

A Capital Project Audit of the
Salt Lake County
District Attorney's
Downtown and West Jordan
Office Buildings

2017

AUDIT REPORT



Downtown District Attorney's Building Under Construction



OFFICE OF THE
SALT LAKE COUNTY AUDITOR
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To foster informed decision making, strengthen the internal control environment, and improve operational efficiency and effectiveness for Salt Lake County, through independent and objective audits, analysis, communication, and training.

Report Number 2017-06
December 2017



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December 15, 2017

The Honorable Sim Gill, Salt Lake County District Attorney
2001 South State Street, S3-600
Salt Lake City, UT 84190-1210

Dear Mr. Gill,

Transmitted herewith is our report, ***A Capital Project Audit of the Salt Lake County District Attorney's Downtown and West Jordan Office Buildings*** (Report Number 2017-06). An Executive Summary of the report can be found on page 1. The overall objective of a capital project audit is to review project expenditures throughout the project lifecycle, and compare budgeted to actual expenses. Capital project audits ensure that project expenditures are properly reviewed, authorized, and accounted for, and that contractor payments comply with contract terms and agreements.

We compared budgeted to actual costs, reviewed monthly contractor pay requests, and read through general contractor and architect contracts to determine compliance with contract terms. Also, we compared monthly or periodic pay requests from the general contractor and architect to actual payments made, and examined amounts paid to vendors other than the general contractor and architect.

We truly appreciate the time and efforts of the employees of the District Attorney's Office and the Facilities Management Division throughout the audit. Our work was made possible by their cooperation and prompt attention given to our requests.

We will be happy to meet with you or any other appropriate individuals to discuss any item contained in the report for clarification or to better facilitate the implementation of the recommendations.

Respectfully submitted,

Scott Tingley, CIA, CGAP
Salt Lake County Auditor

Cc: Ralph Chamness, Chief Deputy District Attorney
Rory Payne, Director, Facilities Management Division
Megan Hillyard, Director, Department of Administrative Services
Javaid Lal, Fiscal Administrator, Department of Administrative Services



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Executive Summary

Background and Purpose

We recently completed a capital project audit of construction projects for two new Salt Lake County District Attorney ("District Attorney" or "DA") office buildings, one in downtown Salt Lake City ("Downtown"), and the other one in West Jordan City ("West Jordan"). As of the date of this report, the Downtown building is still under construction and the West Jordan building has been completed. The same general contractor and architect were used for both building projects.

We limited our audit scope to the construction budget, actual costs, payments to vendors, and authorization and accounting for payments. We reviewed general contractor and architect contracts for payment terms, and determined compliance with those terms. We examined change orders, their nature, purpose, and level of authorization, and analyzed project fiscal responsibility by comparing actual to budgeted expenditures. In this report, we present findings and recommendations that provide insight into construction progress and direction for more efficient capital project management.

The purpose of this capital projects audit was to determine whether:

- Expenditures made during the project lifecycle of each of these capital projects conformed to budgeted amounts.
- Expenditures were appropriately reviewed, authorized, and accounted for.
- Payments to contractors complied with contract terms.

Throughout this report, we use the terms "contract" and "agreement" synonymously.

What We Found

Actual expenditures were within budgeted amounts set for the District Attorney's office building construction projects. (p. 6)

Actual expenditures of \$26 million since project inception were within the overall project budget of \$65 million. Additional expenditures will occur as construction work progresses. In addition, payments to both the general contractor and architect have not yet reached their overall contracted amounts.

Change orders increased general contractor costs by \$800,000 and architect costs by \$400,000. (p. 8)

Thus far, change orders in construction of the West Jordan and Downtown District Attorney's buildings total \$780,000, increasing the general contractor's contract budget by the same amount, but not the overall project budget of \$65 million. The contracted payment to the architect also increased, by \$400,000.

The general contractor did not verify rental rates for equipment against Federal cost data, as required in the contract. (p. 15)

The general contractor rented equipment in the construction process, but did not verify rental rates against Federal rental cost data. The contract specified that equipment rental rates should not exceed cost data for equipment rental established by the Bureau of Labor and Statistics. We found that the general contractor did not understand the meaning or source of this data.

The general contractor did not provide a breakdown of supervisor hours with monthly pay requests. (p. 16)

The agreement requires the general contractor to include total supervisor hours in its monthly pay requests to the County to establish compliance with contracted construction supervisor costs. When we examined monthly pay requests, we found that this data was not included, as required by the contract.

What We Recommend

To provide assurance that equipment rental rates do not exceed Federal cost data:

We recommend that the District Attorney's Office work with all parties involved to revise the contract to delete the requirement that rental rates not exceed Federal cost data, as stated, and replace it with terms that all can parties agree with and understand.

To eliminate the requirement that supervisor hours are included with pay requests:

We recommend that the District Attorney's Office work with all parties involved to delete the contract provision for reporting supervisor hours, and revise the contract to comport with bid documents and the intent of contracting parties.

Summary of Agency Response

We received a response from the District Attorney's Office regarding both recommendations given. An action plan was outlined that included the actions that management will take to remediate the issues identified, the person responsible for implementing the action plan, and a due date for the completion of the action plan. The District Attorney's full response to the audit can be found as an attachment at the end of this report.

Introduction

Background

We recently completed a capital project audit of the District Attorney's new office buildings. The audit included an examination of budgeted and actual costs, contract compliance, and timelines of project completion. Construction on the two buildings began in 2016, and was carried out by the same general contractor and architect for both building projects. The two buildings, located in downtown Salt Lake City, and in West Jordan City, are currently under construction with anticipated completion dates of March 9th, 2018 and September 13th, 2017, respectively. In our audit, we examined general contractor and architect contracts, reviewed timelines for completion, and analyzed project expenditures.

