

**Board Report**

File #: 2018-0737, **File Type:** Informational Report**Agenda Number:** 40.

**OPERATIONS, SAFETY, AND CUSTOMER EXPERIENCE COMMITTEE
JANUARY 17, 2019****SUBJECT: METRO'S PHOTO ENFORCEMENT PROGRAM****ACTION: RECEIVE AND FILE****RECOMMENDATION**

RECEIVE AND FILE an update on Metro's Photo Enforcement Program.

ISSUE

In November 2013, the Board approved award of Contract No. PS68103079 with Conduent for a period of eight years, inclusive of two, two-year options, starting July 1, 2014, for photo enforcement services. At inception, the contract was executed for the entire eight year term, including exercising both options expiring on June 30, 2022. Despite the eight-year contract execution, staff returned to the Board in June 2018, consistent with Board intent, to present high-value option contract extensions to the Board for approval. The staff recommendation at the time was to continue in the contract with Conduent.

Conduent originally made a 23.4% Small Business Enterprise (SBE) commitment against a 15% SBE goal, listing two (2) SBE subcontractors with 15.3% committed to Partners in Diversity (PID) and 8.1% to Los Angeles Signal Construction (LA Signal). For the June 2018 Board meeting, nearing the end of the first four-year performance term of the contract, Conduent reported PID's participation at 12.55% and LA Signal's participation at 0%, representing a 10.85% shortfall (Conduent subsequently corrected errors it had made in reporting prime and subcontractor payments, resulting in actual SBE participation 2.84% lower than presented in the June Board report: 9.7% vs. 12.55%). Conduent conceded that the scope committed to LA Signal had been self-performed for all four years by Conduent's own workforce without advisement and/or prior approval by Metro, as required per its contract.

At the June 21, 2018 Executive Management Committee meeting (EMC), Director Dupont-Walker introduced a verbal motion for staff to return to the Committee in January 2019, with an assessment of Conduent's efforts through December 2018, to remedy their DBE shortfall. Specifically, Conduent was to significantly improve the participation levels of both PID and LA Signal such that by the end of the entire contract term on June 30, 2022, Conduent would be in compliance with their overall commitment and to these individual SBE firms. Based on projected monthly payments for the remaining four years of the project, in order for Conduent to comply with their overall SBE

commitment of 23.4% by June 30, 2022, SBE participation would need to exceed 37% from July 1, 2018 through the balance of their contract.

On July 24, 2018, Conduent was granted provisional approval of their draft SBE workplan and has submitted several revisions with their proposed monthly participation levels for each SBE firm for the remainder of the contract. Each of these plans included Conduent’s stated intention to achieve their SBE commitments by June 30, 2022. However, none to date could be formally approved by Metro given their consistent failure to ensure compliance with California Public Contracting Code and SBE Program requirements (i.e. remedy non-compliant substitution of LA Signal and subsequent self-performance by Conduent). Additionally, negotiations between Conduent and LA Signal to subcontract additional maintenance scope to make up their \$1.8 million shortfall, dissolved on November 16, 2018 with LA Signal’s notice of withdrawal due to their inability to resolve union and prevailing wage rate issues in their original agreement.

Beginning in July 2018, staff has been meeting with Conduent on a monthly basis to monitor their SBE remediation plan for a period that ended December 2018. During this period, Conduent provided their work plan revisions and included actual SBE participation levels which were compared against their proposed numbers in the baseline plan. The matrix below shows the cumulative SBE participation, since contract inception, for SBEs for the months of July, August, September, October and November of 2018.

July 2014 - November 2018 Cumulative SBE Participation

June Base*	July	August	September	October	November
9.71%	9.83%	9.95%	10.61%	11.77%	12.14%

*Adjusted per Conduent’s August 2, 2018 correction

For the five month period, for work performed between July 1, 2018 and November 30, 2018, the SBE Utilization Rate is 44.3%. However, even with the uptick in SBE utilization, Conduent is still not meeting its SBE commitment, although is on track to do so by June 30, 2022 at current SBE utilization levels. Staff will continue to monitor Conduent’s updated SBE workplan vs. performance toward substantially mitigating its first four years of SBE payment shortfall.

