

**Board Report**

---

**File #:** 2021-0405, **File Type:** Informational Report

**Agenda Number:** 27.

---

**CONSTRUCTION COMMITTEE  
JULY 15, 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 March 1, 2021 to May 31, 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 \$500,000. The four change orders in this report were selected from the Program Management Major Project Status Report (Legistar file # 2021- 0423) covering March 1, 2021 to May 31, 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 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,
- Approved faster with the new delegation of authority, and
- Negotiated at 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, and
- Recommendations, if any.

Metro's Program Control department will provide 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**

### **4 Spot Checks Performed 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-00196): Construct the 2<sup>nd</sup> & Broadway Station Overbuild Load Transfer System

#### **Change Order Detail**

See Attachment A Spot Check #1 chart.

#### **Summary #1**

**Scope of Work** - This change order is to construct the Load Transfer System (LTS) at the Historic Broadway streets station entrance to accommodate the Los Angeles Tribune's future development structure above the station entrance (original design was revised under a previous modification). Since the execution of the original land acquisition agreement in 2014, the Tribune and Metro have been collaborating to meet the requirements of the Tribune's revised design above this new Metro station. The basis for the LTS are the designs produced by Tribune's engineer, shared with Metro in April 2019.

The LTS is necessary to transfer and distribute weight from the new structure to the underground station walls. The work involves extending the underground support system an additional 7.5 feet deeper (below grade), to facilitate constructability of the Tribune's planned multi-story structure. Other modifications are relocating exit stairs and modifying air vents along the support wall just south of 2nd Street. Some expenses were not foreseen at the time of project award in April 2014, as the Tribune's development of their structure was not finalized at that time. Tribune has contributed \$1.583 million to this change order per a negotiated agreement with real estate for the real property.

**Budget** - This modification was negotiated, and the award amount is \$7,267,980. The Contractor's proposal was \$7,841,735 and the ICE was \$7,211,804. The award amount was \$573,755 (7.3%) under the Contractor's proposal. The negotiated amount was \$56,176 (0.78%) 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 March 23, 2021. The modification was awarded on April 01, 2021 and was completed in 8 workdays. Under the prior Board approval method for change orders, assuming a May Board meeting date, it would have taken an additional 48 workdays to complete the work.

**Recommendation** - None.

### **Spot Check #2 - Regional Connector - Transit Corridor Project**

This OIG Spot Check report concerns the Regional Connector Transit Corridor Project (Contract C0980 MOD 00202): Revise Communications Radio System Scope of Work- Construction

#### **Change Order Detail**

See Attachment A Spot Check #2 chart.

#### **Summary #2**

**Scope of Work** - This change order is to construct the communications radio system (original design was revised under a previous modification). The contractor will purchase radio materials and develop a plan to coordinate the transition from the existing train control radio system to a new dual radio base station system with a channelized repeater amplifier. The benefit of adding these new parts will enhance the system and allow for multiple channels of communication to send a stronger signal to Rail Operations Control. These new radio parts will be installed in the Train Control and Communication room at 7th Metro Station. The signal will extend the radio frequencies from 6th & Flower Streets to the 12th Street portal (utilizing the base station at 1st & Central). Metro has directed this additional work, and therefore adjustment in the contract price is warranted.

**Budget** - This modification was negotiated, and the award amount is \$4,868,856. The Contractor's proposal was \$5,142,513 and the ICE was ICE \$4,692,290. The award amount was \$450,233 (8.8%) under the Contractor's proposal. The negotiated amount was \$176,566 (3.8%) 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 May 11, 2021. The modification was awarded on May 21, 2021 and was completed in 9 workdays. Under the prior Board approval method for change orders, assuming a July Board meeting date, it would have taken an additional 54 workdays to complete the work.

**Recommendation** - The OIG recommends that after installation of the new radio system that interface with Los Angeles fire, police and sheriff departments be tested and verified for their signal strength and connectivity.

### **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 C1045 MOD-0131): Wilshire/Fairfax Station Subgrade DSC.

#### **Change Order Detail**

See Attachment A Spot Check #3 chart.

#### **Summary #3**

**Scope of Work** -The Alternate Dispute Resolution section of the contract with the contractor provides for a Dispute Review Board (DRB) to hear argument by the parties and make recommendations when there is a dispute. Alternate Dispute Resolution was necessary concerning whether the subgrade at the Wilshire/Fairfax Station complies with the contract requirements in the construction plans, technical specifications, and Geotechnical Design Memorandum Table 4. Metro stated the soil at the base was "firm and unyielding" as listed in the geotechnical report. The contractors Engineer on Record (EOR) did not agree with this soil type and would not sign off nor seal the engineering

drawings. Metro moved forward with MOD 0066 to utilize their own EOR. The negotiations took 83 days to change insurance provisions and to come to an agreement with the contractor.