Figure 1. The Downtown District Attorney's Office Building Under Construction



The five-story, 112,000 square foot office building in downtown Salt Lake City, southwest of the Scott M. Matheson Courthouse, is scheduled to be completed in the Fall of 2017. Another two-story, 28,000 square foot building located in West Jordan, is scheduled to be completed in the Spring of 2018.

Both buildings were built to meet Leadership in Energy and Environmental Design (LEED) gold standards. LEED gold rated buildings are intended to be resource efficient by using less water, energy, and reduce greenhouse gas emissions. Cost saving is another intended benefit from using this green building rating system. Total project costs were budgeted at \$65.4 million. This project is a result of a 30-year process first initiated by the previously elected District Attorney.

Objectives

Our objectives for this audit were as follows:

Objective 1 – Budgeted to Actual Expenditures Comparison

- Determine whether actual expenditures during the project lifecycle of each of these capital projects conformed to budgeted amounts.

Objective 2 - Project Expenditures Review

- Determine if project expenditures were properly reviewed, authorized, and accounted for.

Objective 3 – Contract Payments Review

- Determine whether all contractor and supplier payments complied with contract terms.

Scope and Methodology

We examined all project lifecycle costs associated with the construction of the two office buildings. This included comparing adopted budgets to actual expenditures through the 2016 fiscal year end. We compared contracted costs to actual expenditures to verify compliance with contract terms. Additionally, we examined transactions to verify proper authorization, review, and accounting.

Financial information was obtained from the County's financial system and from financial personnel at the District Attorney's Office and Salt Lake County's Facilities Management Division. We conducted tests, interviews, and analyzed data to meet the audit objectives. We plan to continue to monitor these capital projects through the rest of their project life.

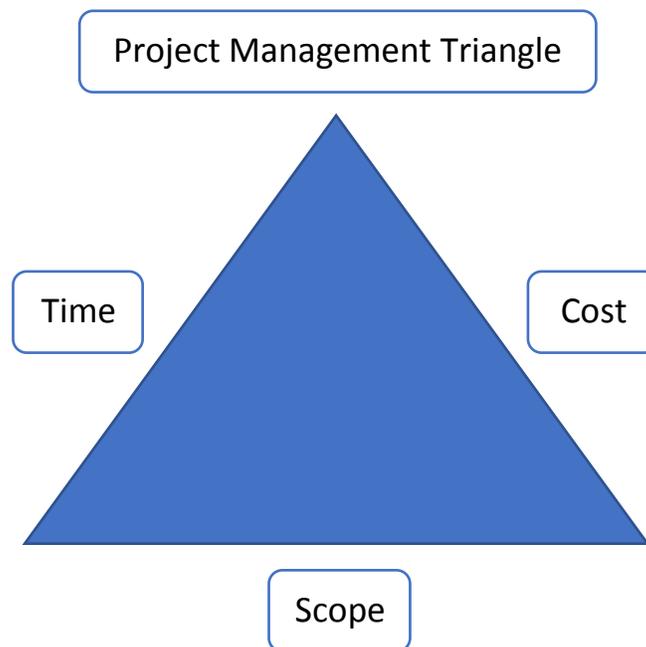
Audit Results

1.0 – Budgeted to Actual Project Expenditures Comparison

- **Determine whether actual expenditures during the project lifecycle of each of these capital projects conformed to budgeted amounts.**

There are certain constraints within all construction projects; mainly time, costs, and scope. This is referred to as the project management tringle. The triangle represents the entire project and each side represents one of the constraints as seen in Figure 2 below.

Figure 2. The Project Management Triangle



Making changes to a side of the triangle changes the triangle's shape thus affecting the entire project. A change order is the formal process that is used to make changes in capital projects. Typically, change orders will make changes to at least one of the constraints mentioned in the triangle.

Since its inception, the project has had a total budget of \$65,440,080. The project began incurring costs in 2013. The project started with a Fixed Limit of Construction Cost (FLCC) of \$41,300,000 and is currently at a FLCC of \$44,402,922.70. A total of eight change orders have been approved increasing the cost and scope of the project. Currently, a total of 88% of the budget has been either spent or encumbered. The project's total costs are expected to be within budget and substantial completion of the project will occur well within the contracted time of July 1, 2018.

The project was primarily financed with three bond indentures issued by the County in 2010, 2014, and 2017 respectively. Additionally, state transportation funds were used to pay for the construction of the parking structure at the downtown building; a total of \$4,700,000 was

transferred to the project in 2017. Table 1 explains the total budgeted costs and financing sources for both buildings.

