

Follow-up of the Audit of Orange
County Convention Center
Phase V Expansion

**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

Rhonda Haney, CPA, Senior Auditor
In-Charge Auditor

**Report No. 389
April 2008**

TABLE OF CONTENTS

Transmittal Letter	1
Implementation Status of Previous Recommendations For Improvement	2
Introduction	13
Scope and Methodology	14
Follow-Up To Previous Recommendations For Improvement.....	15
1. A New Amendment Should Be Executed Specifying That the GMP Is \$490 Million	16
2. The County Should Revise the Classification of Costs in Amendment No. 1 to Show CM Fees Separate From the Cost of Work but Included in the \$490 Million GMP	16
3. The PMIS System Should Provide the Project Team with a Timely Report Showing all Potential Costs to the Project	17
4. Management Should Analyze How to Mitigate All Outstanding PCOs	18
5. The County Should Request That The CM Excludes Any References That Allow Potential Future Requests for Time and Compensation Due to The Result of Cumulative Effects of Change Orders	19
6. The Verbal Agreement Whereby the CM Does Not Share in Savings From Value Engineering (VE) Changes Should Be Formalized	20
7. A Credit Change Order Should Be Obtained From the CM to Restore Funds Used From the Owner's Contingency to Cover Additional Printing and Reproduction Expenses	21
8. Review of Invoices for Printing and Reproduction of Drawings Should Include an Assessment of the Reasonableness of the Services Provided	22
9. General Conditions' Expenditures Should Be Authorized and Incurred by the CM Only.....	24
10. Fees for Printing and Reproduction Services Should Be Formalized in Writing and Used by the Program Manager and the County as the Basis for Their Review of Related Invoices.....	24
11. Blue Line Paper Should Be Used Instead of Bond Paper in Instances Where Drawings Are Needed as Working Copies	25
12. The Budget for General Conditions' Expenses Should Be Established as a Specific Component of the GMP	26
13. Invoices for Legal Services Should Be Reviewed Against the Terms of the CM's Legal Services Agreement With Their Attorneys	27
14. Invoices Should Contain Adequate Descriptions of Materials and Services and Be Supported by Evidence to Show Materials Were Supplied and Services Performed	29
15. Payments Should Not Be Made for Items Included in the Labor Rate Multiplier	30
16. Accuracy of Labor and Other Expenses Should Be Verified Against Contractual Terms.....	32
17. The County Should Pay Overtime Expenses That Are in Accordance With Contractual Terms.....	33
18. Medical Trailers Should Be Adequately Staffed and Related Services Billed in Accordance With Contractual Terms.....	34
19. Payment for Labor Expenses Should Be Based Upon Contractual Rates	36
20. Expenses for Equipment and Site Office Space Should Be Paid in Accordance With the Contracts	38
21. Certain Contract Administration Procedures Should Be Modified.....	39
22. Scope of Services Performed Should Be Shown on Invoices.....	41
23. County Staff Should Review Unit Rates in Trade Contract Proposals and Change Orders That Do Not Affect the GMP.....	42

TABLE OF CONTENTS (continued)

24. CM Contracts Should Contain a Clear and Comprehensive Audit Clause	43
25. The Percentage of Costs for Markup on Change Orders Should Be In Writing and Agreed to Before Contract Signing	44
26. Language and Provisions in Architect and Engineering (A&E) Contracts Should Be Clear and Consistent.....	45
27. Agreements Between the County and Contractors Should Be in Writing, Preferably as Amendments to the Contracts	45

April 16, 2008

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

We have conducted a follow-up of the Audit of Orange County Convention Center Phase V Expansion (Report Numbers 319, 323, 326, 329, 332, 337 and 348). Our original audit included the period of July 1, 1999 to May 31, 2003. Testing of the status of the previous Recommendations for Improvement was performed for the period October 31, 2002 through April 30, 2007. Our follow-up audit was conducted in accordance with generally accepted government auditing standards and included such tests as we considered necessary in the circumstances.

The accompanying Follow-Up to Previous Recommendations for Improvement presents a summary of the previous conditions and the previous recommendations. Following the recommendations is a summary of the current status as determined in this review.

We appreciate the cooperation of the personnel of the Convention Center Construction, Capital Projects and Purchasing and Contracts Divisions during the course of the audit.

Martha O. Haynie, CPA
County Comptroller

c: Ajit Lalchandani, County Administrator
Tom Ackert, Executive Director, Orange County Convention Center
Johnny M. Richardson, Manager, Purchasing and Contracts Division
Tony Aguerrevere, Manager, Capital Projects Division

**IMPLEMENTATION STATUS OF
PREVIOUS RECOMMENDATIONS
FOR IMPROVEMENT**

**FOLLOW-UP OF THE ORANGE COUNTY CONVENTION CENTER PHASE V EXPANSION
STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT**

NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS			
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
Interim Report No. 1					
1.	We recommend the Construction Manager (CM) agreement be amended to change the Guaranteed Maximum Price from \$520 million to \$490 million.	✓			
2.	We recommend the County revise the classification of costs in Amendment No. 1 of the CM contract to show CM fees separate from the cost of work but included in the \$490 million GMP.	✓			
Interim Report No. 2*					
3.	We recommend, for this and future County projects, the Project Management Information System (PMIS) should provide the project team with a timely report showing all potential costs to the project including Potential Change Orders (PCOs) in numerical order with sufficient detail as to their actual and /or expected impact.	✓			
4.	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 PCOs 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.	✓			

