151, dated October 14, 2005.

NDPCI made six payments to OCSO between November 2003 and January 2005, remitting a total of \$271,064.27. Subsequent to the start of our review, NDPCI on August 15, 2005, provided to us their computation of costs to support the amounts remitted. They assert that their computation that includes estimates of direct labor hours, as well as estimates of indirect costs, is fair compensation for the value of services received. As previously stated, our review was limited to the records of OCSO. Therefore, we did not determine the accuracy and completeness of the computation prepared by NDPCI.

Our review did not include an evaluation as to whether OCSO's arrangement with NDPCI was legal, in compliance with the Code of Ethics for Public Officers and Employees (Chapter 112, Part III, Florida Statutes), or in the best interests of Orange County taxpayers. In addition, we did not determine if the relationship between OCSO and NDPCI provides NDPCI with an unfair business advantage over other private companies providing like security assessments and consulting.

Overall Evaluation

We found that OCSO did not identify and accumulate direct and indirect costs incurred in support of NDPCI activities. We were unable to determine the total number of direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. Therefore, we were unable to determine if remittances received from NDPCI were adequate to reimburse for all costs. Improvements are needed and described herein.

RECOMMENDATIONS FOR IMPROVEMENT

1. The Goals and Objectives Established for the OCSO Critical Infrastructure Protection Section Should Be Reviewed to Ensure that the Goals Are Not Biased to the Benefit of Any One Entity

OCSO did not clearly account for or delineate between its own activities and operations from those of the National Domestic Preparedness Coalition, Inc. (NDPCI) during both the development of that corporation and its subsequent operations. As previously noted, NDPCI was incorporated on January 17, 2003. In March 2005, OCSO established General Order 267: Critical Infrastructure Protection Section, which states:

The purpose of this policy is to establish the responsibilities and functions of the Critical Infrastructure Protection Section. The Critical Infrastructure Protection Section will maintain Orange County's Homeland Security Comprehensive Assessment Model (HLS-CAM) to assist in the planning, preparation, and prevention of terrorist attacks. The Critical Infrastructure Protection Section will coordinate Critical Infrastructure training and assessments with Federal, State, and local governments, companies or groups which directly or indirectly impact Orange County.

The procedures formulated in OCSO General Order 267 for the Critical Infrastructure Protection Section (CIP) include:

- Acting as the agency's HLS-CAM coordination point with private, municipal, county, state and federal agencies
- Coordinating instructors and mentors for the HLS-CAM methodology
- Coordinating homeland security related grant projects relating to the HLS-CAM

The copyright to the HLS-CAM is held/owned by the private company NDPCI. NDPCI has established a clientele not

limited to governmental agencies and markets its products, services, and training to private businesses. The three procedures listed above are not appropriate for an OCSO operational section as they provide a biased benefit to NDPCI by directing the Critical Infrastructure Protection Section to perform procedures and provide services benefiting a separate organization. We found, in the OCSO Goals and Objectives Annual Report 2003/2004 and in the Goals and Objectives Quarterly Report, Third Quarter FY 2004/2005 dated August 30, 2005, specific objectives for OCSO Terrorism Threat Assessment Section. OCSO personnel informed us that for the purposes of goals and objectives reporting, the Critical Infrastructure Protection Section was referred to as the Terrorism Threat Assessment Section. The objectives for the CIP Section included the following:

- Objective 2045: Schedule and conduct eight (8) HLS-CAM training courses.

Our review has found that four sworn OCSO employees are HLS-CAM certified instructors and used by NDPCI as trainers. To schedule and conduct 8 HLS-CAM training courses appears to reflect NDPCI's training schedule offered to third parties.

- Objective 2046: Complete the ODP Florida and Mississippi HLS-CAM Demonstration Projects.

Our review found that the ODP Florida/Mississippi HLS-CAM Demo Project was a grant awarded to NDPCI. There are no agreements to identify OCSO as a sub-grant recipient. This appears to be a primary goal for NDPCI, not OCSO.

- Objective 2047: Inquire and apply to the Office of Domestic Preparedness regarding additional HLS-CAM Demonstration grant funding opportunities.

Objective 2047 appeared in the Annual Report for 2003/2004 with a completion status listed as pending, but the objective was omitted from the Third Quarter

FY 2004/2005 dated August 30, 2005. This objective was an NDPCI task as NDPCI did receive additional grant funding from the Federal Homeland Security-Office of Domestic Preparedness.