Table 1. District Attorney’s Building Project Budgeted Costs and Financing

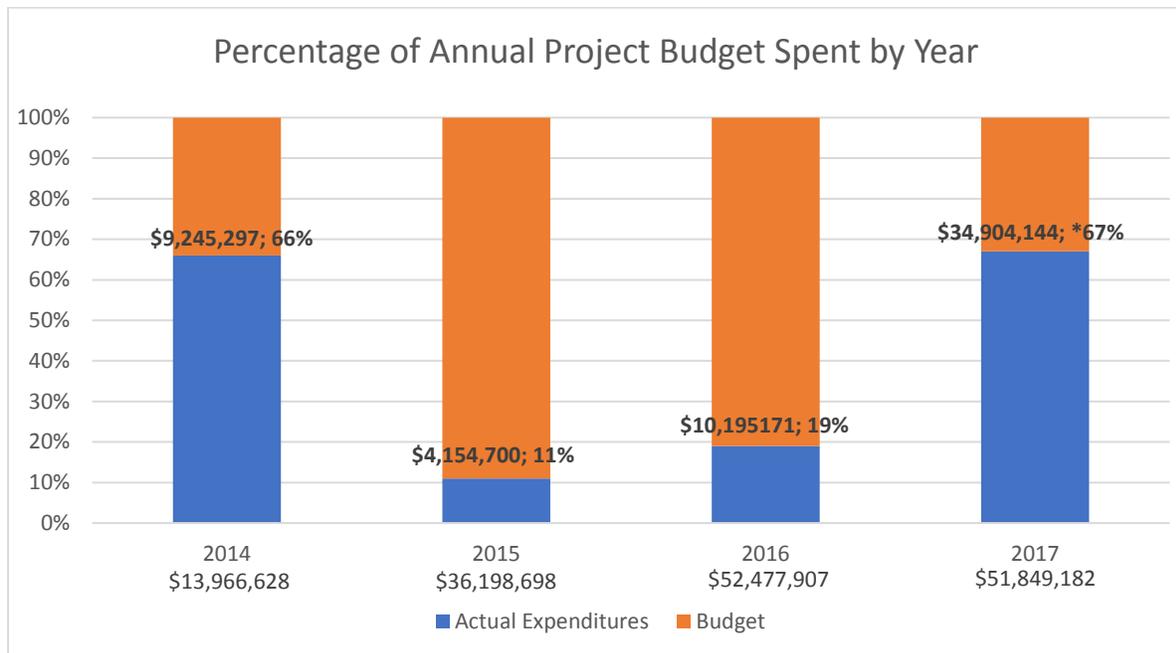
District Attorney’s Buildings Project Budgeted Costs and Financing	
Budgeted Costs	
Total Budgeted Costs for both Buildings	\$65,440,080
Financing for the Two Buildings	
2010 Bond Proceeds	\$18,101,302
2014 Bond Proceeds	\$10,603,870
2017 Bonds Proceeds	\$35,090,453
2017 Budget Adjustment Transfer	\$4,700,000
Total Financing for both Buildings	\$68,495,625

Source: Mayor’s Office of Financial Administration

Finding 1.1: Actual expenditures were within budgeted amounts set for the District Attorney’s office building construction projects.

We obtained detailed budget and expenditure information from the County’s financial system. Our test was to review actual expenditures made throughout the project lifecycle and compare them to budgeted amounts. We first compared each annual budget to the actual expenditures. We found that actual expenditures did not exceed annual budgeted amounts. Figure 3, represents the percent of the annual budget spent in actual expenditures. Figure 4, shows the same data in a different format.

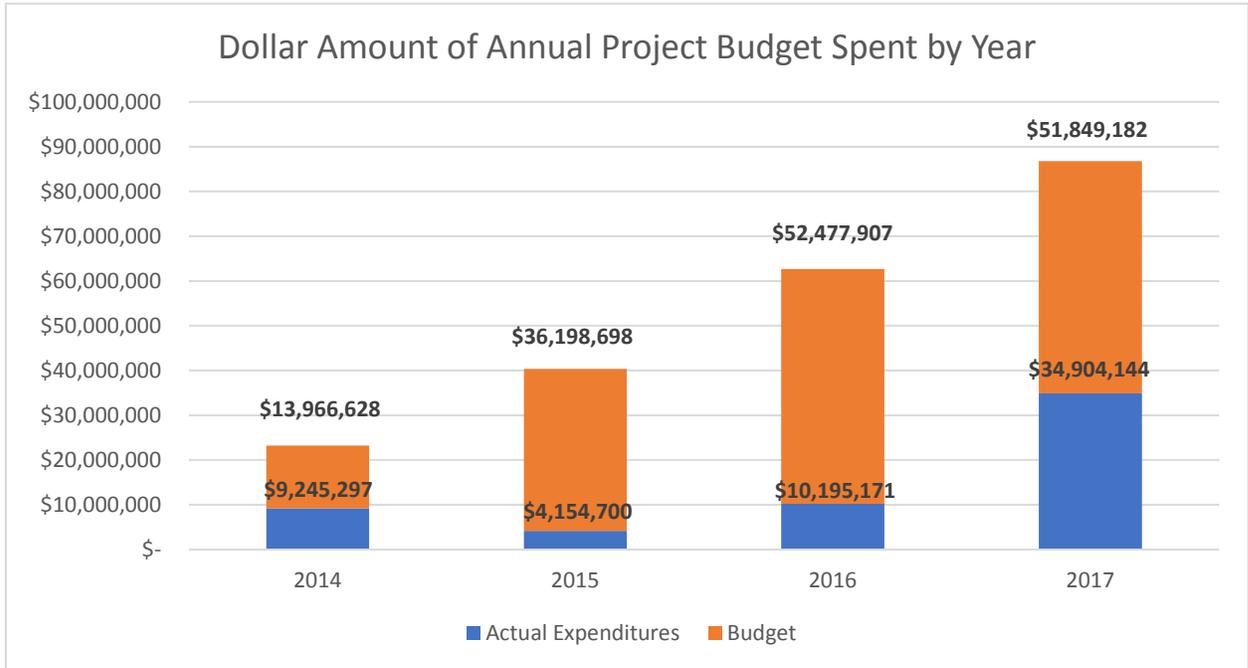
Figure 3. Percentage of Annual Project Budget Spent by Year



*This represents YTD May 24th, 2017 actual expenditures.