**FOLLOW-UP OF THE ORANGE COUNTY CONVENTION CENTER PHASE V EXPANSION
STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT**

NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS			
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
5.	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 excludes any references that specifically allow 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					
6.	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.	✓			

**FOLLOW-UP OF THE ORANGE COUNTY CONVENTION CENTER PHASE V EXPANSION
STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT**

NO.	PREVIOUS RECOMMENDATION	IMPLEMENTATION STATUS			
		IMPLEMENTED	PARTIALLY IMPLEMENTED	NOT IMPLEMENTED	NOT APPLICABLE
Interim Report No. 4					
7.	We recommend the following:				
A)	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)	The County, for this and future CM-at-Risk Agreements with a Guaranteed Maximum Price (GMP), ensures adequate justification is provided (in writing) when utilizing funds from the Owner's Contingency.	✓			
8.	We recommend the following:				
A)	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)	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 Architect/Engineer (A&E), investigate them and request credits where applicable.				✓**
9.	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.	✓			

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10.	We recommend the following:				
A)	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 vendor.	✓			
B)	The Program Manager (PM) 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.	✓			
11.	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.				✓
Interim Report No. 5					
12.	We recommend, for future GMP at-risk agreements, the County formalizes a budget for General Conditions' expenses as a specific component of the GMP.	✓			
13.	We recommend the County performs the following:				
A)	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; and,	✓			
B)	Requests a credit adjustment for the \$30,000 paid for the period July to December 1999.			✓	

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14.	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.		✓		
15.	We recommend the County performs the following:				
A)	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)	Reviews past billings, identify items and amounts billed separately which were already included in the multiplier and request a credit adjustment from the CM.				✓**
16.	We recommend the County performs the following:				
A)	Requests and reviews the 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; and,	✓			
B)	Ensures that future agreements with contractors entitle the County to have access to and make copies of contracts between the contractor and their subcontractors.	✓			

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17.	We recommend the County performs the following:				
A)	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)	Determines the amount of overstated overtime costs reimbursed for this subcontractor and request a credit for the amount from the CM.				✓**
C)	Requests the CM to advise the medical services subcontractor to review its records and submit revised billings for overtime worked but not billed.				✓**
18.	We recommend the County reviews the contract between the CM and the medical services provider to ascertain the compensation terms and conditions and performs the following:				
A)	Requires the CM to ensure that the medical trailer is staffed at all times in accordance with the contractual arrangements;				✓
B)	Ensures that billings and supporting daily reports identify employees' qualifications and that compensation rates are in accordance with contract terms for these positions;				✓
C)	Reviews quarterly treatment reports prospectively to ensure that applicable discounts are not lost; and,				✓
D)	Reviews quarterly reports retroactively and determines if discounted rates were applicable. If they were, determine the overpayment amount and seek a refund from the CM.				✓**

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19.	We recommend the County performs the following:				
A)	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)	Reviews past General Conditions' billings submitted by the security providers, determines amount of overpayments based upon the terms of the contract, and requests a credit adjustment from the CM;				✓**
C)	Requests the CM to establish necessary controls to ensure that future pay requests are for amounts that are in compliance with contractual arrangements; and,	✓			
D)	Ensures rates used to compute labor costs in future billings submitted by subcontractors to the CM conform to contractual rates.				✓
20.	We recommend the County ensures the following:				
A)	Future contracts with A&Es specify who is responsible to pay for on-site office space for A&Es.				✓
B)	All arrangements, subsequent to the execution of the contract, affecting A&E contract terms, are documented in addenda or amendments to the contract.	✓			
C)	The 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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Interim Report No. 6					
21.	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. In addition, for future contracts, we recommend the County:			✓	
A)	Reviews the scope of services in detail to ensure that only one contractor is assigned responsibility for specified scope of work;	✓			
B)	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)	Adheres to contract schedules for labor classification, number of individuals in the classification, hours, and rates; and,				✓
D)	Ensures that accurate information is provided to the Board on contract amendments.	✓			
22.	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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Final Report					
23.	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.	✓			
24.	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.	✓			
25.	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.	✓			
26.	We recommend, for future A&E contracts, the County ensures that the contracts are written clearly and reference existing and consistent clauses.	✓			

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27.	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.	✓			

* - Issued by Cumming McGillivray, LLC

** - Per Orange County Convention Center Construction Management, all cumulative claims with the CM were settled in August 2006 for \$14.2 million which is in addition to an earlier agreement in April 2006 whereby the County paid the CM \$4.3 million for a total of \$18.5 million. No documentation was available to determine implementation status. Due to settlement, no further action is required.

INTRODUCTION

Scope and Methodology

The audit scope was limited to an examination of the status of the previous recommendations for improvement from the Audit of Orange County Convention Center Phase V Expansion (Report Numbers 319, 323, 326, 329, 332, 337 and 348). Testing of the status of the previous recommendations was performed for the audit period October 31, 2002 through April 30, 2007.

