



July 27, 2022

To: Finance and Administration Committee

From: Darrell E. Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit Department

Subject: Oversight Controls and Contract Compliance Related to the OC Streetcar Design and Construction Management, Internal Audit Report No. 22-505

Overview

The Internal Audit Department of the Orange County Transportation Authority has completed an audit of oversight, procurement, invoice, and project reporting controls and compliance with policies, procedures, and contracts related to the design and construction management of the OC Streetcar project. The initial scope of the audit included the OC Streetcar construction contract; however, this was excluded at legal counsel direction, and consistent with government auditing standards that require consideration of interference with ongoing legal proceedings. Based on the audit, procurements were handled in compliance with procedures, required status meetings with the Federal Transit Administration are conducted, and quarterly project reports to the Board of Directors are provided. However, recommendations have been made to reconsider the use of a Schedule of Values in firm-fixed price contracts to recover identified overbillings by consultants, to resume preparation of internal project status reports on a monthly basis, and to enhance controls over contract amendments and monitoring of consultant insurance requirements.

Recommendation

Direct staff to implement five recommendations provided in Oversight Controls and Contract Compliance Related to the OC Streetcar Design and Construction Management, Internal Audit Report No. 22-505.

Background

The Orange County Transportation Authority (OCTA) is implementing a modern streetcar running between the Santa Ana Regional Transportation Center in the City of Santa Ana and the intersection of Harbor Boulevard and Westminster Avenue in the City of Garden Grove, in cooperation with these two cities. The OC Streetcar project, with a 4.15-mile route, includes ten streetcar stops in each direction, comprised of four shared center platforms and six side platforms in each direction, and a maintenance and storage facility that accommodates up to fifteen modern streetcar vehicles, as well as all necessary administration, operations, vehicle maintenance, parts storage, and maintenance-of-way needs.

OCTA entered into Agreement No. C-5-3337 with HNTB Corporation to provide design consultant services. The contract was set up as a firm-fixed price contract, with a fixed price of \$16,434,022 and term through December 31, 2019. By Amendment 11, the term had been extended through September 30, 2022, and the maximum obligation had increased to \$26,083,841. OCTA entered into Agreement No. C-6-0926 with PGH Wong Engineering, Inc. to provide construction management (CM) services. The contract was set up as a time and expense contract, with a maximum obligation of \$10,752,136 and term through June 30, 2021. By Amendment 14, the term had been extended through November 30, 2024, and the maximum obligation had increased to \$35,082,570.

Discussion

The design consultant is billing for design support during construction using a Schedule of Values (SOV) that identifies unit rates for administration, meetings, requests for information (RFI), submittals, non-conformance reports, and other items, which is not typical in design agreements and is inconsistent with a firm-fixed price contract for which work is billed based on percentage of completion. The unit rates in the SOV increased significantly in a contract amendment, despite a lack of adequate accounting support to justify the increases. Recent amendments have been estimated to fund only a period of time instead of projecting the full fixed price, and since the contract had run out of funding before two amendments were processed, costs were incurred without contract authority for six months. Based on unit rates in the SOV and corresponding quantities in the monthly progress reports, the Internal Audit Department (Internal Audit) identified overbillings totaling \$160,712, resulting from: overcounting two RFIs, splitting an RFI into multiple parts with each part billed at the RFI rate, duplicate billings of RFIs, submittals, meetings, and non-conformance reports, and billing of responses to OCTA questions or

requests as an RFI, when an RFI is actually a formal request notification issued by the construction contractor. Further, starting in November 2021, the design consultant began billing labor hours for services of an engineering manager, which are not allowable per the contract or the SOV, and may overlap with time already being compensated for responding to RFIs, attending meetings, monthly administration, etc. These unallowable charges totaled \$44,958 in November 2021, and \$49,454 in December 2021. Internal Audit recommended that management reconsider use of an SOV and initiate amendments in a timely manner. Management should also recover identified overbillings and unallowable charges and disallow payments for services not allowed by the SOV. Management agreed to amend the contract to remove the use of SOVs. Management agreed to recover identified overbillings but indicated that unallowable charges for services by an engineering manager will not be recovered as these services were requested by management.

Internal Audit also identified duplicate billings of labor hours and other direct costs by the CM, resulting in \$987.63 in overbillings. Additionally, while the CM contract allows for escalation of labor billing rates on an annual basis, Internal Audit identified five consultant staff that were added to the contract and their billing rates escalated before their hire date or within two to three months of their hire date. Finally, when pricing the value of amendments, a few consultants used indirect rates and escalation that were higher than the contract rates or rates used in the original proposal. Internal Audit recommended that management recover overbillings, enhance controls over escalation when adding new staff, and ensure that the pricing of amendment values is based on the original contract or proposal rates. Management indicated that overbillings will be recovered and agreed to implement the recommendations.

Project Controls recently changed the frequency of its project status summary reporting from monthly to quarterly. Internal Audit recommended that Project Controls resume preparing monthly status summary reports in accordance with written procedures. Management responded that written procedures will be assessed, and revisions considered to effect efficient use of Project Controls resources.

Internal Audit also noted that consultants had not submitted evidence of required insurance three months after expiration of insurance certificates on file. Internal Audit recommended management develop procedures to ensure insurance coverage is maintained by consultants throughout the contract term and that standards for follow-up be set for outside vendors involved in the monitoring process. Management responded that the new contract with the

outside vendor will include more defined performance metrics and standards of service for insurance document tracking.

Summary

Internal Audit has completed an audit of oversight and contract compliance controls related to OC Streetcar design and construction management. Five recommendations were offered.

Attachment

- A. Oversight Controls and Contract Compliance Related to the OC Streetcar Design and Construction Management, Internal Audit Report No. 22-505

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