Although OCSO has numerous relationships with not-for-profit companies, with OCSO employees serving on their board of directors (i.e., Orange County Police Athletic League, Inc. and the Children's Safety Village, Inc.), to our knowledge those associations have not directly compensated OCSO employees serving as directors. However, NDPCI did provide direct compensation to the Sheriff and the two OCSO employees serving as directors in December 2004.

NDPCI's Articles of Incorporation record that the company was established with a purpose for research and development in connection with homeland security and to publish and distribute manuals and to train law enforcement and military personnel, emergency responders, and civilians in the maintenance of homeland security. While we do not question that the end result of the relationship between OCSO and NDPCI has been of value to our community as well as to other communities outside Orange County, we question the manner in which the relationship has been documented and administered.

We were informed the original group that included the Sheriff and OCSO staff decided that it was in the best interest to all to create NDPCI as a corporate entity separate from OCSO. At that point the relationship between the two separate entities should have been formalized by executing written agreements.

The blending of goals and objectives between OCSO and those of NDPCI places OCSO at risk of an appearance of impropriety by the provision of privileged information and resources to a private organization. Prior to August 2005, the controlling leadership of NDPCI was comprised of the Orange County Sheriff and two high-ranking OCSO employees. The interlocking directorship did not provide for

arms-length transactions or for independent monitoring of the relationship between the two entities.

We Recommend the goals and objectives established for the OCSO Critical Infrastructure Protection Section be reviewed to ensure that such goals are not biased to the benefit of any one entity.

Management's Response:

Concur. First, OCSO appreciates OCC's acknowledgement that the "end result" of the relationship between OCSO and NDPCI has been of value to our community as well as to communities outside Orange County. At the 13 February 2006 meeting between representatives of OCC, OCSO and NDPCI, everyone agreed that NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. In addition, everyone agreed that there is no evidence of any intent on the part of OCSO to do anything improper from an accounting standpoint. As a result, OCSO respectfully submits that the record shows that NDPCI provided real and substantial value to Orange County's taxpayers in the form of free threat assessment services plus reimbursement for all taxpayer resources used in providing these free services.

Second, as for Objective 2045 regarding scheduling and conducting of eight (8) HLS-CAM training courses, OCC's Report states that "to schedule and conduct 8 HLS-CAM training courses appears to reflect NDPCI's training schedule offered to third-parties." The Report should note that NDPCI provided training to various OCSO employees for free and then allowed them to conduct these HLS-CAM training courses to the benefit of Orange County taxpayers free of charge.

Third, OCC's Report states that "NDPCI did provide direct compensation to the Sheriff and the two OCSO employees serving as directors in December 2004." Although NDPCI did compensate the Sheriff and two (2) OCSO employees for their off-duty consulting services performed during the preceding two (2) years, prior to making these payments

NDPCI consulted with its attorney, an internationally recognized accounting firm, and a local certified public accountant. All of these professionals informed NDPCI that these payments for consulting services were lawful and reasonable. It is important to understand that the Sheriff and the two OCSO employees were not compensated by NDPCI for serving as directors of NDPCI, but rather for consulting services provided by them to NDPCI in their respective specialties.

Fourth, OCC's Report states that "the interlocking directorship between OCSO and NDPCI did not provide for arms-length transactions or for independent monitoring of the relationship between the two entities." Again, everyone agrees that the relationship between OCSO and NDPCI has been of value to Orange County, and at the 13 February 2006 meeting between representatives of OCC, OCSO and NDPCI, everyone agreed that NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. Hence, the end result is that Orange County's taxpayers did in fact receive a fair deal and substantial benefits from relationship between OCSO and NDPCI.

Finally, there is indeed a "blending of goals and objectives" between OCSO and NDPCI - namely, protecting Orange County's families, visitors and critical assets from the attacks of violent terrorists. As we all know, a terrorist attack anywhere impacts us here in Orange County on many levels, and both OCSO and NDPCI have demonstrated their steadfast commitment to protecting and securing Orange County.

Auditor's Comment:

We do not agree that "...NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees." The reader should refer to our Overall Conclusion indicating that we were unable to determine the total number of direct labor hours

and costs incurred on NDPCI activities due to the inadequate identification and accumulation of these costs.