The budget portion of each column represents the annual approved budgeted amounts each year for the projects.

Figure 4. Dollar Amount of Annual Project Budget Spent by Year



*This represents YTD May 24th, 2017 actual expenditures.

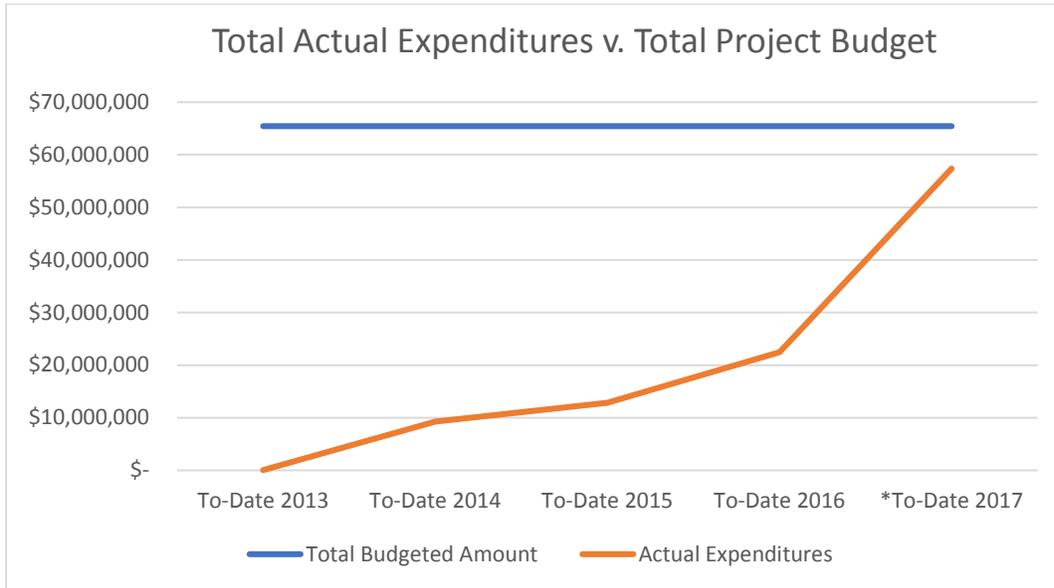
Actual project expenditures did not exceed annual budgeted amounts in any year from 2014 to 2017.

From 2015 to 2017, the highest annual expenditures were made towards the construction of the buildings. Construction expenditures were primarily made to contractors like the architect, general contractor, artists, engineers, and consultants. The highest annual project expenditures to-date of \$9.2 million, occurred in 2014, to purchase the land for both buildings.

We also compared total project expenditures to the total project budget. Figure 5 shows a comparison of actual expenditures to the total overall project budget. The total project budget is different from the annual budget. The annual budget only considers future expenditures within the county annual budget period ending December 31st, while the total project budget considers future expenditures throughout the lifecycle of the project that could extend multiple years.

The total budget of the project was \$65,440,080. Total actual expenditures, including encumbrances, were \$57,370,232.06 by May 24th, 2017, representing a total of 88% of budgeted funds.

Figure 5. Total Actual Expenditures v. Total Project Budget



**This represents YTD May 24th, 2017 actual expenditures.*

The largest increase in expenditures occurred in 2017, primarily because construction underway with both buildings.

Most of the expenditures were made in 2017, amounting to \$34,904,144.35 or 60% of total actual expenditures over the lifecycle of the project. The percentage increase in expenditures from 2016 to 2017 was 72%. These significant 2017 increases were associated with the increase in construction activity for the two buildings.

Finding 1.2: Change orders increased general contractor costs by \$800,000 and architecture firm costs by \$400,000.

Change orders occur in the normal course of construction projects as unanticipated or unplanned structural modifications or changes are needed. Change orders generally increase, but in some cases, decrease the original total budgeted costs of a capital project. General contractor change orders in building both the West Jordan and Downtown District Attorney’s buildings currently total \$781,064. Contract terms allow for change orders and address the steps required for processing them.

The **“General Terms & Conditions Construction Manager/General Contractor Contract,” Sections 18.2 and 18.3**, state:

“Changes in the Work that require an adjustment to the GMP (Guaranteed Maximum Price, or fee) or Contract Time shall be initiated in ... the following manner ... [General Contractor] shall submit a proposal of changes and costs to the County and [architect] for review.”

The original contract, signed in 2015, specified a general contractor fee of \$41,300,000, but an amended contract in 2016 established a revised fee of \$43,621, 859, an increase of \$2,321,859. Since the amended contract, net change orders have totaled \$781,064, increasing the contract total to \$44,402,923.

Eight change orders, comprising 57 individual change requests, have occurred since the amended contract took effect. Table 2 shows the amount of each individual change request. The type or code to the side of each dollar amount in this table refers to the type of change made. The key in Table 3 describes the change corresponding to each type.

