



Board Report

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CONSTRUCTION COMMITTEE OCTOBER 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 June 1 to August 31, 2022.

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 Program Management Quarterly Major Project Status, Legistar 2022-0668. The OIG gathers the data, reviews all the change orders over \$500,000 and selects change orders from the major projects. 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.

For each Spot Check we summarize:

- Description of the change order,
- Change order detail,
- Scope of Work,
- Budget,
- Schedule (Time to execute the change order),
- Safety, and
- Recommendations (lessons learned are identified starting with this report).

Metro’s Program Control department has provided informal responses to this report before its

issuance and are asked to 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-0239), Additional AT&T Duct bank Installations at 2nd Street - Construction.

Change Order Detail

See Attachment A Spot Check #1 chart.

Summary #1

Scope of Work - This change order (MOD 0239) is to extend the work limits beyond the station boundary extending into Broadway and Spring Streets and construct new AT&T duct banks. In 2014, AT&T developed engineering plans, which were approved by City of Los Angeles, for the 2nd and Broadway Streets Station, under the Regional Connector contract. In 2020, the contractor and Metro determined the communication lines could not be constructed as planned because of numerous conflicting underground utilities and the existing communication vaults that were too small and in poor condition. Plans have now been re-developed to extend the duct bank beyond the station limits and extend into Broadway and Spring Streets. Pothole investigation will occur to determine feasible locations for the new communication vaults on Spring Street north of the Broadway Street intersection. Two communication vaults will be purchased on a separate change order.

Budget - This modification was negotiated, and the award amount is \$4,150,000. The Contractor's proposal was \$5,349,197 and the ICE was \$4,275,427. The difference in price is \$1,199,197 (-22.4%) under the contractor's proposal. The negotiated amount was \$125,427 (-2.9%) under the ICE. Staff stated that funds for this change are within the recently amended Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this modification. The Contractor and Metro agreed on the Scope of Work on July 29, 2022. The modification including the price, was awarded on August 17, 2022, and was completed in 14 workdays. Under the prior Board approval method for change orders, assuming a September Board meeting date, it would have taken a total of 39 workdays to complete the transaction.

Safety - Regional Connector has 7,417,605 project hours through June 2022 with a Recordable Injury Rate of 0.73 (Bureau of Labor Statistics the National Average is 2.4) and a Days Away, Restricted or Transferred (DART) of 0.00 (Bureau of Labor Statistics National Average is 1.5).

Recommendation -The OIG acknowledges the unknown underground site condition of numerous conflicting underground utilities, but the existing AT&T communication vaults that were both too small and in poor condition may or may not have been known prior to the beginning of contract. It should be noted that AT&T did not initially provide design or informational requests for new vaults and now Metro is creating a change order to pay the contractor for an oversight on the utility's behalf.

The OIG recommends, as a **Lesson Learned**, during project planning Metro should ask the Utility company to acknowledgement that all vaults, duct banks, and utility lines conform to current specifications and are in satisfactory condition. It is prudent for Metro to be aware of the utilities condition before entering into a construction contract.

Spot Check #2 - Division 20 Portal Widening and Turnback Project

This OIG Spot Check report concerns the DIV 20 Portal Widening and Turnback Project (Contract C1136 CO-0017.4/MOD 0037), 1st Street Bridge Continuous Monitoring.

Change Order Detail

See Attachment A Spot Check #2 chart.

Summary #2

Scope of Work - This change order is to provide continuous electronic survey monitoring of all movements of the 1st Street Bridge during major construction impacts. At multiple locations across the bridge, instrumentations were set up to read at set intervals, monitor, and report the bridge movement. Alerts are sent to Metro, City of Los Angeles, Engineer of Record, and the Contractor when movement exceeds set thresholds.

