

**GOVERNMENT &  
ADMINISTRATION**

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# **Government & Administration Committee**

## ***Justice Center / All Star Investments***

Investigation #00/01-I-007

### **Reason for the Report**

The Grand Jury received comments from several sources that El Dorado County's ("County") contracting procedures were less than optimum. Among the contracts publicly debated, and about which concern had been expressed, were those entered into with All Star Investments, LLC ("All Star") for the design and development of a Justice Center ("Justice Center" or "Project") to be constructed on County owned property adjacent to the existing County Jail.

### **Scope of the Investigation**

The Committee's investigation included review of:

- Agendas, Agenda Packets, and Conformed Agendas (minutes) of the El Dorado County Board of Supervisors ("BOS") pertaining to the Project, from May 1998 through July 2000;
- Various newspaper articles pertaining to the development of the proposed Justice Center;
- Documents associated with a proposed Request for Qualifications ("RFQ") "for design/build/financing services in support of the proposed...project";
- The selection process that ultimately resulted in an award of contracts to All Star;
- Internal memoranda between various Departments within County government;
- Documents prepared by All Star addressed to various County Department Heads and Officials;
- Contracts, Letters of Agreement, drafts of proposed contracts, counterproposals and letters discussing issues relating to contractual commitments by the County and All Star;
- A memorandum from the Taxpayers Association of El Dorado County to the BOS "REGARDING: Proposed Method of Financing and its Approval for the Placerville Justice Center Project";
- A legal opinion of the County Counsel regarding an analysis of Measure A (November 6, 1990 Election) and the Project's compliance with Measure A; and
- Letters, billings, invoices and other financial documents associated with demands for payments, or actual payments, including those of the County, All Star and various subcontractors involved with design and development of the Project.

The committee's investigation also included testimony from:

- The County Auditor/Controller;
- The County Counsel;
- A Deputy County Counsel;
- The District Attorney (DA) and members of his staff;
- The former interim Director of the County's Department of General Services ("DGS");
- The former County Administrative Officer ("CAO"); and
- Three members of the 1999/2000 Board of Supervisors.

### Findings

- F1. In May 1998 the Director of DGS requested and was granted authority to release an RFQ for the "design/build/financing services" of the Project.
- F2. In the original proposal to the BOS, the DGS Director represented "The estimated cost of this...is roughly \$6.0 million, payable via annual 'lease payments' of approximately \$600,000 per year over a period of 25 years."
- F3. Advantages of the proposed design/build/finance system articulated to the BOS were stated to be "guaranteed lease payments (no cost overruns), timely completion of construction, no bid, construction or supplier delays, guaranteed completion date." While some of these proffered advantages were unrealistic, this process did provide an opportunity for the County to avoid putting the Project out for public bid.
- F4. On July 2, 1998, DGS released a "NOTICE REQUESTING LETTERS/STATEMENTS OF QUALIFICATIONS" ("RFQ"). Included at Exhibit B page 2, Section B.2, of the RFQ was the following statement: "Any costs incurred by respondents in the preparation of any information or material submitted in response to this RFQ shall be borne solely by the respondents."
- F5. On July 15, 1998, a pre-submittal conference was held for interested parties. An "attendees list" identified thirty-six (36) companies. On July 23, 1998, seven (7) additional companies were added to the list.
- F6. At that conference the County publicized its intention to parcel off a portion of the 25-acre Criminal Justice Site to be leased to the successful bidder. The proposed facilities were to be built on this site and then leased back to the County on a "lease/purchase agreement" for a specified period of time. It was proposed that, at the end of the term of the Agreement, "title to the land and facilities will revert back to the County."
- F7. Ten companies submitted timely responses to the RFQ.

