



Board Report

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Agenda Number: 27.

CONSTRUCTION COMMITTEE JANUARY 20, 2022

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, 2021 to November 30, 2021.

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 \$1,000,000. The four change orders in this report were selected from the Program Management Major Project Status Report (Legistar file # 2021-0788) covering September 1, 2021, to November 30, 2021. 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 involved project office.

We found that two of the four change orders in this report were:

- Negotiated and executed more expeditiously than would have occurred according to the former Board approval process,
- Approved faster with the new delegation of authority, and
- Negotiated at a lower cost than the contractors’ proposed price.

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,
- Safety, and
- Recommendations, if any.

Metro's Program Control department has provided informal responses to this report before its issuance and will provide written responses to the recommendations in this OIG Spot Checks Report within 30 days after this Report is issued. Included with this Report is a spreadsheet on the status of responses concerning former OIG Spot Check Report recommendations.

DISCUSSION

Spot Checks Performed in this Quarter

Spot Check #1 - Regional Connector - Transit Corridor Project

This OIG Spot Check report concerns the Regional Connector - Transit Corridor Project (Contract C0980 MOD-00218): Metro Eastside Access Improvement Project "Segment 2" Esplanade and other improvements along Alameda Street - Construction Only

Change Order Detail

See Attachment A Spot Check #1 chart.

Summary #1

Scope of Work - This Change Order authorizes payment to the Regional Connector Contractor to construct the 1st Street and Central Station Improvement Project plans.

Plans were developed by Metro's Eastside Access Improvement Project team.

Metro thought it would be cost and schedule efficient to have the contractor from Regional Connector bid on and perform the work because the repaving of Alameda Street and other hardscape additions between 1st Street and Commercial Street for the Eastside project overlap with work being done by the Regional Connector contractor for the Regional Connector project.

The Plans were reviewed separately by the Regional Connector contractor and the Metro estimator for the Eastside project to determine similarity in scope between the two projects. By using the Regional Connector contractor, Metro avoids paying for demolition of the newly paved Alameda Street, eliminates the need for a separate contractor mobilization, and reduces in-house procurement activities. The Eastside Access Improvement Project will fund this modification.

Budget -This modification was negotiated, and the award amount is \$4,850,023. The Contractor's proposal was \$5,664,323 and the ICE was \$4,626,775. The award amount was \$814,300 (14.38%) under the Contractor's proposal. The negotiated amount was \$223,248 (4.83%) over the ICE. Staff 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 Contractor and Metro agree on the scope of work on September 3, 2021. The modification including the price, was awarded on October 7, 2021, and was completed in 24 workdays. Under the prior Board approval method for change orders, assuming a November Board meeting date, it would have taken a total of 62 workdays to complete the work.

Safety - Regional Connector Project has 6,651,066 project hours through September 2021 with a Recordable Injury Rate of 0.72 (per the Bureau of Labor Statistics the National Average is 2.4) and a Days Away Rate (DART) of 0.00 (per the Bureau of Labor Statistics National Average is 1.5).

Recommendation - none

Spot Check #2 - Division 20 Portal Widening Turnback Project

This OIG Spot Check report concerns the Division 20 Portal Widening Turnback Project (Contract C1136 CO-00020.2): Differing Site Conditions - Connections to Existing Ductbanks and Unknown Utilities Impacts

Change Order Detail

See Attachment A Spot Check #2 chart.

Summary #2

Scope of Work - This Change Order authorizes the Division 20 project Contractor to continue the work of utility relocations, construct several large concrete manholes, and install high voltage ductbanks that feed into the new traction power substation.

