



May 27, 2015

To: Finance and Administration Committee

From: Darrell Johnson, Chief Executive Officer

Janet Sutter, Executive Director
Internal Audit

A handwritten signature in black ink, appearing to read "Darrell Johnson for", is written over the typed name of the Chief Executive Officer.

A handwritten signature in black ink, appearing to read "Janet Sutter", is written over the typed name of the Executive Director of Internal Audit.

Subject: Review of Oversight Controls and Contract Compliance Related to the State Route 91 Westbound Widening Project between State Route 57 and Interstate 5

Overview

The Internal Audit Department of the Orange County Transportation Authority has completed a review of the State Route 91 Westbound Widening Project between State Route 57 and Interstate 5. Based on the review, procurements were handled in accordance with Orange County Transportation Authority procurement policies and procedures, and the consultants and California Department of Transportation are providing services in accordance with their contracts. However, recommendations have been made to recover consultant overbillings, enforce contract payment terms, follow procedures for contract amendments, and update and comply with project management procedures.

Recommendation

Direct staff to implement three recommendations offered in the Review of Oversight Controls and Contract Compliance Related to the State Route 91 Westbound Widening Project between State Route 57 and Interstate 5, Internal Audit Report No. 15-504.

Background

The Measure M2 freeway program calls for the addition of capacity in the westbound direction to State Route 91 (SR-91) between State Route 57 and Interstate 5. The SR-91 westbound widening project will convert the existing westbound auxiliary lanes into a continuous mixed-flow lane between State College Boulevard and Brookhurst Avenue.

The Orange County Transportation Authority (OCTA) delivers these highway projects through five phases of effort. The phases in the process include planning; environmental; design; right-of-way acquisition; and construction. For this project, OCTA was the lead agency for the planning, environmental, and design phases. The California Department of Transportation (Caltrans) is the lead agency for right-of-way acquisition and construction.

The scope of the audit included review of selected consultant and Caltrans contracts, and invoices paid against those contracts. The audit also included review of project files for evidence of oversight and compliance with procedures.

Discussion

The Internal Audit Department (Internal Audit) identified overbilling by a construction management (CM) sub-consultant providing materials testing, whose practice is to bill two hours show-up time, four hours for labor up to four hours, and eight hours for labor over four hours and up to eight hours; however, this practice is not allowed by the contract. When an employee works on multiple projects, the sub-consultant's practice is to bill each of the projects the excess hours, even when those hours exceed the hours actually paid to the employee. These practices resulted in overbillings of \$13,942, of which \$5,829 represents hours billed in excess of incurred costs. In addition, Internal Audit identified instances where support for labor hours did not always agree, and invoices from the plans, specifications, and estimates (PS&E) consultant did not include required certification language. Internal Audit recommended management pursue recovery of \$13,942, identify contracts with similar billing practices, and ensure only allowable, incurred costs are billed. Internal Audit also recommended that invoice supporting documents be reconciled and that management enforce contract requirements for invoice certification. Management agreed and indicated that these actions are underway.

In addition, according to procedures, amendments used to process staffing changes may be back-dated up to 60 calendar days prior to executing the amendment. Internal Audit found that the CM consultant billed \$25,069 for staff prior to the effective dates of the amendments adding the staff to the contract. Of that amount, \$21,951 represented costs related to two sub-consultant staff. Despite having been advised of the limitations on processing amendments, the consultant's request to add staff was submitted four months after the staff began working on the project. Internal Audit recommended that management consider seeking recovery of amounts, post procurement policies online, and continue to emphasize requirements to consultants during project kick-off

meetings. Management agreed to pursue recovery, to make procurement policy rules available online, and to continue to advise consultants of the rules at project kick-off.

Finally, a Project Management Plan (PMP) was not prepared for this project, as required by procedures. Internal Audit recommended that management ensure that a PMP is prepared for each project, and management agreed that procedures currently require a PMP from all consultants, but this PS&E contract did not specifically include that requirement. Also, project files did not consistently include minutes of the monthly Project Development Team meetings for the environmental phase. Internal Audit recommended that management update procedures to require retention of monthly meeting minutes in project files. Management responded that retention of meeting minutes is not a document storage requirement.

Summary

Based on the review, procurements were handled in accordance with procurement policies and procedures, and the consultants and Caltrans are providing services in accordance with their contracts. However, Internal Audit made recommendations to recover consultant overbillings, enforce contract payment terms, follow procedures for contract amendments, and update and comply with project management procedures.

