



SHERIFF-CORONER DEPARTMENT  
COUNTY OF ORANGE  
CALIFORNIA

MICHAEL S. CARONA  
SHERIFF-CORONER

OFFICE OF SHERIFF-CORONER

550 N. FLOWER STREET  
P.O. BOX 449  
SANTA ANA, CA 92702-0449  
(714) 647-7000

ASSISTANT SHERIFFS  
JO ANN GALISKY  
PETE GANNON  
DON HAIDL  
KIM MARKUSON  
DOUG STORM

July 22, 2004

The Honorable Frederick Horn  
Presiding Judge  
Orange County Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92702

Subject: Response to Grand Jury report – “Cost Overruns and Delays at the Orange County Sheriff-Coroner’s Statewide Training Facility”

Dear Judge Horn:

Pursuant to California Penal Code §933 and §933.05, I am submitting to you my responses to Grand Jury Findings and Recommendations contained in their subject report. To add context to some of the findings and recommendations, I am also providing some background information and an overview of the project.

**Background:**

On May 25, 2004, the Grand Jury issued its report titled “Cost Overruns and Delays at the Orange County Sheriff-Coroner’s Statewide Training Facility”. This report documented the Grand Jury’s review of the construction project to design and build the new Statewide Coroner Training Facility. As stated in the report, the focus of the Grand Jury’s review was to determine the cause of cost overruns and delays, review the bidding process, and determine what the Orange County Sheriff Construction Management Team could have done differently to reduce the delays and to avoid some of the cost increases.

Included in the text of the report, the Grand Jury concluded that “A very minor portion of the Change Order cost increases could be attributed to changes ordered by the Coroner to meet the specialized needs of the facility. In general, the Sheriff Construction Management Team was very efficient and skilled in their approach. The County experienced problems because much of the cost overrun and delays were caused by architectural and engineering problems beyond the County’s control.” It should be noted that the Grand Jury found no issues related to the bidding process and had no recommends of what the Sheriff’s Department could have done differently to reduce delays and cost increases.

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**Project Overview:**

The original morgue building, located in Santa Ana, was critically overcrowded and in need of major repairs and renovation. In 1999, the Sheriff identified \$2 million that could be budgeted for improvements. After further analysis, it was determined that the building could not be cost-effectively improved to meet the long-term needs of the Department.

At the time when the Sheriff was reevaluating options to improve and expand the old morgue there was a critical Statewide need to expand training opportunities for Coroner staff. At that time, police officers received 16 weeks of basic peace officer training while Coroner staff received only 2 weeks of death investigation training. The Sheriff's Department developed a creative plan to address Orange County's need for a new building and also address the critical shortage of training opportunities for Coroner staff. This plan envisioned replacing the old morgue facility with a new Statewide Coroner's Training Facility that would house Coroner Division operations and would include additional space for classrooms and other training spaces for a Statewide training program for Coroners.

In 2000, the Sheriff's Department sponsored legislation that would provide funding for construction of the Statewide Coroner's Training Facility. This legislation did not pass so the Sheriff's Department lobbied the State's Budget Conference Committee for \$10 million for construction of the facility through a "Member's Request" (a budget item requested by the members of the Budget Conference Committee). The \$10 million "Member's Request" was approved and the Sheriff's Department added the \$2 million previously identified for improvements for a total of \$12 million available for replacement of the building. The lobbying effort by the Sheriff's Department saved the County millions of dollars that it would have paid to replace the old morgue building.

The County selected an Architect-Engineering team that demonstrated the best qualifications for designing state-of-the-art Coroner facilities. The team was made up of a primary Architect and sub-consultants that specialized in structural, mechanical, and electrical engineering. Plans were developed by the A-E team and the low bid for construction was slightly above budget at \$12.1 million. Sheriff staff and the A-E team identified items that could be deducted from the project and a contract for construction was agreed to at a cost of \$11,992,300.

