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Follow-up of the Limited Review of Orange County's Job Order Contract

**Report by the
Office of County Comptroller**

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**Report No. 462
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TABLE OF CONTENTS

| | |
|--|----|
| Transmittal Letter | 3 |
| Implementation Status of Previous Recommendations For Improvement | 4 |
| Introduction | 6 |
| Scope and Methodology | 7 |
| Follow-Up To Previous Recommendations For Improvement..... | 8 |
| 1. Work Should Be Priced in Accordance With Contract Terms and Proposals Should Accurately Reflect the Items and Quantities Needed to Complete the Scope of Services | 9 |
| 2. Proposals Should Be Evaluated To Ensure the County Is Paying an Appropriate Amount for the Services Provided | 10 |
| 3. Purchasing Limits Should Not Be Exceeded Without Adequate Approval..... | 11 |
| 4. Work Should Be Completed as Specified in the Purchase Order Document or a Properly Authorized Change Order Should Be Processed | 12 |
| 5. Payments Should Not Be Made Until Work Is Complete | 13 |

March 30, 2017

Teresa Jacobs, County Mayor
And
Board of County Commissioners

We have conducted a follow-up of the Limited Review of Orange County's Job Contract (Report No. 427). Our original audit included the period of October 2010 to June 2011. Testing of the status of the previous Recommendations for Improvement was performed for the period from October 2014 through June 2016.

We conducted this audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The accompanying Follow-Up to Previous Recommendations for Improvement presents a summary of the previous conditions and the previous recommendations. Following each recommendation is a summary of the current status as determined in this review.

We appreciate the cooperation of the personnel of the Capital Projects and Procurement Divisions during the course of the audit.

Phil Diamond, CPA
County Comptroller

c: Ajit Lalchandani, County Administrator
Anne Kulikowski, Director, Administrative Service Department
Sara Flynn-Kramer, Manager, Capital Projects Division
Carrie Woodell, Manager, Procurement Division

IMPLEMENTATION STATUS OF
PREVIOUS RECOMMENDATIONS
FOR IMPROVEMENT

**FOLLOW-UP OF THE LIMITED REVIEW OF ORANGE COUNTY'S JOB ORDER CONTRACT
IMPLEMENTATION STATUS OF PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT**

| NO. | PREVIOUS RECOMMENDATION | IMPLEMENTATION STATUS | | | |
|-----|--|-----------------------|-----------------------|-----------------|----------------|
| | | IMPLEMENTED | PARTIALLY IMPLEMENTED | NOT IMPLEMENTED | NOT APPLICABLE |
| 1. | We recommend the County ensures work awarded under the job order contract is priced in accordance with contract terms. In addition, we recommend the County ensures price proposals accurately reflect the items and quantities needed to satisfy the scope of work. Negotiations to increase or decrease the quantities used in the pricing should be documented. | ✓ | | | |
| 2. | We recommend the County evaluates the proposals received under the job order contract to ensure the County is paying an appropriate amount for the services provided. | ✓ | | | |
| 3. | We recommend the County project managers not exceed purchasing limits without adequate approval. Further, the County should review these instances to determine if additional controls or actions are necessary. | ✓ | | | |
| 4. | We recommend the County perform the following: | | | | |
| A) | Funds encumbered for a purchase order only be used to pay for the goods and services described in the purchase order; and, | ✓ | | | |
| B) | Revised pricing be obtained and a change order issued to reflect changes in the scope of work. | ✓ | | | |
| 5. | We recommend the County ensure work is complete or materials are adequately stored and supported before payments are made to contractors. | ✓ | | | |

INTRODUCTION

INTRODUCTION



Follow-Up of the Limited Review
of Orange County's Job Order Contract

Scope and Methodology

We have conducted a follow-up of the Limited Review of Orange County's Job Order Contract (Report No. 427). Our original review included the period of October 2010 to June 2011. Testing of the status of the previous Recommendations for Improvement was performed for the period of October 2014 through June 2016.

We interviewed personnel within the Capital Projects and Procurement Divisions. We also reviewed source documents and performed tests necessary to determine the implementation status of the previous recommendations. We have described the specific methodologies utilized during our review in the implementation status of each Recommendation in the Follow-up to Previous Recommendations for Improvement section of this report.

FOLLOW-UP TO PREVIOUS RECOMMENDATIONS FOR IMPROVEMENT

**1. Work Should Be Priced in Accordance With
Contract Terms and Proposals Should Accurately
Reflect the Items and Quantities Needed to
Complete the Scope of Services**

During the prior review, construction work valued at less than \$100,000 was awarded through the County's job order contract. Section 1.0 of the contract stated "the general guide for pricing and determining allowable work is the current RS Means Facility Construction Cost Data price index." For many projects in the prior sample, we noted significant differences between the items included in the price proposal and the items actually needed to complete the project. Our prior review revealed instances where the RS Means price index did not serve as the basis for establishing the value of the work for the price proposal. It was a generally accepted practice for the Job Order Contractor to obtain a quote from a subcontractor for each task needed for a project and prepare a RS Means price proposal to "back in" to the total of the quotes obtained.

In addition, the price proposals for six of the twenty projects reviewed contained readily apparent items and/or quantities that were not needed to complete the agreed-upon scope of work. Although the County did not receive many of the specific items included on the price proposals, the County generally received materials that satisfied the overall agreed-upon scope of work requirements.

As a result, it was not possible to determine all of the costs attributed to the overall project and to assess whether the County paid an appropriate amount for the work performed.

