



November 30, 2022

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Right-of-Way and Appraisal Services and Activities, Internal Audit Report No. 22-511

Overview

The Internal Audit Department of the Orange County Transportation Authority has completed an audit of right-of-way and appraisal services and activities. Based on the audit, service procurements were handled in accordance with procurement policies and procedures, and oversight and invoice review controls are adequate. However, recommendations were made to ensure a documented cost or price analysis is conducted for contract amendments, and to expand policy and procedures to provide clarification on the application of settlement authority thresholds.

Recommendation

Direct staff to implement two recommendations provided in Right-of-Way and Appraisal Services and Activities, Internal Audit Report No. 22-511.

Background

The Real Property Department (Real Property) provides general real estate and right-of-way (ROW) services for the entire agency. ROW services include acquisition and negotiation, relocation assistance, utility coordination, title and escrow, and environmental site assessment. Real Property utilizes on-call consultants to support ROW activities.

Effective July 29, 2020, OCTA entered into Agreement No. C-9-1613 with Epic Land Solutions, Inc. (Epic) for on-call ROW and property management services. The contract was set up as an on-call, time and expense agreement with an

initial term of three years, with two, one-year option terms and a maximum obligation of \$3,500,000.

Effective November 20, 2019, OCTA executed agreements with Hendrickson Appraisal Company, Inc., Hennessey & Hennessey, LLC, Integra Realty Resources – Los Angeles, and R.P. Laurain & Associates, Inc., to provide on-call real property appraisals and related services, in the aggregate amount of \$3,500,000, for a five-year term.

The Real Property manager assigns work to Real Property agents (agents) and support consultants to conduct ROW activities. The agent oversees all work assigned to the on-call consultant to ensure compliance with policies and procedures. Depending on project size and the number of parcels that need to be appraised, the Real Property manager may utilize the on-call ROW consultant for appraisal services or may issue a contract task order to consultants on the appraisal services bench. After obtaining an appraisal and a review appraisal, the ROW consultant makes recommendations on the acquiring property for review and concurrence by the agent. The agent, Real Property manager, and OCTA's legal counsel review and approve offer packages before they are delivered to the property owner.

The Real Property Policies and Procedures Manual outlines administrative and legal settlement authority thresholds as follows:

- The Executive Director, Capital Programs is authorized to execute real estate agreements, ROW contracts, utility agreements, deeds, certificates of acceptance, leases, licenses, permits, or any Real Property agreement documents up to \$250,000, or 20 percent above the appraised value.
- The Chief Executive Officer (CEO) approval limit is up to \$250,000, or 50 percent above the appraised value.
- The CEO is also authorized to approve settlements when the difference between the approved appraisal and the settlement amount exceeds 50 percent but is not more than \$25,000 over the appraised value.

For the Interstate 405, State Route 55, and the State Route 91 improvement projects (projects), the Board of Directors (Board) authorized an incentive payment program to expedite agreements with property owners to avoid construction delays. The payment program provides for an incentive payment to be provided to property owners that execute an agreement within 60 days of the first written offer. The incentive payment is calculated at 20 percent above the appraised value, with a minimum payment of \$1,000, and a maximum payment

of \$100,000, for each acquisition. The Board also approved modifications to the CEO settlement authority thresholds for these projects, as follows:

- The CEO approval limit is up to \$500,000, or 50 percent above the appraised value.
- The CEO is also authorized to approve settlements when the difference between the approved appraisal and the settlement amount exceeds 50 percent but is not more than \$100,000 over the appraised value.

For these projects, the Board must approve any administrative or legal settlement above the CEO approval limits.

Discussion

Two amendments that included pricing adjustments to the ROW services contract were executed without evidence of a cost or price analysis, as required by procurement policies and procedures. This analysis is used to determine if proposed prices are fair and reasonable. The Internal Audit Department (Internal Audit) recommended that a cost or price analysis be performed and documented as required, and that increases to rates already set by contract be denied. Management agreed and indicated that refresher training will be provided to procurement staff to ensure a cost or price analysis is performed and documented as required. Management also agreed to disallow changes to rates already included in the contract and subject to contract escalation.

Application of Board-approved authority thresholds for administrative and legal settlements should be clarified. When a transaction occurs following the initial acquisition transaction, management calculates the required approval level by adding the original appraised value and incentive payment amount to the valuation amount determined for the subsequent transaction. Discussion with legal counsel advised that the evaluation for settlement authority should include the original appraised value but should not include the incentive payment amount. Internal Audit consulted with the California Department of Transportation (Caltrans) staff, who indicated that OCTA should, at a minimum, clarify these interpretations in Board-approved policies. Internal Audit recommended management update policies to clarify procedures for determining settlement authority. Management agreed and indicated that policies will be updated to clarify determination of authority thresholds.


Summary

Internal Audit has completed an audit of ROW and appraisal services and activities and has offered two recommendations, which management agreed to implement or otherwise address.

Attachment

- A. Right-of-Way and Appraisal Services and Activities, Internal Audit Report No. 22-511

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