We interviewed personnel in the Orange County Convention Center Construction, Capital Projects (CPD) and Purchasing and Contracts (PCD) Divisions. We also reviewed source documents for the Orange County Convention Center Phase V Expansion. Two additional contracts, Architect & Engineer (A&E) contract Y4-817 and Construction Manager-at-Risk contract Y6-800 for the construction of four fire stations were reviewed. With respect to these documents and contracts, we performed the tests necessary to determine the implementation status of the previous recommendations. We have described the specific methodologies utilized during our review in the implementation status of each recommendation in the Follow-Up to Previous Recommendations for Improvement section of this report.

**FOLLOW-UP TO PREVIOUS
RECOMMENDATIONS FOR
IMPROVEMENT**

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

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

During the previous audit, we noted that the Construction Management agreement was amended to show a Guaranteed Maximum Price (GMP) of \$520 million. However, the actual GMP should have been only \$490 million. The project budget was \$520 million consisting of the \$490 million and the County's contingency of \$30 million.

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

Status:

Implemented. On August 30, 2002, a second amendment to the CM agreement was issued changing the GMP to \$490 million.

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

During the previous audit, we noted that the first amendment to the CM agreement showed that the "Cost of Work" included the \$19.4 million of CM fees. However, Section 11.1 of the CM agreement prescribes that, if the cost of work plus CM fees are less than the GMP, the difference would be shared (60/40) between the Owner and the CM. Adding the CM fees to the cost of work could allow for double counting of the CM fees.

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

STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

Status:

Implemented. On August 30, 2002, a second amendment to the CM agreement was issued which shows the cost of work to be \$470.6 million and CM fees of \$19.4 million separate from the cost of work for a total GMP of \$490 million.

3. The PMIS System Should Provide the Project Team with a Timely Report Showing all Potential Costs to the Project

During the previous audit, our consultant noted the Project Management Information System (PMIS) that is set-up and administered by the CM allows real time tracking and forecasting of the contract cost.

From the PMIS, the CM produces a log titled "PCO Summary Log to Owner" that only identifies PCOs (potential change orders) that are considered by the CM to be the County's financial responsibility. It does not include PCOs covering work that the CM intends to fund from other categories within its GMP contract. The report includes numerical gaps in the sequence of PCO tracking numbers that are subsequently filled with previously unreported PCOs, some over a year old, and their related values.

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 PCOs in numerical order with sufficient detail as to their actual and/or expected impact.

Status:

Implemented. Our review of the November 2006 Monthly Report for CM-at-Risk contract (Y6-800) for \$7,080,000, selected for review as part of the follow-up audit, for the construction of four fire stations (35, 77, 81, 86) indicated that the PMIS has the ability to identify and report on all



PCOs for inclusion in monthly reports for project management.

4. Management Should Analyze How to Mitigate All Outstanding PCOs

During the previous audit, our consultant noted that the construction budget established for the Orange County Convention Center (OCCC) was \$520,000,000. A review of the joint venture Change Order Transfer Authorization (COTA) Log through November 2002 listed the project cost, including all approved change orders to the CM, at approximately \$516,008,856. The PCO Log from the CM's monthly report for November 2002 totaled \$64,761,455 which represents the potential cost exposure to the Owner's remaining contingency value of \$9,225,283. In addition, the published PCO Log did not include any value for changes and claims that could have been forthcoming over the remaining months of construction. If this value plus the value of PCOs was not reduced or eliminated, the construction value of the project would be considerably over the construction budget.

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 PCOs 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.

Status:

Implemented. In August of 2006 the County and the CM agreed to a final settlement of \$14.2 million which is in addition to an earlier agreement whereby the County paid the CM \$4.3 million for a total of \$18.5 million to settle all of



the \$64.6 in million claims. This settlement closes out the project as to any more claims or liabilities to the County for construction costs. It establishes the final cost to the County of \$544 million which is \$24 million (4.6%) over the original construction budget of \$520 million.

5. The County Should Request That The CM Excludes Any References That Allow Potential Future Requests for Time and Compensation Due to The Result of Cumulative Effects of Change Orders

During the previous audit, our consultant noted that historical experience indicates that while contract changes may not affect the Critical Path Schedule and the Date of Substantial Completion on their own merit, they do affect the Trade Contractor's duration, staffing or acceleration to complete their scope of work which in turn affects the cost of General Conditions' and Overhead. Several changes incorporated in the signed Change Order Transfer Authorizations (COTA's) contained a Proposal Qualification from the CM for each PCO which states:

"HCC may request additional compensation and/or a future time extension, which, in the future, may be justified as the result of this change order's unforeseeable cumulative effect with other change orders."

By not disclaiming this reservation to claim, the contractor can use the change and any other changes to submit for cumulative changes in duration or compensation for elimination of that duration from the schedule by acceleration cost. The clause also allows the contractor to submit at the end of the project for issues such as stacking of trades and loss of productivity.

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 excludes any references that specifically allow



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.

Status:

Implemented. Although OCCC Management disagreed with the recommendation, PCD is planning to change the wording on the change order request form for all departments. This new language is similar to what was proposed by our consultant.