We Recommend the County ensures work awarded under the job order contract is priced in accordance with contract terms. In addition, we recommend the County ensures price proposals accurately reflect the items and quantities needed to satisfy the scope of work. Negotiations to increase or decrease the quantities used in the pricing should be documented.

Status:

Implemented. The job order contract that utilized the RS Means Facility Construction Cost Data price index was eliminated and replaced with a new minor construction process that utilizes prequalified contractors for projects with an estimated cost of less than \$200,000. The new minor construction process requires that an Information for Bid (IFB) be sent to all of the prequalified contractors for each proposed project. Projects are then awarded to the lowest responsive and responsible bidder.

Article 18 of the IFB requires the awarded bidder to, "...submit a schedule of values of the work including quantities and unit prices totaling the contract amount." We reviewed five minor construction contracts and noted that each contractor submitted a schedule of values in compliance with Article 18. Our review of the contract files noted that the awarded bidders complied with the IFB submittal requirements and the schedule of values information was reviewed by the County and accepted as reasonable or in one case, negotiated to a lower amount.

Our review of the contract files also noted that there were increases to the awarded contract amount for three of the five contracts selected for testing. We reviewed the applicable change orders and determined that the appropriate documentation was provided to reflect changes in the scope of work.

2. Proposals Should Be Evaluated To Ensure the County Is Paying an Appropriate Amount for the Services Provided

During our prior review, we noted that the County did not have a definitive way to ensure that the appropriate amount was paid for projects awarded under the Job Order Contract. As noted in Recommendation for Improvement No. 1, it was standard practice for the Job Order Contractor to obtain

subcontractor prices for tasks needed for the projects and use these prices to "back-in" to the RS Means estimate.

Review of 17 closed projects in our prior sample revealed that the County paid the Job Order Contractor approximately \$17,230 more than could be verified with supporting documentation provided by the contractor.

In addition, four projects were brought to our attention where County personnel obtained a price proposal from the Job Order Contractor but the work was not awarded. Three of the projects reviewed were ultimately procured through open competition. For two of the competitively procured projects the County paid less for the work than what was proposed under the job order contract. For one of the projects, the County paid more under the open competition process. The work was never completed for the remaining project.

We Recommend the County evaluates the proposals received under the job order contract to ensure the County is paying an appropriate amount for the services provided.

Status:

Implemented. The new minor construction process introduced a competitive process for each individual project as a replacement for using fixed unit costs such as those in the RS Means Price Index. This process helps ensure that pricing for each project reflects current market conditions, and the lowest responsible and responsive bidders are awarded the contract.

**3. Purchasing Limits Should Not Be Exceeded
Without Adequate Approval**

The job order contract was intended for construction work not to exceed \$100,000. During our prior review of purchase orders and price proposals, we noted that several of the projects were related and when combined exceeded the \$100,000 threshold. The prior audit sampled 20 purchase



orders representing 15 individual projects. Controls established by the County's Purchasing and Contracts division requiring authorization for expending public money were overridden by County project managers. County purchasing rules require approval from the Board of County Commissioners for bid awards in excess of \$100,000.

We Recommend the County project managers not exceed purchasing limits without adequate approval. Further, the County should review these instances to determine if additional controls or actions are necessary.

Status:

Implemented. With the elimination of the Job Order Contract, the Capital Projects Division implemented additional policies and controls to reduce the risk of project managers exceeding purchasing limits for minor construction contracts. The Capital Projects Division Manager maintains an active and completed project listing that includes the project title, scope, authorization, funding source, project status, and the total project budget.

Our review of the executed minor construction projects managed by the Capital Projects Division from October 2014 through June 2016 did not note any projects that appeared to be related or a project that exceeded the revised project limit of \$200,000.

4. Work Should Be Completed as Specified in the Purchase Order Document or a Properly Authorized Change Order Should Be Processed

During the previous audit, we noted the contractor performed work that was not within the scope of a proposed project. Review of supporting documentation for this project revealed only \$4,400 (five percent) of the amounts paid to the contractor were for work included within the original proposal. However, \$72,236 (73 percent) was used to pay for various renovations outside the scope of work included within the

proposal. Additionally, of the \$72,236 that was not included in the original proposal, \$17,000 was used at a different location.

We Recommend the County perform the following:

- A) Funds encumbered for a purchase order only be used to pay for the goods and services described in the purchase order; and,
- B) Revised pricing be obtained and a change order issued to reflect changes in the scope of work.

Status:

- A) Implemented. During the audit, we reviewed the supporting documentation for five minor construction contracts. We verified that funds encumbered were only used for goods and services described within the scope of the contract.
- B) Implemented. As noted in Recommendation for Improvement No. 1, review of the contract files confirmed that appropriate documentation was provided to reflect changes in the scope of work.

5. Payments Should Not Be Made Until Work Is Complete

During our prior review, we found that some of the payments made to the contractor were not reasonable based on the actual progress of work. The County paid the contractor before all of the work included in the pay application was completed for eleven percent (2 of 19) of the projects reviewed.

We Recommend the County ensure work is complete or materials are adequately stored and supported before payments are made to contractors.

Status:

Implemented. As noted in Recommendation for Improvement No. 1, Article 18 of the IFB requires each contractor to submit a schedule of values totaling the contract amount. The schedule of values is submitted along with the application for payment to document the contractor's status of work completed and to provide written notice of a payment request.

We reviewed 14 payments disbursed for the five minor contracts selected for testing. Interviews with Capital Projects Division personnel and a review of supporting documentation sufficiently substantiated that project managers verified work was completed prior to authorizing payments to the contractors.