

January 30, 2003

RECEIVED

Honorable Bruce A. Clark
Presiding Judge of the Superior Court
Ventura County Hall of Justice
800 S. Victoria Avenue
Ventura, CA 93009

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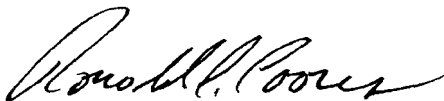
RE: OAK PARK LIBRARY, SPECIFICATION NO. CP00-03
CONTRACTOR: KEITH K.C. LEE, INC. (KKCL)
GRAND JURY LETTER DATED DECEMBER 31, 2002

Dear Judge Clark:

Enclosed is a copy of the Public Works Agency Response to Findings, Conclusions, and Recommendations of the 2002-2003 Ventura County Grand Jury Report Entitled *Oak Park Public Library Construction* forwarded by the Grand Jury letter dated December 31, 2002. This responds to the Grand Jury letter in accordance with California Penal Code section 933.05.

If you have any questions or need any additional information on the Public Works Agency response to the Grand Jury's findings, please do not hesitate to call me at 805-654-2073.

Very truly yours,



Ronald C. Coons
Agency Director

Enclosure

cc: Grand Jury (w/encl) 2751
County Counsel (w/encl)
Project Manager (w/encl)
File (w/encl)



**Public Works Agency Response to Findings,
Conclusions and Recommendations of the 2002-2003
Ventura County Grand Jury Report Entitled *Oak Park
Public Library Construction***

Findings:

F-1. There is no formal pre-qualification process for construction contracts. However, the PWA does check to see that the apparent low bid contractor has the required license for the work specified, that it is not on a State listing of debarred contractors and that the bid bond meets the criteria and standards specified in the contract documents.

PWA Response: Concur. Prior to contract award, PWA further reviews each contractor's bid for potential mistakes in bidding.

F-2. Due to Contractor deficiencies, a split of inspection responsibilities between the Division of the State Architect (DSA) and the PWA Building Inspector and the voluntary default of the Contractor, construction has been delayed for more than a year and is not yet completed.

PWA Response: Concur in part. The split of inspection responsibilities, while novel and the source of some redundancy between the two inspector's duties, had little to do with construction delays.

F-3. Coordination between the DSA, represented by an employee of OPUSD, and the County Building Inspector, an employee of the PWA, was continuous.

PWA Response: Concur.

F-4. The Field Act, among other things, provides for mandatory pre-construction approval by the DSA of plans for construction of any school building to assure that the plans conform to State seismic standards.

PWA Response: Concur.

F-5. The DSA approved the architect's plans for the library project as meeting all State requirements for that type of construction including the Field Act.

PWA Response: Concur.

F-6. The PWA generally kept adequate records and did not permit deviations from plans without written approval. However, when the PWA approved the use of a thru bolt to support a ledger in one location, this single approval was used for all locations resulting in thru bolts exposed on the exterior of the building.

PWA Response: Concur in part. Structural Engineer of Record (SEOR) approval was obtained in each instance in which a DSA Notice of Non-compliance (NNC) was issued for a thru-bolt installation. After SEOR approval of a particular thru-bolt installation was obtained and it was understood by the DSA Inspector of Record (IOR) that the approval was typical for installations with the equivalent configuration, the DSA IOR issued no additional NCN's for the typical thru-bolt installations involved. Exterior bolt heads currently exposed on the exterior CMU walls will be covered by the

building's 2-1/2 inch thick exterior insulation and finish system not yet installed as of the date of this report.

F-7. The Contractor failed to designate in its bid its masonry subcontractor and could not do the work itself as required by law and, therefore, faced a severe penalty for late designation of a subcontractor; which penalty could not legally be waived under these circumstances.

PWA Response: Concur in part. The Contractor did not designate a masonry subcontractor in its bid. There was no indication in the submissions required of bidders that it was not capable and prepared to perform the masonry work itself. After contract award, the Contractor made no written request for subcontractor substitution for its self-performance of masonry work. If the Contractor had substituted an unlisted subcontractor for the masonry work after award of the contract, the Contractor would be subject to the penalties provided by Section 4110 of the Public Contract Code.

F-8. The PWA, for business reasons relating to bond fulfillment and in order to expedite reprocurement, permitted the Contractor to voluntarily default the project because of the financial hardship resulting from the penalty to be imposed for late designation of a substantial subcontractor.

PWA Response: Disagree. The Contractor unilaterally defaulted because it was, in its words, "financially unable to perform or complete the performance of the work or comply with its contractual obligations ..."

F-9. The PWA and the bonding company are in the process of substituting a replacement contractor for the Contractor.

PWA Response: Concur.

F-10. The OPUSD perceived that it was not kept informed on a timely basis of the detailed progress of construction.