2. OCSO Should Execute a Formal Written Contract to Establish the Responsibilities and Levels of Support Between OCSO and NDPCI

OCSO did not execute written contracts, agreements, or instructions between OCSO and NDPCI, or with individuals working on the HLS-CAM project that delineated the arrangement to allow OCSO employees to conduct activities that were directly related to: the creation of NDPCI, NDPCI's subsequent operations, marketing of NDPCI products, and reimbursement arrangements between OCSO and NDPCI. OCSO did not formally establish the services to be provided and received, the number of hours active duty employees could devote to the operations and administration of NDPCI, and the costs to be reimbursed by NDPCI or fees to be charged. We were not provided with a copy of the OCSO license to use Automated HLS-CAM software and/or any other products copyrighted by NDPCI.

OCSO maintains a comprehensive set of policies and procedures. Several of those policies and procedures appear applicable to the transactions and activities occurring between OCSO and NDPCI. Specifically, several of the procedures address when contractual agreements should be executed (i.e. OCSO General Order 260: Financial Management; General Order 263: User Fees for Sheriff's Services; General Order 360: Off-Duty Employment; and General Order 250 Training Organization and Administration). However, we found those procedures to have been waived or not documented for the Sheriff's relationship with NDPCI.

The Sheriff and the two OCSO employees as directors of NDPCI were not independent in doing business with OCSO. As previously noted the Sheriff and one employee resigned as NDPCI directors in August 2005. The second employee tendered a letter of resignation to OCSO on November 23, 2005, and was approved to take personal leave until his

earned benefits exhaust on April 12, 2006. This employee currently serves as the Chief Executive Officer for NDPCI. It is difficult to distinguish activities performed solely for the benefit of OCSO and Orange County citizenry and those activities performed with a significant benefit to NDPCI due to the nature of the services, the unity of purpose, and the lack of independent monitoring of the activities.

Good business practices require properly executed written contracts to protect the parties of an association. Traditionally, contracts define the purpose of the association/project and transactions, the responsibilities of each party, the risks assumed by each party, the compensation to be received by the parties, the manner of compensation, and the term of the contract (time period covered).

We Recommend the Sheriff ensures agreements between OCSO and other entities are formally documented through written contracts. Specifically, agreements for the provision of services by OCSO employees and/or for the use of OCSO equipment, facilities, and ancillary services should be documented to include, at a minimum:

- Service levels (direct labor) and support anticipated,
- Financial responsibilities of each party, the method of compensation to be made to OCSO and any associated costs to be borne by OCSO; and,
- Term of the agreement (contractual dates).

Additionally, the Sheriff should assign independent staff to monitor and administer such agreements.

Management's Response:

Concur. NDPCI has provided OCSO with a proposed "royalty free" Copyright License Agreement pursuant to which OCSO is entitled to use, without charge, the HLS-CAM forever for the benefit of Orange County. As noted in OCC's Report, there is no longer any overlap between the

leadership of OCSO and NDPCI. Going forward, OCSO will execute written contracts with NDPCI as required under OCSO's policies and procedures.

3. OCSO Should Maintain Appropriate Documentation to Support Labor, Travel, Facilities, Equipment, and Ancillary Services Costs Incurred in Direct Support of NDPCI

OCSO did not provide adequate accountability of the costs incurred in support of NDPCI. The Critical Infrastructure Protection Section did not comply with OCSO General Order 263: User Fees for Sheriff's Services. The purpose of General Order 263 "...is to establish user fees to maintain current service levels, reduce the burden on County taxpayers, and avoid subsidization in instances where the service is not being provided to the general public but rather is for the specific benefit of the persons or groups charged."

OCSO Fiscal Section reported to us that as of September 2005 they neither billed nor received a request to bill NDPCI for services provided since the inception of NDPCI in January 2003. No special accounting was established to capture the costs incurred on behalf of NDPCI.

NDPCI remitted \$271,064.27 to OCSO (during the period of our review) as remuneration for services provided by OCSO. Relating to this, we noted the following:

- A) OCSO did not require individuals in the Homeland Security Section, and subsequently in the Critical Infrastructure Protection Section to maintain contemporaneous detailed time records of hours spent on the HLS-CAM project and/or the administration and operation of NDPCI.

