

Audit of the Orange County  
Convention Center Phase V  
Expansion  
Interim Report No. 3 –  
Potential Claims for Value  
Engineering Changes

**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

Edward T. Brennan, CIA, Audit Supervisor  
In-Charge Auditor

Glenn R. Tingling, CPA, Audit Supervisor  
Staff

**Report No. 326  
April 2003**

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April 4, 2003

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

We are in the process of conducting an audit of the Orange County Convention Center Phase V Expansion. This interim report is limited to a review of certain potential claims for value engineering (VE) changes. Our audit was conducted in accordance with government auditing standards and included such tests as we considered necessary in the circumstances.

Responses to our Recommendations for Improvement were received from the Orange County Convention Center Construction Division and are incorporated herein.

We appreciate the cooperation of the Division during the course of the audit.

Martha O. Haynie, CPA  
County Comptroller

c: Ajit M. Lalchandani, County Administrator  
Tom Ackert, Director, Orange County Convention Center  
John Morris, Manager, Orange County Convention Center, Construction Division  
Johnny M. Richardson, Manager, Purchasing and Contracts Division

# INTRODUCTION

**Background**

On March 24, 2000, the County entered into an agreement, effective retroactively to January 1, 2000, with Huber, Hunt & Nichols/Clark/Construct Two for the Construction Manager (CM) At Risk services. Subsequently, this group changed its name to Hunt/Clark/Construct Two, Joint Venture. On November 22, 1999 the County also executed an agreement with O'Brien Kreitzberg (Program Manager) for program management services. Components of the construction budget of \$520 million were delineated in Exhibit B of the CM agreement. The Notice to Proceed was issued to the CM on March 31, 2000.

The Convention Center's Project Director is responsible for controlling the budget, contract administration, coordination of the various firms and related teams, day-to-day oversight, and providing reports to the Citizens Oversight Committee (COC), County Chairman and Administration, and the Board. The Purchasing and Contracts Division, with input from the Project Director, is responsible for contract documentation and amendments.

The Program Manager, the Project Director, the CM, and other individuals provide monthly updates on construction activities and progress to the COC. Copies of these reports and minutes of these meetings are provided to the Board.

**Scope, Objectives,  
and Methodology**

The overall audit scope includes a limited review of the Architectural and Engineering Services, the Program Manager, and the Construction Manager (CM) At Risk contracts with emphasis on contract administration, compliance, and certain related matters. The audit period is July 1, 1999 to May 31, 2003. This interim report (No. 3) covers certain potential claims for value engineering (VE) changes.

The objective of this audit segment was to verify whether there were adequate contractual documents to protect the County from subsequent claims from the CM for a share in certain savings achieved through VE. To achieve our objective, we performed the following:

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## INTRODUCTION



Audit of the Orange County Convention Center  
Phase V Expansion  
Potential Claims for Value Engineering Changes

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- Examined the CM's original contract and subsequent amendments;
- Examined the special report issued by Mr. Egerton K. van den Berg to the Orange County Chairman on the Phase V expansion; and,
- Interviewed County staff and other Consultants as appropriate.

## Overall Evaluation

Based upon the work performed, it is our opinion that the County is not adequately protected from potential claims, up to \$15 million, by the CM for a share of the planned \$30 million value engineering reductions.

# RECOMMENDATIONS FOR IMPROVEMENT

**1. The Verbal Agreement Whereby the CM Does Not Share in Savings From VE Changes Should Be Formalized**

Article 7.1 of the CM's contract with the County required the CM to submit a Guaranteed Maximum Price (GMP) within 90 days after completion of the Design Development Documents. A series of negotiations took place prior to the finalization of the amount. 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 (for example, the elimination of the chilled water plant with an estimated cost of \$11 million), it was agreed that the Project Management Team (CM, the Architect & Engineer (A&E), Program Manager, and the Owner) would achieve further reductions of \$30 million. This \$30 million of reductions was referred to as 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 amount from the shared VE savings' contract clause. This clause, Article 7, Paragraph 4.1, in the CM's Agreement, dated March 24, 2000, defines the VE items as follows:

Those changes suggested by the Construction Manager which have a cost benefit to the overall work without reducing the scope of the project or material function or architectural features of the work.

