

**Board Report**

File #: 2022-0825, **File Type:** Informational Report**Agenda Number:**

**CONSTRUCTION COMMITTEE
JANUARY 19, 2023****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 September 1 to November 30, 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 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 2022-0855. 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 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 - Division 20 Portal Widening and Turnback Project

This OIG Spot Check report concerns the DIV 20 Portal Widening and Turnback Project (Contract C1136 CO-121.1/MOD 57), Site Improvements for Garfield Yard to Store New Special Trackwork.

Change Order Detail

See Attachment A Spot Check #2 chart.

Summary #1

Scope of Work - This change order is to the contractor to prepare the Metro owned property at Garfield Avenue and 105 freeway for the storage of new track until Division 20 is ready to accept the rail strings. The work to be performed includes clearing, grading of site, and covering the surface with rock (class II base). A chain link fence will be added (3,124 Feet) with barbed wire and gates around 2.4 acres of the property. Security will be necessary 24/7 to ensure the materials are secure. The rail will be stored at this site until transported to the Division 20 rail yard once the Division 20 project site is ready to accept the new rail. After the rail is delivered to the Division 20 yard, the contractor will clean the property and remove the fencing.

The work is out of scope of the contract because storing the rail off site was not part of the original plan. The special trackwork manufactured in both Illinois and Wyoming is to be delivered on schedule but the Division 20 rail yard project fell behind schedule from differing site conditions at the 1st Street viaduct, and therefore the project site is not ready to accept the track.

Budget - This change order was negotiated as MOD 0057 for the amount of \$3,146,480, but the contractor refused to sign the modification so the project office chose to issue a unilateral change order. The Contractor's proposal was \$4,316,889 and the ICE was \$2,819,753. The difference in negotiated price to the Contractor's proposal is \$1,173,409 (27.1%) under Contractor's proposal. The ICE is \$1,497,136 (34.7%) under the contractor's proposal. The ICE is less than the negotiated amount by \$323,727 (11%). Staff stated that funds for this change order are within the recently amended 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 October 14, 2022. The unilateral change order was awarded on November 28, 2022, and was completed in 30 workdays. Under the prior Board approval method for change orders, assuming a January Board meeting date (no December meeting), it would have taken a total of 70 workdays to complete the transaction.

Safety - The DIV 20 Project has 616,833 total project hours through November 2022 with a 12-month Recordable Injury Rate of 0.97 (Bureau of Labor Statistics the National Average is 2.4) and a Days

Away, Restricted or Transferred (Total DART) of 1.62 (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-contractor's bonds and insurance be resolved and further change orders follow the standard Metro construction practices and procedures.

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

This OIG Spot Check report concerns the Purple Line Extension Section 1 Transit Project (Contract C1045 / CO-0015), Station Artwork Architectural Glass

Change Order Detail

See Attachment A Spot Check #2 chart.

Summary #2

Scope of Work - This change order is to provide additional funds for the artwork at three underground Metro Purple Line stations. The installation of the artwork at La Brea, Fairfax, and La Cienega Stations, consists of enhanced exterior glass curtain walls at the plaza level entrances and interior glass tiles on the intermediate landing as well as the concourse level walls.

Since the artwork was not decided upon at the release of request for proposals (RFP), the original contract documents had a provisional sum amount (PSA), that provided for \$3,800,000 as an estimated set aside for artwork. These funds have been exhausted.

The actual cost of the artwork has thus far exceeded the PSA, so this change order is to cover the additional costs over the PSA. The issuance of the Not to Exceed (NTE) Change Order is to proceed with the artwork while negotiations are ongoing concerning the final costs of the remaining art related work to be done.

Budget - This NTE Change Order 0015 is for the amount of \$4,500,000. Because the negotiations are ongoing the ICE cannot be disclosed at this time until both parties come to an agreement on the scope of work. The Contractor's proposal is \$9,050,863 and the NTE amount is \$4,500,000. The difference in price is \$4,550,863, which is 50.5% less than the contractor's proposal. There will be a signed modification or another unilateral change order once a scope of work is agreed upon and a final settlement is reached. Staff stated that funds for this change order are within the Life-of-Project budget.

Schedule - The CEO Delegation of Authority process was utilized for this change order. The Contractor and Metro do not have an agreed upon Scope of Work and therefore the days saved cannot be calculated and the item would not be ready for the Board. The NTE funds were issued on September 20, 2022, to order art glass and associated materials.

Safety - The Purple Line Extension 1 Project has 7,801,217.94 project hours through October 2022 with a Recordable Injury Rate of 1.03 (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 - The OIG recommends that a final scope of work and agreed upon total costs be determined as soon as possible.

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

This OIG Spot Check report concerns the Purple Line Extension Section 2 Transit Project (Stations Contract C1120 CO 0023.2), CCCS Relocated UPE Plenum at Westfield Mall.

Change Order Detail

See Attachment A Spot Check #3 chart.

