



OFFICE OF
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January 28, 2009

Gary Lee Moore, City Engineer
Bureau of Engineering
1149 South Broadway Street, Suite 700
Los Angeles, CA 90015

Dear Mr. Moore:

**SUBJECT: EVALUATION OF RESPONSE TO THE AUDIT OF THE
EOC/POC/FDC PROJECT AND OTHER PROPOSITION Q
PROJECTS**

My Audit Division has evaluated your December 15, 2008 response to the "Audit of the EOC/POC/FDC Project and other Proposition Q Projects" and the "Proposition Q Bond Program: Assessment of the City's Management & Oversight of the Metro Detention Center" issued on October 30, 2008. I am pleased to see that the Bureau of Engineering (BOE) overall, concurs with the findings and recommendations, and plans to implement changes within 180 days.

I accept the BOE's planned actions to address the reports' recommendations; however, I have the following comments:

Audit Recommendation No. 4:

For complex projects, the BOE should consider the use of an independent estimator.

BOE Response

As responded to in the Police Administration Building (PAB) audit, BOE will implement the recommendation for projects with an estimated construction value greater than \$100 million.

Controller's Comment

I reiterate the importance of an independent cost estimator and recommend that BOE revisit the proposed construction value greater than \$100 million before retaining an independent cost estimator, as this threshold appears to represent a relatively small proportion of the City's projects.

Audit Recommendation No. 8:

The Bureau of Contract Administration should ensure that Qualifications Statements and other submittal requirements are provided at the time the bid or proposal is submitted as required by City solicitations. If proposals are incomplete, declare them as "nonresponsive", as they should not be considered for award.

BOE Response

Your response stated that the Bureau of Contract Administration will document when the content of the CRO Questionnaires is considered nonresponsive, however, it did not indicate any action plan to implement the recommendation.

Controller's Comment

The intent of our recommendation was that if proposals received are incomplete per the requirements of the solicitation, declare them as "nonresponsive", as they should not be considered for award.

Audit Recommendation No. 9:

Consistently apply terms limiting subcontractor mark-ups to all professional services agreements. The BOE and Bureau of Contract Administration (BCA) should review current City professional services contracts and determine if these contracts can be amended to limit subcontractor mark-up to 5%.

BOE Response

Your response stated that BOE's current Standard Consultant contract limits administrative fees for subcontracts to 5%, however, it did not indicate any action plan to review existing City professional service contracts that do not have the mark-up language, and if so, whether they could be amended to limit subcontract mark-up to 5%.

Controller's Comment

I reiterate the recommendation that BOE and BCA should review current (existing) City professional services contracts and determine if these contracts can be amended to limit subcontractor mark-up to 5%.

Audit Recommendation no. 12:

The BOE should establish a formal policy that requires the assignment of Task Orders for individual projects to on-call design firms through an open, competitive

process. This policy should also define requisite documentation to support award decisions.

BOE Response

Your response stated that BOE will provide clarification in the PDM regarding the assignment of Task Orders to On-Call consultants and clearly define the required documentation of that process; however, it did not indicate whether the assignment of Task Orders to On-Call consultants will be an open and competitive process.

Controller's Comment

It is essential that BOE establish a formal policy that requires the assignment of Task Orders for individual projects to on-call firms through an open and competitive process.

Audit Recommendation No. 13 and 14:

BOE should seek an expedited contract approval process.

BOE should formalize its policy regarding limited issuance of Notices to Proceed for projects that require immediate commencement.

BOE Response for Audit Recommendations 13 and 14

Your action plan includes revising the PDM to discuss the probability of having a consultant start before a contract is fully executed, requiring appropriate authorizations for proceeding, and notifying the consultant in writing that there is no guarantee that they will be paid for the work performed prior to contract execution.

Controller's Comment

While your action plan will help mitigate the risk of City liability, it does not address the core issue of the audit finding, i.e., the lengthy process for contract execution. As stated previously in reference to the audit of the Police Administration Building project, I reiterate the recommendation for BOE to develop an expedited contract approval process. Your proposed action plan appears to make the process more complicated by requiring formal approvals to proceed without a contract, and a second approval process to execute the contract.