The change order for monitoring movement was first established as CO-0017.0 for \$234,600 in February 2021; it was increased to \$1,131,306 in CO 17.1 and increased again to \$1,831,306 in CO 17.2 and then was superseded by CO 17.3 for \$2,110,000 this amount included all the prior changes. The Contractor submitted a cost and schedule proposal in December 2021 for this work. A final agreement on the scope of work occurred in May 2022 and MOD 37 was created for an agreed upon price of \$3,465,238. The Contractor is refusing to sign the modification (MOD 37) with Metro. Therefore, Metro has issued a unilateral change order (CO 17.4) totaling \$3,465,238; the Contractor is allowed to invoice hours and materials each month until the \$3,465,238 is exhausted. The use of unilateral change orders is not uncommon but Metro has been put in a position to issue a unilateral because the contractor refuses to sign a modification. This sum covers the total charges for the instrumentation and monitoring of the bridge movements (as stated previously). The agreed amount has been projected for work to occur out to June 2023, using the remaining balance of \$1,355,238 (this is the difference between CO 17.3 and CO 17.4) to have continuous monitoring until all bridge construction impacts are complete. This construction and monitoring will be complete when the demolition of the affected portion of the bridge supporting structure is removed.

Budget - Four Not To Exceed (“NTE”) change orders plus this final unilateral change order totals \$3,465,238. This modification was negotiated, but the contractor refused to sign the modification and the project office chose to issue a unilateral change order. The Contractor’s proposal was \$3,624,429 and the ICE was \$3,114,343. The difference in price is \$159,191 (-4.4%) under the contractor’s proposal. The negotiated amount was \$350,895 (11.3%) over the ICE. Staff stated that funds for this change are within the recently amended Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this modification. The Contractor and Metro agreed on the Scope of Work on May 27, 2022. The unilateral change order was awarded on July 26, 2022, and was completed in 41 workdays. Under the prior Board approval method for change orders, assuming an August Board meeting date (no July meeting), it would have

taken a total of 63 workdays to complete the transaction.

Safety - DIV 20 Project has 545,997 project hours with a Recordable Injury Rate of 0.73 (Bureau of Labor Statistics the National Average is 2.4) and a Days Away, Restricted or Transferred (DART) of 1.5 (Bureau of Labor Statistics National Average is 1.5).

Recommendation - As was recommended in the prior quarterly construction change orders spot check report, the OIG recommends the issue of liability for sub-contractors claims and bonds be resolved so that it is not necessary to use NTE change order methods, and further change orders follow the standard Metro construction practices and procedures.

Spot Check #3 - Airport Metro Connector Transit Station

This OIG Spot Check report concerns the Airport Metro Connector Transit Station (Contract C1197 MOD 009), Bulletin 16 - Light Rail Transit (LRT) Fence Updates.

Change Order Detail

See Attachment A Spot Check #3 chart.

Summary #3

Scope of Work - This change order (MOD 009) regards changes to the stainless-steel fencing at the Airport Metro Connector station. The contract drawings were revised at Metro's request to increase the capacity of the fence to resist seismic and wind loads by reducing the weight of the fence.

To accomplish this, the width between fence posts and the support assembly were shortened. The footing size and the post depth into the footing was modified. Additionally, the stainless-steel thickness was reduced and a different finish to the surface both lightened the weight. Even though the heaviness of the fence was reduced, the cost increased because of the current raw material shortage escalated the price.

Budget - This modification was negotiated, and the award amount is \$2,319,894. The Contractor's proposal was \$2,858,617 and the ICE was \$2,116,833. The difference in price is \$538,723 (-18.8%) under the contractor's proposal. The negotiated amount was \$203,061 (9.6%) over the ICE. Staff stated that funds for this change are within the Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this modification. The Contractor and Metro agreed on the Scope of Work on June 9, 2022. The modification was awarded on August 9, 2022, and completed in 43 workdays. Under the prior Board approval method for change orders, assuming an August Board meeting date, it would have taken a total of 55 workdays to complete the transaction.

