



County of Orange
California

James D. Ruth
County Executive Officer

August 4, 2004

Tom Staple, Foreman
FY 03/04 Grand Jury
Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Cost
Overruns and Delays at the Orange County Sheriff-Coroner's
Statewide Training Facility"

Dear Mr. Staple:

Per your request, and in accordance with Penal Code 993, enclosed please find the County of Orange response to the subject report as approved by the Board of Supervisors. If you have any questions, please contact Brian Wayt at the County Executive Office who will either assist you or direct you to the appropriate individual.

Very truly yours,

James D. Ruth
County Executive Officer

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2003-2004 Grand Jury Report
**“Cost Overruns and Delays at the Orange County Sheriff-Coroner’s Statewide
Training Facility”**
Response to Findings and Recommendations

Response to Findings:

1. The project had 41 Change Orders totaling \$2,055,690. Contract completion time extensions of 377 days had been approved at the time of the Grand Jury’s review of the project

Response: Agrees with finding

2. Some Change Orders were necessary to correct errors in the calculation of loads and to provide missing supporting structure of structural elements.

Response: Disagrees partially with the finding

Change orders were necessary to provide missing supporting structure, however to the best of our knowledge there were no change orders resulting from “errors in calculation of loads”.

3. The majority of the Change Orders were required due to the failure of the architect and the structural, mechanical, and electrical engineers to coordinate their plans and to adequately detail how items were to be built within the limited spaces available.

Response: Agrees with finding

4. It was not discovered until the underground foundation stage of the project that the architect failed to supply the contractors with the revised set of plans that changed critical layouts. This omission caused the first of many delays when work had to be stopped and redone which contributed to cost overruns.

Response: Agrees with finding

5. The contractors were reimbursed for accelerated completion of several phases of the project as well as “out of sequence” installations. The basis of these payments was found to be very subjective and could not be audited to verify the actual costs to the contractor.

Response: Disagrees partially with the finding

The County disagrees that the payments were “subjective and could not be audited to verify the actual costs to the contractor”. Due to the large amount of documents related to the project, the Grand Jury only reviewed a sampling of the details related

to the change orders. All of the detail related to these costs were not requested by the Grand Jury.

6. The general contractor was paid \$1,660 per day for 122 days of approved time extensions for what is described as “general conditions” due to delay. The amount was found to be very subjective and could not be audited to verify the contractor’s actual daily cost.

Response: Disagrees partially with the finding

Contractors are due compensation when a project experiences delays not caused by the contractor. Determining the amount can be complex and is negotiated between the contractor and the County. There are a number of costs associated with this amount including: on-site staffing, utility costs, home-office costs, lost profit on jobs that they could have been working on, insurance bonds, etc. If an agreement were not reached, the issue most likely would end up in court, with an even greater cost to the County.

The amount that was agreed upon was based upon a cost of \$50,000 per month, which included out-of-pocket- staffing and support costs. The contractor did not include all on-site costs, overhead, and future profit losses. In reviewing all of the documents, staff determined that this amount was fair and prevented a potential lawsuit against the County.

7. The County of Orange withheld retention payments for uncompleted work for a lengthy period. This retention was in addition to the Performance Surety Bond already supplied by the contractor to ensure completion. At the completion of the Grand Jury’s study in March 2004, the general contractor still had not received all of his funds, even though the project was accepted as completed in January 2004.

Response: Disagrees partially with the finding

The County is required to hold retention payments per Public Contract Code 7107, which says the retention, shall be released within 60 days of completion of the project. Sheriff’s staff filed the notice of completion on January 7, 2004, which means the Auditor-Controller would release the final retention by March 7, 2004 pending completion of the proper documentation by the Contractor. However, several sub-contractors filed “stop notices” which requires the Auditor-Controller to freeze payment to the general contractor until all claims are resolved. Once the “stop notices” were released and all documentation required by the contract was submitted by the Contractor, the Auditor-Controller released all retention within the time required by the Public Contract Code. The Performance Surety Bond does not allow release of the retention prior to meeting the requirements within the Public Contract Code.

8. The County did not pay the architect to remedy errors but did pay for additional expenses and granted increases above the contracted amount despite serious deficiencies in the services provided.

Response: Disagrees partially with the finding

The Architect incurred substantial costs to remedy issues as they arose for which they were not reimbursed, however at no time did the County pay for additional expenses above the contract amount. The County did increase the contract through two Board approved amendments and one administratively approved change order to change the scope of work, and not for reimbursement to correct errors.

Moreover, even though the Architects plans and specifications contained many errors, the services provided by the Architect during construction to correct these problems was performed well.

Response to Recommendations:

1. The Orange County Sheriff-Coroner Department immediately pursue the necessary steps to effect reimbursement of those costs associated with the errors and failures of the architect and various engineers who were responsible.

Response: The recommendation has been implemented

Sheriff staff has met with the Architect to discuss reimbursement costs associated with the errors. The Architect has met with its sub-consultants to discuss the change orders resulting from errors by the sub-consultants. The Architect has shown sincere interest in negotiating a settlement with the County.

2. On future projects, the Orange County Sheriff Construction Management Team authorized payment of overtime for accelerated or out-of-sequence installations at per unit cost agreed upon prior to execution of the work so that audits can be made any payments can be justified.

Response: The recommendation has been implemented

It has always been the policy of the Sheriff's Construction Management Team to authorize payment of accelerated or out-of-sequence installations at a per-unit cost when appropriate. However, there are times when overtime is authorized to catch-up with the schedule to avoid delay claims. In these instances, staff will closely monitor the activity of the contractor to ensure that the desired outcomes are achieved in a cost effective manner.

3. In future projects, the Orange County Sheriff Construction Management Team require that the daily reimbursable cost for delays in construction beyond the control of the general contractor be established with full documentation so that audits can be made and payments can accurately reflect the true additional costs involved.

Response: The recommendation will not be implemented because it is not warranted

During negotiations regarding payment rates for delays, Sheriff staff tries to negotiate a rate that is less than the true additional costs. However, if the rates proposed by the contractor appear to exceed true additional costs, the County can request supporting documentation and pay only those true additional costs.

4. The Orange County Sheriff Construction Management Team re-examine their policy of withholding retention payments and only hold back the industry standard of 150 percent of the value of those uncompleted "punch list" items

Response: The recommendation will not be implemented because it is not reasonable

The Sheriff's policy for withholding retention is exactly what the Public Contract Code requires. Public Contract Code only allows the release of retention after "completion" of work. After "completion" of work, the County can release part of the retention and withhold 150% of any disputed "punch list" items.

In this particular case, there were serious construction defects that would not allow the Sheriff to occupy the building. The contractor and its attorney met with Sheriff staff and County Counsel to discuss the release of retention and agreed that the defects would be corrected before the Sheriff would accept the building and release the retention.