Attachment

- A. Review of Oversight Controls and Contract Compliance Related to the State Route 91 Westbound Widening Project between State Route 57 and Interstate 5, Internal Audit Report No. 15-504

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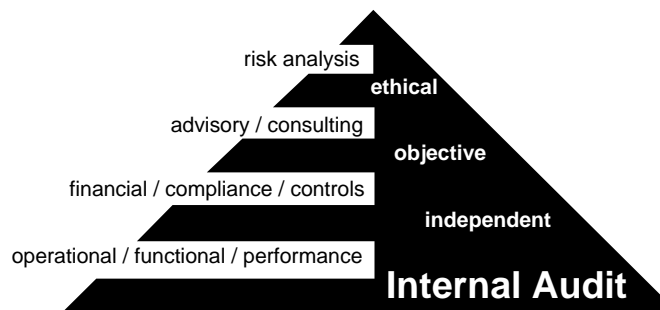
ORANGE COUNTY TRANSPORTATION AUTHORITY INTERNAL AUDIT DEPARTMENT



Review of Oversight Controls and Contract Compliance Related to the State Route 91 Westbound Widening Project between State Route 57 and Interstate 5

Internal Audit Report No. 15-504

May 18, 2015



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Conclusion

The Internal Audit Department (Internal Audit) of the Orange County Transportation Authority (OCTA) has completed a review of oversight controls and contract compliance related to the State Route 91 (SR-91) Westbound Widening Project between State Route 57 (SR-57) and Interstate 5 (I-5). Based on the review, procurements were handled in accordance with OCTA procurement policies and procedures, and the consultants and California Department of Transportation (Caltrans) are providing services in accordance with their contracts. However, recommendations have been made to recover consultant overbillings, enforce contract payment terms, follow procedures for contract amendments, and update and comply with project management procedures.

Exceptions related to monitoring of contract expiration dates were also identified; however, similar issues have been addressed in other audit reports and the exceptions identified during testing pre-dated the recommendations made in those reports.

Background

SR-91 Westbound Widening Project between SR-57 and I-5

The Measure M2 freeway program, Project H, calls for the addition of capacity in the westbound direction and operational improvements to the SR-91 between the SR-57 and the I-5. The SR-91 westbound widening project will convert the existing westbound auxiliary lanes into a continuous mixed-flow lane between State College Boulevard and Brookhurst Avenue.

OCTA delivers these highway projects through five phases of effort. The phases in the process include planning; environmental; design; right-of-way acquisition; and construction. For this project, OCTA was the lead agency for the planning, environmental, and design phases. Caltrans is the lead agency for right-of-way and construction. The construction contractor is C.C. Meyers.

The total project budget is \$78,093,000. The project is in the construction phase; the estimate of construction completion is April 2016.

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Contracts

OCTA entered into the following contracts related to this project:

- Agreement No. C-7-0584 with DMJM Harris effective June 29, 2007 through December 31, 2010, to develop an approved Project Report and Environmental Document (PR/ED);
- Agreement No. C-9-0244 with RBF Consulting effective March 31, 2010 through March 31, 2016, to provide plans, specifications, and estimates (PS&E);
- Agreement No. C-1-3125 with AECOM Technical Services, Inc. effective October 5, 2012 through June 30, 2015, to provide construction management (CM) support services;
- Agreement No. C-7-1153 with Caltrans effective December 5, 2007, where OCTA agrees to be the lead agency providing a consultant to produce the project report including all necessary environmental documentation, and to submit to Caltrans for review and approval at appropriate stages of development, and Caltrans agrees to provide oversight through the preliminary engineering phase and to issue an encroachment permit to OCTA's consultant authorizing entry onto the state highway right-of-way to perform survey and other investigative activities required for preparation of the PR/ED;
- Agreement No. C-0-1372 with Caltrans effective September 20, 2010, where OCTA agrees to be the lead agency providing a consultant to produce the PS&E, and Caltrans agrees to provide independent quality assurance of all OCTA's work necessary for completion of PS&E, and to provide prompt reviews, comments, concurrence, and/or approvals of submittals by OCTA, and to cooperate in timely processing of documents necessary for completion of PS&E;
- Agreement No. C-0-1376 with Caltrans effective September 1, 2010, to define terms and conditions under which right-of-way services are performed and financed; and
- Agreement No. C-2-1335 with Caltrans effective July 5, 2012, to establish funding terms and conditions, for OCTA to provide a maximum of \$13,050,000 of construction capital funding and construction management consultant services over the course of the project, and to pay 100 percent of Caltrans construction support costs estimated at \$2,875,000.

