

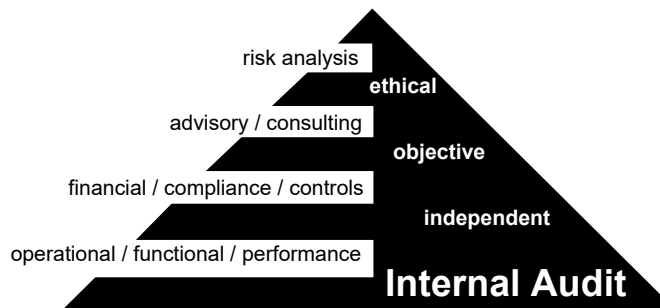
ORANGE COUNTY TRANSPORTATION AUTHORITY INTERNAL AUDIT DEPARTMENT



Audit of Oversight Controls and Contract Compliance Related to Agreement No. C- 9-1177 with Cofiroute USA, LLC for 91 Express Lanes Operations

Internal Audit Report No. 24-508

February 3, 2025



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Conclusion

The Internal Audit Department (Internal Audit) of the Orange County Transportation Authority (OCTA) has completed an audit of oversight, contract compliance, and invoice review controls related to Agreement No. C-9-1177 (agreement) with Cofiroute USA, LLC (Cofiroute), for 91 Express Lanes (91EL) operations. Based on the audit, management exercises oversight of Cofiroute; however, recommendations have been made to enforce all contract requirements, develop procedures for waivers of liquidated damages and penalties, improve performance reporting, and enhance invoice review controls.

Background

The 91EL is a four-lane, 18-mile tolled facility built in the median of California's Riverside Freeway (State Route 91 [SR-91]) between the Costa Mesa Freeway (State Route 55 [SR-55]) in the City of Anaheim and the Interstate 15 (I-15) interchange in the City of Riverside. The 91EL toll road is jointly managed by OCTA and the Riverside County Transportation Commission (RCTC), with operations and maintenance of the toll road outsourced to Cofiroute. OCTA's Express Lanes Programs Department (Department) is responsible for managing the operation of the 91EL, the 405 Express Lanes, and Motorist Services. The Department is headed by a general manager, and the 91EL operations is staffed with a project manager and an Information Systems (IS) project manager.

In January 2020, OCTA and RCTC (Agencies) entered into the agreement with Cofiroute to design, implement, install, operate, and maintain a back-office system and to operate a customer service center for the 91EL, with the intent of providing a single, seamless toll facility from a customer perspective. The initial term is effective for seven years, through January 31, 2027, with two, three-year option terms. OCTA's maximum obligation for the initial term is \$35,420,566. The agreement defines two phases, an Implementation Phase and a Maintenance and Operations Phase.

The Implementation Phase included 19 distinct milestones beginning with a Notice to Proceed milestone and culminating with the final three milestones: "Go-Live", "Operational & Acceptance Testing Approved", and "Back-Office System Acceptance". The agreement specifies a fixed amount to be paid for completion of each milestone, with payments from OCTA totaling \$7,124,546 after completion of all milestones. The agreement requires that Cofiroute submit to the Agencies a Baseline Implementation Schedule with proposed completion dates for each of the milestones. Additional contract requirements of this phase include:

- Ten percent retention of all milestone payments,
- A Guaranteed Completion Date (GCD) of 550 days from the effective date, or August 4, 2021 (later amended to September 29, 2021),
- Agencies' written approval of Cofiroute submittals,

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- Liquidated damages for failure to meet the GCD, and
- Invoice submission requirements.

OCTA contracted with HNTB Corporation (HNTB) for project management and oversight support, including assistance in developing the agreement and scope of work, and technical review of Cofiroute's achievement of individual milestones on behalf of the Agencies.

After "go-live" of the back-office system, the Maintenance and Operations Phase began and Cofiroute was required to bill monthly based on fixed-monthly prices, variable unit prices, and pass-through costs outlined in the agreement.

Once the Maintenance and Operations phase begins, the agreement requires Cofiroute to meet certain performance measures, which establish a minimum level of service relating to the back-office system and customer service center operations. If the performance measures are not met, the agreement outlines penalties that can be assessed against the monthly invoice. The agreement requires Cofiroute to submit monthly performance scorecards, along with detailed supporting documentation, to allow the Agencies to review performance and confirm any events of non-compliance. For each performance measure failure, Cofiroute is required to develop and submit a Corrective Action Plan (CAP) identifying the root cause, extent of the problem, and a plan to rectify the issue and prevent future occurrences. Cofiroute must also provide a historical report detailing its performance against standards for the most recent 13-month period.