As was documented in the Grand Jury report, cost overruns of \$2 million were primarily the result of errors and omissions in the plans and specifications prepared by the Architect and its sub-consultants. Most of the errors and omissions are attributable to the sub-consultants. During the early stages of construction, it became clear that the plans had problems. Sheriff staff, the Architect, and the contractor held weekly meetings (more often if needed) to address the problems as they arose. This process was a cooperative effort to identify issues early, resolve the issues as soon as possible, and to develop strategies to reduce delays and cost increases. The strategies included placing an Architect representative at the construction site to resolve design issues on the spot, the use of overtime for critical path

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construction activities, and close monitoring and adjusting of the schedule to allow advance notice of schedule changes to sub-contractors so they could adjust their scheduling to avoid delay impacts. This teamwork and coordination between Sheriff staff, the Architect, and the contractor minimized delays, minimized costs for the County, and resulted in no delay claims from any sub-contractors.

The Sheriff's Department absorbed the cost increases by utilizing contingency funds budgeted for construction projects, reallocating savings from other construction projects, and utilizing annual interest earnings on Sheriff Department funds held for other construction projects. The Sheriff Department did not request additional funding from the Board of Supervisors to cover the cost overruns. This has resulted in a reduction of funds available for large maintenance and repair projects and has increased our backlog of projects.

Sheriff staff is currently in negotiations with the Architect to reimburse the County for some of the costs associated with errors and omissions. To date, the Architect has been extremely cooperative and eager to develop a settlement agreement. While most of the errors and omissions were caused by the sub-consultants, the Architect is living up to its commitment as the party responsible for the design documents. The Architect has traveled out of state to its sub-consultants to discuss financial commitments from the sub-consultants to participate in the reimbursement of the County for errors and omissions. At the time of this writing, negotiations are proceeding.

The Sheriff's Department appreciates the effort and the detail of review performed by the Grand Jury. Attached are specific responses to the findings and recommendations of the Grand Jury. If you have any questions regarding this report, please contact Assistant Sheriff Doug Storm at 647-1803.

Respectfully Submitted,



Michael S. Carona  
Sheriff-Coroner

Attachment: Responses to Grand Jury Findings and Recommendations

cc: Tom Staple, Grand Jury Foreman  
Board Offices  
Jim Ruth, CEO  
Doug Storm, Assistant Sheriff  
Jo Ann Galisky, Assistant Sheriff  
Rick Dostal, Sheriff-Coroner Department  
Jacque Berndt, Chief Deputy Coroner

## **Response to the Grand Jury**

# **Cost Overruns and Delays at the Orange County Sheriff-Coroner's Statewide Training Facility**



**Sheriff – Coroner Michael S. Carona**

**ORANGE COUNTY SHERIFF'S DEPARTMENT**

Doug Storm, Assistant Sheriff

Chief of Special Services

Santa Ana, California

July 2004

## **Cost Overruns and Delays at the Orange County Sheriff-Coroner's Statewide Training Facility**

### **FINDINGS**

In accordance with California Penal Code section 933 and section 933.05, responses are required to all findings. The 2003-2004 Orange County Grand Jury arrived at the following eight findings. Beneath each is the Sheriff's Department response to that finding.

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.*

The Sheriff agrees with the finding.

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

The Sheriff disagrees partially with the finding.

Explanation: The Sheriff agrees that change orders were necessary to provide missing supporting structure (structural steel beams) but we are not aware of any change orders resulting from "errors in the calculation of loads". However, in addition to the change orders to provide missing supporting structure, there were change orders related to structural issues that resulted after the Architect submitted structural plans to the County's Plan Check section for permit approval. Plan Check required revisions (not necessarily due to errors in calculations) to the structural plans. The Architect made the revisions and received Plan Check's approval but the Architect included the original plans, instead of the revised (approved) plans, with the bid documents. The fact that the Architect included the original plans in the bid documents was not discovered until after construction started which resulted in change orders (see Finding #4 below).

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.*

The Sheriff agrees with the finding.

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- 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.***

The Sheriff agrees with the finding (see Finding #2 above).

- 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.***

The Sheriff disagrees partially with the finding.

Explanation: The Sheriff disagrees that the basis of payments for acceleration and out of sequence installations was "subjective and could not be audited to verify the actual costs to the contractor". Due to the large volume of documents related to this project, the Grand Jury asked to review the detail of a sampling of change orders. The detail behind the acceleration and out of sequence installations was not requested by the Grand Jury. There are two issues related to this finding: acceleration of the project, and out of sequence items.