- F8. Six of the responding companies were selected as finalists to make presentations to a County Selection Board. Those presentations were scheduled for November 4 and 5, 1998.
- F9. DGS directed the finalists to address a series of questions dealing with specific issues. Each of the finalists was provided a blank sample of the score sheet that would be used by the evaluators. Included within the material provided to the finalists, at Page 3 under the heading Financial Consideration, was Question 1: *“What funding mechanisms are available to the County, aside from Certificates of Participation, Municipal Bonds Securities, etc.?”* (Emphasis added)
- F10. On December 3, 1998 the Director of GSA recommended that the BOS select All Star for the design, construction and financing of an approximate 50,000 square foot courthouse, and a separate Sheriff’s facility to be constructed next to the County Jail.
- F11. Among the factors delineated to the BOS as having influenced that judgement, the DGS Director stated: “All Star Investments, LLC was the only respondent to recommend and propose using private investor capital for the financing element of the project. ... [T]he other proposals involved financing the project through the sale of tax exempt certificates of participation or similar debt instruments.... These proposals gave rise to the concern this approach may be perceived to be counter to the spirit of the 1990 County initiative related to revenue bond financing.”
- F12. The BOS approved the selection of All Star.
- F13. By written communication dated January 6 1999, All Star proposed the following actions for financing the Project:
- a. “The property to be developed must be legally subdivided from the adjoining property.”
  - b. “This property will be deeded to All Star, subject to a lease with the County (the ‘lease’).”
  - c. “All Star will obtain a construction loan and a take out loan on the Property to finance this development.”
- F14. All Star did not reveal the spread in any interest rates that would be charged to the County as part of the costs of this form of financing.
- F15. On January 27 and 28, 1999, the first of a series of meetings was held to identify the proposed occupants of the Justice Center, their needs, and a design concept that would serve those needs. The scope of the proposed Project changed several times during its design phase.

- F16. On February 11, 1999, in a letter written to the Director of DGS, All Star:
- a. Identified several additional phases of the Project including a juvenile hall;
  - b. Proposed a Letter of Agreement in which the County would "agree to pay the costs associated with the development of these documents (master plan, programming and partial Schematic design Plans)...in the event that the County does not proceed with the project...by December 1, 1999.";
  - c. Represented in the proposed form of the agreement, that: "Our reimbursable expenditures associated with Courts Phase I *will not exceed* \$\_\_\_\_\_ and those associated with the Sheriff's facility *will not exceed* \$\_\_\_\_\_." (Emphasis added); and
  - d. Presented a draft form of a proposed lease agreement between the County and All Star for consideration.
- F17. A proposed master lease was submitted to the County Counsel for review and recommendation.
- F18. The County Counsel's Office and legal representatives for All Star continued negotiations over the form of a proposed master lease throughout the term of the Project design and development phase of the Agreement between All Star and the County. Those negotiations failed to result in any Master Lease Agreement between the County and All Star being signed.
- F19. On February 18, 1999, All Star wrote a letter to the Director of DGS identifying certain financial considerations absent from its previous letter. The letter stated in part: "... [I]n the event that the County does not proceed with the project and authorize us to continue with the design and construction by December 1, 1999[, our] reimbursable expenditures associated with Courts Phase I *will not exceed* \$180,000 and those associated with the Sheriff's facility *will not exceed* \$195,000." (Emphasis added)
- F20. On February 25, 1999, All Star sent a proposed Letter of Agreement, with conditions as stated above, to the CAO, requesting his signature as approval of the letter of agreement.
- F21. On May 28, 1999, All Star wrote to the CAO advocating the following:
- a. That the County complete the legal subdivision of the Phase I property and convey title to the property to All Star;
  - b. That the County authorize a Letter of Agreement in the form of previously written letters, including the provision that "Our reimbursable expenditures

associated with Courts Phase I *will not exceed* \$600,000 and those associated with the Sheriff's facility *will not exceed* \$500,000." (Emphasis added); and

