



Board Report

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Agenda Number: 18.

CONSTRUCTION COMMITTEE APRIL 18, 2024

**SUBJECT: OFFICE OF THE INSPECTOR GENERAL
CONSTRUCTION CHANGE ORDER SPOT CHECKS**

ACTION: RECEIVE AND FILE

RECOMMENDATION

RECEIVE AND FILE Office of the Inspector General Construction Change Order Spot Check Report for the period December 1, 2023, to February 29, 2024.

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 construction 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 2024-0180. 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, virtual meetings and telephonic interviews were conducted with Metro Program Management, Project Control, and Procurement staff involved in each change order as necessary.

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 and Lessons Learned.

Metro's Program Control department has provided informal responses to this report before its issuance and is 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 (Attachment B).

DISCUSSION

Spot Checks Performed in this Quarter

Spot Check #1 - Division 20 Portal Widening Turnback Project

This OIG Spot Check report concerns the Division 20 Portal Widening Turnback Project (Contract C1136 MOD 0141), North Ladder Track Subgrade, and Ballast.

Change Order Detail

See Attachment A Spot Check #1 table.

Summary #1

Scope - This change order provides for the purchase and placement of ballast for the North Ladder Tracks between the 1st Street Bridge and Road G. This material and work is out of scope from the original contract because the project plans did not provide track subgrade information and lacked sufficient detail for construction to include in the original cost proposal. The cross-section drawing indicated that there would be existing ballast for the new tracks. This was not feasible because of extensive underground utilities whose construction required the removal of the existing ballast materials.

Budget - This change order was negotiated as MOD 0141 for the amount of \$898,032. The Contractor's proposal was \$1,455,124. The negotiated price is \$557,092 (38.3%) lower than the Contractor's proposal. The ICE was \$906,843 which is \$8,811 higher than the negotiated amount. Staff stated that funds for this change order are within the approved Life-of-Project budget. Additionally, there *might be* a cost recovery potential from the Designer of Record.

Schedule - The CEO Delegation of Authority process was utilized for this change order. The Contractor and Metro agreed on the Scope of Work on November 7, 2023. The modification was awarded on December 11, 2023, and it took staff 23 workdays to complete all signature approvals. Under the prior Board approval method for change orders, assuming a January Board meeting date, it would have taken a minimum of 53 workdays to complete the transaction.

Safety - The Division 20 Portal Widening Turnback Project has 847,468 project hours through January 2024 with a Recordable Injury Rate of 2.6 (the Bureau of Labor Statistics National Average is 2.4) and the Days Away Rate (DART) of 1.40 (the Bureau of Labor Statistics National Average is 1.5).

Recommendation/Lessons Learned - None.

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

This OIG Spot Check report concerns the Purple Line Extension Section 1 (Contract C1045 CO 0050), Sound Wall Pile Removal at Station Yards.

Change Order Detail

See Attachment A Spot Check #2 table.

Summary #2

Scope -This change order is to remove sound wall piles in their entirety. The completion of this activity captures the difference between complete pile removal and the base C1045 Contract requirement of removal up to 3 feet. However, the City and privately-owned properties require these piles be removed in their entirety ahead of any future development and pursuant to Temporary Construction Easement contract requirements. The piles beyond the initial 3 feet are being removed at the following locations: 1. La Brea North Yard, 2. La Brea South Yard, 3. Fairfax Yard (Ogden), 4. La Cienega Yard, and 5. La Cienega Gale Yard.

Budget - This change order was negotiated as a unilateral change order for \$898,842. The Contractor's proposal was \$1,070,859. The negotiated price is \$172,017 (16%) lower than the Contractor's proposal. The ICE is \$296,935, which is \$601,907 (203%) lower than the negotiated amount. Staff stated that funds for this change order are within the approved Life-of-Project budget

Schedule - The CEO Delegation of Authority process was utilized for this change order. The Contractor and Metro agreed on the Scope of Work on December 11, 2023. The change order was issued as a unilateral on January 26, 2024, and it took staff 33 workdays to complete all signature approvals. Under the prior Board approval method for change orders, assuming a February Board meeting date, it would have taken of a minimum of 57 workdays to complete the transaction.

Safety -The Purple Line Extension Section 1 Project has 9,608,516 project hours through January 2024 with a Recordable Injury Rate of 0.85 (the Bureau of Labor Statistics National Average is 2.4) and the Days Away Rate (DART) 0.08 (the Bureau of Labor Statistics National Average is 1.5).

Recommendation/Lessons Learned - none.

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

This OIG Spot Check report concerns the Purple Line Extension Section 2 C1120, CO-0062), Additional Project Management, Administration, and Contract Compliance for Extended Design Services.

