



---

County of Orange

---

California

**Michael B. Giancola**  
County Executive Officer

September 16, 2014

Honorable Glenda Sanders  
Presiding Judge of the Superior Court of California  
700 Civic Center Drive West  
Santa Ana, CA 92701

Subject: Response to Grand Jury Report, "Dana Point Harbor Revitalization - 15 Years of Planning: What Has Been Learned"

Dear Judge Sanders:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondents are the Orange County Board of Supervisors, County Executive Officer, and Dana Point Harbor Director.

If you have any questions, please contact Jessica O'Hare of the County Executive Office at (714) 834-7250.

Sincerely,

Michael B. Giancola  
County Executive Officer

Enclosure

*County Executive Office*  
333 W. Santa Ana Blvd.  
Third Floor  
Santa Ana, California  
92701-4062

Tel: 714.834.6200  
Fax: 714.834.3018  
Web: [www.ocgov.com](http://www.ocgov.com)

cc: FY 2013-14 Orange County Grand Jury Foreman  
Mark Denny, Chief Operating Officer, County Executive Office  
Jessica O'Hare, Assistant to the COO, County Executive Office  
Brad Gross, Director, OC Dana Point Harbor Department



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?”**

**Summary Response Statement:**

On June 26, 2014, the Grand Jury released a report entitled “Dana Point Harbor Revitalization – 15 Years of Planning: What Has Been Learned?” This report directed responses to findings and recommendations to the Orange County Board of Supervisors, CEO, and Dana Point Harbor Director. The County of Orange’s combined response is included below.

**F.1. The original and current contract for the project management company has been extended five times since March 2003 without an audit clause.**

Agrees with the finding. The agreement includes language that, while not specifically identified as an “audit clause”, requires the keeping of accurate records that “will be available for inspection by COUNTY, or by any other appropriate governmental agency, at reasonable times, for a period of four years after final payment under this agreement.”

In fact, this contract has been subject to audits by both the Orange County Auditor-Controller (Contract Administration and Contract Payments, December 31, 2008) and Internal Auditor (No. 2013-12).

The County Procurement Office has since updated the language from this 2003 contract with new language for standard terms and conditions for County contracts related to “Audits/Inspections” to be included in all future contracts. The new language is as follows:

Contractor agrees to permit the County’s Auditor-Controller or the Auditor-Controller’s authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of contractor for the purpose of auditing or inspecting any aspect of performance under this contract. The inspection and/or audit will be confined to those matters connected with the performance of the contract including, but not limited to, the costs of administering the contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the contractor’s records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further,



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years  
of Planning: What Has Been Learned?”**

contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this contract.

Should the contractor cease to exist as a legal entity, the contractor’s records pertaining to this agreement shall be forwarded to the surviving entity in a merger or acquisition or, in the event of liquidation, to the County’s project manager.

The County retains the right to audit any contract in which it enters with a private corporation, including audits of financial management (Auditor-Controller, Internal Audit) or performance (Performance Audit).

**F.2. The references for the final chosen three applicants responding to the original request for proposal, (RFP) were not verified.**

Disagrees wholly with the finding. The October 2002 A-E Selection – Request for Proposal (RFP) Interview & Written Evaluation Criteria forms were made available to the Grand Jury. The final three applicants (Project Dimensions, Inc., DMJMH+N and Gafcon, Inc.) were each evaluated by five County evaluators. Evaluation Criteria “II” in the written proposal evaluation was “Key Personnel and References”. Each of the three final applicants were scored based on their “References”. (refer to AIT #77 dated December 10, 2002).

**F.3. When the evaluations were done of the three competitors, the selected company came in last on the weighted written portion, but first on the orals. The proposals included references on past performances however; the evaluators did not evaluate the past performance submitted with the proposal. The original references by the selected project management company could not be produced.**

Disagrees partially with the finding. Agrees that the selected firm ranked first on oral and last on written. However, when this RFP was analyzed in 2003, the County’s criteria for selection was to use the project management company with the highest score overall. The selected company, Project Dimensions, Inc. came in first place with an overall score of 2,166 (second place had a total score of 2,018, third place had a total score of 2,010). With regard to the references, please refer to response for F.2.



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?”**

**F.4. The original responses to the initial Request For Proposals (RFP), have been unable to be found by Dana Point Harbor or the County Executive Office staff.**

Agrees with the finding. This finding is of questionable relevance as the terms scope of work contained within the contract govern its implementation. The Grand jury was provided with copies of the 2002 DPH Project Management Evaluation Results, which clearly show PDI with the highest ranking score overall among the 5 County evaluators. The contract which was executed in 2003 is the legally binding document by which the County and contractor must abide.

