



## Board Report

**File #:** 2019-0689, **File Type:** Informational Report

**Agenda Number:** 41.

### CONSTRUCTION COMMITTEE OCTOBER 17, 2019

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

**ACTION: RECEIVE AND FILE**

#### **RECOMMENDATION**

RECEIVE AND FILE Office of the Inspector General Change Order/Modification Construction Spot Check Report.

#### **ISSUE**

On January 25, 2018, the Metro Board directed the Office of the Inspector General (“OIG”) to conduct random spot checks on the projects listed in the quarterly program management report to ensure that the delegation of authority to approve construction Change Orders policy is performing in the manner desired by the Board of Directors.

#### **BACKGROUND**

The OIG’s Spot Check Program (“Spot Checks”) focuses on approved Change Orders and Modifications that exceed \$1,000,000 dollars. The four Change Orders in this report were selected from the October 2019 Program Management Major Project Status Report (File # 2019-0692), covering June 1 to August 30, 2019. The information for the Spot Checks was collected from the Program Management Information System (PMIS) which is the department’s database system. Also, in-person and telephonic interviews were conducted with Metro Program Management, Project Control, and Procurement staff from each individual 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 three Change Orders were negotiated at lower cost and one was equal to the contractors’ proposed price. This quarter’s Spot Checks of Change Orders/Modifications found the delegation of authority has resulted in:

- A negotiated amount that was reasonable 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, and
- Zero construction delay costs were incurred.

Each Spot Check summarizes the following areas:

- Introduction of Change Order/Modification
- Facts of Change Order (charts and pictures shown on Attachment A)
- Scope of Work
- Budget
- Schedule: Time to Execute Change Order
- Recommendations

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

## **DISCUSSION**

### **I. Spot Checks Performed in this Quarter**

#### **A. Spot Check #1 - Crenshaw/LAX Transit Project**

This OIG Spot Check report concerns the Crenshaw/LAX Transit Corridor Project (Contract C0988 MOD-00432), Update Station Customer Signage, Construction

#### **Facts of Change Order**

See Attachment A Spot Check #1 chart.

#### **Summary #1**

**Scope of Work** -The Americans with Disabilities Act (ADA) regulates accessibility and includes requirements for signage. The guidelines were approved by the Department of Justice for publication on September 15, 2010, and made legally enforceable on March 15, 2012. These are known today as "2010 ADA Standards for Accessible Design."

The standard Metro Rail Design Criteria (Metro RDC) and the Technical Specifications were updated with 2010 ADA Standards for Accessible Design after the release and execution of the Crenshaw contract (August 2013). The Customer Signage Directive Drawings were updated by the Crenshaw consultant under a previous modification (MOD-00198.1 and MOD-00075) and completed design changes to platform signage in 2014 and underground stations in 2015.

This modification is to change the signage to conformance to the updated designs under the 2010 ADA Standards for Accessible Design. Under this modification, the contractor will be paid for labor, equipment, material to fabricate and install signage in eight stations at multiple locations.

**Budget** -This Modification was negotiated and the award amount is \$1,813,970. The contractor's proposal was \$1,813,970. The award amount was equal to the contractor's proposal. This is due to the fact that the contractor took the quote from the lowest vendor, and credited back the amount from the original contract (\$720,039) for this line item. The independent cost estimate (ICE) was \$884,370. The negotiated gross amount was \$929,600, or 5.1% over the ICE. Staff has stated that funds for this change are within the approved the Life-of-Project budget, and unallocated contingency funds.

**Schedule** - The new delegation process was utilized for this Modification. The agreed upon scope of work occurred on June 8, 2019. The Modification was executed on July 15, 2019, and was completed in 25 work-days. Since there was no Board meeting in August the team would have used the September Vendor Contract Management (V/CM) submission date on July 29, 2019, this Change Order would have gone to the September 26, 2019 Board agenda. The scenario of utilizing the Board for approvals on change orders would be 77 work-days later verses the 25 work-days utilizing the delegated authority.

**Recommendation** - The Metro RDC was updated with 2010 ADA Standards for Accessible Design later, and after the release and execution of the Crenshaw contract. When new standards are issued all request for proposal specifications pending after that date should be reviewed for correction before release when possible.

For request for proposals released between 2010 and 2014, (when we changed the specification and Metro RDC) the OIG recommends immediate evaluation to determine if they were also awarded based on the old pre 2010 standards to determine whether their projects might be similarly impacted.

## **B. Spot Check #2 - Crenshaw/LAX Transit Project**

This OIG Spot Check report concerns the Crenshaw/LAX Transit Corridor Project (Contract C0988 MOD-00434), LADWP and COI New Water Service Connection - Main to Meter.

### **Facts of Change Order**

See Attachment A Spot Check #2 chart.

### **Summary #2**

**Scope of Work** - This Modification is to have the contractor perform work related to the water service connections from the water main to the water meter. This work is out of the scope of the contract because originally the Los Angeles Department of Water and Power (DWP) and the City of Inglewood were going to perform the work related to the new water service connections, so was not made part of the contract requirement for the contractor. Due to their lack of available personnel, both the City of Inglewood and DWP have requested that the Metro contractor perform the water service connections work. The contractor shall provide all labor, material and equipment necessary to install new water service connections, from the water main to meter, at various locations along the Crenshaw alignment.

**Budget** - This Modification was negotiated and the award amount is \$1,978,937. The contractor's proposal was \$2,230,705 and the ICE was \$1,427,593. The award amount was \$251,768, or 11.3%, under the contractor's proposal. The negotiated amount was \$551,344 more or 38.6% over the ICE.