Change Order Detail

See Attachment A Spot Check #3 table.

Summary #3

Scope - This change order is to compensate the Contractor for additional Project Management, Administration, and Contract Compliance for Extended Design Services after substantial completion. After review of all completed and outstanding design work, Metro agreed with the Contractor that substantial completion of base design work was achieved on October 1, 2021, and, from this date forward, the amount of outstanding change design work exceeded the outstanding base design work.

The contract has a general conditions clause, GC 32.6.2.E, for Contract Modifications for the

contractor to claim compensation for extended performance of administrative design support for change design work that needs to continue after substantial completion of base design work. This change order is compensation design work after substantial completion for the period October 1, 2021, through July 31, 2023.

Budget - This unilateral change order CO 0062 is for the amount of \$706,933. The Contractor's proposal was \$1,488,880. There was not a negotiated amount. The change order was completed as a unilateral change order. The ICE is \$961,188 which is \$254,255 (36%) higher than the unilateral amount. Staff stated that funds for this change order are within the approved Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this change order. The Contractor and Metro did not agree on the scope of work. The Unilateral Change Order was awarded on December 11, 2023. Because Metro and the Contractor could not reach an agreement, the recorded date for the scope of work was never achieved, and Metro moved forward with awarding the Contractor \$706,933.

Safety - The Purple Line Extension Section 2 Project has 3,862,976 project hours through January 2024 with a Recordable Injury Rate of 2.80 (the Bureau of Labor Statistics National Average is 2.4) and the Days Away Rate (DART) of 0.62 (the Bureau of Labor Statistics National Average is 1.5).

Recommendation/Lessons Learned - Lessons learned are that future contracts could provide better language when substantial completion is achieved so that there would be no question about the amounts that are allowed for this type of work.

Spot Check #4 - Purple Line Extension Section 2 Transit Project

This OIG Spot Check report concerns the Purple Line Extension Section 2, C1120, MOD-0195), MOA Impacts to WRS Work Activities within COBH January 2, 2022 to November 23, 2022.

Change Order Detail

See Attachment A Spot Check #4 table.

Summary #4

Scope - This change order is to compensate the Contractor for impacts to the Wilshire/Rodeo Station construction activities from work restrictions imposed by the City of Beverly Hills Memorandum of Agreement during the period January 2, 2022, to November 23, 2022.

The Contractor is to provide the entire work, furnishing all management, coordination, professional services, labor, equipment, materials, and other services for the Memorandum of Agreement Impacts to Wilshire Rodeo Station for the Station Box and Station Entrance construction. This change order covers work performed in the year 2022.

Budget - This change order was negotiated as MOD 0195 for the amount of \$1,132,941. The Contractor's proposal was \$3,635,360. The negotiated price is \$2,502,419 (68.8%) lower than the Contractor's proposal. The ICE was \$1,419,812 which is \$20% higher than the negotiated amount. Staff stated that funds for this change order are within the approved Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this change order. The

Contractor and Metro agreed on the Scope of Work on November 3, 2023, which was awarded on November 20, 2023, and it took staff 37 workdays to complete all signature approvals. Under the prior Board approval method for change orders, assuming a January Board meeting date, it would have taken a minimum of 55 workdays to complete the transaction.

Safety - The Purple Line Extension Section 2 Project has 3,862,976 project hours through January 2024 with a Recordable Injury Rate of 2.80 (the Bureau of Labor Statistics National Average is 2.4) and the Days Away Rate (DART) was 0.62 (the Bureau of Labor Statistics National Average is 1.5).

Recommendation/Lessons Learned - The OIG recommends that Metro encourage the Contractor to submit their cost proposals promptly, so Metro can negotiate and promptly award money that is due. This will assist Metro in better tracking the Life of Project budget expenditures and knowing available resources.

This report does not have a financial impact on the Agency.

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 Life of Project budget in the following amounts:

Spot Check #1) \$898,032 Division 20 Tunnel Widening Turnback Project

Spot Check #2) \$898,842 Purple Line Extension Section 1 Project

Spot Check #3) \$706,933 Purple Line Extension Section 2 Project

Spot Check #4) \$1,132,941 Purple Line Extension Section 2Project

EQUITY PLATFORM

In the opinion of the OIG, we considered whether these change orders presented any equity-related issues on their face. The OIG did not receive any data concerning community impacts. The OIG observed no obvious disparate impacts created by these change orders on small businesses, or 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 2016 and 2023 Construction Best Practices reports, 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 Management. Program Control and Program Management agree 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 in this report
Attachment B - OIG Recommendations and Responses Tracking Sheet

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