Cofiroute is also required to provide monthly status reports with a summary of traffic and revenue statistics, operational and financial highlights, and peak hour volumes, along with back-office system/Customer Service Center reports and other supporting files. OCTA 91EL staff reviews and verifies information in the monthly status report and prepares a 91EL status report for circulation to the Board of Directors (Board) and the SR-91 Advisory Committee.

Objectives, Scope, and Methodology

The objectives were to assess and test selected oversight, contract compliance, and invoice review controls related to the provision of services by Cofiroute under the agreement.

According to Generally Accepted Government Auditing Standards (GAGAS), internal control is the system of processes that an entity's oversight body, management, and other personnel implement to provide reasonable assurance that the organization will achieve its operational, reporting, and compliance objectives. The five components are control

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environment, risk assessment, control activities, information and communication, and monitoring.¹ The components and principles that were evaluated as part of this audit are:

- Control Activities
 - OCTA deploys control activities through policies that establish what is expected and in procedures that put policies into action.
- Information and Communication
 - OCTA obtains or generates and uses relevant, quality information to support the functioning of internal control.
- Monitoring
 - OCTA selects, develops, and performs ongoing and/or separate evaluations to ascertain whether the components of internal control are present and functioning.

The methodology consisted of assessing invoice review procedures and testing a sample of invoices for compliance with policies and key contract provisions, comparing the scheduled completion dates for milestones listed in the baseline implementation schedule to actual completion dates per invoice date, testing a sample of 91EL status reports for adequate supporting documentation and accuracy, and review of the annual independent audits of Cofiroute's system for processing toll transactions and related controls (System and Organization Control [SOC] 1 – Type 2 report).

The scope included all milestones included in the baseline implementation schedule, a sample of 37 invoices paid from March 18, 2021 through October 3, 2024, and a sample of six 91EL status reports prepared for fiscal year 2023-24 activities. The judgmental samples were selected to provide coverage throughout the scope periods. The scope also included Cofiroute's two most recent SOC 1 – Type 2 reports.

Internal Audit conducted this performance audit in accordance with GAGAS. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹ See U.S. Government Accountability Office publication, "Standards for Internal Control in the Federal Government," available at <http://www.gao.gov/products/GAO-14-704G>, for more information.

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Audit Comments, Recommendations, and Management Responses

Back-Office System Implementation Milestones

Back-office system implementation milestones have been significantly delayed, and the milestones for operational and acceptance testing and final acceptance have yet to be completed. Delays to achievement of milestones ranged from 145 to 1,005 days.

The agreement outlines liquidated damages of \$7,500 per calendar day for failure to meet the back-office system “go live” date. In accordance with this provision, the Agencies calculated liquidated damages totaling \$1,185,000 for the 185-day delay, but ultimately waived 50 percent of this amount, resulting in assessed damages of \$592,500, of which OCTA was apportioned \$296,250. There is no policy or procedure in place to address parameters or authorization thresholds to waive penalties and liquidated damages.

The agreement also requires the Agencies’ written approval of milestone submittals. The Agencies relied on the technical expertise of a consultant, HNTB, for review of submittals demonstrating milestone achievement. HNTB would then issue a letter to Cofiroute on behalf of the Agencies indicating approval of milestone submittals. An approval letter was not on file for four of the 13 milestones tested and payment was made to Cofiroute prior to the date of approval letters issued for another four milestones. Payments to Cofiroute for all milestones tested did evidence OCTA management approval.

Recommendation 1:

Internal Audit recommends management enhance its project management oversight procedures to ensure that vendors are held accountable to contract requirements. Policies and procedures should also be developed to address the parameters and authorization thresholds for waiving of liquidated damages.

Management Response:

Management agrees and will develop policies and procedures to address parameters and thresholds for waiving damages. In addition, staff will work with our consultant, HNTB, to submit formal approval letters for the remaining milestones, rather than relying upon verbal or email approvals, to enhance the documentation. The coronavirus (COVID-19) pandemic significantly affected the delivery of the back-office software system (Project). In part, because of travel restrictions, staff shortages, and the postponement in the delivery of system hardware. Ultimately, this delayed the deployment of the Project. After the deployment, staff from the Agencies collaboratively reviewed the impacts and calculated liquidated and actual damages that should be fairly applied. After staff discussions, the Agencies decided to accept a lower payment given the effects of the

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COVID-19 pandemic and contract amount. Going forward, staff will do a better job documenting these situations, consistent with the new policy that is recommended.

Performance Measure Reporting and Penalty Assessments

Cofiroute has not consistently provided complete and accurate reporting of performance measure results and its plans to correct failures.