**Schedule** - The new delegation process was utilized for this Modification. The agreed upon scope of work occurred on July 9, 2019. The Modification was executed on July 18, 2019, and was completed in 8 work-days. Since there was no Board meeting in August the team would have used the September V/CM submission date on July 29, 2019, this Change Order would have gone to the September 26, 2019 Board agenda. The scenario of utilizing the Board for approvals on change orders would be 57 work-days later verses the 8 work-days utilizing the delegated authority.

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**Recommendation**

None.

**C. Spot Check #3 - Purple Line Extension Section 1 Transit Project**

This OIG Spot Check report concerns the Purple Line Extension Section 1 Transit Project (Contract C1078 MOD-00083), La Cienega Dewatering DSC

**Facts of Change Order**

See Attachment A Spot Check #3 chart.

**Summary #3**

**Scope of Work** - During excavation, it was found that the groundwater table was not draining as expected. The contractor could not lower the groundwater sufficiently using the methods attempted. This constitutes a “differing site condition” requiring excavation work out of the scope of the contract to stop water seeping into the excavation cavern and making it impossible for productive work.

New engineering design and analysis, installation of additional dewatering wells, drains, and other methods have to be utilized to correct the condition. Additional labor resources are required to avoid schedule impacts.

**Budget** -This Modification was negotiated and the award amount is \$16,841,067. The contractor's proposal was \$22,059,501 and the ICE was \$14,555,428. The award amount was \$5,218,434, or 23.6%, under the contractor's proposal. The negotiated amount was \$2,286,639, or 15.7%, over the ICE.

**Schedule** - The new delegation process was utilized for this Modification. The agreed upon scope of work occurred on May 22, 2019. The Modification was executed on July 3, 2019, and was completed in 26 work-days. Using the June 3, 2019 V/CM submission date, this Change Order would have gone to the July Board agenda. The scenario of utilizing the Board for approvals on change orders would be 45 work-days later verses the 26 work-days utilizing the delegated authority.

**Recommendation**

The Geotechnical Baseline Report stated that the ground conditions would permit drainage of water. The OIG questions if the consultant who developed the Geotechnical Baseline Report properly interpreted the boring data. Investigation is warranted to determine if the report accurately reflects the data.

The OIG recommends recovering part of the cost, if the investigation demonstrates that the report was erroneous. The OIG further recommends future Geotechnical Baseline Reports should include interpretation of the borings to determine within a 95% confidence level the nature of the underlying soil and the location of the water table.

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

This OIG Spot Check report concerns the Purple Line Extension Section 1 Transit Project (Contract C1078 MOD-00085), Geotechnical Instrumentation: Revise Geotechnical Contingency Plan and Reporting.

**Facts of Change Order**

See Attachment A Spot Check #4 chart.

**Summary #4**

**Scope of Work** - Additional geotechnical instrumentation has been required by Los Angeles Bureau of Engineering (LABOE) because of concern over dewatering settlement and to monitor and report any change in ground conditions. Over the past year monitoring equipment has been added to the street, buildings and the construction site. A total of 1,137 instruments have been added to monitor movement. Those instruments have a total of 2,345 monitoring points which has yielded over 40,000 threshold alarms. This led to 1,600 false alarms and 13 work stoppages. Weekly reporting will now take place to replace monthly reporting. Closed-circuit television will now be utilized; a full time field Instrumentation Engineer on site will be added to provide real time analysis; and additional support to the contractor will be provided to avoid work stoppage.

Metro believes the additional instrumentation is a betterment because LABOE does not have criteria for shoring of underground stations and instead of performing periodic checks, the LABOE is requiring additional documentation above and beyond what was required by the original contingency plan and at a level that is not required by any standard.

**Budget** -This Modification was negotiated and the award amount is \$4,158,687. The contractor's proposal was \$8,345,399 and the ICE was \$2,799,376. The award amount was \$4,186,712, or 50.2%, under the contractor's proposal. The negotiated amount was \$1,359,311, or 48.5%, over the ICE. Funds for this modification are within the approved Budget in Project and Task No. 3.3.02.03.

**Schedule** - The new delegation process was utilized for this Modification. The agreed upon scope of work occurred on June 27, 2019. The Modification was executed on July 19, 2019, and was completed in 16 work-days. Since there was no Board meeting in August the team would have used the September V/CM submission date on July 29, 2019, this Change Order would have gone to the September 26, 2019 Board agenda. The scenario of utilizing the Board for approvals on change orders would be 65 work-days later verses the 16 work-days utilizing the delegated authority.

**Recommendation**

The OIG recommends if Metro believes this change order is a betterment, then Metro should complete the new "Potential Notice of Betterment" form, submit a copy to LABOE and retain a copy for negotiations at the end of the contract if not sooner. This means Metro would move forward at LABOE expense. Going forward, this "Potential Notice of Betterment" form should be completed when applicable and submitted to the LABOE prior to agreeing to move forward, thus allowing the LABOE to make the decision if the betterment is truly necessary.

## **FINANCIAL IMPACT**

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) \$1,813,971 Crenshaw
- Spot Check #2) \$1,978,937 Crenshaw
- Spot Check #3) \$16,841,067 Purple Line Ext. 1
- Spot Check #4) \$4,158,687 Purple Line Ext. 1

## **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. The OIG mission includes reviewing expenditures for fraud, waste, and abuse. For each selected Change Order/Modification reviewed, the OIG evaluates if fraud, waste, or abuse is taking place. We report the background details of the Change Order, and make recommendations consistent with the OIG's Construction Best Practices report 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. The next OIG Construction Spot Check report will be in January 2020.

## **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, including those for July 2019, is an attachment to this OIG October 2019 report.

## **ATTACHMENTS**

Attachment A - Charts for Spot Checks

Attachment B - Tracking sheet of Recommendations and Responses

Attachment C - Power Point for October 2019 Construction Spot Checks

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