Two OCSO employees involved in the administration and operation of NDPCI stated that approximately 10 percent of their regular OCSO workdays were spent on NDPCI activities, (unless they were traveling exclusively on NDPCI business). They stated that the

other OCSO employees providing training services to NDPCI spent none of their normal OCSO workdays on NDPCI activities. We are unable to verify the accuracy and reasonableness of these claims, as we were not provided with any records to substantiate that at most, 10 percent of their normal OCSO workdays were spent on NDPCI activities.

In an attempt to determine the reasonableness of the claims, we reviewed OCSO travel records and noted that the OCSO Captain (in charge at the time) of the CIP Section spent 30 percent of his time on out of county travel related to NDPCI. Other OCSO employees involved in providing services to NDPCI spent an average of approximately 15 percent of their time on out of county travel. In addition, the OCSO's Chief Deputy provided us access to a document that represents the HLS-CAM report for Orange County. The document is considered exempt from Chapter 119, Florida Statutes Public Record Law. This document represents the culmination of the previous years' assessment of Orange County's critical infrastructure vulnerability for the audit period. The document does not provide any additional detailed support of when the assessments took place for a majority of the locales listed. However, the Deputy Chief stated that the document represented a significant effort and time commitment by the OCSO CIP Section.

- B) During our review, NDPCI's attorney forwarded a schedule of travel conducted by OCSO employees on behalf of NDPCI. We compared that schedule to OCSO records of all travel expense for these reported individuals. The comparison identified 18 additional trips that NDPCI officers agreed were taken for the benefit of NDPCI. Identification of travel solely benefiting NDPCI was difficult as most travel records from the CIP Section did not clearly state whether or not the travel was on behalf of NDPCI or if the costs were to be reimbursed by NDPCI. Starting in 2005, NDPCI began directly paying for the costs of trips.

Although such trips are listed on the schedule received, we were provided neither with any additional information to determine the completeness of the listing of trips paid wholly by NDPCI, nor corroborating information to support the listing.

In addition, we noted the following trips that appear to be related to NDPCI business but were not included on the schedule provided by NDPCI:

- Three instances where OCSO reimbursed employees for the \$55 per person charge to attend NDPCI's HLS-CAM Instructor Training Course held in West Virginia on February 1 through 8, 2003. All three employees were subsequently utilized by NDPCI for training engagements with other entities on behalf of NDPCI. The travel cost of these three trips excluding labor totaled \$1,113.
 - Travel costs totaling \$858 excluding labor to the American Hotel & Lodging Association's April 2005 conference in Scottsdale, Arizona where the employee's travel authorization form records the purpose as "Speaker at American Hotel & Lodging Assoc. for WV Project and OCSO HLS."
 - Training provided by NDPCI to FDLE, held in Orlando during May 2004, and taught by OCSO employees for the use of HLS-CAM (identified by FDLE in correspondence with our office).
- C) Thirty-eight OCSO travel reimbursements, paid to various OCSO employees providing NDPCI services during the period from January 1, 2002 to August 10, 2005 totaling approximately \$18,343, did not have adequate support to determine the nature and/or purpose of the travel disbursements.

RECOMMENDATIONS FOR IMPROVEMENT



Limited Review of the
OCSO's Relationship
With NDPCI

- D) OCSO employees that performed work for NDPCI were provided take-home vehicle privileges and utilized the vehicles provided by OCSO in performing services for NDPCI. However, we were not provided with detailed trip logs to document the mileage or purposes of the trips made with these vehicles. OCSO Travel Authorization forms indicate that, on occasion, the vehicles were driven out-of-state on trips related to NDPCI activities.

- E) We were not provided adequate documentation to support the daily fringe rate used by NDPCI to estimate costs for traditional wage benefits (social security, retirement, insurances, overtime, and specialty pay), as well as a daily rate for equipment, and vehicle costs. The methodology used in applying the computed fringe rate to estimated labor hours does not follow generally accepted accounting principals.

- F) From January 2003 to July 2005 NDPCI operated out of OCSO facilities. The methodology and formulas used by NDPCI to estimate facilities costs were not based upon generally accepted cost accounting principles². NDPCI marketing materials, official correspondence and website used OCSO facilities for its mailing address, OCSO phone numbers, and OCSO E-mail accounts as the contact numbers for the corporation. OCSO employees providing services to NDPCI had 24 hour access to the facilities.