- c. January 2000 was set forth as being the deadline date for a finalized lease agreement.
- F22. On June 23, 1999, the CAO prepared an Agenda Transmittal requesting that the BOS authorize him to sign a Letter of Agreement with All Star for the necessary planning, programming, and schematic design required to proceed with the environmental review for the proposed Justice Center Complex. The BOS was advised that the estimated cost to the County, in the event the County chose not to proceed, was approximately \$1,000,000, and that these costs would be wrapped into the lease rate if the County did proceed with the Project.
- F23. That request was scheduled as item 42 on the BOS Consent Calendar.
- F24. The BOS approved the request.
- F25. A Letter of Agreement, dated July 9, 1999, was prepared by All Star for approval by the CAO, and included the signature of John Thomas, President of All Star. The County approved the Letter of Agreement by the signature of Michael B. Hanford, Chief Administrative Officer.
- F26. Terms of that Agreement stipulated reimbursement by the County to All Star upon a failure to finalize a lease agreement by April 2000. Further, the Agreement provided that "reimbursable expenditures associated with Courts Phase I *will not exceed* \$600,000 and those associated with the Sheriff's facility *will not exceed* \$500,000." (Emphasis added) These provisions constituted "caps" rather than fixed fees.
- F27. On September 9, 1999, All Star prepared a letter for the purpose of amending the Letter of Agreement dated July 9, 1999. The purpose of the amendment ("Amendment #1") was the addition of a Juvenile Hall Facility to Phase I of the Project. Amendment #1 stated in part: "If for any reason the County and All Star cannot conclude lease terms and rates, All Star *shall be entitled to a fee of* \$300,000 for services provided." (Emphasis added) This language constituted a "fixed fee" for services provided.
- F28. This proposed letter of amendment was not routed to the County Counsel's Office for review and recommendation.
- F29. On October 8, 1999, the CAO prepared an Agenda Transmittal requesting BOS "authorization to sign the amendment to the previously approved letter dated 7-09-99, adding a new juvenile hall...." In his attached memorandum, the CAO advised the BOS that the amendment would be an "authorization of *fee up to* \$300,000 to be paid them for their work if we do not move forward with the project." (Emphasis added) This language would have constituted a "cap" rather than a "fixed fee". In fact,

however, the actual letter of amendment by its terms constituted a "fixed fee" agreement.

- F30. The proposed amendment was scheduled as item 47 on the BOS's Consent Calendar for October 26, 1999, and was approved by the BOS.
- F31. Failure to route the proposed amendment to County Counsel, for review and recommendation, combined with insufficient attention to detail on the part of the CAO, contributed to the authorization and signing of a contractual agreement with terms other than that represented by the CAO to the BOS. This would subsequently prove to have significant financial consequences for the County.
- F32. In a letter dated November 19, 1999, All Star requested authorization for another amendment ("Amendment #2") to the July 9, 1999, Letter of Agreement, for the production of construction documents. Amendment #2 would have imposed costs to the County in addition to those already the subject of the existing Agreement. Amendment #2 states in part: "If for any reason the County and All Star cannot conclude lease terms and rates, All Star shall be entitled *to a fee of \$625,000* for the Courts and Sheriff's facility and \$325,00 (sic) for the Juvenile Hall Facility for services provided." (Emphasis added)
- F33. In a letter dated November 29, 1999, All Star submitted another letter requesting the authorization of Amendment #2. This letter was essentially the same as the letter of November 19 save for monetary changes in the last sentence which reads in part: "... All Star shall be entitled *to a fee of \$725,000* for the Courts and Sheriff's facility and \$425,00 (sic) for the Juvenile Hall Facility for services provided." (Emphasis added)
- F34. In a memo on All Star letterhead, dated December 12, 1999, the Project cost was estimated to be to be \$36,000,000. Yearly lease payments were represented as ranging from \$2,980,000 figured at a rate of 6%, to \$3,775,000 figured at a rate of 7.5%. These figures were proposed in the context of a 30-year, fixed rate, fully amortized agreement.
- F35. Yearly payments on \$36,000,000 at 6% calculate to be \$2,615,360, and for 7.5% calculate to be \$3,048,164.
- F36. At a meeting of the BOS on December 14 1999, the Board approved in concept a lease-leaseback agreement and an underlying ground lease with All Star, "subject to the opinion of County Counsel as to its collision with (ballot) Measure A."
- F37. In a letter dated December 13, 1999, from the Taxpayers Association of El Dorado County, the Association President requested the BOS give due consideration to Measure A. The letter states in part: "This proposed lease, lease-back arrangement appears to circumvent the requirements of Measure A."