6. The Verbal Agreement Whereby the CM Does Not Share in Savings From Value Engineering (VE) Changes Should Be Formalized

During the previous audit, we noted that a series of negotiations took place with the CM prior to the finalization of a Guaranteed Maximum Price (GMP). At the commencement of negotiations, the CM proposed a GMP in excess of the project's construction budget of \$520 million. After certain scope changes were made, it was agreed that the Project Management Team (CM, Architect & Engineer, Program Manager and Owner) would achieve further reductions of \$30 million that were referred to as value engineering (VE) changes. Thus, a GMP of \$490 million was agreed upon. However, there was no written agreement to formalize the plan to achieve the \$30 million VE reductions or exclude this from the shared VE savings' contract clause. As a result, the CM could claim to be

STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

entitled to \$15 million of this planned \$30 million reduction, when achieved.

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.

Status:

Implemented. A letter from the CM dated March 10, 2003 confirmed that the CM would not share in the \$30 million savings.

7. A Credit Change Order Should Be Obtained From the CM to Restore Funds Used From the Owner's Contingency to Cover Additional Printing and Reproduction Expenses

During the previous audit, we noted that the County used \$700,000 from the \$30 million Owner's Contingency provision of the project's \$520 million construction budget to cover overruns in the CM's General Conditions' line item budget of \$500,000 for printing reproduction of drawings and related documents. This increased the GMP by an equal amount. Printing and reproduction of drawings and related documents were included in the General Conditions' items agreed upon by the County and CM at the time the GMP was established. The items agreed to were identified as line items in the CM's General Conditions' section of the \$490 million construction GMP.

Since printing and reproduction of drawings was identified as a General Conditions' item when the GMP was established, the \$700,000 should have come from the CM's GMP at Risk amount of \$490 million. There was no written justification for utilizing the \$700,000 from the Owner's Contingency.



We Recommend the following:

- A) 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) 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.

Status:

- A) Not Applicable. We were informed by OCCC management that all cumulative claims with the CM were settled in the final settlement of \$14.2 million in August 2006. No documentation of what constituted the final settlement amount was available. However, due to the settlement, no further action is recommended on this issue.
- B) Implemented. Our review of CM-at-Risk contract (Y6-800) for the construction of four fire stations indicated that all charges to the CM's contingency account were appropriate and the purpose of each expenditure was fully justified in writing through the regular change order processing procedure. At the time of the audit, there were no charges to the Owner's Contingency account; however, we were informed that any eventual charges to the Owner's Contingency account would be handled in the same manner.

8. Review of Invoices for Printing and Reproduction of Drawings Should Include an Assessment of the Reasonableness of the Services Provided

During the previous audit, our review of sample disbursements for printing and reproduction of drawings revealed that there were instances when invoices were paid

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

by the County for services that were not requested and for services that should have been billed to the A&E.

We Recommend the following:

- A) 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) 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.

Status:

- A) Implemented. Three invoices that were processed subsequent to the issuance of Interim Report No. 4 were reviewed. The prices of various items and services shown on the invoices fully conformed to the fee schedule and no instances of unreasonable charges were noted.
- B) Not Applicable. OCCC Management could not provide documentation to indicate that any action was taken to review past paid invoices and request credits. We were informed by OCCC management that all cumulative claims with the CM were settled in the final settlement of \$14.2 million. No documentation of what constituted the final settlement amount was available. However, due to the settlement, no further action is recommended on this issue.



9. General Conditions' Expenditures Should Be Authorized and Incurred by the CM Only

During the previous audit, we noted that the A&E placed some print orders for design and construction documents directly with the printer without going through the CM. Costs of these print jobs were then billed directly to the CM for payment out of their General Conditions' funds based upon the signature of an A&E employee. As a result, the CM did not have complete control over the General Conditions' budget line for reproductions.

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.

Status:

Implemented. For the CM-at-Risk contract (Y6-800) selected for review for the follow-up audit, no instances were noted where any General Conditions' funds were committed or expended other than those authorized by the CM.

10. Fees for Printing and Reproduction Services Should Be Formalized in Writing and Used by the Program Manager and the County as the Basis for Their Review of Related Invoices

During the previous audit, we noted that there was no written agreed-upon fee schedule for printing and reproduction expenses between the CM and the vendor for reproduction services prior to requesting services. In addition, the Program Manager and the County accepted the prices noted on the invoices in the absence of a schedule of fees.

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

We Recommend the following:

- A) 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 vendor.
- B) 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.

Status:

- A) Implemented. A schedule of fees for printing and reproduction expenses was provided by the CM.
- B) Implemented. Three invoices that were processed subsequent to the issuance of Interim Report No. 4 were reviewed. The prices of various items and services shown on the three invoices fully conformed to the fee schedule.

11. Blue Line Paper Should Be Used Instead of Bond Paper in Instances Where Drawings Are Needed as Working Copies

During the previous audit, we noted that there were instances when the A&E could have obtained copies of drawings on blue line paper instead of on bond paper. The price of bond ranged from \$0.50 per square foot to \$0.15, where as the cost of blue lines was fixed at \$0.06 per square foot. In addition, no procedures were put in place to review A&E print orders to ensure that blue lines were used for working copies.

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

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

the drawings are needed as working copies and not for archival purposes.

Status:

Not Applicable. OCCC Management and the CPD stated that blue lined paper is no longer produced. In addition, we contacted a local vendor who verified that the industries use of blue lined paper has been replaced with laser printing.

