

# **QUESTIONABLE CONTRACT MANAGEMENT**

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## **SUMMARY**

Allegations of improper activities on a consulting contract by the County Executive Office (CEO), Office of Human Resources were brought to the attention of the 2002-2003 Orange County Grand Jury.

The Grand Jury found that a one-year consulting contract for \$285 thousand had actual spending of \$933 thousand during the year and greatly exceeded authorization. Three issues appear to have increased the cost of the contract:

- a significant change in the scope of the project
- an increase in the billing rates of the consultant firm
- the addition of a new project to the contract

These actions were not authorized during the contract period and costs were increased to the County and the taxpayer. The Orange County Board of Supervisors approved all of these actions retroactively at the end of the contract year.

## **INTRODUCTION AND PURPOSE**

A complaint letter alleged there were significant improper expenditures on a consultant contract. These allegations included exceeding the authorized expenditures due to changing the scope of the contract, increasing the billing rates and adding a new project to the contract without competitive bidding or sole source justification.

The purpose of this study was to ensure that effective accountability systems were in place; to ensure that policies, procedures, regulations and laws were complied with; and to determine if there were any improprieties as alleged in the complaint.

## **METHOD OF STUDY**

The Grand Jury interviewed Purchasing and Human Resources personnel, and reviewed procurement, contract and invoice documents, Board of Supervisor's agenda documents, various correspondences, notes and other documents including the Orange County Contract Policy Manual.

## **BACKGROUND**

The County of Orange, the Orange County Labor Management Task Force (OCLMTF) and the Labor Management Steering Committee had jointly developed a Performance Management and Performance Incentive Program (PIP) to link performance to pay incentives for County employees.

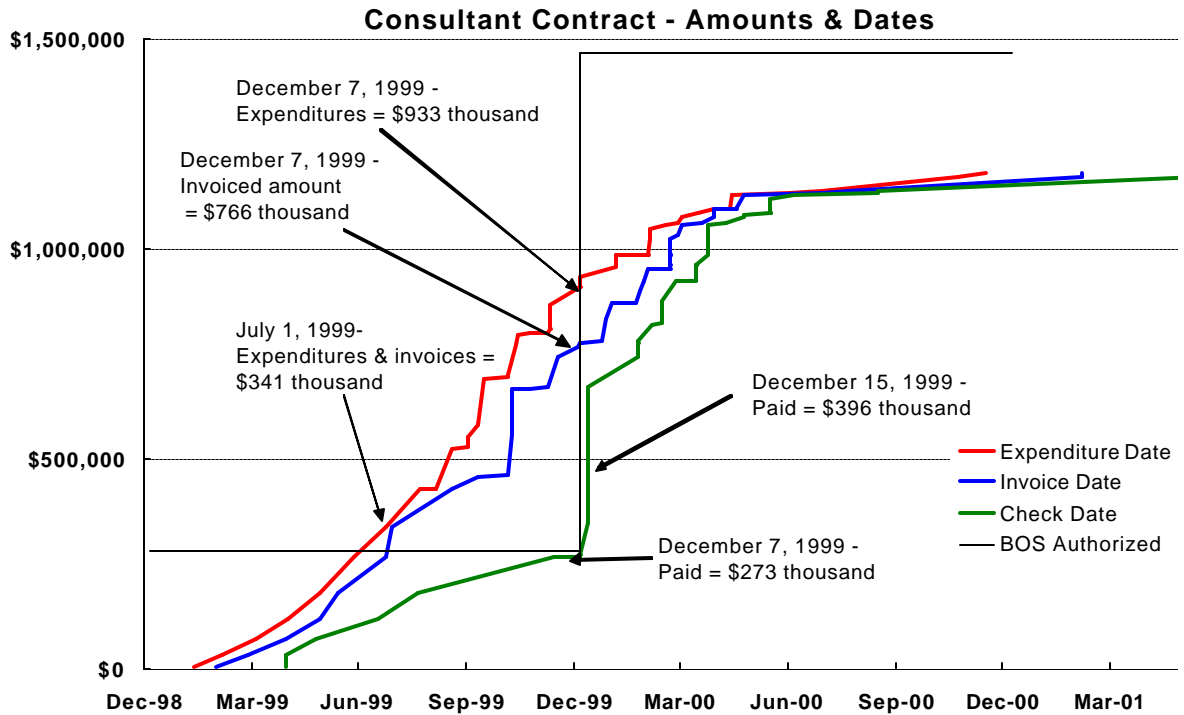
As part of the implementation of the new program, the CEO Office of Human Resources sought assistance from outside agencies in the development of:

- A communication and marketing strategy for the Performance Management Appraisal System
- Performance Management Appraisal forms
- Orientation/Appraisee and Appraiser training programs, using instructors, videotape, and computer based training

The County Executive Office (CEO) Purchasing issued a Request for Proposal (RFP) in August 1998, soliciting qualified vendors to provide training services and to communicate the County's new Performance Management Appraisal System and PIP to employees.

A consulting firm was selected to provide the services requested in the RFP. The consultant firm's proposal listed eight (8) deliverables with a fixed price and four (4) deliverables specified at hourly rates. The CEO Office of Human Resources submitted to the Orange County Board of Supervisors (BOS) on December 8, 1998, a request to approve a one-year agreement with the consulting firm, renewable for two additional years, in an amount not to exceed \$285 thousand per year, with a provision to allow for a ten percent (10%) increase without further BOS action. The BOS approved the request as recommended.

