

AUDIT REPORT

Oregon State University: Review of the Valley Library Expansion Project



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Summary

PURPOSE

During the course of other audit work at Oregon State University (university), information came to our attention regarding the university's Valley Library (library) expansion project. After reviewing the information, we had questions about the process used to select the project's Construction Manager/General Contractor (contractor). We also had questions concerning the circumstances of a \$421,000 settlement payment from the university to the contractor at the end of the project. The objectives of our audit were to determine whether the university followed state laws, rules, policies and procedures in selecting the project's contractor and architect, and in managing the contract. We also sought to review and report on the circumstances of the university's final settlement with the contractor.

BACKGROUND

In October 1995, the university executed a contract with Hoffman Construction Company of Oregon to be the contractor for the expansion of the Kerr (now Valley) Library located on the campus in Corvallis. The university accepted the project as complete at the end of February 2000. Total project funding amounted to approximately \$42 million. Direct construction costs paid to the contractor totaled approximately \$32.9 million. To help pay for the project, the state issued \$20.5 million in general obligation bonds. Gift funds provided through the Oregon State University Foundation provided more than one-half of the money for the project.

RESULTS IN BRIEF

As a state agency governed by state laws and rules, the university is required to document its contracting activities. The university did not adequately document its procedures in selecting either the project contractor or the architect.

The state and university designed and negotiated a contract that lacked clear provisions for guiding key contracting decisions. In particular, the contract did not clearly describe which costs incurred by the contractor and subcontractors as part of the project would be considered reimbursable. Lacking clear contract language, the university, the contractor, and certain subcontractors took disputed actions that resulted in increased costs to the state.

RECOMMENDATIONS

We recommend that for construction projects the university:

- Document its selection and hiring of contractors as required by state laws and rules.
- Consider increasing the number or portion of external, independent, and knowledgeable parties serving on selection committees.
- Continue to work with the attorney general's office in creating and negotiating clear and supportable construction contracts that adequately protect the state's interests.

AGENCY RESPONSE

University management generally agrees with the recommendations.

Introduction

In October 1995, the university and the contractor executed a contract for the library expansion project. The contractor's services would be provided at a cost of approximately \$30.8 million, with work to be completed in September 1998.

The university accepted the project as complete on February 28, 2000. Total project funding, including

money for furniture and equipment, amounted to approximately \$42 million. The contractor was paid approximately \$32.9 million.

Audit Results

Inadequate Documentation of Contractor Selection Process

All of the state's public universities are required to document their activities in selecting and hiring contractors. Full documentation of

the process is needed to show the basis for contracting decisions and whether or not proper selection procedures were followed.

The university did not adequately document the selection processes used in hiring either the project contractor or the architect.

Seven construction firms submitted applications to qualify for the final selection process. The university had formed a selection committee with seven voting

members to evaluate and score the applicants' qualifications. Six of the voting committee members were OSU employees and a seventh was a representative of the construction industry.

We reviewed a handwritten tally of seven scores showing that the contractor was among the four finalists. The university retained original scoring sheets prepared by six of the seven committee members. Because of the missing scoring sheet, we were unable to verify the total score given to each applicant.

We were told that another evaluation process was used to select a contractor from the four finalists. However, the university had not retained any scoring sheets or other documentation of the final selection process. Because of the missing documentation, we were unable to verify that the contractor received the highest final selection committee scores or other ratings.

We also were unable to verify the selection of the project architect. The university had not retained any scoring sheets used by the members of an architect selection committee. During the course of the library project, the architect was paid \$2.7 million.

We noted that the initial selection committee included only one voting member who did not work for the university. One of the contractors we interviewed recommended having more than one external, independent, and knowledgeable person as a voting member.

The university awarded the contract to a contractor whose parent company had contributed significant funds for the university for many years. We were told that one unsuccessful bidder, one of the four finalists, also had contributed significant funds for the university for many years.

A principal of the contractor's parent company was also an officer

of the Oregon State University Foundation. Gift funds provided through the foundation supplied more than one-half of the money for the library project.

Given the large amount budgeted for the project (approximately \$40 million), and the intertwined financial relationships between the university, bidding contractors, and foundation, the university should have properly documented its actions and better demonstrated the bases for its contracting decision.

We recommend that for construction projects the university:

- Document its contractor selection procedures as required by state laws and rules.

Agency's Response:

Management believes that all documentation requirements were met for the Valley Library contractor selection process, with the exception of the scoring sheets used for the selection among the four finalists of the winning contractor for this project. The score sheet that this report identifies as missing from the required documentation was, in fact, never completed because the representative of the construction industry refused to vote. So the score sheet was not 'missing'; it simply did not exist.