PWA Response: Concur in part. OPUSD maintained their DSA inspector on-site, OPUSD representatives were invited to all significant PWA site meetings, and OPUSD representatives received copies of all significant PWA project documentation, correspondence and meeting minutes. Complete information regarding the detailed progress of construction depended, in part, on information provided by the Contractor. In that regard, OPUSD was not always kept informed on a timely basis in the same way the PWA was not kept informed by the Contractor.

Conclusions:

C-1. Because of the failure to fully verify the Contractor's capabilities (pre-qualification), a contractor that could not perform the work was selected for the job (F-1).

PWA Response: Disagree. Although prequalification may have helped in this case, it is not a fail-safe system. PWA performed due diligence by ensuring the contractor was properly licensed, properly bonded for the work on the project, and not on a state listing of debarred contractors. The Contractor ultimately defaulted because it was financially unable to complete the work.

C-2. There are continuing long delays in the construction of the Oak Park Public Library (F-2).

PWA Response: Concur.

C-3. Construction of school buildings in the County would be facilitated by PWA's qualification to act as the DSA inspection authority (F-2).

PWA Response: Concur.

C-4. The requirement of the Field Act for pre-construction approval of plans for Oak Park Public Library was accomplished in accordance with State law (F-5).

PWA Response: Concur.

C-5. The PWA acted responsibly and competently in its administration of the Oak Park Public Library construction contract (F-8).

PWA Response: Concur.

C-6. The PWA should tighten its supervision of contractor performance relative to granted plan deviations. Failure to do this contributed to the perception that "the Contractor cut corners and failed to follow approved plans."

PWA Response: Concur in part. In some instances the Contractor failed to follow the approved plans. We believe all deviations were identified by the inspectors and appropriate action taken. All structural deviations were either provided by or approved by the Structural Engineer of Record. In some cases, perceptions of the Contractor failing to follow approved plans may have resulted from the Contractor using unusual means and methods of construction to meet the contract requirements.

C-7. The PWA did not refuse to fire the Contractor and reprocure despite failures in performance (F-8).

PWA Response: Concur. PWA issued many warning letters to the Contractor and the project Surety regarding the Contractor's performance and, immediately prior to the Contractor's voluntary default, advised the Contractor that it would exercise its rights under the default clause of the contract. In effect, the Contractor resigned before it was fired.

C-8. The PWA should have been more diligent in the timely sharing of construction status reports with the OPUSD and OPUSD should have been more assertive in gathering status information on the project (F-10).

PWA Response: Concur in part. PWA shared with OPUSD all significant construction status information available to it. However, the detailed reporting on the progress of construction depended, in part, on information available only from the Contractor. The Contractor was not always diligent in providing such information.

Recommendations:

R-1. The PWA institute a pre-qualification system to assure contractor performance capability in addition to its present practice of verifying the bonding and licensing qualifications of the contractor and its absence from a State debarred bidders list (C-1).

PWA Response: PWA is reviewing whether to institute a prequalification system for contracts on major capital projects or to institute procedures for inserting provisions in contract specifications requiring minimum qualifications for the key personnel and specialty subcontractors hired by the Contractor.

R-2. The PWA act on its expressed intention to consolidate the inspection process by qualifying to act as the DSA inspection authority as well as its present County Building Inspection authority (C-3).

PWA Response: Requires further study. PWA can have its construction inspectors certified by DSA through training and testing. However, the DSA Inspector of Record (IOR) on each individual project must be accepted by the A&E of Record and

DSA and is required by DSA to be under the supervision of the project's "owner". Accordingly, the PWA construction inspector can act as the DSA IOR only in those cases where DSA approves such assignments.

R-3. The PWA exert more discipline with respect to contractor deviation from plans and enforce the limitations of those exceptions granted (C-6).

PWA Response: Implemented. In some instances the Contractor failed to follow the approved plans. We believe all deviations were identified by the inspectors and appropriate action taken. All structural deviations were either provided by or approved by the Structural Engineer of Record. In some cases, perceptions of the Contractor failing to follow approved plans may have resulted from the Contractor using unusual means and methods of construction to meet the contract requirements.

R-4. The PWA act with reasonable and responsible expedition in moving forward with the substituted construction contractor (C-5)

PWA Response: Implemented.

R-5. The PWA review its information sharing practices vis-à-vis its clients with a view to keeping them fully informed of the status of projects undertaken for them by the PWA (C-8).

PWA Response: Implemented. PWA will continue to use all of the contract administration tools at its disposal for encouraging contractor diligence in pursuing the contract requirements, including providing status information and PWA will continue to ensure that all such information that it receives is shared with its clients.

R-6. The OPUSD be more assertive in gathering status information on projects being performed for it by the PWA (C-8).

PWA Response: Requires further study. OPUSD does not have standing as a contract administrator in the Construction contract and cannot require actions from the Contractor under the contract. While OPUSD may not "gather" information in this way, it may diligently keep the Project Manager informed when it perceives deficiencies in the status information that it is receiving and the Project Manager shall take the necessary action to obtain the information if it is available and required under the contract.