Summary #3

Scope of Work - This change order is to relocate a portion of the heating, ventilation, and air conditioning (HVAC) system called a UPE Plenum. This UPE Plenum was to be located on the property of the Westfield Mall to allow for an underground entrance from the Century City Constellation Station into the Mall. The new owners of the Westfield Mall have now informed Metro that they are no longer interested in an underground mall entrance from public transportation. Therefore, Metro has determined an alternate location for the UPE Plenum in the public right-of-way along Constellation Boulevard to avoid the need for a real-estate easement agreement with Westfield management.

Budget - This unilateral NTE Change Order 0023.2 is for \$2,758,978. Because the negotiations are ongoing the ICE cannot be disclosed at this time until both parties arrived at a final dollar amount. The Contractor's proposal is \$5,227,898 and the NTE amount authorized by Metro is \$2,468,920, less than the contractor's proposal. There will be a subsequent contract modification once a final settlement is reached. Staff stated that funds for this change order are within the approved amended 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 August 11, 2022. An NTE change order for the \$2,758,978 was issued on September 14, 2022, and the transaction was completed in 25 workdays. Under the prior Board approval method for change orders, assuming an October Board meeting date, it would have taken a total of 56 workdays to complete the transaction.

Safety - The Purple Line Extension 2 Project has 2,984,206 project hours through October 2022 with a Recordable Injury Rate of 3.08 (Bureau of Labor Statistics reports the National Average is 2.4) and Days Away, Restricted or Transferred (DART) of 0.67 (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 (Tunnels Contract C1151, MOD-0007.2) Revisions to Southern California Edison (SCE) Power Connection.

Change Order Detail

See Attachment A Spot Check #4 chart.

Summary #4

Scope of Work - This change order is to provide permanent power to the Westwood / VA Hospital

Station. Southern California Edison (SCE) asked Metro to move Purple Line Extension 3 overhead power lines to underground conduits along Wilshire Boulevard (from the US Army Reserve site to the VA construction staging area). Moving the power lines underground provides better power reliability to the future station.

The City of Los Angeles requested that Federal Avenue not be opened twice, (i.e. once for temporary power by the tunnel contractor and later by the station contractor for the permanent power). The City requested the two sets of power lines be combined into one underground conduit trench. By combining conduit lines in one underground trench, additional manholes were necessary. The City also believed a single trench would reduce disturbance to the community and result in reduced painting and street restoration time.

This change order also covers Ohio Avenue, Federal Avenue, and Wilshire Boulevard for underground power lines and manholes to the new Westwood / VA Hospital Station. This work was completed in 2019. At that time, the contractor refused to sign the modification for final payment until their subcontractors had no further billing statements and all issues were resolved.

Budget -. This modification was negotiated, and the award amount is \$4,217,568. The Contractor's proposal was \$6,236,425 and the ICE was \$2,496,761. The difference in price is \$2,018,857 (32.4%) under the contractor's proposal. The negotiated amount was \$1,720,807 (68.9%) 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. Even though the work was completed in 2019 the Contractor and Metro just agreed on the content of the Scope of Work on October 5, 2022. The modification was awarded on November 8, 2022, and was completed in 25 workdays. Under the prior Board approval method for change orders, assuming a January Board meeting date, it would have taken a total of 78 workdays to complete the transaction.

Safety - The Purple Line Extension 3 Project has 2,294,942 project hours through November 2022 with a Recordable Injury Rate of 1.49 (Bureau of Labor Statistics reports the National Average is 2.4) and Days Away, Restricted or Transferred (DART) of 0.44 (Bureau of Labor Statistics reports the National Average is 1.5).

Recommendation/Lessons Learned - The OIG recommends that in all future contracts where it is possible to consolidate planned multiple street utility construction works that a single trench be dug, and both temporary and permanent power conduits be installed in the same trench at the same time as to reduce costs and minimize impacts to the neighborhood.

The OIG further recommends that when the Metro management authorizes work and exercises their authority under this Delegation Policy, there should be a maximum period after that action that it must be reported in the quarterly program management report and not wait 3 years to negotiate the modification and report an action to the Board.

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 Life of Project budget.

- Spot Check #1) \$3,146,480 DIV 20 Portal Widening & Turnback Project
- Spot Check #2) \$4,500,000 Purple Line Extension Section 1 Project
- Spot Check #3) \$2,758,978 Purple Line Extension Section 2 Project
- Spot Check #4) \$4,217,568 Purple Line Extension Section 3 Project

EQUITY PLATFORM

In the opinion of the OIG, we considered whether these change orders presented any equity related issues on their face. There is a location downtown by the Division 20 railroad yard that is within or adjacent to Equity Focus Communities (EFC's). At the Division 20 location there are not sound walls around the construction worksite. The residential apartment community, directly above the Santa Fe Metro offices shares an exterior wall with the rail yard precisely where all the construction and heavy machinery operate. The OIG recommends that this noise issue be reviewed by Program management. 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. Except what is noted above, 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 Management. 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

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