12. The Budget for General Conditions' Expenses Should Be Established as a Specific Component of the GMP

During the previous audit, we noted that a budget of \$15.4 million for General Conditions was agreed upon at the time the GMP of \$490 million was finalized. However, the amount was not shown in the CM-at-Risk Agreement Amendments (Numbers 1 and 2) that formalized the GMP.

We Recommend for future GMP at-risk agreements, the County formalizes a budget for General Conditions' expenses as a specific component of the GMP.

Status:

Implemented. Our review of the cost proposal submitted by the CM for Fire Station No. 81 included an itemized breakdown of General Conditions' within the Cost of Work total of \$2,628,299. This amount was included in Amendment No. 1 to CM-at-Risk contract Y6-800 that was approved by the Board. However, we noted that a large amount (\$253,784 of a total of \$354,704) of General Conditions' items for self-provided work by the CM was paid without the submission of detailed invoices. The items were paid based on the percentage of completion at the time of each pay request. Recommendation for Improvement No. 14 addresses this issue.



13. Invoices for Legal Services Should Be Reviewed Against the Terms of the CM's Legal Services Agreement With Their Attorneys

During the previous audit, we noted that the CM's agreement with a legal firm required the CM to pay a retainer of \$10,000 upon execution of the engagement letter and \$10,000 per month for a period of thirty-six months after the County awarded the building contract to the CM. Relating to this agreement, we had the following concerns:

- A) The County made an agreement with the CM to pay \$5,000 per month towards the \$10,000 monthly retainer. There was no documentation on file to:
- Show when payments should begin and end;
 - Explain how the basis for the \$5,000 was determined;
 - Show the amount of the agreed upon retainer that should be paid by the CM to the Attorneys; or,
 - Indicate the scope of services to be provided.

As a result, the reasonableness of the retainer and the extent of the commitment for payments were not determined.

- B) The contract between the CM and the County to build Phase V of the Convention Center had an effective date of January 1, 2000. However, the County retroactively paid \$5,000 of the monthly retainer for the period July through December 1999 (totaling \$30,000).
- C) The County made payments for services rendered by the CM's attorneys. We determined that these services were performed in defense of a suit filed by a former member of the management team against the CM. The County did not review the legal services agreement between the CM and their attorneys, and

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

as a result, could not ensure the payments were in accordance with the contract terms.

- D) Our review of 15 invoices revealed numerous deficiencies in documentation such as the time spent performing each activity, positions of the individuals performing the activity and a description of the activities performed.

Due to the lack of details on the invoices and knowledge of contractual terms, the accuracy and reasonableness of the billings were not determined.

We Recommend the County performs the following:

- A) 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; and,
- B) Requests a credit adjustment for the \$30,000 paid for the period July to December 1999.

Status:

- A) Implemented. One invoice for legal expenses processed subsequent to the issuance of Interim Report No. 5 was located in the population of payments. The invoice included details of the legal duties performed and the rates included on the invoice conformed to the applicable agreement. The CM-at-Risk construction contract (Y6-800) did not include a provision for legal expenses.
- B) Not Implemented. OCCC Management was unable to provide documentation that a credit of \$30,000 was requested from the legal firm for payments made from July to December 1999. Management informed

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

County Audit that the staff accountant that would have processed this was no longer employed with OCCC.

In our opinion, the credit of \$30,000 was not a litigation issue. However, because the settlement for \$18.5 million with the CM is final, no further action is recommended on this issue.

14. Invoices Should Contain Adequate Descriptions of Materials and Services and Be Supported by Evidence to Show Materials Were Supplied and Services Performed

During the previous audit, we noted that the support documentation for a sample of two General Conditions' payments did not contain adequate descriptions to ensure that goods and services were provided.

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.

Status:

Partially Implemented. Invoices included in two General Conditions' payments for the Phase V project that were processed subsequent to the issuance of Interim Report No. 5 did contain adequate descriptions of materials and services and evidence that the items were received.

However, CM-at-Risk contract Y6-800 included a large amount of General Conditions' items paid (\$253,784 of a total of \$354,704) for the construction of Fire station No. 81 for which no invoices were submitted. These items were self-provided by the CM and were paid for as a lump sum, based on a percentage of completion at the time of each pay request. As contract number Y6-800 is for the construction of four fire stations, it is projected that the total cost of

STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

general conditions paid without adequate support may exceed \$1 million.

Treating these items as a lump sum is contrary to the language in the CM-at-Risk contract and negates the possibility that these items might be obtained for a lower price than estimated thereby reducing the contract price below the GMP. Article 7.1 of the contract provides that the actual price to be paid by the owner, for work (including General Conditions' items), shall be the actual cost of the work or the GMP, whichever is less. The \$253,784 of General Conditions' items represents work done by the CM's staff. Without invoices from the CM with detailed information supported by the CM's payroll documentation, the County does not have assurance that they are paying the proper amount for these services.

We Again 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.

We also recommend when utilizing the CM-at-Risk method of contracting, the PCD include language in the contract requiring the CM to include hourly rates in the contract and submit detailed invoices for self-performed work. Further, the CPD should monitor the contracted rates for agreement with invoices submitted for payment.