- G) Although requested, we were not provided with a schedule of OCSO equipment (computers, software, printers, Internet services, LCD projectors, copiers, cell phones, phones, and other audio-visual equipment) utilized by OCSO employees in the

² NDPCI's estimate for facilities costs incorrectly used an annualized lease rate as a monthly rate, did not include areas for restrooms or conference rooms, and adjusted the resultant value by 20 percent, an unsupported percentage, for an estimate of time the facilities were used when the facilities were provided on a 24 hour, 7 days a week basis. The use of the annualized rate as a monthly rate provided a rate that may have been 12 times more than required.

provision of services and training on behalf of NDPCI. Without such a schedule, we are unable to determine the value of OCSO equipment provided to NDPCI.

The payments received from NDPCI were not based upon OCSO billings, and NDPCI did not provide a detailed accounting of costs to be covered by each remittance at the time paid. As such, it is difficult to ascertain if amounts received are adequate to cover actual costs incurred. Although NDPCI claims that they had remitted more than the costs incurred through August 31, 2005, without adequate documentation of actual labor hours, equipment usage logs, and other ancillary services provided, we are unable to determine if OCSO has received adequate remuneration for all costs incurred on behalf of NDPCI.

We Recommend OCSO ensures compliance with General Order 263: User Fees for Sheriff's Services, and maintains proper documentation of all services provided to third parties to include contemporaneous detailed time records, appropriate vehicle and equipment usage logs, travel costs, costs of facilities provided, and overhead and/or indirect cost rates to be applied to the services provided.

Management's Response:

Concur. First, OCSO agrees that, with the benefit of hindsight, the employees in its Homeland Security Section should have been more meticulous in preparing detailed contemporaneous records as they completed the urgent and monumental task of making sure Orange County's families and infrastructure are safe from terrorist attacks. Nevertheless, the bottom line is that at the 13 February 2006 meeting between representatives of OCC, OCSO and NDPCI, everyone agreed that NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. In addition, everyone agreed that there is no evidence of any intent on the part of OCSO to do anything improper from an accounting standpoint. Hence, the record shows that OCSO

**RECOMMENDATIONS
FOR IMPROVEMENT**



did in fact hold NDPCI accountable for costs incurred in support of NDPCI.

Second, NDPCI's reimbursement to OCSO included the following full daily fringe benefits rate and vehicle usage rates provided by OCSO's Fiscal Management and Human Resources Division:

FICA	7.65%	\$433.45
Retirement	23.41%	1326.41
Insurance (Health, Long term Disability, life)	5500 / 12 = 458.33	458.33
Overtime	5.0%	283.00
Incentive	\$120/ Month	120.00
Longevity	\$40 / Month	40.00
Uniform Cost	\$197.92/ Month	197.92
*Equipment Cost	\$406.64/ Month	406.64
Vehicle Maintenance (Est. \$.075/Mile)	\$168.50/ Month	168.50
Fuel (Est. \$.1 O/Mile)	\$244.75/ Month	244.75
Total Fringe Benefits	\$122.63/Day	\$3,679.00

Notably, the benefit rate paid by NDPCI includes fuel and vehicle maintenance costs for all trips, including trips involving travel by air which did not involve the use of OCSO's vehicles. That is, NDPCI accounted for the fuel and vehicle maintenance costs for all trips even though OCSO's vehicles were not used on all trips.

Third, according to the OCC Report, NDPCI's estimate for facilities costs may have been up to 12 times more than required. If the OCC Auditors are correct that NDPCI's payments to OCSO for facilities costs "may have been 12 times more than required," then this amounts to an additional \$24,635 overpayment by NDPCI [$\$26,875 - (\$26,875 / 12) = \$24,635$]. At OCSO's request, NDPCI has agreed to waive its right to seek reimbursement of this potential \$24,635 overpayment to OCSO.

Fourth, NDPCI accounted for cell phones, laptops, etc. in the equipment portion of the "benefits payment" reimbursed to

OCSO. Also, NDPCI accounted for its use of LCD projectors, laptops, printers, Microsoft Office Product software and all audio visual equipment. Again, NDPCI reimbursed OCSO for all equipment regardless of whether OCSO equipment was actually used.

Fifth, starting in May 2005, NDPCI paid for the NEXTEL phones and service used by those helping NDPCI, even though those phones were used for OCSO business the majority of the time. Again, NDPCI reimbursed Orange County for cell phones regardless of whether OCSO equipment was actually used.