As of November 30, 2018, the last month for which data is available for this report, the overall Project -to-Date Utilization Rate is 12.14% up 2.43% from the adjusted participation of 9.71% on June 30, 2018. However, staff is concerned, based on the initial contract that was entered into between Conduent and LA Signal, and subsequent cessation of negotiations above, that Conduent will not be able to meet its SBE commitment of 8.1% to LA Signal and will need to substitute another SBE in order to achieve their overall compliance target. Conduent had eight months to resolve the issues with LA Signal, and if they were unable to reach resolution, to seek approval from Metro to possibly substitute LA Signal with another SBE to perform the work that was originally planned to be performed by LA Signal. Since LA Signal withdrew from Conduent’s planned efforts to mentor maintenance staff and field technicians, on December 12, Metro received a preliminary SBE substitution request from Conduent. Metro will evaluate whether the SBE substitution conforms to the SBE program requirements, once staff receives additional details from Conduent.

Labor Wage and Retention Programs Update

Metro's Labor Wage & Retention Programs (LWRP) unit received a letter dated November 16, 2018 from Conduent stating that this photo enforcement contract is a service contract and is not covered by federal or state prevailing wages. LWRP had previously submitted the scope of work for this contract to the Department of Industrial Relations (DIR) for review. The DIR responded on November 21, 2018, stating that work related to installation and maintenance of the photo enforcement cameras, and graffiti removal could be performed by prevailing wage classifications. Citing the letter from the DIR, as well as the solicitation documents for the contract, Metro responded to Conduent's letter on November 29, 2018, informing the firm that prevailing wages for the above type of work were applicable to the contract and that all certified payrolls and supporting documents are required to be submitted to Metro's Labor Wage & Retention Programs unit.

Conduent currently has a non-compliant status with regard to their Labor Compliance/Prevailing Wage reporting requirements; and have been encouraged to submit the requested documents to prevent penalties being assessed for failure to submit requested documentation in a timely manner, as well as possible future underpayments.

For the above reasons, staff initiated a re-solicitation effort in November 2018 while continuing to work with Conduent and its existing subcontractors in resolving outstanding issues in order to avoid a disruption in the photo enforcement services. Staff anticipates that the solicitation documents will be issued before the January 2019 Metro Board Committee Meetings. Staff will continue under the current contract with Conduent until the outcome of the re-solicitation is determined. The re-solicitation will afford Metro to take advantage of the broader marketplace of new vendors who provide such services and possibly obtain a more competitive service. Conduent, will not be precluded from proposing on the re-solicitation. At the end of the re-solicitation process, staff will return to the Board with a staff recommendation including whether to select a vendor under a new contract and terminate the Conduent contract, or to continue under the current contract with Conduent.

DISCUSSION

The purpose of installing automated enforcement systems in most cities and counties is multi-faceted: to reduce traffic collisions between 3rd party vehicles, to free peace officers to conduct other patrol duties and to offset the operational cost of the systems. Metro is slightly different because our objectives are to reduce collisions with our vehicles directly, the costs of litigation, employee injuries, damage to our real property and vehicles, reputation damage, disruption to our passengers, and the opportunity costs of Metro employees and first responders who manage the incident and post-incident activities. Our ultimate goal is to reduce dangerous driving behaviors and resulting collisions through deterrence and through the elimination of recidivism via installation of an automated enforcement system thereby identifying those drivers that violate the law and issuing tickets to those violators. Metro couples this enforcement activity with a rigorous public awareness campaign and continuous engineering improvement program at grade crossings.

In 1994, Metro initiated modifications to the California Vehicle Code under State Senate Bill 1802, making citations for violations recorded by photo enforcement equipment subject to the same

procedures as citations written by police officers for other moving violations. The provisions enacted under Senate Bill 1802 have since been extended for red light running violations at signalized intersections.