One year later on December 7, 1999, the CEO Office of Human Resources submitted a second request to the BOS. This request asked the BOS to retroactively approve an increase to the first year of the agreement by \$780 thousand to a total of \$1.065 million for unanticipated costs and new hourly billing rates, effective May 1, 1999. The request also asked the BOS to approve the second year of the agreement along with an increase in the second year from \$285 thousand to \$400 thousand, increasing the total approved amount to \$1.465 million. Included in the second year request was a change in scope of work to include an additional training component to educate Human Resources professionals on the evolving role of Human Resources. The BOS approved the request as recommended.



The above chart of the expenditures, invoices and payments for the contract shows that by July 1, 1999, expenditures and invoiced amounts were at \$341 thousand. This was well above the authorized amount of \$285 thousand plus an additional contingency amount of \$29 thousand, for a total of \$314 thousand. The County of Orange Contract Policy Manual clearly states that any increase, which changes the original contract amount, must be approved by the Board of Supervisors.<sup>1</sup>

When the CEO Office of Human Resources submitted the second request to the BOS on December 7, 1999, the expenditures and invoiced amounts had grown to \$933 thousand and \$766 thousand respectively. At this time only \$273 thousand of these expenditures had been paid, which was just under the authorized amount for the first year. After the BOS approval of the increased spending, an additional amount of \$396 thousand was paid on December 15, 1999. This left a total of \$97 thousand in unpaid invoices. Expenditures of \$257 thousand were incurred over the next nine months. Total spending on the contract reached \$1.180 million.

The following issues appear to have increased the cost of the contract above its original amount:

***Significant Change in Scope:*** A letter dated December 1, 1999, from the consulting firm to the CEO/Purchasing office stated that a change in scope was requested by the CEO Office of Human Resources after work started. The original understanding of the engagement by the firm was to focus on training and different delivery systems, however, the focus shifted to communication development and implementation with a significantly enlarged project management and leadership role.

This change in the scope of the work should have required the CEO Office of Human Resources to rebid the project with the revised scope of work. The contract with the consulting firm also stated that all extra work, resulting in an increase in the contract price, needed to be authorized by written amendment to the contract and might be subject to approval by the County Board of Supervisors.<sup>2</sup>

***Increase in Consulting Firm's Billing Rates:*** Further, the consulting firm increased the billing rates across the range of their personnel assigned to the project. These increases ranged from 1.8% to 34.6% and were not allowed by the contract. The contract stated that the contractor agreed that no price increase shall be passed along to the County during the term of the contract<sup>3</sup>

***Addition of New Project to Contract:*** In October 1999, spending began on a separate additional project assigned to the consulting firm. The consulting firm had four deliverables for the Human Resources Visioning Project:

- Create a Shared Human Resources Vision
- Define Competencies for Human Resources Professionals
- Identify Performance Metrics for Human Resources
- Create an HR Shared Service Center Development Plan

Although an Agenda Item Transmittal (AIT) to the BOS on December 7, 1999, briefly mentioned training and it stated that the consulting firm would assist with the

development of this additional training component, the Human Resources Visioning Project was a separate project. It should have been either sent to bid or justified as a sole source contract. Nevertheless, spending had begun on this project in October 1999. The consulting firm's proposal was not submitted until June 2000, well after the project was underway.

## **FINDINGS**

Under *California Penal Code* Sections 933 and 933.05, responses are required to all findings. The 2002–2003 Orange County Grand Jury arrived at the following findings.

1. The expenditures by the CEO Office of Human Resources on a consultant contract in 1998 and 1999 exceeded the amount authorized by the Orange County Board of Supervisors on December 8, 1998.
2. The CEO Office of Human Resources increased the billing rates up to 35% on the consultant contract without prior approval by the Orange County Board of Supervisors.
3. The CEO Office of Human Resources made a significant change of scope in the consultant contract, but did not rebid the contract for the new services.
4. CEO Office of Human Resources added an additional project to the consultant contract (Human Resources Visioning Project) without competitive bidding or sole source justification.
5. Orange County Board of Supervisors retroactively approved the unauthorized expenditures, increased billing rates and changed the scope in the consultant contract on December 7, 1999.

Responses to Findings 1-4 are requested from the Orange County Executive Officer, Response to Finding 5 is required from the Orange County Board of Supervisors.

## **RECOMMENDATIONS**

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation requires a response from the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based on the findings, the 2002–2003 Orange County Grand Jury recommends that:

1. The County Executive Officer investigate the management of the consultant contract, and if in fact mismanagement did occur, County Executive Officer to consider appropriate action. [Findings 1-4]
2. The Orange County Board of Supervisors appoint a committee of senior financial and purchasing personnel to review contracts approved by the Board of Supervisors for the past three years to determine if other contracts have exceeded the cost originally approved by the Board and were then returned to the Board for retroactive approval of the increased contract costs. [Finding 5]
3. The Orange County Board of Supervisors implement procedures to prevent future occurrences if the committee finds significant overruns on other contracts. [Finding 5]

Responses are requested to Recommendation 1 from the Orange County Executive Officer.

Responses to Recommendations 2-3 are required from the Orange County Board of Supervisors.

## NOTES

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<sup>1</sup> County of Orange Contract Policy Manual, August 1998, page 3-3-3

<sup>2</sup> Price Agreement for a Performance Management Appraisal Training Program for the County of Orange with consultant firm, dated February 1, 1999, Proposal Cost Summary

<sup>3</sup> Price Agreement for a Performance Management Appraisal Training Program for the County of Orange with consultant firm, dated February 1, 1999, Pricing Structure, Page 7