15. Payments Should Not Be Made for Items Included in the Labor Rate Multiplier

During the previous audit, we noted that subcontractor invoices, totaling approximately \$14,000, submitted by the CM for reimbursements during the period November 23, 2001 to December 21, 2001 were paid by the County even though the items billed were included in the labor multiplier stipulated in the contract between the subcontractor and the CM. As a result, the County paid twice for these items. County staff reviewing the supporting documents for the pay

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

requests did not know that the items billed were already included in the multiplier, as they had not obtained the contract between the CM and the subcontractor.

We Recommend the County performs the following:

- A) 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) Reviews past billings, identify items and amounts billed separately which were already included in the multiplier and request a credit adjustment from the CM.

Status:

- A) Implemented. Despite OCCC Management's initial disagreement with the above recommendation, the contract between the CM and the principle subcontractor for the Phase V project was obtained. Invoices included in two General Conditions' payment requests totaling \$122,449, processed subsequent to the issuance of Interim Report No. 5, were reviewed and revealed nine items totaling \$111 that were included in the calculation of the multiplier and also charged as a direct expense. However, because the nine items represent only .0009% of the invoice totals, the amount was considered immaterial.

For the CM-at-Risk contract (Y6-800), selected for review as part of the follow-up audit, no instances were noted where invoices included a multiplier and also charged directly for the type of items normally included in the calculation of the multiplier.

- B) Not Applicable. OCCC Management could not provide any documentation to indicate that any action was taken to review past paid invoices and request credits. OCCC Management stated that all



outstanding items were made part of the overall settlement of \$18.5 million with the CM and no further credits could be requested. Due to the settlement, no further action is recommended on this issue.

16. Accuracy of Labor and Other Expenses Should Be Verified Against Contractual Terms

During the previous audit, we noted two General Conditions' payments totaling approximately \$1 million that the County paid labor expenses and other services totaling \$627,747 without adequate support. As of August 31, 2002, the County paid a total of \$20.4 million for General Conditions' expenses without verifying the actual rates billed with contracted rates. County staff had not requested copies of the contracts because of subcontract access restrictions in the CM contract.

We Recommend the County performs the following:

- A) Requests and reviews the 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; and,
- B) Ensures that future agreements with contractors entitle the County to have access to and make copies of contracts between the contractor and their subcontractors.

Status:

- A) Implemented. The County obtained copies of the General Conditions' sub-contracts for the Phase V project and the CM-at-Risk contract (Y6-800) for the construction of four fire stations. Four invoices relative to the Phase V project, processed subsequent to the issuance of Interim Report No. 5, included labor rates that conformed to the contract provisions. None of the contracts covering General Conditions' items



for the fire stations contained any stipulated labor rates. The greatest portion of the General Conditions' items in the contract (\$256,322 out of \$354,704) is self-performed by the CM and no hourly rates are included in the contract for comparison to invoices.

- B) Implemented. Amendment 1 relative to Article 17 of contract Y6-800 for CM-at-Risk services includes wording that entitles the County to have complete access to, and make copies of, contracts between the CM contractor and sub-contractors.

17. The County Should Pay Overtime Expenses That Are in Accordance With Contractual Terms

During the previous audit, we noted that overtime billings for labor provided by the primary General Conditions' subcontractor may have been overstated. The rate for this subcontractor's overtime was applied to the multiplier rate of 2.0 times base pay. The contract between the CM and this subcontractor did not address the issue of overtime.

In addition, an invoice submitted by the on-site medical services subcontractor to the CM did not include seven hours of overtime at a rate of 1.5 times the base hourly rate. The County did not review this contract and according to County staff, their procedures were to pay only what was billed.

We Recommend the County performs the following:

- A) 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) Determines the amount of overstated overtime costs reimbursed for this subcontractor and request a credit for the amount from the CM.

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

- C) Requests the CM to advise the medical services subcontractor to review its records and submit revised billings for overtime worked but not billed.

Status:

- A) Partially Implemented. The contract with the prominent subcontractor for the Phase V project did not specify how overtime should be paid. However, our review of two payroll invoices that were processed after the interim report was issued, showed that overtime was paid at the standard rate of time and one half. The contract with the security firm did specify how overtime should be paid and our review of two payroll invoices showed that it was paid in accordance with the contract rate of time and one half. The CM-at-Risk contract (Y6-800) did not have any significant subcontracts where payment was made based on labor rates.
- B) Not Applicable. OCCC Management could not provide any documentation to indicate that any action was taken to review past paid invoices and request credits or revised billings for underpaid overtime. OCCC Management stated that all outstanding items were made part of the overall settlement of \$18.5 million with the CM and no further credits could be requested. Due to the settlement, no further action is recommended on this issue.
- C) Not Applicable. See B) above.

18. Medical Trailers Should Be Adequately Staffed and Related Services Billed in Accordance With Contractual Terms

During the previous audit, we noted that daily reports supporting invoices submitted by the subcontractor providing on-site medical services indicated that the medical trailer was staffed with one to three persons each day, but did not

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

indicate the employees' qualifications. Since the employees' qualifications were not stated, it could not be determined if the trailer was adequately staffed by the required Paramedic and EMT or the adequacy of the amount paid for services. In addition, the contract also stipulates "if 80% of the patients seen in any calendar quarter are not treated onsite, a 10% discount will be given for the hourly services for the following calendar quarter." The County did not review the contract and was not aware of the staffing and rate pay stipulations or the discount clause.