Audit Recommendation No. 20:

Subcontracts should be requested from prime contractors and reviewed to determine if subcontract terms and conditions are adequate, labor rates are reasonable, amount of any subcontractor mark-up billed by prime contractor is reasonable, and that subcontractors are not allowed to also mark-up second-tier subcontractor's costs.

BOE Response

Your response stated that BOE received a clarification from the City Attorney that the contract language was intended to require that the City approve the addition of the subconsultant firm, but not to approve or review the prime consultants "contracts" with the subconsultants. Further, to avoid any possible confusion, the term "subcontracts" has been approved by the City Attorney to be changed in future contracts to "subconsultants."

Controller's Comments

The intent of the recommendation was not to approve subconsultants' contracts. The intent was for the City to review the subconsultants' contracts to ensure prime contractor is ensuring subconsultants labor rates are reasonable, amount of any subcontractor mark-up billed by prime contractor is reasonable, and that subcontractors are not allowed to also mark-up second-tier subcontractor's costs. While we understand that the City is not in privity of contract between the prime and subcontractors, the City must ensure through review of agreements or other monitoring activities, that primes fulfill their responsibility for the performance and compliance of their subcontractors.

Audit Recommendation No. 24:

Finalize the revisions to the Project Delivery Manual regarding negotiating and documenting the change order process, including clarifying the requirements for an independent estimate.

BOE Response

You have referred to your response to Audit Recommendations number 4 and 15.

Controller Comment

Please refer to my comments above for Audit Recommendation number 4.

Best Practice Suggestion No. 28.3:

Independent cost estimators should be considered to assist BOE with construction cost estimates.

BOE Response

Your response indicated that BOE has implemented this recommendation for projects with an estimated construction value greater than \$100 million and that appropriate changes to Procedure 3.7 of the PDM have been made to implement the recommendation.

Controller's Comment

Refer to my comments from Audit Recommendation No. 4.

Best Practice Suggestion No. 28.8:

Expand role of the Bureau of Contract Administration (BCA) to provide contract administration support services for construction projects. Resources should be knowledgeable of public sector contract administration principles.

BOE Response

Your response stated that BOE is already assigned by the Board of Public Works as the responsible entity for the contract administration of all design and construction contracts, including contract negotiations, change order negotiations, rates negotiations, and reference check documentation.

Controller's Comment

The intent of the best practice suggestion was to enhance or improve contract administration practices, in order to prevent similar issues noted in the audit, by seeking input or support from knowledgeable partners including BCA, if deemed necessary.

MDC Audit Recommendation No. 2:

Consider establishing a team of trained cost estimators in-house to perform detailed estimates to be used for soliciting, negotiating, and managing the costs of large scale construction projects; or, at a minimum, establish specific, detailed requirements for estimates prepared by consultants who are independent from the design firm.

BOE Response

Your response stated that BOE will consider staffing an in-house cost estimating team in the following budget cycle; however, it did not indicate any action plan on the alternative recommendation.

Controller's Comment

Considering that BOE cannot yet fund an in-house cost estimating team, I reiterate the recommendation to establish specific, detailed requirements for estimates prepared by consultants who are independent from the design firm.

Gary Lee Moore, City Engineer
January 28, 2009
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As part of my Office's follow-up program, we will be requesting a status report approximately six months. The objective of the follow-up program is to ensure that the audit recommendations have been properly addressed.

Sincerely,

A handwritten signature in black ink that reads "Laura N. Chick". The signature is written in a cursive, flowing style.

LAURA N. CHICK
City Controller

cc: Robin Kramer, Chief of Staff, Office of the Mayor
Chris Espinosa, Deputy Chief of Staff, Office of the Mayor
Nancy Sutley, Deputy Chief of Staff, Office of the Mayor
Raymond P. Cirana, Interim City Administrative Officer
Gerry F. Miller, Chief Legislative Analyst
Cynthia M. Ruiz, President, Board of Public Works
Valerie Lynne Shaw, Commissioner, Board of Public Works
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Antoinette D. Christovale, Director, Office of Finance
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