

**Board Report**

File #: 2020-0825, **File Type:** Informational Report**Agenda Number:** 40.

**CONSTRUCTION COMMITTEE
JANUARY 21, 2021****SUBJECT: OFFICE OF THE INSPECTOR GENERAL CHANGE ORDER CONSTRUCTION SPOT CHECKS****ACTION: RECEIVE AND FILE****RECOMMENDATION**

RECEIVE AND FILE Office of the Inspector General Change Order Construction Spot Check Report for the period September 1 to November 30, 2020.

ISSUE

On January 25, 2018, the Metro Board directed the Office of the Inspector General (“OIG”) to conduct random spot checks on change orders for the projects listed in the quarterly program management report to ensure that the CEO Delegation of Authority to approve Construction Change Orders Policy is performing in the manner desired by the Board of Directors.

BACKGROUND

The OIG’s Construction Change Order Spot Check Program (“Spot Checks”) focuses on approved change orders and modifications that exceed \$500,000. The four change orders in this report were selected from the January 2021 Program Management Major Project Status Report (Legistar file # 2020-0836) covering September 1 to November 30, 2020. The information for the Spot Checks was collected from the Program Management Information System (PMIS) which is the department’s database system. Also, TEAM meetings and telephonic interviews were conducted with Metro Program Management, Project Control, and Procurement staff from each project office.

We found that all four of the change orders in this report were negotiated and executed more expeditiously than would have occurred pursuant to the former Board approval process, and all four were approved faster with the new delegation of authority. In addition, all four change orders were negotiated at lower cost than the contractors’ proposed price. This quarter’s Spot Checks of change orders found the delegation of authority has resulted in:

- A negotiated amount that was less than the contractors’ proposed price for the work to be done,
- Enabled the contractor to immediately order parts and materials, reducing delay,

- Contractor and was able to continue working without stoppages related to these change orders, and
- Zero construction delay costs were incurred for these changes.

Each Spot Check summarizes the following areas:

- Description of the change order,
- Change order detail,
- Scope of Work,
- Budget,
- Schedule: Time to execute the change order, and
- Recommendations if any.

Metro's Program Control department will provide responses to the recommendations in this report of OIG Spot Checks within 30 days after this Board report. Included with this report is a separate spreadsheet of recommendations and the status of responses concerning former OIG Spot Check recommendations.

DISCUSSION

Spot Checks Performed in this Quarter

A. Spot Check #1 - Regional Connector - Transit Corridor Project

This OIG Spot Check report concerns the Regional Connector - Transit Corridor Project (Contract C0980 MOD-00184) Expanded Duco Yard and Temple Street Sanitary Sewer Work

Change Order Detail

See Attachment A Spot Check #1 chart.

Summary #1

Scope of Work -

This change order is to realign a sewer line inside of Los Angeles Department of Water and Power (LADWP) Facility at Duco Yard, located on the corner of East Temple Street and Alameda Street.

During field investigation it was discovered that an active sewer line into LADWP's Duco Yard was in direct conflict with the proposed underground track and guideway structure construction plans. This active sewer line was incorrectly shown on recorded as-built drawings as being abandoned.

The project team performed analysis of multiple alternatives and determined the only workable solution for the sewer conflict was to realign the sewer inside Duco Yard to drain into the publicly owned sanitary sewer line on Temple Street. Temple Street sewer would need to be expanded from 8-inch pipe to a 10-inch to accommodate the additional sewage flow. The work will be done within the LADWP Duco Yard and a property right-of-entry agreement has been secured from LADWP.

Budget -This modification was negotiated, and the award amount is \$3,060,510. The contractor's proposal was \$3,724,682 and the ICE was \$2,924,507. The award amount was \$664,172 (17.8%) under the contractor's proposal. The negotiated amount was \$136,003 (4.65%) over the ICE. Staff has stated that funds for this change are within the approved Life-of-Project budget.

Schedule - The new delegation process was utilized for this modification. The agreed upon scope of work occurred on November 5, 2020. The modification was awarded on November 20, 2020 and was completed in 12 workdays. Under the prior Board approval method for change orders, assuming a January Board meeting date, it would have taken an additional 54 workdays to complete the work.

Recommendation - The OIG recommends that future contracts with the designer should include verification of sewers identified as abandoned, and to document the verification on the construction drawings if the cost of such verification is minor and the consequences of reliance on erroneous information is significant. Additionally, the OIG recommends that the as-built record drawings at the City be updated.

B. Spot Check #2 - Purple Line Extension Section 1 Transit Project

This OIG Spot Check report concerns the Purple Line Extension Section 1 Transit Project (Contract C1045 MOD-00121), Alternate Soil Disposal

Change Order Detail

See Attachment A Spot Check #2 chart.