We Recommend the County reviews the contract between the CM and the medical services provider to ascertain the compensation terms and conditions and performs the following:

- A) Requires the CM to ensure that the medical trailer is staffed at all times in accordance with the contractual arrangements;
- B) Ensures that billings and supporting daily reports identify employees' qualifications and that compensation rates are in accordance with contract terms for these positions;
- C) Reviews quarterly treatment reports prospectively to ensure that applicable discounts are not lost; and,
- D) Reviews quarterly reports retroactively and determines if discounted rates were applicable. If they were, determine the overpayment amount and seek a refund from the CM.

Status:

- A) Not Applicable. General Conditions' payments 46 through 52, covering the period, after the issuance of Interim Report No. 5, from October 2003 through January 2006 were reviewed and no invoices from the medical contractor were located. The major portion of the project was substantially completed on

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

May 15, 2003 (two months before the report was issued), and the remaining work was substantially completed on August 8, 2003. The CM-at-Risk contract (Y6-800) selected for review for the follow-up audit did not include an on-site medical facility.

- B) Not Applicable. See item A) above.
- C) Not Applicable. See item A) above.
- D) Not Applicable. OCCC Management could not provide any documentation to indicate that any action was taken to review past paid invoices and request credits. OCCC Management stated that all outstanding items were made part of the overall settlement of \$18.5 million with the CM and no further credits could be requested. Due to the settlement, no further action is recommended on this issue.

19. Payment for Labor Expenses Should Be Based Upon Contractual Rates

During the previous audit, we noted the following concerns related to payments made by the County to the CM for labor expenses incurred by the CM's subcontractors:

- A) The hourly rates billed by a security firm for the period November 26, 2001 to January 2, 2002 were lower than the rates stipulated in the contract. The amount under billed for the period was \$4,225.
- B) The County paid a security firm's Administrative/Project Manager expenses that were 110 hours in excess of the allowable billable hours over eleven of fifteen weeks tested. As a result, the County made overpayments totaling \$2,750.

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

We Recommend the County performs the following:

- A) 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) Reviews past General Conditions' billings submitted by the security providers, determines amount of overpayments based upon the terms of the contract, and requests a credit adjustment from the CM;
- C) Requests the CM to establish necessary controls to ensure that future pay requests are for amounts that are in compliance with contractual arrangements; and,
- D) Ensures rates used to compute labor costs in future billings submitted by subcontractors to the CM conform to contractual rates.

Status:

- A) Not Applicable. OCCC Management could not provide any documentation to indicate that any action was taken to review past paid invoices and pay amounts that were under billed. OCCC Management stated that all outstanding items were made part of the overall settlement of \$18.5 million with the CM and no further payments or credits could be requested. Due to the settlement, no further action is recommended on this issue.
- B) Not Applicable. See A) above.
- C) Implemented. For the Phase V project, two invoices processed after the issuance of the interim report were reviewed and the labor rates included in the invoices for security services conformed to the labor rates included in the applicable contract.



- D) Not Applicable. For CM-at-Risk contract (Y6-800), there were no significant subcontracts for General Conditions' items where billings were based upon contractual hourly rates.

20. Expenses for Equipment and Site Office Space Should Be Paid in Accordance With the Contracts

During the previous audit, we noted during our examination of certain fixed assets that a modular suite was partially occupied by the Architect and Engineer (A&E) at the construction site. Also, the County made monthly payments to clean the suite although the contract between the County and A&E did not require the County to provide free office space and maintenance to the A&E. According to County staff, they made an oral arrangement with the A&E to provide free office space.

In addition, the County provided a laptop computer to a cost estimating firm that is a sub-consultant of the A&E although the County's contract with the A&E did not require the County to provide the A&E or its sub-consultants with office equipment.

We Recommend the County ensures the following:

- A) Future contracts with A&Es specify who is responsible to pay for on-site office space for A&Es.
- B) All arrangements, subsequent to the execution of the contract, affecting A&E contract terms, are documented in addenda or amendments to the contract.
- C) The 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.

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

Status:

- A) Not Applicable. Although A&E contract Y4-817, selected for review for the follow-up audit, did not contain language as to who would pay for space occupied by the A&E consultant at the construction site, this was not applicable since a site visit verified that there were no facilities at the construction site dedicated to the use of the A&E consultant.
- B) Implemented. A review of A&E contract Y4-817 for design services for the four fire stations indicated that all arrangements made with the A&E contractor were documented in detail in appropriate contract addenda or amendments.
- C) Implemented. We confirmed the laptop computer loaned to the A&E sub-consultant was returned to the County.

21. Certain Contract Administration Procedures Should Be Modified

During the previous audit, it was noted that:

- A) Services for the development, implementation, and maintenance of a Project Management Information System (PMIS) were included in both the PM's and the CM's contracts.
- B) In some cases the Project Director authorized the PM to utilize more persons in a particular position than was stipulated in an exhibit to the contract and paid approximately \$850,000 more than the amount budgeted for these positions.
- C) The Board approved Amendment 2 to the PM contract for \$291,207 for the addition of a Project Engineer from March 2002 through December 2003. However, no Project Engineer was added. Funds

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

approved for the Project Engineer were used to pay for a second Contracts/Control Manager. This position was not authorized by the contract. The person filling this position was not an engineer and was hired eighteen months before the request for Amendment 2 was made to the Board.