- F38. In a letter from the CAO to the BOS dated January 3, 2000, the CAO articulated a number of factors relevant to the Project including the following:
- a. "There is a strong possibility that the State Task Force on Trial Court Facilities will recommend that the State or the California Administrative Office of the Courts (AOC) assume responsibility for statewide court facilities. If other county departments were housed in the court building, the County could be required to pay facility rental charges to the State at some time in the future."
  - b. Government Code Section 68073 states, "The County is responsible for providing necessary and suitable facilities for judicial and court support positions created prior to July 1, 1996."
  - c. "Building and financing the construction of courthouse facility space for expanded staffing and functions (those created after July 1996) might not be a county responsibility in the future, however, if undertaken by the county at this time, would most likely create a higher level of ongoing financial responsibility by County government".
  - d. Quoting from an attached document entitled "Transfer of Trial Court Facilities" (sic) the CAO stated: "The 'preliminary General Principles' propose that...[n]ew construction would be the responsibility of the State. The State would provide future financing for renovation/reconstruction projects via the State budget process. New construction financing would be the responsibility of the State...."
  - e. "Building a new court facility which would accommodate an increased number of judicial officers and staff (i.e. positions over and above those in existence prior to July 1, 1996),...would unnecessarily create a lasting financial burden for the El Dorado County budget."
  - f. "It appears that it would be preferable to let the State take responsibility for future expansion of the Courts and not burden the County with financial expenses that are the responsibility of the State."
- F39. The County nevertheless proceeded to pursue the development of this Project, including the potential construction, in two phases, of an eight-courtroom court building.
- F40. In a memo dated January 14, 2000, County Counsel submitted a detailed analysis of Measure A and its impact on the Project. The memo concludes by stating in part "Measure A requires one thing. In the future, if the Board of Supervisors chooses to enter into an agreement to sell revenue bonds to acquire, construct, purchase or lease County building or other capital facilities, they must put their plan before the voters

for final approval.” (Emphasis in original). The County Counsel also “conclude[d] that the Justice Center project, as currently proposed to be financed, does not require voter approval under Measure A.”

- F41. While the proposed lease, leaseback agreement would not have required voter approval under the specific language of Measure A, entering into the proposed master agreement with All Star would have committed a significant amount of County Funds, estimated \$3,000,000 or more, annually for thirty (30) years. In fact, the long term commitment of large sums of the County’s funds for capital improvements was the event that previously triggered the ballot initiative commonly referred to as Measure A. The Project, measured in terms of cost, was at least as significant as the expenditures that had resulted in the passage of Measure A.
- F42. The County actively sought a financing scheme that would legally allow the completion of the Project without the necessity of taking the proposal before the voters for their approval.
- F43. On January 18, 2000, The CAO submitted to the BOS, for approval, a request for authorization to sign Amendment #2. That request was scheduled as an item on the BOS’s, January 25, 2000, Consent Calendar. On January 25, however, the CAO requested that the item be continued to February 1, 2000. Ultimately, the CAO withdrew his request for approval of Amendment #2.
- F44. In a memo dated January 25, 2000, All Star detailed a number of proposed changes to contract language for agreements between All Star and the County. Those proposals were reviewed by County Counsel’s Office.
- F45. In a response addressed to All Star’s Attorney, County Counsel stated in part: “Your client requested modification of the ‘not to exceed’ language to ‘the amount of’, which has not been incorporated. Obviously, if the County were to terminate the project prior to the completion of the final plans, the full costs of the work would not have been incurred by your client, nor would the County have received all the work bargained for.”
- F46. A courtesy copy of this letter was routed to the CAO.
- F47. In a memorandum from the County Treasurer/Tax Collector dated February 8, 2000, to the District III Supervisor, several recommendations were made regarding the Project. The last of these reads: “All Star Investments, LLC, should fully disclose to all interested parties all income from all sources on this deal, including any spread on the interest rate.”
- F48. The Grand Jury found no evidence that this request was ever made of All Star. No such information was ever provided to the County by All Star.