Sixth, NDPCI has paid OCSO for the time a handful of OCSO employees spent on NDPCI business while on OCSO's clock. NDPCI estimated this amount at 10% of the employees' time, and OCSO agrees this is a reasonable good faith estimate.

Indeed, OCSO and NDPCI have completed a full threat assessment for Orange County, including the identification of our most critical facilities, infrastructures and events ("Critical Facilities"), and Orange County's Critical Facilities have also been prioritized as required by Homeland Security Presidential Directive 7. Notably, Orange County is one of the few jurisdictions in the entire United States that has identified, assessed and prioritized its Critical Facilities. The completion of the Orange County HLS-CAM process was a true team effort involving all levels of Orange County's Government. This process solicited input from the participating members and identified and prioritized over seven hundred fifty (750) Critical Facilities within Orange County. The prioritized list was then used to begin vulnerability assessments of the most critical facilities identified in unincorporated Orange County. If Orange County had been required to hire and pay a private security company to complete this work, the cost to Orange County would have exceeded \$545,000.00.

In addition, the HLS-CAM was used to secure the NATO Conference and to protect the election process for Orange

County, Florida. This process was completed at no cost to the citizens of Orange County.

Auditor's Comment:

We do not agree that "...NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees." The reader should refer to our Overall Conclusion indicating that we were unable to determine the total number of direct labor hours and costs incurred on NDPCI activities due to inadequate identification and accumulation of these costs.

4. OCSO Should Remit Remuneration for Services to Orange County in Compliance with Section 30.51 Florida Statutes

OCSO did not remit the amounts received as remunerations (fees for services) from NDPCI to Orange County as required by State law. OCSO has received approximately \$271,064 from NDPCI over the past several years. These remunerations were recorded in OCSO accounts as current period refunds, and as credits to various expenditure accounts, with the effect of reducing the expense for the period in which the amounts were recorded.

In our Audit Report 228, dated February 1996 and again in our Follow-up Report 282, dated January 2000 we noted various other remittances and fees which OCSO had not remitted to the County contrary to State law.

Section 30.51, Florida Statutes requires of sheriffs that "All fees, commissions and other remuneration provided by law for services other than criminal shall be charged by the said sheriff to other authorities and parties doing business with their offices, and shall be paid over to the county as provided in this section."

We Recommend OCSO remits all remunerations as provided by law to Orange County on a monthly basis.

Management's Response:

Do not concur. The OCSO agrees that it will remit all remunerations provided by law to Orange County. This remuneration from NDPCI was not a "fee for service" and was not required to be remitted as a revenue to the County. It was a current period refund and retained by the OCSO to offset current expenditures.

Auditor's Comment:

OCSO employees' provided services to NDPCI and OCSO received fees in return for their employees' service. Section 30.51, (5), Florida Statutes requires: "All fees, commissions, or other funds collected by the sheriff for services rendered or performed by his or her office shall be remitted monthly to the county." We urge OCSO to obtain an Attorney General's Opinion on the nature of the remuneration received from NDPCI and as appropriate remit all fees for services to the County.

5. OCSO Should Establish Written Policies Regarding OCSO Ownership of Developed Intellectual Property

Written policies regarding OCSO ownership of works made for hire and other intellectual property, including manual methodologies, programs, software applications and spreadsheets, that are developed on OCSO's time and equipment were not implemented for all staff. OCSO General Order 217 exists for in-house programming development and modifications performed by Information Management Services Section staff but does not apply to all staff.

Written policies should be developed and distributed to all employees informing them that manual methodologies, programs, software applications, and spreadsheets developed on OCSO's time and equipment are the property of OCSO.

As a part of their job responsibilities, OCSO personnel routinely develop methodologies, applications, and spreadsheets. These items are developed using OCSO resources and employees are paid for the time for development. When employees are not informed of OCSO ownership, the methodologies, spreadsheets, and applications could be copyrighted, licensed and marketed for personal gain.

We were informed that the intent of forming the not-for-profit NDPCI was to protect and share the HLS-CAM with the multiple agencies that assisted in its development. However, NDPCI's Articles of Incorporation do not define ex-officio director positions from each of the multiple agencies that collaborated in its development. NDPCI copyrighted the HLS-CAM and the subsequent MD-Sharp Matrix that is used to analyze criminal and/or terrorist targets. NDPCI has licensed/sold the rights to the Automated HLS-CAM to Intelliorg, Inc.