Safety - The Airport Metro Connector Transit Station Project has 129,560 project hours with a Recordable Injury Rate of 1.54 (Bureau of Labor Statistics reports the National Average is 2.4) and Days Away, Restricted or Transferred (DART) of 0.00 (Bureau of Labor Statistics reports the National Average is 1.5). Note that this project has not reached 1 million hours and the data can only be properly interpreted after project reaches necessary hours.

Recommendation - The OIG recommends Metro consider updating Metro Rail Design Criteria

(MRDC) and necessary specifications to reflect current 2022 California Seismic standards and future requests for proposals to build better and be prepared for future earthquakes. This may be considered a **Lesson Learned**.

Spot Check #4 - Purple Line Extension Section 1 Transit Project

This OIG Spot Check report concerns the Purple Line Extension Section 1 Transit Project (Stations Contract C1045 MOD 159), Track Level Access Openings at Wilshire/Western, Wilshire/La Brea and Wilshire/ La Cienega.

Change Order Detail

See Attachment A Spot Check #4 chart.

Summary #4

Scope of Work - This modification is to provide three temporary structural openings in the tunnel shaft to provide efficient and safe access for new building materials, removal of tunnel boring machine (TBM) bearings, and cutterheads. Previous access was provided from the Division 20 rail yard through the tunnel using the tracks to Wilshire/Western station. That access will no longer be allowed as construction advances towards completion of the turnback project at the Division 20 rail yard. The three locations at Wilshire and Western (10-ft x 10-ft), Wilshire and La Brea (14-ft x 32-ft), and Wilshire and La Cienega (15-ft x 40-ft) will be designed and constructed by the Contractor. This change order is out of the scope of the contract because of delays associated with the TBM's due to anomalies at Wilshire and San Vicente. These temporary openings in the station exterior walls will mitigate construction delays associated with the roof, concourse, and entrance of the stations.

Budget -. These modifications were negotiated, and the award amount is \$5,487,903. The Contractor's proposal was \$7,147,417 and the ICE was \$5,200,824. The award amount was \$1,659,514 (-23.2%) under the contractor's proposal. The negotiated amount was \$287,079 (5.5%) over the ICE. Staff stated that funds for this change are within the approved amended Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this modification. The Contractor and Metro agreed on the Scope of Work on May 27, 2022. The modification was awarded on June 30, 2022, and was completed in 24 workdays. Under the prior Board approval method for change orders, assuming an August Board meeting date, it would have taken a total of 63 workdays to complete the transaction.

Safety - Purple Line Extension 1 Project has 7,316,693 project hours with a Recordable Injury Rate of 1.09 (Bureau of Labor Statistics reports the National Average is 2.4) and Days Away, Restricted or Transferred (DART) of 0.08 (Bureau of Labor Statistics reports the National Average is 1.5).

Recommendation - none.

FINANCIAL IMPACT

This report will have no financial impact on the Agency beyond what is described above.

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) \$4,150,000 Regional Connector Transit Corridor Project
- Spot Check #2) \$3,465,238 DIV 20 Portal Widening & Turnback Project
- Spot Check #3) \$2,319,894 Airport Metro Connector Transit Station
- Spot Check #4) \$5,487,903 Purple Line Extension Section 1 Project

The OIG was informed that the contractor on spot check #2 refuses to sign modifications because the Metro standard modification form says Metro will not pay the sub-contractor's bond cost. Therefore, Metro has decided to issue a unilateral change order to avoid over use of NTE's. The disagreement concerning the modification form language should be resolved.

EQUITY PLATFORM

In the opinion of the OIG, we considered whether these change orders presented any equity related issues on their face. There are a few locations downtown in the Regional Connector project at Alameda and 1st Street in China Town and Division 20 railroad yard that are within or adjacent to Equity Focus Communities (EFC's). There are 20-ft high sound walls around the construction worksites to protect residential communities and office suites from the nuisance of construction noise. 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 Office of Inspector General reviews large change orders over a calendar quarter and makes recommendations as appropriate to 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 and 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 October 2022 Construction Spot Checks

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