- F49. In an attachment to a letter dated May 23, 2000, All Star represented the Costs for Phase I of the Project to be \$38,100,000.
- F50. The County received a grant from the State Bureau of Corrections (BOC) in the amount of \$1.4 million, the funds to be applied to the construction or renovation of a juvenile hall facility. The grant included a deadline for the use of funds.
- F51. Repeated changes in the Project caused delays in the required CEQA process, which, combined with other lease issues, led to negotiations for the Juvenile Hall portion of the Project not being completed in a sufficiently timely manner to allow the expenditure of the grant funding prior to the grant deadline. The funds were returned to the State without prejudice.
- F52. All Star made a demand to the CAO for payment, in a letter dated June 7, 2000, which reads in part: "We request that the County honor the commitments made in the July 9, 1999 Letter of Agreement, as amended September 9, 1999, and provide All Star Investments with immediate payment of the aggregate total of \$1,400,000 now due and owing for the environmental and design documentation furnished to the County." No supporting invoices or other documentation justifying the amount of such payment were submitted by All Star to the County.
- F53. On June 14, 2000, notwithstanding the absence of supporting invoices or other documentation justifying the amount of All Star's claim, the CAO prepared an Agenda Transmittal and letter attachment recommending to the BOS that the All Star billing be approved for payment, and paid, in the amount of \$1,400,000. These funds were to be paid from the Department 15 Capitol Facilities Construction Account. The CAO represented to the BOS that it had previously approved "a Letter of Agreement and amendments thereto *calling for the payment of \$1.4 million* to All Star Investments" in the event the lease was not finalized by April 2000. (Emphasis added). That was incorrect. The BOS had actually authorized the payment of up to \$1.4 million, not a flat fee of \$1.4 million. The matter was scheduled as Agenda Item #86 on the BOS Calendar for June 27, 2000. The Agenda item itself, as opposed to the documents submitted to the members of the BOS in support of the Agenda item did not publicly specify the amount of payment to be made.
- F54. The CAO's recommendation to the BOS was misleading, in that it did not advise the BOS of the following facts:
- a. That the \$600,000 figure for the Phase I Court Facility was a cap, rather than a fixed fee;
  - b. That the \$500,000 figure for the Sheriff's Facility was a cap, rather than a fixed fee;

- c. That the \$300,000 for the Juvenile Hall had been approved on the basis of the CAO's representation of it as a cap, rather than a fixed fee, contrary to the language of the agreement (Amendment #1) itself;
  - d. That no supporting backup for All Star's claim for its own services, or allocation of that claim between three separate portions of the Project, had been received; and
  - e. That no supporting backup for All Star's claim for subcontractors' services, or allocation of those claims between the three separate portions of the project, had been received.
- F55. After input from the Auditor/Controller, at the June 27 meeting of the BOS, the CAO modified his recommendation to authorize payment to All Star "after proper invoices are received and reviewed by the CAO, County-Counsel and Auditor-Controller."
- F56. Except for the input of the Auditor/Controller, it appears the sum of \$1.4 million would have been paid to All Star without any determination having been made by the CAO or the BOS:
- a. That \$600,000 had actually been expended by All Star for the Phase I Court facility;
  - b. That \$500,000 had actually been expended by All Star for the Sheriff's facility;
  - c. That the amounts of All Star's subcontractors claims, and allocation of those claims between the three separate phases of the project, were justified; or
  - d. That the amount of All Star's claim for its own services was justified.
- F57. All Star submitted an invoice dated 7/10/00. It is a single item invoice for "Professional Services rendered for the schematic design for the El Dorado Juvenile Hall Facility". The amount billed was \$300,000. Because of the language of Amendment #1, which constituted a fixed fee agreement, the Auditor paid the claim in full on September 6, 2000.
- F58. Examination of billings and invoices associated with the work of All Star and its subcontractors shows that the reimbursable expenses associated with the Juvenile Hall Facility would have been less than \$140,000. Thus the fixed fee provision of Amendment #1 ultimately cost the County in excess of \$160,000. Mixing of a "fixed fee" agreement with other "cap" agreements in the same project created a foundation for additional issues regarding the amounts due and payable by the County.