Success of Metro Blue Line (MBL) Vehicle Collision Reduction Efforts

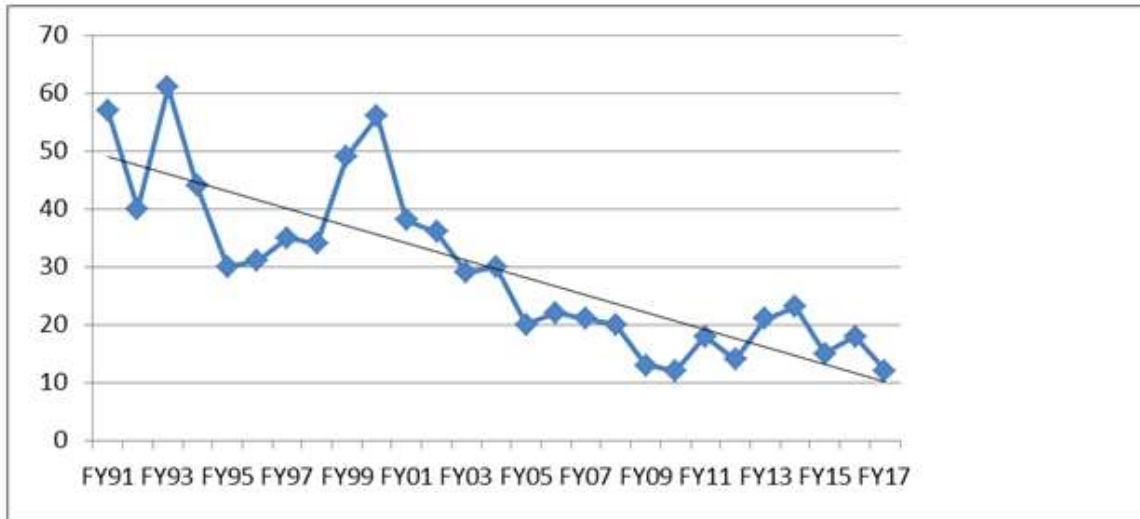
Metro's photo enforcement program began as a public safety response to collision frequency on the MBL, which upon opening had an immediate reputation as one of the most unsafe light rail systems in the United States, particularly for vehicular collisions. On the Blue line, many initiatives were undertaken, concurrently, to address collision root causes across three specific areas: engineering, education and enforcement.

Engineering improvements since opening have included four quadrant gating, active train signage for pedestrians and motorists, median fencing on Long Beach Boulevard, and median islands to prevent crossing gate violations. Improvements in our safety education measures included the creation of the APTA award winning Safety Ambassador Program, our School Education Program and ramped up and ongoing public outreach. Enforcement improvements included the installation of photo enforcement cameras and increased fines for violations.

Collectively, these measures have largely been effective. The number of vehicular collisions on the MBL peaked in Metro's fiscal year 1993 at 61 collisions. For the fiscal year concluded in 2017, the number of vehicle collisions on the MBL fell to just 12, a decline of more than 80%. This reduction in the aggregate number of vehicular collisions on the MBL is despite the addition of significantly more frequent service on the MBL since 1993, as well as substantially more vehicles crossing our rights-of-way driven by population growth. A graphical depiction of the MBL vehicular collision trend is shown below (Figure 1).

Figure 1

MBL Gated and Non-gated Intersection Accidents



DETERMINATION OF SAFETY IMPACT

This photo enforcement program will enable Metro to continue its effective enforcement efforts and enhancing the safety of the general public, and Metro’s patrons and employees.

FINANCIAL IMPACT

Impact to Budget

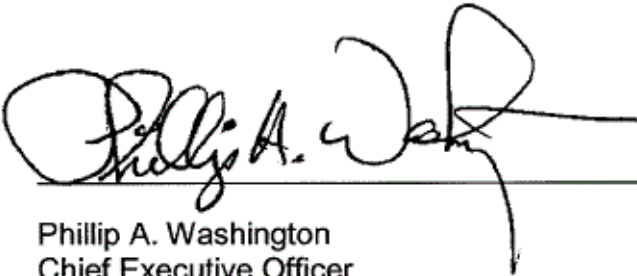
There is no impact to the existing FY19 budget as a result of this Receive and File report.

NEXT STEPS

To avoid citation issuance interruption, staff will continue providing the necessary build-up of the Crenshaw photo enforcement system and photo enforcement program on its system under the current contract with Conduent until the new procurement is completed. Staff will return to the Board at the end of the re-solicitation process with a recommendation for either awarding a new contract and terminating the existing contract with Conduent, or for continuing the current contract with Conduent. After completing the solicitation evaluation, staff intends to return to the Board with a recommendation by the end of July, 2019.

Prepared by: Abdul Zohbi, Systems Safety Manager, (213) 922-2114

Reviewed by: Greg Kildare, Chief Risk, Safety, and Asset Management Officer, (213) 922-4971
Debra Avila, Chief Vendor/Contract Management Officer, (213) 418-3051



Phillip A. Washington
Chief Executive Officer