Table 2. Downtown and West Jordan Change Orders by Amount and Type

Downtown and West Jordan Change Orders by Amount and Type											
Amt	Type	Amt	Type	Amt	Type	Amt	Type	Amt	Type	Amt	Type
\$103,262	SF	(\$295)	SC	\$1,560	MS	\$1,351	BD	\$3,072	MS	\$47,541	DA
\$79,098	MU	\$9,688	MS	(\$1,751)	SC	\$6,908	BD	\$3,400	MS	\$2,696	ID
\$85,633	MU	\$11,389	ID	\$7,585	MS	\$42,723	MU	(\$10,600)	SC	\$5,861	BD
\$9,678	PS	\$5,570	AS	\$15,281	ID	(\$16,221)	SC	\$3,178	BD	\$16,545	BD
\$12,092	DA	\$1,003	MU	\$2,354	BD	\$4,381	MU	(\$3,114)	SC	(\$8,607)	SC
\$27,754	DA	(\$20)	SC	\$539	DA	\$40,161	MS	\$15,576	BD	\$6,710	MS
\$2,863	MS	\$13,334	MS	\$1,484	DA	\$17,380	MS	(\$2,043)	SC	\$609	MS
(\$3,498)	SC	(\$6,040)	SC	\$4,682	DA	\$16,136	MU	\$111,778	DA	\$8,710	MS
(\$786)	SC	\$17,475	DA	\$9,686	BD	\$2,995	MS	(\$1,414)	SC	\$5,610	MS
\$5,335	AS	\$44,787	MS					TOTAL		\$781,064	

Most change orders increased costs but amounts shown in red decreased contract costs.

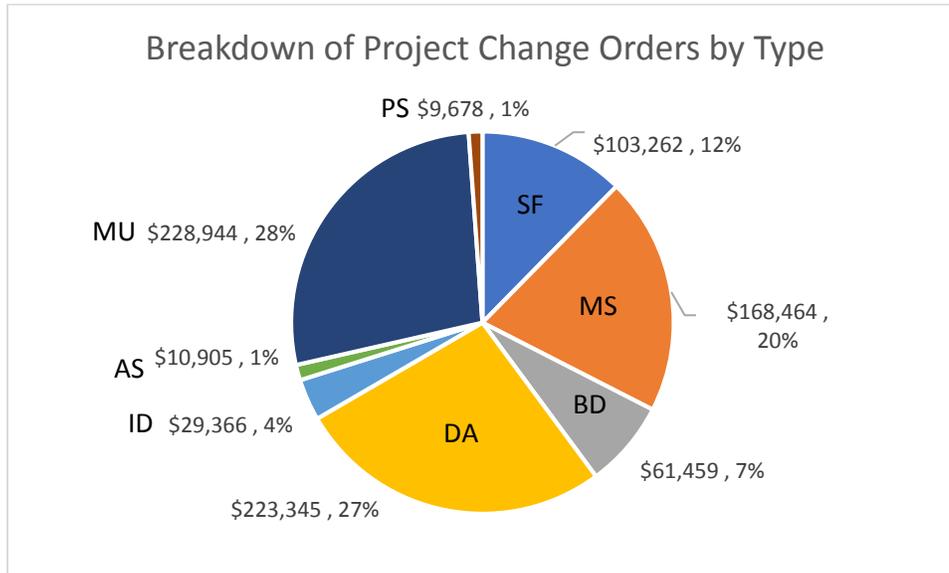
Table 3. Key to Change Order Types Shown in Table 2

Change Order Type Code	Description
PS	Prepare Site. Underground site condition unknown before construction began.
SF	Satisfaction Fee. County's portion of a satisfaction fee paid to the general contractor.
BD	Bid Documents. Required structural change due to incorrectly stated or incomplete bid documents.
ID	Incomplete Documents. Change in structure due to errors or incomplete elements in design documents.
MS	Modify Structure. Required structural changes discovered during the building process. Such as, "One additional drift joint in stone veneer."
DA	District Attorney Request. Requested addition by the District Attorney's Office.
AS	Aesthetics Improvement. Suggested change by general contractor or architect to improve aesthetics.
MU	Municipality Request. Change required by the local municipality, utility, or requested by Salt Lake County Library.
SC	Supplier or Contractor credit. Equipment or structural design found to be unnecessary.

Most change orders related to needed structural modifications.

We summed the amounts for individual requests in each category to provide a better understanding of why changes occurred in the construction process. Figure 6 shows these summarized category totals and the percentage of each summarized category to the total.

Figure 6. Breakdown of Project Change Orders by Type



28% of change orders were attributable to requirements by municipal (city) governments.

Category MU in Figure 6, shows that directives or requests from local municipal (city) governments with jurisdiction over buildings under construction created substantial cost in change orders. For these projects, Salt Lake City and West Jordan hold administrative authority over building sites. For example, Salt Lake City required a change to the storm drain line at the downtown site over the architect’s originally designed plan, which cost \$79,098.

As another example, West Jordan required a water detention basin to be relocated in the future, at the County’s cost, if the city widened the road adjacent to the basin. The District Attorney’s Office decided to resolve the issue now instead of the future, placing the basin under the parking lot of the new building, which necessitated an additional \$85,633. In another case, the Salt Lake County Library requested relocation of the West Jordan District Attorney building parking lot to accommodate patron use during off business hours, an added cost of \$4,381.

Categories MS and BD in Figure 6, comprise general contractor requested changes resulting from structural needs or deficiencies discovered as work progressed. Category BD relates not only to needed changes discovered during construction work but also to incomplete specifications in bid documents that the general contractor used in pricing the project. For example, a change costing \$16,545 provided “fire stopping at edge of slab to close off cavity.”

The change order stated:

“The bid documents did not sufficiently address the edge of slab fire stopping conditions to allow subcontractor to appropriately bid the scope of the work.”

Several requests originated in the District Attorney's Office itself, as shown in category DA of Figure 6, accounting for 27% of change orders. In one such instance the the District Attorney's office requested an upgraded security system, including cameras, for an additional \$111,778.