Management agrees that proper archiving of required documentation is an important aspect to all construction projects and commits to better controls and maintenance of all documentation related to the selection process for contractors, architects and engineers.

We also recommend that the university:

- Consider increasing the number or portion of external, independent, and knowledgeable parties serving on selection committees.

Agency's Response:

Management believes that all state laws and rules were followed in the contractor selection process, with the exception noted above. No state law or rule requires a particular composition of a selection committee.

In fact, the Oregon State University contractor selection committee for the Valley Library project did include an external party. This party's involvement in the contractor selection process was circumscribed by his desire to avoid any actual or apparent harming of a competitor, as well as his decision to serve as a non-voting advisor on the committee.

Management will continue to seek substantive participation of external, independent, and knowledgeable parties in all projects with anticipated costs in excess of \$10 million. As willing parties are identified, a resource list will be created for use in the Oregon State University contractor selection process.

Lack of Clearly Defined Contract Provisions Led to Increased Costs

The library construction contract did not clearly define certain key provisions, such as which costs incurred by the contractor or subcontractors would be considered part of the project and reimbursable. Lacking clear contract language, the university, the contractor, and certain subcontractors took disputed actions that resulted in increased costs to the state. The following is an example.

Claim Pertaining to Weather-Related Events

In the fall and winter of 1996, while construction work was underway, the region experienced periods of abnormally high rainfall. A main access route for Corvallis,

highway 34, was impassable at times due to flooding. A subcontractor was scheduled to do concrete work during periods of high rainfall.

The subcontractor filed a \$314,000 claim against the contractor. The subcontractor later filed the same claim against the university. The claim was to recover extra job site overhead costs, home office overhead costs, lost productivity due to the weather, overtime payments not previously compensated, and a 15 percent markup on the job site costs.

University management consulted with their attorneys at the attorney general's office for advice on handling the claim. The attorneys advised against making payment. They cited the contract that provided for payment only in the event that a delay was caused by OSU and lasted more than 30 days. They also reported that the subcontractor had not filed a claim within the time allowed by the contract. Also missing was evidence that the subcontractor's delay was caused by the weather. The university did not make payment on the claim.

The attorney general's office and the university held that the delays were avoidable because the subcontractor and its workers could have used alternatives to accomplish the work. They also held that the contractor was responsible for delaying the project by at least 24 days because of earlier difficulties with excavation and site preparation.

While the claim was in dispute, the president of the parent corporation of the contractor, who was also the president of the Oregon State

University Foundation, sent a letter to the university president urging that the dispute be settled through discussion and without litigation. He mentioned his firm's 30-year relationship with the university and his desire for it to continue.

After the university received the letter, their attorneys conducted another review of the contract. We were told that the attorneys subsequently advised the university to negotiate a settlement and obtain a comprehensive release from the contractor. The attorneys concluded that the contract language did not adequately describe which costs incurred in doing the work would be considered part of the project and reimbursable, and which costs would not be reimbursed.

Because of this, the attorneys believed that the state had only a 50 percent probability of successfully defending a decision to deny the claim.

A university manager said that given the legal advice, and given that the sum of all disputed and unresolved claims (approximately \$1.8 million) exceeded available resources, the university believed it was in the state's best interest to negotiate a settlement. The negotiations concluded with the contractor agreeing to a \$421,000 final settlement. Included in the settlement agreement was an instruction for the contractor to resolve the concrete subcontractor's claim.

In this case, clearer contract provisions could have helped the university avoid the dispute and associated costs.

We recommend that the university continue to work with the attorney general's office in creating and negotiating clear and supportable construction contracts that adequately protect the state's interests.

Agency's Response:

Management continues to be committed to working closely and cooperatively with the attorney general's office to create construction contracts which protect the assets of the state.

Objectives, Scope and Methodology

The objectives of this audit were to determine whether the university followed state laws, rules, policies and procedures in selecting the project's architect and contractor, and in managing the contract. We also sought to review and report on the circumstances of the university's final settlement with the contractor.

To accomplish these objectives, we interviewed university officials, selection committee members, officials from the attorney general's office, and independent contractors. We reviewed applicable statutes, policies and procedures, contracts with architects and contractors, correspondence, and other relevant information. We also obtained and reviewed professional literature from national organizations.

We conducted our review in accordance with generally accepted government auditing standards.

This report, which is a public record, is intended to promote the best possible management of public resources. Copies may be obtained by mail at Oregon Audits Division, Public Service Building, Salem, Oregon 97310, by phone at 503-986-2255 and 800-336-8218 (hotline), or internet at Audits.Hotline@state.or.us and <http://www.sos.state.or.us/audits/audithp.htm>.

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The courtesies and cooperation extended by the officials and staff of Oregon State University were commendable and much appreciated.

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