OCSO personnel involved in the development of the HLS-CAM reported that the methodology was developed during off-duty hours and was a collaboration of multiple agencies. As previously noted, we were not provided with any corroborating documentation to support that the HLS-CAM was not developed or worked upon during the course of assignments given to OCSO HLS and CIP Sections. Therefore, we are unable to establish the ownership rights, if any, that OCSO yielded to NDPCI when NDPCI copyrighted the property.

We Recommend OCSO develops and distributes, to all employees, and periodically reviews written policies related to works made for hire:

- A) Informing employees that any intellectual property, (including methodologies, programs, spreadsheets, and software applications), developed on the OCSO's time and equipment are the property of the OCSO; and,

- B) Requiring documentation of all user developed reports, spreadsheets, models, programs, and software application.

Management's Response:

Concur. NDPCI was conceived by members of the Orange County Sheriff's Office, the West Virginia University School of Medicine, and the West Virginia National Guard, and has emerged as a stand alone, non-profit organization. NDPCI provides solutions that help protect our Nation's communities from all hazards, including terrorism and natural disasters by providing the highest quality training, and programs, developed through partnerships and participation by those on the front lines, emergency responders, private industry, and our citizens, who know best how to address our homeland security needs.

NDPCI's members developed the Homeland Security Comprehensive Assessment Model ("HLS-CAM") during their off-duty hours. HLS-CAM is a comprehensive assessment that defines a community, evaluates a community's strengths and weaknesses, identifies critical infrastructure and key resources, identifies the threats to the community, prioritizes critical infrastructure and key resources, and provides a comprehensive vulnerability assessment. NDPCI provides training for Emergency Responders and Private Industry representatives in the HLS-CAM methodology.

NDPCI has provided OCSO with a proposed "royalty free" Copyright License Agreement pursuant to which OCSO is entitled to use, without charge, the HLS-CAM forever for the benefit of Orange County.

OCSO will continue to routinely train its employees regarding all OCSO policies and procedures, including OCSO's written policies related to intellectual property.

Management's Additional Response to Overall Evaluation:

In conclusion, OCSO agrees that, with the benefit of hindsight, its employees should have been more meticulous in preparing detailed contemporaneous records as they completed the urgent and monumental task of making sure Orange County's families, infrastructure and visitors are safe from terrorist attacks.

The Report's "Overall Evaluation" section is somewhat confusing because; it states that OCSO did not "accumulate direct and indirect costs incurred in support of NDPCI activities." To any person that is not a trained accountant, this language implies that OCSO made no effort to recover reimbursements from NDPCI, which is simply not true. To date OCSO has collected payments from NDPCI in the amount of \$271,064.27 to cover the direct labor hours spent and costs incurred on NDPCI activities by OCSO employees.

At the 13 February 2006 meeting between representatives of OCC, OCSO and NDPCI, everyone agreed that NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. In addition, everyone agreed that there is no evidence of any intent on the part of OCSO to do anything improper from an accounting standpoint.

Again, to date OCSO has received payments from NDPCI in the amount of \$271,064 to cover the direct labor hours spent and costs incurred on NDPCI activities by OCSO employees. Based upon its reasonable, good faith estimates, NDPCI believes that it has overpaid OCSO approximately \$4,000 for the direct labor hours and costs incurred on NDPCI activities by OCSO employees. In addition, if the OCC Auditors are correct that NDPCI's payments to OCSO for facilities costs "may have been 12 times more than required," then this amounts to an additional

\$24,635 overpayment by NDPCI [$\$26,875 - (\$26,875 / 12) = \$24,635$].

Thus, in total, it appears that OCSO may have collected from NDPCI a total potential overpayment in the amount of \$29,470.

Although NDPCI has informed OCSO that it respectfully disagrees with the OCC Auditors statements regarding several trips, at OCSO's request NDPCI has agreed to waive its right to seek reimbursement of its potential \$29,470 overpayment to OCSO to account for these trips and in order to expediently address and resolve certain questions raised by the OCC Auditors regarding these expenditures.

Auditor's Comment:

Again, we do not agree that "...NDPCI's payments to OCSO are a reasonable, good faith estimate and effort to reimburse OCSO for all direct labor hours spent and costs incurred on NDPCI activities by OCSO employees." The reader should refer to our Overall Conclusion indicating that we were unable to determine the total number of direct labor hours and costs incurred on NDPCI activities due to inadequate identification and accumulation of these costs.