The original change order (CO 20.0) was first issued with a not-to-exceed (NTE) authorization of funds of \$440,860 to transfer unfinished work from the early utility relocations contract to the current Division 20 Portal Widening Turnback Project. During the original site investigations, on-site access was restricted because the rail yard was active and some underground locations were not accessible because of existing tracks, pavement, and buildings. As the Contractor began to dig trenches and install high voltage ductbanks they found abandoned utilities that were not shown on the Department of Water and Power (DWP) as-built plans and other utility site conditions not identified on the plans. The authorized funds were exhausted with further work still to be done. Metro agreed to increase the change order (CO 20.1) NTE amount to \$840,860. This current change order (CO 20.2) further increases the NTE limit to authorize the contractor to perform work up to an additional \$1,700,000 of NTE amount. The recent increase in funds accounts for additional requirements by DWP and work to address the actual site utilities that differ from what was documented in the plan. Metro staff has received a new cost and schedule proposal from the Contractor which incorporates all of change orders: 20.0, 20.1, and 20.2. This full change order remains to be negotiated.

Budget - This change order is to increase the NTE limit to \$2,540,860. The NTE limit has now been increased three times. The work continues to progress and staff stated the work is being tracked on a time and material basis, however unknown utilities remain a potential source of scope increase.

Schedule - The new delegation process was utilized for this change order extension. There has been no change to the scope of work since late 2020 when the contractor began discovering new utility conditions as they performed ductbank work. The NTE value was increased on November 16, 2021. These circumstances do not lend themselves to a determination of time savings by the use of the new delegation process.

Safety - The Division 20 project had too few work hours through September 2021 than is required to calculate a recordable injury rate pursuant to the OSHA incident rate formula.

Recommendation - The OIG recommends that Metro continue to track the time and materials used by the contractor while negotiating the Contractor's cost and schedule proposal and to bring this change order to a final award amount.

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 CO-00034): Century City Constellation Station Storm Drain and Sanitary Sewer Relocation Construction of MOD 70 Design

Change Order Detail

See Attachment A Spot Check #3 chart.

Summary #3

Scope of Work - This change order is part of a larger change notice CN-47.1; to construct the storm drain and sanitary sewer relocation at the Century City Constellation Station. Costs for the design for the storm drain and sanitary sewer were previously completed under MOD 70. The design plans are approved by the City of Los Angeles Bureau of Engineering (BOE). Construction of the new storm drain and relocation of the sanitary sewer has begun. The Contractor still awaits BOE approval for final shoring plans to construct the deep trench for the existing storm drain to be excavated.

Change Notice (CN-47.1) was issued by Metro to the contractor in June 2020. Over 1-year later the Contractor submitted a 318-page, multi-million-dollar cost and schedule proposal (CSP) for Change Notice (CN-47.1) in July 2021 that incorporates three modifications (MOD 2, 70, and 74) and three change orders (CO 32, 26, and 34). Metro staff has stated, this CSP is currently under review by the Metro project team. Negotiations for the final price for all the work included in CN-47.1 could take Metro months to conclude research and confirm before an agreement can begin.

Budget - This change order scope and final award amount have not been agreed upon. The contractor has been issued a change order to proceed with the work up to a cost NTE \$5,436,000 to begin the construction. Issuing a change order to the contractor using the NTE method, mitigates delays to the excavation of the Century City Constellation Station. We cannot disclose the amount of the ICE until the contract is negotiated. Staff stated that funds for this change stay within the approved Life-of-Project budget.

Schedule - The new delegation process was utilized for this change order. The scope and price of the work have not been completely agreed upon. The change order was issued on September 27, 2021. Time-saving efforts using the new delegation process time cannot be determined under the circumstances.

Safety - Purple Line Ext. 2 Project has 2,354,779 project hours through October 2021 with a Recordable Injury Rate of 3.14 (the Bureau of Labor Statistics reports the National Average is 2.4) and DART of 0.67 (the Bureau of Labor Statistics reports the National Average is 1.5).

Recommendation - none.

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

This OIG Spot Check report concerns the Purple Line Extension Section 3 Transit Project (Contract C1152 MOD-0007): Replacement Parking at VA Hospital Lot 42 During Station Construction

Change Order Detail

See Attachment A Spot Check #4 chart.