Summary #2

Scope of Work - This change order is due to an increase in fees, capacity limits, and modified hours of operation at the Chiquita Canyon landfill where dumping of materials is done for this project. Metro has an agreement with this landfill location, but the landfill changed its pricing in 2017 which affected the Purple Line Section 1 ongoing costs. The Chiquita Canyon landfill dump fees for clean dirt increased from \$5 per ton to \$10 per ton and for contaminated non-hazardous soil from \$17.25/ton to \$23.25/ton. Additionally, the landfill's daily maximum capacity was lowered to not exceed 12,000 tons on any given day. Furthermore, the landfills open hours were reduced.

Invoices and weight tickets have accumulated over the years and have now been provided for October 1, 2017 through December 31, 2020. During this period a total of 1,112,965 tons of clean soil and 539,291 tons of contaminated soil were identified as 'Alternate Soil Disposal Quantities' that were hauled away from the project and disposed of at other landfill sites and at higher rates than applied before the rate increase.

By both raising the rates, limiting hours of operation and lowering the daily capacity the contractor not only had to pay more than what was originally negotiated in the construction contract but was forced to haul both the clean and contaminated dirt to other landfills that may be a farther distance.

Budget -This modification was negotiated, and the award amount is \$16,469,000. The contractor's proposal was \$21,525,548 and the ICE was \$15,680,422. The award amount was \$5,056,548 (23.5%) under the contractor's proposal. The negotiated amount was \$788,558 (5.0%) over the ICE. Staff has stated that funds for this change are within the approved Life-of-Project budget.

Schedule - The new delegation process was utilized for this modification. The agreed upon scope of work occurred on September 10, 2020. The modification was awarded on October 21, 2020 and was completed in 30 workdays. Under the prior Board approval method for change orders, assuming a November Board meeting date, it would have taken an additional 52 workdays to complete the work.

Recommendation - California laws, including Senate Bill 1383 of 2016 set mandatory targets to reduce waste going to landfills. Metro developed a recycling policy (GEN 51) in response to State recycling goals and to support Metro's sustainability goals. The Conditional Use Permit for the Chiquita Canyon Landfill was set to expire and the Landfill operator sought a new permit, which was granted in July, 2017. The new permit requirements limits the rate of tonnage of dumping allowed, hours of operation, and the county set other multiple requirements that Chiquita Canyon must adhere . The OIG recommends:

1. Construction waste disposal options are utilized to minimize project costs and to help achieve the reduction goal of a 75% reduction in waste by 2025;
2. Project teams work very closely with the Metro Sustainability Department, State, Los Angeles County, other regulators, landfill owners, and contractor's personnel, to determine options consistent with GEN 51 for the reuse of soils and construction debris in the current or other construction sites;
3. When a Board member has a matter come before them at their respective municipalities that can potentially effect Metro projects, if they would give notice to Metro of the matter, Metro can determine how its projects will be impacted and possibly address the matter with the municipality or 3rd party prior to the matter being approved including possibly negotiate that the terms of a permit not allow price increases or other impacts on Metro projects where contractual commitments have previously been negotiated in reliance on previous conditions; and
4. LA Metro evaluate how other LA Metro projects for which a contract was entered may be impacted by the newly imposed landfill mitigations and higher fees.

C. Spot Check #3 - Purple Line Extension Section 2 Transit Project

This OIG Spot Check report concerns the Purple Line Extension Section 2 Transit Project (Contract C1120 MOD-0091), Increase UPS Spare Capacity at Wilshire Rodeo and Century City Constellation Stations

Change Order Detail

See Attachment A Spot Check #3 chart.

Summary #3

Scope of Work -

This change order concerns uninterruptible power supplies (UPS). UPS are primarily used to provide a backup power source. This change order will increase the capacity of the UPS batteries from 50% to 100% at the Wilshire Rodeo and Century City Constellation Stations along the Purple Line.

When the RFP for this project was prepared the Metro Rail Design Criteria (MRDC) technical requirements were amended, however Contract General and Technical Requirements for the UPS capacity were not accordingly updated to match the updates in the MRDC. This Change Order accomplishes compliance with the MRDC that determined a higher level of backup power capacity

was more prudent.

Budget -This modification was negotiated, and the award amount is \$800,381. The contractor's proposal was \$1,115,685 and the ICE was \$697,053. The award amount was \$315,304 (28.3%) under the contractor's proposal. The negotiated amount was \$103,328 (14.8%) over the ICE. Staff has stated that funds for this change are within the approved Life-of-Project budget.

Schedule - The new delegation process was utilized for this modification. The agreed upon scope of work occurred on July 30, 2020. The modification was awarded on September 16, 2020 and was completed in 33 workdays. Under the prior Board approval method for change orders, assuming a September Board meeting date, it would have taken an additional 39 workdays to complete the work.