Not included in Figure 6, are the reversals, or reductions in contractor payments, which totaled \$54,389. As construction work progressed, the general contractor also found unneeded items or achieved efficiencies in their work that allowed for cost reductions instead of increases.

County officials sign statements in change order documents that attest to their necessity and legitimacy. The following narrative lists the statements of attestation in these change order documents and the County officials that sign them.

- “The work of this change order is consistent with the original intent and the established funding requirements ...” – County director of Facilities Management.
- “This requested change is required to insure a satisfactory and timely completion of the subject project.” – The project manager from the outside management company, the Salt Lake County Facilities Management employee assigned as the project manager, the assistant director of Facilities Management, the chief deputy over the Civil Division of the District Attorney's office, and the attorney with oversight of contracts in the District Attorney's office.
- The change order “is in accordance with the provisions and conditions of the subject contract documents.” – The County Mayor, or his representative.

In addition to the general contractor, the architect's contracted fees have changed. The architect's fee started at \$2,193,030 in the original contract but increased over time by \$414,255 to \$2,607,285 because of changes in the general contractor fee and additional assigned tasks. The contract specifies payment to the architect based on 5.31% of the general contractor fee. Architect fee increases occur through amended contracts and not change orders. Table 4 below shows the individual adjustments in amendments to the architect's contract.

Table 4. Summary of Changes to the Architect's Contract Fees

Summary of Changes to the Architect's Contract Fees	
Reason for Addition to Architect's Fee	Amount
Original Contract Fee	\$2,193,030
Original Fee for consulting on furniture, fixtures, and equipment	\$87,000
Traffic Study	\$4,730
Energy Modeling, Building Envelope, and Energy Simulation consulting	\$146,200
Survey & Design Improvements	\$4,320
Audio Visual Consulting	\$35,300
Additional pay to architect because general contractor's fee increased	\$118,949
County's portion of the Architect Satisfaction Fee	\$15,000
Muster Radio Design	\$3,900
Parking lot and detention basin modifications for West Jordan	\$3,975
Design error in steel elevations Downtown	(\$5,119)
Current Architect's Contract Fees Total	\$2,607,285

The last item resulted in a deduction from the architect's contracted fees.

The original contract anticipated two of the services noted in Table 4, the audio visual (\$35,300) and building envelope (\$146,200) consulting services, as options that could be exercised later. The contract stated that these options would become effective at the sole discretion of the County and upon amendment to the agreement. Their total cost, \$181,500, comprise 44% of the \$414,255 in architect fee increases.

Change orders, as discussed in the preceding paragraphs, show that project managers do not anticipate all structural needs prior to establishing costs and starting construction. Therefore, they include a budget contingency to accommodate changes and additions. Evaluating the need for changes extends beyond our area of expertise, but we did observe the extensive review process and documentation on file prior to implementing them. We did not see any obvious deficiencies in the process that would suggest gross error in planning by officials and contractors.

2.0 – Project Expenditures Review

- **Determine if project expenditures were properly reviewed, authorized, and accounted for.**

General contractor fees make up most project expenditures with \$44 million budgeted in the contracts for both buildings. Architectural firm fees make up \$2.6 million of the total contract costs for the DA's office buildings. Other vendors perform needed services in the construction process, including furniture and fixtures, soils analysis, and building commissioning.

The building commissioning agent inspects various building systems and structures to ensure that they are functioning properly. Project expenditures for vendors other than the general contractor and the architect, must be authorized for payment by contract, or purchase order.

During our audit, we reviewed general contractor and architect contracts to determine required authorization by County personnel prior to payment. In authorizing payments, the contract requires use of the "Salt Lake County Contract Payment Application" form for requesting monthly payments. The form provides lines for project manager and District Attorney office signatures. In signing the form, these managers assert that based on their observations, work has progressed to the point indicated by the contractor.

In addition to authorization of payments, we examined other areas, including the bid process for selecting the general contractor and architect, contractual basis for payments to vendors other than the architect and general contractor, risks that could delay the project or increase costs, required construction bonds, and accounting for payments in the County's PeopleSoft financial system.

Finding 2.1: All project expenditures were properly reviewed, authorized, and accounted for.

We reviewed all expenditures related to the general contractor and architect since project inception, which comprised most project expenditures, and all other related expenditures. Payments to the building contractor of \$18.7 million, at the time we completed our audit work, had

not exceeded the contract authorized amount of \$44.4. The general contractor used the County-authorized form for monthly or periodic payments on construction projects that requires the general contractor's signature, and a County representative's signature attesting that work has progressed to the point indicated by the contractor.

Payments to the architect of \$2.3 million did not exceed the authorized contract amount of \$2.6 million. At the time of our audit work, the County had not yet completed these contracts, and anticipated additional payments. Both the outside and internal Facilities Management Division project managers reviewed all invoices from architects, as did the District Attorney civil division chief deputy.

For all other expenses, which totaled \$1.3 million in 2016, we examined supporting invoices or other documentation for vendor payments. Of the \$1.3 million, 61% represented County Facilities Management charges for their work on and review of the project, and also charges by commissioning agents, engineering firms, and others, and an accrual of the construction retainage fee. Besides these costs, other expenditures related to art acquisition, \$262,000, and work by the outside project manager, \$234,000. We did not examine real estate acquisition, as this fell outside the scope of our work.