**F.5. Amendment #5, April, 2013 to the original contract for the project management company was incorrectly labeled and submitted to the Board of Supervisor for ratification as a ‘Sole Source’ contract although this was subsequently corrected.**

Agrees with the finding. However, this finding is not relevant. Although the amendment was originally submitted as a sole source agreement, this was corrected during internal pre-review prior to Board consideration. A “Sole Source” contract was not processed/approved for project management.

**F.6. The Contract Policy Manual does not contain well written examples of “sole source” justification.**

Disagrees partially with the finding. The purpose of the Contract Policy Manual is to be a policy manual and not a procedure manual, and therefore it doesn’t contain sample forms as part of the document. However, the County has made modifications to the Contract Policy Manual, Section 4.4 “Sole Source and Proprietary Requests” to revise the policy regarding sole source contracts and additional review procedures have been implemented to ensure compliance. Also, the sole source justification form available to County staff online does provide direction and guidance as to how to complete the form.



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled "Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?"**

**F.7. Historical invoices submitted by the project management company lack specificity. Although monitoring of the invoices have improved with the oversight of the County Internal Auditor, the Grand Jury found that there remains a lack of information on the submitted invoices to determine the specified task, the portion of the task completed, or the anticipated date of completion. The ability to follow the assigned task from beginning to completion with the financial allotment/award is not easily determined.**

Disagrees wholly with the finding. Invoicing for this project has been ongoing for 12 years. During this time, the agreement with the Project Management firm has changed based on direction from the County at any given point in time through the Board of Supervisors. Originally, the agreement was a fixed fee agreement billed in proportion to the work accomplished. As the County's needs changed, in 2006 the agreement was modified to a flat monthly fee, plus time and materials. Now it is strictly a time and materials agreement. Invoicing format has been modified over the years based on the type of agreement structure and based on invoicing requirements and project needs set by the County at the time.

The County Internal Audit Department (IA) performed an audit on Contract Administration and Contract Payments, their Objective #2 specifically looked at invoices for PDI and determined only control findings were recommended to properly date stamp and adhere to the allowable process time for payment. No other recommendations were made regarding the PDI invoices (refer to Internal Audit No. 2820 dated September 16, 2009).

The Department was then directed in 2013 to obtain greater detail on deliverables and time charged on each invoice following review from the IA. Each monthly invoice is now submitted to the IA to verify all pertinent information is included prior to approval for payments, the Department and IA feel all necessary detail is provided. These invoices are also reviewed in conjunction with the weekly team meeting agenda material, and further reviewed by the Auditor Controller in conjunction with the existing contract prior to payment.

**F.8. Standardized minutes of the weekly meetings held with Harbor Management, the project management company, various vendors, and lease holders associated within the Harbor, are not documented.**

Disagrees wholly with the finding. Regular team meetings are held by OC Dana Point Harbor with the Dana Point Shipyard (quarterly), the Harbor Operators (bi-weekly), as well as the project management company and design/engineering consultants (weekly). The proceedings of these meetings are documented on a consistent basis. Meeting agendas are prepared. Topics of discussion include permitting, design, engineering and other issues and items pertinent to the



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled "Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?"**

revitalization project including progress, status of work products, updated schedules, information and coordination on action items are discussed and assigned, and follow up on previous action items is done. All of this information from each meeting is added to the agenda for the next meeting and the process is repeated for each meeting. Although not technically titled "minutes", this documentation process has been an effective tool in managing this complex project and creating documentation of the meetings and what is discussed. All historical agendas and any attachments are kept on file in the Department.

This same method is used for other standard meetings with County contractors, including bi-weekly meetings with operators for Harbor Operational items within their respective operating areas. Additionally, a spreadsheet with milestones and related deadlines are maintained for the Dana Point Shipyard and used as the agenda during the quarterly meetings. All of these documents are also kept on file by the Department.

**F.9. There are two managerial marine companies in the Harbor which duplicate services for boaters and operate under two separate County agreements; the East Marian and the West Marina.**

Agrees with the finding.

**F.10. Oversight for the Revitalization Project is lacking especially in the areas of:**

- a) no audit clause in the original contract**
- b) invoice non specificity (document does not track deliverables)**
- c) sole source error to the original contract**

Disagrees wholly with the finding. Oversight is not lacking in any of the areas referenced as has been previously noted in F1, F5, F7 respectively.



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?”**

**R.1. The CEO should assign OCPWD to oversee the construction phases of the Dana Point Harbor revitalization project. (F.1. through F.5. and F.10.)**

The recommendation requires further analysis. The CEO’s office will perform this analysis and report back to the Board via memorandum with findings and recommendations by December 31, 2014.