Recommendation - The OIG recommends that immediately prior to sending out an RFP, Metro should insure that the most current MRDC is used.

D. Spot Check #4 - Purple Line Extension Section 3 Transit Project

This OIG Spot Check report concerns the Purple Line Extension Section 3 Transit Project (Stations Contract C1152 CO-0005.1), VA Hospital Replacement Parking for Lot 42 During Station Construction Phase.

Change Order Detail

See Attachment A Spot Check #4 chart.

Summary #4

Scope of Work - In order to build the Metro station at the Veterans Administration (VA) hospital campus to serve the patrons and the users of the VA hospital, the station location was decided to be placed at the primary parking lot #42. Currently, lot #42 has accessible parking for ADA and is close to the main entrance.

The station area will eliminate approximately two thirds of the parking spaces in lot #42 and temporary parking must be provided over the next several years during construction. The VA has requested Metro to provide temporary parking at other parking lots on the VA campus to accommodate the loss of spaces from parking lot #42 while a permanent replacement parking structure is being constructed. This change order is to upgrade the other parking lots which are in disrepair and not designed to accommodate ADA parking. The upgrade will refurbish the lots and bring them up to ADA code to meet the capacity needs of the hospital.

This change order is out of scope from the original contract because when the RFP was prepared in 2017, there was insufficient information available from the VA to define temporary replacement parking and the location of the new VA parking structure was not yet determined.

In February 2020, Metro issued a change order to initiate the design effort. September of 2020, Metro and the contractor agreed to set an incremental increase with a Not-to-Exceed value in order to provide finances to the contractor to move forward with the construction project. Completion of negotiations is pending receipt of the contractor's future cost schedule proposal (CSP).

Budget -This modification was negotiated as a Not-to-Exceed amount of \$1,727,505. The contractor's proposal was \$2,716,681 and the ICE was \$2,159,382. The award amount was granted as a partial award and the contractor is to notify Metro when costs reach \$1,382,004 which is 80% of the Not-to-Exceed value. The final negotiated amount is to be determined when the contractor submits an updated CSP because of the parking lot changes from the original contract scope.

Schedule - The new delegation process was utilized for this modification. The project office and contractor have only reached a partial agreement on August 28, 2020. The authorization to proceed was reached on September 4, 2020, and work was completed in 5 workdays. Under the prior Board approval method for change orders, assuming an October Board meeting date, it would have taken an additional 39 workdays to complete the transaction.

Recommendation - The OIG recommends that the Project office and Real Estate continue to work closely and aggressively to come to a full resolution with the VA hospital and the contractor on the modified costs.

FINANCIAL IMPACT

This report will have no Financial Impact to the agency.

Impact to Budget

For all of the construction change orders, Metro states the funds are within the approved budget, and will utilize the contingency funds to cover the costs.

- Spot Check #1) \$3,060,510 Regional Connector Transit Corridor Project
- Spot Check #2) \$16,469,000 Purple Line Extension Section 1
- Spot Check #3) \$800,381 Purple Line Extension Section 2
- Spot Check #4) \$1,727,505 Purple Line Extension Section 3

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendations that the Office of Inspector General has put forward support Metro's Strategic Plan Goal #5: Provide responsive, accountable, and trustworthy governance within the Metro organization and CEO goals to exercise fiscal discipline to ensure financial stability. The OIG mission includes reviewing expenditures for fraud, waste, and abuse in Metro program, operations and resources. For each selected change order reviewed, the OIG evaluates whether there are red flags of fraud, waste, or abuse taking place. We report the details of the significant change orders, and make recommendations consistent with the OIG's Construction Best Practices report dated February 29, 2016, more particularly focusing on lessons learned, improving efficiencies, and prudent spending.

Our goal is to provide rational, trustworthy information to the Board and support the efforts of Metro management to constantly improve and refine its efforts for the benefit of the public. The Office of the Inspector General will continue reporting to the Board the results of Construction Change Order Spot Checks selected from the Program Management Major Project Status Quarterly Report.

NEXT STEPS

The OIG shall provide every quarter, an on-going spread sheet of recommendations to Program Control. Program Control and Program Management agrees to respond to the recommendations of the OIG within 30 days. The OIG continues to meet periodically to discuss reports, recommendations, and the status of implementation of recommendations, with Project Management and receive updates. The list of OIG recommendations and Metro management responses, is an attachment to this OIG report.

ATTACHMENTS

Attachment A - Charts for Spot Checks

Attachment B - Tracking Sheet of OIG Recommendations and Responses

Attachment C - Power Point for January 2021 Construction Spot Checks

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