Project Status Controls

During the environmental and design phase, there were monthly Project Development Team meetings to discuss project issues. Attendees consisted of representatives from OCTA, Caltrans, the cities of Anaheim and Fullerton, and the environmental or design consultants.

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During the current construction phase, weekly construction meetings are held in the field office with representatives from OCTA, Caltrans, the cities of Anaheim and Fullerton, the construction contractor, and the CM consultant. There are also monthly construction status meetings, and Caltrans provides its internal Monthly Construction Progress Reports to OCTA.

The Capital Programs Division now reports its Capital Action Plan performance metrics to the Board of Directors (Board) on a quarterly basis. The Capital Action Plan performance metrics reports include the status of the SR-91 Westbound Widening Project between SR-57 and I-5. Quarterly Measure M2 progress reports are submitted to the Board, and these progress reports also include discussion of the SR-91 Westbound Widening Project between SR-57 and I-5.

Invoice Review

Project Controls reviews the invoices based on a standard invoice review checklist. The project manager reviews the invoice for level of effort and for the nature of work being performed. If invoices are over the project manager's signing authority, he routes the invoice for signature by management with sufficient signing authority. Accounts Payable reviews the invoices for proper signature authority prior to processing payment.

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Objectives, Scope, and Methodology

The objectives were to ensure that the procurements were handled in accordance with OCTA procurement policies and procedures, the consultants and Caltrans provide services in accordance with their contracts, invoices paid to consultants and Caltrans are in compliance with the contract payment provisions and are properly approved, and the project administration and oversight controls are adequate.

The methodology consisted of identification and testing of controls to monitor and report project status, review of procurement of consultant contracts, review of compliance with significant consultant, and Caltrans contract provisions such as payments, review of a sample of amendments, and review of selected invoices paid against consultant and Caltrans contracts. Invoice review for Agreement No. C-2-1335 also included a review of employee time reports and pay summaries for a judgmental sample of labor items and a recalculation of overhead assessments.

The scope is limited to the SR 91 Westbound Widening Project. The scope included the PR/ED, PS&E, and CM contracts, Agreements No. C-0-1372 and No. C-2-1335 with Caltrans, and all amendments to the contracts. The scope also included invoices paid on the PR/ED contract from 2010 to the end of the contract, invoices paid on the amendments to the PS&E contract through October 2014, invoices paid on Agreements No. C-0-1372 and No. C-2-1335 with Caltrans through October 2014, and all invoices paid on the CM contract to present.

This review was conducted in accordance with Generally Accepted Government Auditing Standards. 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Audit Comments, Recommendations and Management Responses

Invoice Discrepancies and Overbilling

Internal Audit identified overbilling by Sequoia, a CM sub-consultant that conducts materials testing during the construction phase. Based on an employee union agreement, Sequoia's practice is to bill two hours show-up time, four hours for labor up to four hours, and eight hours for labor over four hours. However, this billing practice is not allowed by the contract which states that OCTA shall pay the hourly rates for each full hour of labor satisfactorily performed by consultant's personnel. In addition, when an employee works on multiple projects, Sequoia's practice is to bill each of the projects the excess hours even when those hours exceed the hours paid by Sequoia to the employee. These practices resulted in overbillings of \$13,942, of which \$5,829¹ represents hours billed in excess of costs incurred by Sequoia.

Internal Audit also noted that, during the construction phase, CM staff working from the field office record their hours worked on a weekly Time Sheet Verification form, which is then signed by the Caltrans resident engineer. In several instances, Internal Audit found that the hours billed exceeded the number of hours per the Time Sheet Verification forms; however, the consultant advised that labor hours are billed based on employee timesheets, not the Time Sheet Verification forms.

Finally, the PS&E consultant that provides and bills for construction support services, uses invoice certifications that do not match required language per the contract.

Recommendation 1:

Internal Audit recommends the following:

1. Management should pursue recovery of \$13,942.
2. Management should identify other contracts with Sequoia as a sub-consultant and/or other sub-consultants with similar billing practices. For those contracts that allow these billing practices, contract language should be added to limit billings to consultant's incurred cost.
3. Management should reconcile discrepancies in supporting documents before authorizing invoices for payment.