Summary #4

Scope of Work - This change order is to refurbish four parking lots named 43, 3, 5, 7, and perform crack repairs at the American Red Cross parking lot at the West Veterans Administration Hospital (VA). There will be a new bus shelter and ADA walkway. All four parking lots will have new signage, striping of the parking stalls, and the addition of parking space bumpers. To create an ADA path at the north side of parking lot 43, a section of sidewalk will be removed and street lights relocated to make way for the new ADA path. Lot 43 will also have a new ADA-compliant parking section with multiple parking stalls. New concrete islands will be built and various existing concrete planters will be modified to accommodate the new parking lot layout.

This change order is outside the original scope of the contract because the Memorandum of Understanding between Metro and the VA to perform some of these modifications was negotiated after the contract was issued.

Budget - These modifications were negotiated, and the award amount is \$2,570,689. The Contractor's proposal was \$2,716,681 and the ICE was \$2,159,382. The award amount was \$145,992 (5.4%) under the contractor's proposal. The negotiated amount was \$411,307 (19%) over the ICE. Staff 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 30, 2020. Staff states, the modification was executed on November 18, 2021, and was completed almost one year later, because the transaction was delayed by the contractor for months after being negotiated. The Contractor accepted and signed the modification on October 27, 2021. The modification including the price, was awarded on November 16, 2021, and was completed in 15 workdays. Under the prior Board approval method for change orders, assuming a January Board meeting date, it would have taken a total of 63 workdays to complete the work.

Safety - Purple Line Ext. 3 Project has 1,438,368 project hours through October 2021 with a Recordable Injury Rate of 1.67 (per the Bureau of Labor Statistics the National Average is 2.4) and a DART of 0.70 (per the Bureau of Labor Statistics National Average is 1.5).

Recommendation - The OIG recommends that the Contractor be instructed to timely submit cost proposals, enter negotiations, and sign agreements before work is performed so Metro can process the work order close in time to work being performed, not only to pay the contractor but to help ensure the sub-contractors are paid timely.

FINANCIAL IMPACT

This report will have no Financial Impact on the agency.

Impact to Budget

- For all of the construction change orders reviewed, Metro states the funds are within the approved budget and will utilize the contingency funds to cover the costs from the LOP budget.
- Spot Check #1) \$4,850,023 Regional Connector Transit Corridor Project
- Spot Check #2) \$2,540,860 Division 20 Portal Widening Turnback Project
- Spot Check #3) \$5,436,000 Purple Line Extension Section 2
- Spot Check #4) \$2,570,689 Purple Line Extension Section 3

EQUITY PLATFORM

In the opinion of the OIG, we considered whether these change orders presented any equity related issues on their face. Three of the locations: Alameda and 1st Street in China Town, Division 20 at the old railroad yard, and the West Veterans Administration Hospital on Wilshire Blvd., are within or adjacent to Equity Focus Communities (EFC's). Each of these construction projects is required to install tall (over 20-ft high) sound walls around the construction worksites to protect residential communities and office suites from the nuisance noise of construction. The exterior public side of the walls also serves as community advertisement space for local businesses and keeps the public safe as a barrier from the construction activities.

The work to be performed at the West Veterans Administration Hospital will make significant improvements to improve disabled persons access to the hospital, and the contractor will utilize sound blankets around the equipment while performing noise-generating activities such as saw-cutting and jack-hammering at VA Parking Lots to not disturb the hospital activities, patients, and surrounding neighbors.

The OIG did not receive any data concerning other community impacts. Each of the contractors are striving to have work performed by Disadvantage Business Enterprises (DBE) typically at 12-15% implementation, for these change orders at these EFC sites. The OIG observed no obvious disparate impacts created by these change orders on small businesses, low-income persons, or by the performance of the work in a manner that impacted a disadvantaged community beyond what is typical and usual when conducting any construction.

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 programs, 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.

NEXT STEPS

The OIG shall provide every quarter, an ongoing spreadsheet 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 the recommendations with Project Management, and receive updates. The list of OIG recommendations and Metro management responses is an attachment to this OIG report (Attachment B).

ATTACHMENTS

Attachment A - Change Order Details for Spot Checks

Attachment B - Tracking Sheet of OIG Recommendations and Responses to last quarter

Attachment C - Power Point for January 2022 Construction Spot Checks

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