It also stipulates the sharing of VE savings as follows:

The amount of savings quoted by the Construction Manager to the Owner for the VE item shall be reduced by an amount equal to the Architect's charge for making the change, and in turn, the GMP will be adjusted by Change Order by an amount equal to the Architect's charge. The remaining savings, after deducting the Architect's charge, shall be split equally and added to the Construction Manager's Contingency and to the Owner's Contingency.



Based upon this language, the CM could claim to be entitled to \$15 million of this planned \$30 million reduction, when achieved.

The County's Project Director, in discussing this subject with the auditors, stated that there was a verbal agreement between the County and the CM. Specifically, he stated that the verbal agreement provides that the CM would not share (equally with the County) the reductions in cost due to VE changes, contrary to the provisions of the CM contract. According to the Project Director, the verbal agreement, in effect, provides the County with the entire \$30 million savings.

However, due to the extent of the risk of a potential claim by the CM, this verbal agreement should have been formalized, preferably with an amendment to the CM's contract.

We noted that a report submitted by Mr. Egerton K. van den Berg to the County Chairman on October 26, 2001 recommended that "the effects of the 'VE Reserve,' insertion should be carefully reviewed, and appropriate documentation prepared for execution by the CM and the County. It appears the CM desires this as well." However, the recommendation was not implemented. Mr. Van den Berg's report did not address a potential claim from the CM in connection with this matter.

After the auditors pointed out the above, on January 2, 2003, the Program Manager sent an e-mail to the CM in which he requested that the CM confirm that the \$30 million is not subject to the provisions of Article 7 Paragraph 4.1 of the CM's agreement with the County. Later that day the CM's Project Executive replied and confirmed that the information in the Program Manager's e-mail was correct.

Although this e-mail is helpful, it is questionable whether this adequately protects the County from a potential claim by the CM. Also, the Program Manager does not have the authority to enter into verbal or e-mail agreements with the CM to change major terms of the CM contract.



**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.

### **MANAGEMENT'S RESPONSE:**

I do not agree that a need exists for further amendment to the CM Contract; however, to address the concerns in the Draft Interim Report No. 3 I have implemented the recommendations in the report to formalize the agreement with the CM and to consider a contract amendment.

The e-mail exchange with the CM, as referred to in the Draft Report was obtained only to ease your concerns, which had been verbally expressed to me earlier this year. I do not see a basis for concern that the County might not be "adequately protected from potential claims up to \$15 million, by the CM for a share of the value engineering reductions." Nonetheless, I have obtained and attach a letter [see Exhibit] from the CM confirming its earlier e-mail message.

I reviewed the issue with the county attorney's office on March 24<sup>th</sup>. Their opinion is that the contract between Orange County and the CM, as previously amended, adequately protects the County from a potential claim by the CM on the value engineering savings.

Management's Exhibit –  
Supplemental Response

Management's Exhibit – Supplemental Response



JM  
TG  
C195-130

Monday, March 10, 2003

Mr. John Morris  
Orange County Convention Center  
5300 Test Circle Dr. Suite 200  
Orlando, FL 32819

Re: Orange County Convention Center - Phase V Expansion  
Shared Savings of Value Engineering

Dear Mr. Morris,

Please allow this letter to confirm our conversation regarding the above referenced subject.

HCC concurs that the provisions of Article 7.4.1 of our CM Agreement, relative to an equal split of value engineering savings into HCC's contingency and the Owner's contingency, do not apply to the \$30 million value engineering allowance that was established with the GMP.

The provisions of Article 7.4.1 do apply to value engineering savings in excess of the \$30 million value engineering allowance. However, as you are aware, HCC has never exercised its rights to add 50% of any net value engineering savings to our contingency. All value engineering savings in excess of the \$30 million value engineering allowance have been credited 100% to the Owner's contingency.

Please let me know if you have any questions about this matter.

Sincerely,

ROBERT K. MAY  
Project Executive

cc: Dick Larson  
file

CMP13803

**RECEIVED**  
MAR 10 2003  
Orange County Convention Center  
**CONSTRUCTION**