¹ Internal Audit calculated the difference between the billed hours and employees' timesheet hours for the project (with an allocated share of non-project hours or "N" hours). Employee timesheets list hours charged to each project as well as "N" hours. If the employee charged hours to multiple projects and "N" hours on the same day, Internal Audit divided the "N" hours by the number of projects for a reasonable allocation of "N" hours.

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4. Management should ensure that invoice certifications match the language required by the contract.

Management Response:

1. Management is recovering the \$13,942 through current invoice and billing cycles.
2. The Contracts Administration and Materials Management Department (CAMM) is identifying other contracts that have similar contract language and billing practices. Cost recovery and contractual changes will be implemented as needed.
3. Management will continue to reconcile discrepancies in supporting documents before authorizing invoices for payment. Management staff previously determined that the Time Sheet Verification form as used on the project did not correctly represent hours worked, and as a result, used the employee time sheet as the invoice support. However, as additional verification, management has requested the construction management consultant to verify the employee's time sheet using the employee's daily inspector diary log.
4. Management will continue to enforce the invoice certification requirements.

Amendments to Consultant Contracts and Billing of Consultant Staff

According to CAMM procedures, amendments used to process staffing changes on consultant contracts may be back-dated up to a maximum of 60 calendar days prior to execution of the amendment. Documents on file confirm that the project manager advised the CM consultant of this limitation at the time of the first amendment request.

Internal Audit found that the CM consultant billed \$25,069 for staff prior to the effective dates of amendments adding staff to the contract. Of that amount, \$21,951 represents the costs of two sub-consultant staff prior to July 19, 2013, the effective date of the letter amendment adding the staff. The request from the consultant to add these two staff was not submitted to OCTA until September 13, 2013, despite the fact that the staff began working on the project four months earlier.

In addition, the first amendment to the CM contract was executed on July 19, 2013, with an effective date of March 21, 2013, exceeding the 60 day limit by two months. Also, four letter amendments appear to have been back-dated. Had the letter dates not been back-dated, the effective dates would also have exceeded the 60 day limitation.

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Recommendation 2:

Internal Audit recommends the following:

1. Project management should continue to emphasize requirements for processing staffing changes to consultants during project kick-off.
2. Project management should consider seeking recovery of amounts, and in the future, reject billings of labor for consultant staff that are not part of the contract.
3. CAMM should communicate on its website, procurement policies as well as significant changes to those policies.

Management Response:

1. Management will continue to emphasize the requirements for processing staffing changes at project kick-off and throughout the course of the project. In addition, Capital Programs and CAMM will assess the current process and duration needed to review and execute staffing change amendments to determine if any change to processing procedures or to the 60-day effective date limits are necessary. Capital Programs and CAMM will continue to work internally, and with the consultant, to process timely amendments.
2. Management is recovering \$21,951 for billing prior to the effective date of July 19, 2013, through current invoice and billing cycles.
3. CAMM agrees to post on the CAMMNET website, procurement policies with an effective date. If procurement policies change, a revision to the policies will be made and will be posted online along with a new effective date. In addition to this posting, CAMM will also add to the Tips for Doing Business section of the website, specific information about the letter amendment procedures, highlighting the 60-day effective date limit on staffing changes.

Project Management Records

A Project Management Plan (PMP) was not prepared for this project. Program management procedures require that a PMP be prepared for each project to communicate the scope of work, constraints, and technical requirements to all project participants.

In addition, project files did not consistently include minutes of the monthly Project Development Team meetings for the environmental phase.

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Recommendation 3:

Internal Audit recommends the following:

1. Management should ensure that a PMP is prepared for each project.
2. Management should update procedures to require retention of monthly meeting minutes in project files.

Management Response:

1. Project Management Procedures currently require a PMP from all consultants. However, this PS&E contract did not specifically include requirements for a PMP.
2. Retention of meeting minutes from Project Development Team meetings is not a document storage requirement. The meeting minutes are generally retained in the project file for use by the project team. These meeting minutes are retained, at a minimum, for the period required to close out the agreement and any associated contract claims. The minutes which were reviewed were from an earlier project development environmental approval phase that had been closed out. In addition, depending on need, monthly meetings may not always be held. Management will emphasize that the appropriate project meeting minutes continue to be saved in the project files until contract agreement closeout.