- D) The requesting memo to the PCD, the Agenda item to the Board and other supporting documents for Amendment No. 4 to the PM's contract, included several errors and, therefore, did not adequately justify the requested amount of funding. A recalculation of the funding request, considering the correct information, indicated that the amendment as approved by the Board provided excess funding of \$138,726.

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. In addition, for future contracts, we recommend the County:

- A) Reviews the scope of services in detail to ensure that only one contractor is assigned responsibility for specified scope of work;
- B) 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) Adheres to contract schedules for labor classification, number of individuals in the classification, hours and rates; and,
- D) Ensures that accurate information is provided to the Board on contract amendments.

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

Status:

Not Implemented. OCCC Management disagreed with the need to issue a revised amendment and stated that the funds in question that were not used for the PMIS development but instead, applied to other PM services which were necessary and within the scope of services authorized in the PM contract. A review of the contract files confirmed that a revised amendment No. 4 was not issued. Therefore, no further action is required regarding this issue.

- A) Implemented. No instances were noted where the responsibility for performing specific work on the fire stations was included in more than one contract.
- B) Not Applicable. Interim Report No. 6 covered a review of the Phase V Program Manager's expenses. The OCCC does not currently have a similar type contract that could be reviewed for the follow-up audit. Also, the subsequent project selected for review (construction of four fire stations) does not currently have a similar type consulting contract whereby payment of this type are made.
- C) Not Applicable. See B) above.
- D) Implemented. No instances were noted where incorrect information regarding the fire stations was provided to the Board for subsequent contract amendments.

22. Scope of Services Performed Should Be Shown on Invoices

During the previous audit, we noted that five (totaling \$686,501) of the thirty-five invoices submitted by the PM to the County for program management services did not show the scope of services performed on the supporting timesheets or the individual invoices submitted by each subcontractor. Section II of the Program Management

STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

contract requires that all request for payments must identify the portion of the scope of services as described in Exhibit A of the contract.

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.

Status:

Implemented. The current CM-at-Risk contractor for the fire stations did not use a Program Manager. However, a review of nine A&E invoices for the project showed that the invoices included the scope of services performed as required by the A&E contract.

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

During the previous audit, we noted that change orders to trade contracts that do not affect the GMP are not reviewed by either the County staff or the contracted Program Manager (PM) for the reasonableness of prices. Also, neither the County nor the PM reviews the rates for the original trade contracts prior to the award of the contract.

This is important because the CM contract contains 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.

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,

STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

- 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.

Status:

- A) Implemented. We noted that the CPD reviewed the proposals from trade contractors for reasonableness prior to the award of the trade contracts for the fire station construction projects.
- B) Implemented. CPD has a procedure in place to review significant dollar change orders to trade contracts for reasonableness even if the changes do not affect the GMP. For example, the only significant change order was for \$11,533 for an entrance canopy at fire station no. 81. All of the materials in the change order were provided by trade contracts. The change order was reviewed by both CPD and the County's cost consultant.

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

During the previous audit, we noted that the CM Agreement lacked a clear and comprehensive audit clause. For example, Paragraph 11.7 prescribes that the owner cannot audit the CM's fees and Paragraph 2.4.6 (6) states that the Trade Contracts awarded by the CM are not public works contracts.

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.



Status:

Implemented. Subsequent to the original report, more comprehensive audit clauses were developed by the County (with input from us) for the various types of contracts. A review of eleven contracts, issued after the PCD changed the contract boiler plate language, revealed that all of the contracts contained a comprehensive audit clause.

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

During the previous audit, we noted that the CM, for changed work done by subcontractors, applied five percent markup on all change orders that increased the GMP. However, on scope changes that reduced the GMP, the CM reduced the change order by only two percent. The CM contract was silent regarding the percent that should be applied on reductions of the scope of work.

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.

Status:

Implemented. A review of contract Y6-800, issued August 1, 2006, for CM services relative to the construction of four fire stations, regarding payment/credit of fees for change orders, includes details of the amount of fees that will be paid/refunded for additional/reduced work authorized by change orders.



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

During the previous audit, we noted that certain aspects of the language included in the A&E contract are inconsistent and confusing. Certain paragraphs in the contract regarding payment procedures refer to other paragraphs that are non-existent.

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

Status:

Implemented. For two of the three design contracts reviewed, the language in the contracts appeared to be clear and consistent. Although there were a few instances where references were incorrect and inconsistent in A&E contract Y4-817, they were not material enough to affect the understanding of the contract's provisions.

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

During the previous audit, we noted that the Project Director made oral agreements with contractors that in some cases materially changed the provisions of the contracts.

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.

Status:

Implemented. Criteria has been established by PCD that details the conditions when oral agreements to contracts can

**STATUS OF PREVIOUS
RECOMMENDATIONS
FOR IMPROVEMENT**



Follow-Up Audit of the Orange County
Convention Center Phase V Expansion

be made. The criteria should limit the extent of oral agreements and has been included in the boiler plate language in current construction contracts as well as in the County Purchasing Manual under Article 24 – Verbal Orders.