We deemed all expenditures we viewed as authorized and related to the District Attorney buildings. Due to the extent of work on and our lack of expertise in construction projects, we could not review or comprehend every detail involved. Nevertheless, invoices or documentation we reviewed related to the DA buildings projects and comported to the type of work expected in a construction project.

Moreover, we reviewed accounting within the County's PeopleSoft general ledger system and found all payments to the general contractor and architects posted in the account designated for the DA buildings projects. Also, we found other expenses related to the projects posted to this account. We deemed all expenditures properly accounted for.

3.0 – Contract Payments Review

- **Determine whether all contractor and supplier payments complied with contract terms.**

General contractor and architect agreements written by and entered by the County specify and authorize total payment amounts to these two primary vendors in the construction process. The agreements specify the timing of payments and any fines or liquidated damages in case work is not timely or completed as expected. For example, untimely building completion allows the County to assess liquidated damages to the general contractor of \$1,000 per day beyond the stated date of substantial completion.

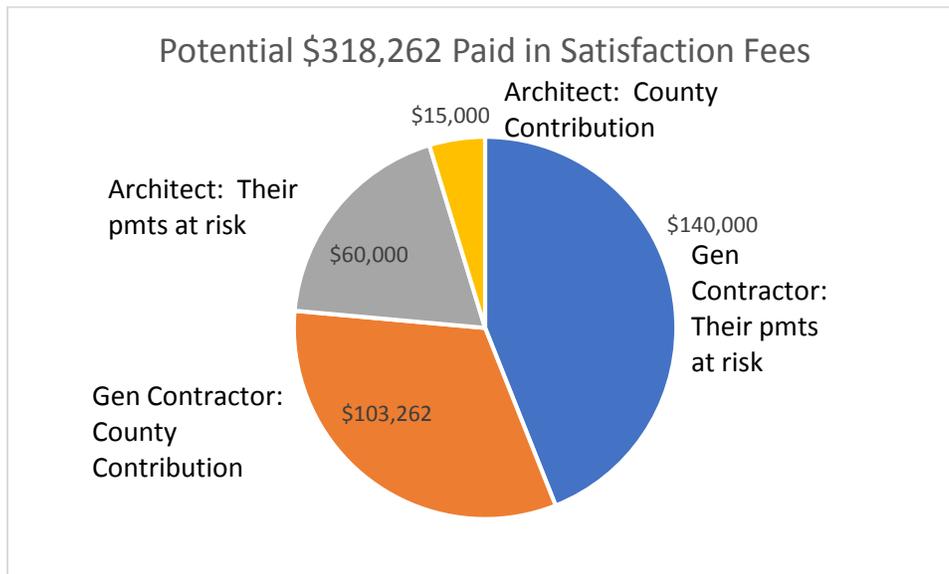
Most importantly, the contracts specify total payment amounts that cannot be exceeded except for contract revision or change orders. The contract also requires that the County retain 5% of the general contractor's monthly payment request. As a construction industry standard, retainage helps guarantee contractor performance. At the end of the project, the County releases the total retainage, plus accrued interest, to the contractor following an inspection of the building to

determine that it meets specifications. The County also contracted with the architect. The architect's contract specifies payments to the architect based on 5.31% of the total contracted payment to the general contractor, and 3% of the budgeted furniture, fixtures, and equipment expense.

Unique to this District Attorney buildings project is payment of a satisfaction fee to both the general contractor and architect. Paid each quarter, the contract specifies a potential total of \$318,262 in satisfaction fees over the life of the project. A portion of the satisfaction fee derives from an amount that the general contractor and architect put at risk of their regular payments from the County, and another portion the County contributes from the construction budget. Per quarter, the general contractor receives a maximum satisfaction fee payment of \$17,988.

Figure 7 shows the total potential satisfaction fee the County can pay over the project life cycle and segregates this fee by the architect and general contractor at risk amounts, and the County contribution.

Figure 7. Potential \$318,262 Paid in Satisfaction Fees



The general contractor receives the most potential satisfaction fee at \$243,262.

In distributing the satisfaction fees, project managers and District Attorney Office officials grade the general contractor and architect in five performance categories, such as budget, schedule, and owner satisfaction. The County may distribute 100% of the fee, or a lesser amount depending on the grade.

The general contractor has consistently received 100% of its satisfaction fee. The architect also has received 100% of its fee, except for the most recent quarter when it received 70% due to design of the downtown daycare facility that included smaller capacity than required, and building footings that extended onto State Department of Transportation land and will require a small land purchase from them.

In project authorization and accounting we reviewed invoices related to other vendor payments, in addition to those tied to the general contractor and architect. Payments to other vendors comprise a small amount of the overall budget. We recalculated amounts on general contractor invoices for accuracy. We examined payments made by the County for timeliness. We verified that County payments to contractors complied with contract terms. Also, we visited both the Downtown and West Jordan building sites to observe construction progress. District Attorney officials provided guided tours and explanation of key building specifications for us at both sites.

Finding 3.1: The general contractor did not verify rental rates for equipment against Federal cost data, as required in the contract.

In reviewing contract payment terms, we found a provision related to equipment rental aimed at ensuring reasonable rental rates. The provision required a review and comparison of actual rental rates against cost data produced by the Federal government. The general contractor did not make this comparison as required.

The **“Construction Manager/General Contractor Contract,” dated September 28, 2015, Article 2, Section E.3.a.i**, states:

“Rental rates for all necessary machinery and equipment, exclusive of hand tools, used at the site of the work, whether rented from the [general contractor], or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, shall be at rental charges at actual cost, and in no case greater than the applicable ‘Bureau of Labor and Statistics for Salt Lake City Construction Cost Data.’”