The DRB reviewed the written evidence and testimony, provided a report on January 17, 2020. The DRB came to the following 5 conclusions:

1. Metro appears to accept delay from August 31 to September 13, 2018 (14 calendar days) as Metro's responsibility.
2. During period September 13, 2018 to December 13, 2018 (83 calendar days) the parties were involved in further investigations and testing as well as protracted negotiations regarding MOD 0066.
3. Metro took an inordinate period of time to draft MOD 0066 and the contractor could have returned to work earlier than December 06, 2018 [contractor chose to not work in this area since their EOR was being removed].
4. Responsibility for the 83-calendar day period should have been resolved by negotiation between the parties.
5. Project delays for this particular disputed task do not lie on the projects critical path. Compensation to the contractor should be restricted to the indirect and overhead costs associated with Fairfax Station only.

The DRB made the following 3 recommendations:

1. As a result of encountering differing site conditions during excavation the contractor is entitled to an adjustment in the total contract price in accordance with the contract documents.
2. The parties should negotiate the responsibility for delay arising from the differing site conditions and the appropriate compensation for contractor's reasonable delay cost not on the critical path.
3. Metro receives credit from contractor for the costs of Metro's Engineer of Record to approve the subgrade [...]

This Modification is to implement payment to the contractor consistent with the recommendations of the DRB, on January 17, 2020, for the Wilshire/Fairfax Station under Wilshire Blvd. between Ogden and Fairfax.

**Budget** - This modification was negotiated, and the award amount is \$4,203,350. The Contractor's proposal was \$5,276,320 and the ICE was \$4,200,888. The award amount was \$1,072,970 (20.3%) under the Contractor's proposal. The negotiated amount was \$2,462 (.06%) 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. Because there was a disagreement, parties moved the matter to a DRB for resolution. The DRB deliberated and issued its recommendations on January 17, 2020. One year later, in January 21, 2021, a change notice was issued to the contractor. The modification was awarded on March 08, 2021 and was completed in 33 workdays. Under the prior Board approval method for change orders, assuming a March Board meeting date, it would have taken 46 workdays to complete the work.

**Recommendation** - The OIG recommends that after a DRB issues its recommendations that favor the contractor, Metro act swiftly to move forward with a change notice to the contractor and not delay payment to the contractor, less any credits owed to Metro. We understand in this particular case the contractor assigned a lower priority for processing this change notice over many others.

#### **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-00014): Revisions to Westwood/UCLA Station Entrances - Design Only

#### **Change Order Detail**

See Attachment A Spot Check #4 chart.

#### **Summary #4**

**Scope of Work** - The two Station entrances were modified after the construction contract was signed with the contractor due to an agreement that was recently negotiated with UCLA and real estate negotiations with the 10900 Wilshire Blvd property owner. At UCLA, the locations were revised for the electrical box, switch, and conduits to the west end of the Station plaza. Two parking spaces were removed to provide one reserved parking space for Department of Water and Power staff. Ventillation and emergency exits were also revised. A decorative wall was added to separate the Metro entrance from the UCLA parking lot and tree areas and landscaping was rearranged. Two pedestrian access openings were added from the campus through a nearby parking lot to the Station. At the southeast station entrance at 10900 Wilshire Blvd, the stairs, elevator, and entrance canopy were moved. Ventillation shafts and mechanical rooms were relocated and more.

**Budget** -This modification was negotiated, and the award amount is \$631,627. The Contractor's proposal was \$682,638 and the ICE was \$235,535. The award amount was \$51,011 (7.5%) under the contractor's proposal. The negotiated amount was \$396,092 (168%) 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 March 31, 2021. The modification was executed on April 23, 2021 and was completed in 18 workdays. Under the prior Board approval method for change orders, assuming a June Board meeting date, it would have taken 61 workdays to complete the work.

**Recommendation** - none.

#### **FINANCIAL IMPACT**

This report will have no Financial Impact to 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) \$7,267,980 Regional Connector Transit Corridor Project
- Spot Check #2) \$4,868,856 Regional Connector Transit Corridor Project

- Spot Check #3) \$4,203,350 Purple Line Extension Section 1
- Spot Check #4) \$631,627 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.

### **EQUITY PLATFORM**

We considered whether these change orders presented any equity related issues on their face. All of the locations (2<sup>nd</sup>/Broadway, Regional Connector, Westwood/Wilshire) which are the subject of these change orders are within or adjacent to Equity Focus Communities (EFC's). The OIG did not receive any data concerning community impacts or whether the work would be performed by DBE's 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. To the extent equity issues were considered in the initial approval of the project, and that these changes keep the projects moving forward without further delay and add functionality, convenience or improve safety for the community, they may be considered to have positive equity impacts. The OIG is aware there is a DBE goal for each project that the contractor should strive to meet. At this time, the status of the DBE goal is not included in this report but we will monitor DBE goals and impacts to EFC on future construction change order reports. Further, it appears these investments for improvements to the radio system as described in spot check number two and installing additional building support as described in spot check number one, will mitigate safety concerns for the community. Additional entrances and access providing by the re-scoping of the design at UCLA will increase convenience for the community as described in spot check number four.

### **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 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 July 2021 Construction Spot Checks

Prepared by: Prepared by: Suzanna Sterling, Construction Specialist Investigator, (213) 244-7368

Reviewed by: Karen Gorman, Inspector General, (213) 244-7337



Karen Gorman  
Inspector General