- 1) Acceleration: During construction of the project, it became clear that there would be significant delays causing cost increases to the County of \$1,660 per day for delays to the General Contractor (see discussion of Finding # 6 below), possible delay costs to sub-contractors, \$280 per day of rent for the temporary morgue, and other less quantitative costs for administering the project. Sheriff staff and the contractor developed a plan to accelerate the project by using overtime in order to reduce the delays and the associated delay costs.

Overtime was authorized for critical path work items only. The increased cost to the County was the extra premium pay (i.e. the extra "half" in the phrase "time and a half") which averaged about \$20 per hour. Every hour of overtime was documented with the total cost being \$62,000. The overtime reduced the construction schedule by at least 43 days, saved the

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County at least \$71,380 of delay costs and rent at the temporary morgue, and was most likely a factor in there being no delay claims from any sub-contractor despite the overall delays of the project.

- 2) Out of Sequence Items: Hundreds of construction activities are scheduled to be performed in a certain sequence to minimize the cost of construction. There are times when certain construction activities must be rescheduled to a later date which may cause an increase in construction cost.

Sheriff staff and the Grand Jury discussed one such instance in which a different type of door jam was needed than what was identified in the plans. The alternate door jams had to be ordered and would have delayed the project by 6 weeks causing about \$70,000 in delay costs. Instead of delaying the project, the contractor was directed to continue with construction and install the door jams at a later date, out of sequence. The cost for later installing the door jams out of sequence was determined by Sheriff staff after observing the actual installation of the door jams. Two tradesmen were able to install an average of 6.5 door jams per day (2.5 man-hours per door jam). Sheriff staff was able to negotiate payment at the rate of 8 door jams per day (2 man-hours per door jam), which saved the County \$3,300 on installation and avoided a costly delay claim.

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.***

The Sheriff disagrees partially with the finding.

Explanation: Contractors are due compensation when a project experiences delays not caused by the contractor. Determining the amount of compensation can be complex and is negotiated between the contractor and the County. It can include costs such as on-site staffing, rent of a construction trailer, utility costs, phone costs, a share of home-office costs, lost profit on jobs that they could have been working on if the project had finished on schedule, insurance, bonds, etc. If an agreement is not reached, the issue could be settled in court which would add attorneys' fees and

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consultants' fees to the cost for the County. Typically, it is in everyone's best interest to negotiate a reasonable daily rate to avoid costly litigation.

The Sheriff disagrees that the amount of \$1,660 was very subjective. This number was proposed by the contractor based on the cost of \$50,000 per month to cover out-of-pocket staffing and support costs for on-site staff. The Contractor did not include all on-site costs and did not include home office overhead and lost future profits. Sheriff staff analyzed the proposal and came to the following conclusions:

- 1) After deleting one-time costs, actual on-site costs during the first 15 months of the project for on-site staffing, rent of a construction trailer, utilities, phones, etc. averaged \$53,700 per month (or \$1,790 per day) which is \$130 per day more the \$1,660 per day that was proposed by the Contractor. During construction, the Contractor had 4 administrative positions full-time on the job-site charging an estimated average of \$50.75 per hour. This equates to \$1,624 per day in just full-time on-site staffing costs. Adding other actual costs would have easily exceeded the agreed amount of \$1,660 per day.
- 2) The proposed methodology focused on on-site costs but did not require the County to pay for home-office overhead or loss of profit from other jobs that they could have been working on if they were not delayed. This was a large savings for the County.
- 3) In the mid-1990s, the County had a large capital project that experienced delays. The County required documentation of actual delay costs after the project was completed. The contractor was able to document on-site costs, home office costs, and lost profit on jobs that it could have been working on if the project was not delayed. The County ended up paying \$14,500 per day which included \$5,000 per day for the general contractor and \$4,500, \$4,000, and 1,000 per day for three separate sub-contractors. Agreeing to \$1,660 per day was substantially less than that which has been paid on past projects.
- 4) Based on the above, Sheriff staff believe the methodology agreed to with the contractor was more than fair for the County and resulted in savings exceeding \$100,000 when compared to what the cost could have been by calculating actual delay costs to the contractor. The Contractor should be



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commended for working with the County to negotiate a reasonable settlement rather than trying to maximize profits and possibly ending up in litigation.