The agreement requires monthly performance scorecards for back-office system and customer service center operations be provided, along with historical performance results for the most recent 13 months. Testing found that historical performance results for customer service center operations were not provided for seven of the 12 months tested. Testing also identified errors in the performance scorecards and/or inconsistencies between the performance scorecards, supporting reports, historical performance results, and/or calculated penalties in six of the 12 months tested. The performance scorecards are used to calculate penalties for failure to meet performance measures.

The testing also identified 100 performance measure failures out of the 520 applicable to the months tested. Cofiroute failed to provide a CAP for each performance measure failure, as required by the agreement. The purpose of the CAP is to identify the root cause of the failure, to disclose the extent of the problem, and to communicate the plan to correct the problem and prevent future occurrences.

Penalties due to OCTA resulting from failures to meet performance standards totaled \$1,246,218.39 for the period May 1, 2022 to May 31, 2024; however, the majority of these penalties (\$782,012.72 or 62.75 percent) were waived. Total calculated penalties amounted to 12 percent of the total amount invoiced to OCTA, whereas assessed penalties amounted to only 4.5 percent, or \$464,205.68.

Recommendation 2:

Internal Audit recommends management strengthen enforcement of contract requirements related to performance measures and reporting. Management should also develop a policy and procedures to address parameters and authorization thresholds for penalty waivers.

Management Response:

While Cofiroute has experienced several issues with monthly performance, the Agencies' staff have worked closely with Cofiroute to improve and strengthen monthly reporting, ensuring accuracy and adherence to contract requirements. Management will enhance documentation for monthly standard assessment and associated backup review for the agreed-upon penalties. Furthermore, management will strengthen oversight of

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performance measures by developing a monthly performance standards checklist to ensure accuracy across all supporting documents.

Cofiroute did not provide CAPs for each performance measure failure, as required by the agreement. Back-office system and customer service center issues have been handled in a separate manner. For all back-office system failures, Cofiroute maintained an online web-help desk (WHD) ticketing system to track technical issues, bugs, and failures. The WHD database includes all instances in which the back-office system caused, or could have caused, a performance measure failure. The WHD lists the description of each failure, the investigation conducted, the results of the investigation, and any required fixes to prevent the issue from occurring again. For customer service center issues, no written CAPs were submitted by Cofiroute; however, verbal updates on operational failures were provided through weekly triage and bi-weekly status meetings covering the reason for failing to meet the standard and their plan to correct the failure.

While there is no policy addressing penalty waivers, OCTA's Express Lanes General Manager and RCTC's Toll Operations Director were aware of all penalties and waivers that were assessed. As recommended, management will develop a policy and procedures to address the parameters and authorization thresholds for penalty waivers so that proper documentation is easily accessible.

91 Express Lanes Status Reports

Performance measure results reported to the Board through the 91EL Monthly Status Reports (reports) are not calculated in accordance with the agreement. Reports reflect results based on a monthly standard, while the agreement specifies daily standards. As a result, actual performance results are not always accurately reflected. For example, reports sometimes indicate that Cofiroute has achieved a standard during a month when the measure was not achieved every day of the month and associated penalties were applied.

Recommendation 3:

Internal Audit recommends management adjust reports to reflect results against standards as outlined in the agreement.

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Management Response:

Management agrees with the recommendation. Some of the performance measure results in the reports were summarized on a monthly basis and did not reflect when penalties were applied. Management has updated the report format, starting with the November 2024 report, to reflect the standards as outlined in the agreement.

Invoice Requirements

Invoices do not meet all the requirements of the agreement and complete invoice packages are not available in the accounts payable file.

For the Operations and Maintenance Phase, the agreement requires invoices to include the project-to-date cumulative invoiced amount, and a certification signed by Cofiroute that the invoice is a true, complete, and correct statement of reimbursable costs. None of the invoices tested included the cumulative invoiced amount and ten of the 12 invoices were missing the required vendor certification.

In addition, the entire invoice package, including all documentation supporting invoiced amounts, is not submitted to the Accounts Payable Department (Accounts Payable) for inclusion in the accounting system file, which serves as OCTA's central repository for all paid invoices.

Recommendation 4:

Internal Audit recommends management utilize an invoice review checklist to help ensure all contract requirements have been met. In addition, management should include all invoice back-up used to support the invoiced amount in the invoice package submitted to Accounts Payable.

Management Response:

Management agrees with the recommendation. Management has developed a review checklist to be used when reviewing the monthly invoices to ensure contract requirements are met. In addition, beginning with the June 2024 invoice, the entire invoice package is now being submitted to Accounts Payable as recommended.