F59. All Star submitted to the County a one-page Invoice, dated July 17, 2000, seeking payment in the amount of \$1,123,222.20 for the following costs:

- a. \$450,000 for Development and Management Services rendered for the El Dorado County Courthouse and Sheriff Facility. The claim for those costs was supported by a one-page memo, dated July 3, 2000, asserting that an Ellen Warner spent 1,800 hours on the project, at a rate of \$250 per hour, and that the hourly rate was "inclusive of all management, accounting and overhead."
- b. \$503,840.00 for Nacht & Lewis Architects.
- c. \$63,668.85 for Carlton Construction Co.
- d. \$4,066.50 for The Hoyt Co.
- e. \$5,000.00 for Walker Parking Consultant.
- f. \$45,997.03 for Legal Services.
- g. \$45,000.00 for Financing Services.
- h. \$5,669.82 for Miscellaneous Expenses.

No subcontractor invoices or other billing documents were submitted in support of the claim.

F60. In a letter dated August 3, 2000, All Star responded to a concern which the County had raised regarding the possibility All Star was double billing for work performed on the Juvenile Hall Facility. The letter reads in part: "We have reviewed the billing and back up submitted to you previously, and confirm that the Juvenile Facilities costs are not included in the Sheriff and Courthouse Project."

F61. Ellen Warner, the person identified in the claim referenced in F59 (a.) above, was represented to the County by All Star through numerous communications on All Star letterhead, to be "VICE PRESIDENT, All Star Investments, LLC". Further, according to the CAO in a letter to All Star dated October 25, 2000, "John Thomas has readily acknowledged that his company [All Star] did not incur a reimbursable cost to Ellen Warner in the amount of \$250.00 per hour."

F62. Invoices obtained from Nacht and Lewis, the company identified in the claim referenced in F59 (b.) above, for billings to All Star for work performed on the Project, show total billings of \$523,077.08. Of that sum, however, \$120,849.60 is clearly marked and billed exclusively to work performed on the Juvenile Hall Facility.

- F63. Examination of billings from Carlton Engineering, the company identified in the claim referenced in F59 (c.) above, discloses that the amount actually billed by Carlton Engineering was \$62,961.87, of which \$6,453.30 was directly attributable to work performed for the Juvenile Hall Facility. This was subsequently confirmed by a letter from All Star dated November 17, 2000.
- F64. As a result of the review of "proper invoices" by the Auditor/Controller and County Counsel, the Auditor/Controller determined that All Star was legitimately entitled to the amount of \$376,358.64 for services performed on the Project in addition to the \$300,000 fixed fee paid for the Juvenile Hall Facility. The total paid by the County to All Star for its services was \$676,358.64, not the \$1.4 million originally claimed by All Star.
- F65. Diligence on the part of the Offices of the Auditor/Controller and County Counsel resulted in savings to the County in excess of \$700,000.

### **Recommendations**

- R1. The BOS should require that all contract proposals originating from the CAO be routed to the County Counsel in a timely manner for review and recommendation prior to submission to the BOS for approval.
- R2. All written recommendations by the CAO to the BOS for authorization to enter into contractual agreements on behalf of the County whereby the County would assume contractual monetary obligations should specifically set forth the manner in which those monetary obligations are to be calculated, e.g., fixed-fee obligation, actual cost obligation with or without a specific cap, or other manner of calculation of the amount of the obligation.
- R3. All written recommendations by the CAO to the BOS for payments by the County pursuant to the County's contractual obligations should be accompanied by supporting documentation justifying the specific amount of the payment recommended.
- R4. All written recommendations to the BOS for payment by the County, either (a) as a single payment of \$10,000 or more, or (b) as one of a series of payments totaling the amount of \$25,000 or more, pursuant to the County's contractual obligations, should be submitted to the Auditor/Controller for consultation prior to submission of those recommendations to the BOS.
- R5. All BOS Agenda items pertaining to payments to be made by the County pursuant to its contractual obligations should specify the amount of the payment to be made.

**Commendations**

The Grand Jury commends Auditor/Controller Joe Harn and Deputy County Counsel Trish Beck for their efforts in assuring that the County did not pay more on its contractual obligations to All Star than it was required to pay.

**Responses Required for Findings**

F1 through F65      El Dorado County Board of Supervisors

**Responses Required for Recommendations**

R1 through R5      El Dorado County Board of Supervisors

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