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.***

The Sheriff disagrees partially with the finding.

Explanation: The County is required to hold retention payments per Public Contract Code section 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 appropriate documentation by the Contractor. However, several sub-contractors filed "stop notices" (claims against the general contractor) which requires the Auditor-Controller to freeze payments to the general contractor until the claims are resolved. Once the "stop notices" were released and all the documentation required by the contract was submitted by the Contractor, the Auditor-Controller released all the retention within the time required by Public Contract Code. The Performance Surety Bond does not allow release of the retention prior to meeting the requirements within Public Contract Code.

Public Contract Code requires that retention be withheld longer than some contractors would like, especially sub-contractors who complete their work towards the beginning of the project. This is common knowledge in the industry.

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.***

The Sheriff disagrees partially with the finding.

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Explanation: To the Architect's credit, they assigned staff to the construction site to address issues with the plans as they arose. This resulted in quick resolution of issues and significantly reduced potential delays to the project. This added effort by the Architect resulted in substantial costs for which, again to the Architect's credit, they did not request, nor did they receive, reimbursement.

The County at no time paid for additional expenses above the contract amount. The County did increase the Architect's contract through two Board approved amendments and one administratively approved change order for added scope of work, not for reimbursement to correct errors.

The finding also mentions "serious deficiencies in the services provided". In fact, while the plans and specifications prepared by the Architect and its sub-consultants had many errors and omissions, the services provided by the Architect during construction to correct the errors and minimize the impacts were performed well.

## **Recommendations**

In accordance with California Penal Code Section 933 and Section 933.05, each recommendation requires a response from the government entity to which it is addressed. Based on the findings, the 2003-2004 Orange County Grand Jury developed the following four recommendations. Beneath each is the Sheriff's Department response to that recommendation.

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.*

The recommendation has been implemented.

Sheriff staff has held meetings with the Architect to discuss reimbursement for costs associated with the errors and omissions. Staff provided a listing of the change orders and identified which change orders staff believes resulted from errors and omissions. The architect has met with its sub-consultants on this project to discuss the change orders resulting from errors and omissions by the sub-consultants. At the time of this writing, the Architect has shown a sincere interest in negotiating a reasonable settlement with the County.

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

The recommendation has been implemented.

It always has been the policy of the Sheriff's Construction Management Team to authorize payment for accelerated or out-of-sequence installations at a per-unit cost when appropriate. For example, on this particular project, as discussed in the response to Finding # 5 above, staff authorized payment of 2-man hours per door for installation of door jams that were installed out-of-sequence. However, there are times when overtime is authorized to catch-up with the schedule to avoid delay claims. A per unit price cannot be negotiated so staff will monitor the construction activity to ensure the expected outcome is achieved. If not, overtime would be discontinued.

3. *In future projects, the Orange County Sheriff Construction Management Team require that the daily reimbursable cost for delays in the 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.*

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The recommendation will not be implemented because it is not warranted.

When negotiating a rate of payment for delays, staff first tries to negotiate an agreement that would be less than the true additional cost involved. If the price proposed by the Contractor appears to exceed true additional cost, the County can request documentation of actual costs and pay only those documented 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.***

The recommendation will not be implemented because it is not reasonable.

The Sheriff's policy on withholding retention payments is strictly in line with Public Contract Code. Public Contract Code only allows release of retention after "completion" of the work as defined in PCC Section 7107 (occupation or use of the facility, and/or our acceptance of the work). After "completion" of the work, the County can release part of the retention and withhold 150% of any disputed "punch list" items.

In this case, serious construction defects were discovered by Sheriff staff that would not allow the Sheriff to occupy or accept the building. Therefore, the work was not "complete" and Sheriff's staff correctly withheld retention until the contractor corrected the defects. At the request of the contractor, the contractor and its attorney met with Sheriff's staff and County Counsel to discuss when the County could release the retention and all agreed that the defects would be corrected before the Sheriff would accept the building and release the retention.