We found no documented evidence of rental rate comparisons with Bureau of Labor and Statistics cost data. When we inquired about this provision we found that the project manager and District Attorney's office lacked knowledge or awareness of “Bureau of Labor and Statistics for Salt Lake City Construction Cost Data,” or where it was found. Moreover, we searched the Bureau of Labor and Statistics website and found no cost data specific to equipment rental. In addition, the general contractor did not counter our argument that rental rates had not been compared against this cost data. We discussed the issue with the District Attorney's office contract attorney who felt that an amendment to clarify the intent of contracting parties would best resolve the issue.

None of the parties to the contract or project management team we spoke with, including the outside project manager, were sure of the provision's origin. The DA's office contract specialist, however, stated the requirement came into the contract through someone on staff with the outside project manager. The lack of compliance with or even awareness of the provision and the fact that key players in the contracting process did not suggest its inclusion diminish its importance. As an important distinction, the contract refers to Bureau of Labor and Statistics “cost data” and not “Federal guidelines.” Therefore, this is not a Federal requirement. Other standards or mechanisms could be used to verify reasonable rental rates.

In our work, we found documentation of equipment rentals totaling \$44,135, of which \$38,000 related to heaters used at the construction site in cold weather. We found additional types of rentals, such as a forklift for \$1,801, a skid loader for \$1,224, and other equipment.

When terms in the agreement are not followed or when parties to the contract are not aware of provisions stated therein, the contract loses relevancy and parties could be liable for unfulfilled requirements through unintended neglect.

Recommendation

We recommend that the “Construction Manager/General Contractor Contract” be amended to clarify the provision on equipment rental in language that all contract parties understand and are willing to follow.

Finding 3.2: The general contractor did not provide a breakdown of supervisor hours with monthly pay requests.

The agreement with the general contractor requires that they do not exceed supervision costs outlined in their project proposal. The agreement also states that hourly rates in their proposal should be used when submitting monthly bills to the County.

The “**Construction Manager/General Contractor Contract,**” dated September 28, 2015, Article 2, Section E.3.a.ii, states:

“Supervision Cost shall be paid in an amount based on the hourly rates in the [general contractor’s] Management Plan, to the [general contractor] of such supervision but cannot exceed the total amount [of the contract], submitted with back-up documents that evidence the number of hours, provided with the monthly pay request.”

In our audit work, we reviewed the 19-general contractor pay requests generated thus far in the project and did not find any that reported or documented supervisor hours. We contacted the general contractor pointing out this discrepancy, but did not receive a response.

Through the outside project manager, the general contractor communicated that the County bid form required a lump sum of supervisor hours and rates, and therefore, in their opinion, eliminated the need for a monthly breakdown. We reviewed the general contractor’s proposal on file and found their cost model. They did provide a lump sum cost for “general conditions,” which included supervisory costs. The County accepted their bid, including the general conditions lump sum cost. The lump sum in the bid did not break down supervisory costs into such categories as on-site project manager, superintendent, and so forth.

The District Attorney’s office stated their willingness to revisit the supervisor hours contract issue and draft an amendment that would more clearly reflect the intent of parties involved. When contract terms are not complied with, the contract loses efficacy and potential liability exists to the non-complying party. The fact that all contracting parties ignored the supervisory hours provision indicated a different intent than stated in contract.

The lack of supervisor hours reported with the monthly payment creates no negative effect in the construction process. The DA’s office contract specialist stated that the office was learning about the process for this type of project when the bid and contract were made, and that future projects

and contracts will reflect what they have learned, which our office understood would not require a reporting of supervisor hours.

Recommendation

We recommend that the District Attorney's office revisit the contract provision requiring a report from the general contractor of monthly supervisory hours and amend the contract to reflect actual intent.

Agency Response



Ralph Chamness
Chief Deputy
Civil Division

Lisa Ashman
Administrative
Operators



SIM GILL
DISTRICT ATTORNEY



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

December 1, 2017

Scott Tingley, CIA, CGAP
Salt Lake County Auditor's Office
2001 South State Street #N3-300
Salt Lake City, Utah 84190-1100

RE: A Capital Projects Audit of the Salt Lake County District Attorney's
Downtown and West Jordan Office Buildings

Dear Mr. Tingley:

The District Attorney's Office greatly appreciates the summary, findings, and recommendations made in the attached report. We are pleased that our project is expected to come in on time and under budget.

In a project of this size, it is impossible to anticipate all of the potential issues that give rise to construction change orders. However, through the collaborative work of the project team, we have been able to keep the total cost of change orders well within industry standards.

The audit did find two instances where the written contract did not match with the practice of the parties, and makes two specific recommendations, as follows:

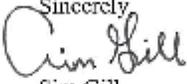
1. We recommend that the "Construction Manager/General Contract" be amended to clarify the provision on equipment rental in language that all contract parties understand and are willing to follow.
2. We recommend that the District Attorney's office revisit the contract provision requiring a report from the general contractor of monthly supervisory hours and amend the contract to reflect actual intent.

Scott Tingley, CIA, CGAP
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Based on the audit, the District Attorney's office plans to take the following actions:

- Amend Article 2, Section E.3.a.i to reflect the reality of how rental rates have been, and will continue to be, monitored throughout the project; and
- Amend Article 2, Section E.3.a.ii to reflect the reality of how supervision costs were provided for in the project bid documents.

Should you have questions, please feel free to contact me.

Sincerely,

Sim Gill
Salt Lake County District Attorney

Attachment: Report



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