**R.2. The CEO should reduce the current time and material agreement for the project management company in cost and scope via specificity of tasks and deliverables, particularly in the area of design and construction management. (F.1..F7.,F10)**

The recommendation will not be implemented because it is not warranted. The CEO does not have the authority to unilaterally amend Board approved contracts. Further, as part of the 2013 Board Approval of Amendment 5, the contract scope and cost was reviewed and a plan was developed to add an additional five years of necessary project management services through June 30, 2018.

The project management firm has delivered results and provided management support on this complex project as should have been expected. The unanticipated events that caused longer than expected delivery schedules is directly related to the County staff in 2002 managing the schedule and their inexperience in accurately setting critical path milestones for the County on a project with so many outside agency factors. Such outside factors include the Coastal Commission schedule, the downturn in the economy causing the State to reduce available resources, and the County’s reliance on permits by other jurisdictions. None of these items are related to the project / construction management contract. The County originally did not have staff assigned who were experienced in the process surrounding Coastal Commission approval as many of the County projects are outside of the Coastal Zone. Furthermore, the work would still be required and this action would leave a staffing gap resulting in project completion issues.

**R.3. The CEO should establish and direct that all construction competition guidelines for major construction agreements follow the current County Policy Contract Manual. (F.2., F.3.,)**

The recommendation has been implemented. The public contract code has a specific set of parameters for “public works construction” elements which are followed by all County departments. To address specific alignment with these regulations, the CEO has tasked the OC Public Works Director with the establishment of standardized countywide processes and the



**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?”**

creation of a contract policy manual for the procurement and administration of public works contracts.

**R.4. The Board of Supervisors and the CEO should carefully monitor all major agreements and the implementation of the terms on a continuing basis during the term of the contract. (F.1.) (F.4., F.5., F.10.)**

The recommendation has been implemented. The County of Orange continuously monitors all aspects of project delivery, including this project, through the efficient use of County staff and consultant / contractor services.

**R.5. The CEO should amend the County Policy Contract Manual to include a clear and concise guideline for ‘sole source’ justification. (F.6.)**

The recommendation has not been implemented but will be implemented in the future. The County Procurement Office is scheduled to undergo a thorough review of the Contract Policy Manual in 2015, at this time clarification, modifications, and edits will be presented to the Board of Supervisors for consideration and approval. At the time of approval by the Board of Supervisors, this recommendation will be implemented.

**R.6. The CEO should require Dana Point Harbor to follow the OCPWD standard procedure for monitoring invoice submittal. (F.7.)**

The recommendation has been implemented. Invoicing for the DPH Revitalization is already closely monitored by the Department and the Auditor-Controller, in addition are reviewed by the Internal Auditor to verify adequate detail is provided prior to payment of invoices. These agencies have found the current invoicing procedures to be acceptable and processed within the timeframes set forth by the Auditor-Controller. OC Public Works has not identified a singular standard procedure for monitoring invoice submittals as the processes are established through boilerplate contract language and best business practices. Finally, the CEO has tasked the OC Public Works Director with the establishment of standardized countywide processes and the creation of a contract policy manual for the procurement and administration of public works contracts. The contract policy manual will be followed by all County departments, including OC Dana Point Harbor as directed by the CEO.





**COUNTY OF ORANGE**  
**Responses to Findings and Recommendations**  
**2013-14 Grand Jury Report entitled “Dana Point Harbor Revitalization – 15 Years**  
**of Planning: What Has Been Learned?”**

R.7. The CEO and the Dana Point Harbor Director should record and keep on file complete standardized minutes of all meetings with the various contractors and agencies with whom they regularly meet. (F.8.)

The recommendation has been implemented.

R.8. The CEO and the Dana Point Harbor Director should do a cost analysis for the efficiency of operating two marina management companies under two separate operating agreements with the County that duplicate services for boaters. (F.9.)

The recommendation has not been implemented but will be implemented in the future. Prior to the expiration of the current Dana Point Marina Company (East Basin) operating agreement in February 2021, a cost analysis will be conducted for both the east and west basins as well as looking at continued feasibility and appropriateness of using operating agreements vs. leases.

R.9. The CEO should conduct a financial audit of the Dana Point Harbor. (F.7., F.8., F.9., F.10.)

The recommendation has been implemented. Annually an audit schedule is developed by the Department and the Internal Auditor. In addition, the Department contracts with an external auditor for additional reviews not able to be performed by the limited audit staff. The Department provides an annual report to the State Lands Commission regarding previous year's revenue and expenditures as well as reserve balance.