

OFFICE OF THE CITY CONTROLLER



**PUBLIC WORKS AND ENGINEERING DEPARTMENT
CONTRACT COMPLIANCE REVIEW
KINGSLEY CONSTRUCTORS, INC.
FOR THE PERIOD OF JULY 2, 1996
THROUGH JANUARY 31, 2000**

Sylvia R. Garcia, City Controller

Judy Gray Johnson, Chief Deputy City Controller

Steve Schoonover, City Auditor



SYLVIA R. GARCIA

OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

November 15, 2000

The Honorable Lee P. Brown, Mayor
City of Houston, Texas

SUBJECT: Public Works and Engineering Department
Contract Compliance Review – Kingsley Constructors, Inc.
(Report No. 00-16)

Dear Mayor Brown:

In accordance with the City's contract with Mir•Fox & Rodriguez, P.C. (MFR), MFR has completed a review of the Public Works and Engineering Department's contract number 36735 between the City and Kingsley Constructors, Inc. (Kingsley) for the Central West 1 Relief Sewers project.

MFR limited their review to determining if Kingsley's construction services were performed in compliance with the Construction Contract terms and that the engineering testing services were performed as required by the Construction Contract. Their report, attached for your review, noted that Kingsley's construction services and the associated engineering testing services were performed in compliance with the terms of the Construction Contract. Draft copies of the matters contained in the report were provided to Department officials. The views of the responsible Department officials as to action taken or being taken are appended to the report as Exhibit 1.

We appreciate the cooperation extended to the MFR auditors by Department personnel during the course of the review.

Respectfully submitted,


Sylvia R. Garcia
City Controller

xc: City Council Members
Albert Haines, Chief Administrative Officer
Cheryl Dotson, Chief of Staff, Mayor's Office
Thomas J. Rolan, Director, Public Works and Engineering Department
Sara Culbreth, Acting Director, Finance and Administration Department

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PHONE: 713-247-1440 • FAX: 713-247-3181
E-MAIL: ctrsrg@ctr.ci.houston.tx.us

July 31, 2000

Honorable Sylvia R. Garcia, City Controller
City of Houston
901 Bagby, 8th Floor
Houston, Texas 77002

Dear Controller Garcia:

In connection with the Greater Houston Wastewater Program (GHWP), we have completed a review of the construction contract number 36735 (Construction Contract) in the amount of \$4,282,662 between the City of Houston (City) and Kingsley Constructors Inc. (Kingsley). The Construction Contract represents a unit price contract for the Central West 1 Relief Sewers project. The City retained Montgomery Watson Americas, Inc. (MWA) as the Engineer and Program Manager of the GHWP. MWA and its program management consultants provided oversight to the construction process. The City also awarded contract number 36736 (Testing Contract) to Law Engineering Inc. (Law) in the amount of \$100,000 to provide engineering testing services as required by the Construction Contract. Both the Construction Contract and Testing Contract were approved by City Council on July 2, 1996.

On May 1, 1999 the Construction Contract was transferred from GHWP to the City's Public Works & Engineering Department's (PW&E's) Construction Division (Construction) for closeout. At January 31, 2000, the City had paid \$5,201,443 for the construction services and \$98,621 for the engineering testing services. In addition, a retainage amount of \$106,152 was outstanding at that date. The Request for Council Action (RCA) has been prepared, but not submitted to City Council for approval. This project is currently in arbitration relating to excessive excavation and backfill outside the trench zone.

Our review was limited to determining if Kingsley's construction services were performed in compliance with the Construction Contract terms and that the engineering testing services were performed as required by the Construction Contract. The objectives of our review included:

- Determining that the contractors met the objectives of their contract and were in compliance with the terms of their contract.
- Determining that Public Works & Engineering (PW&E) personnel responsible for the administration of the contracts were in compliance within the City's policies and procedures to ensure that the work performed by the contractors was within the scope of the contract approved by the City and that the construction contractor's work was adequately tested.
- Determining that goods and services acquired through the provisions of the contracts were in compliance with the City and State of Texas procurement laws.
- Determining if PW&E's systems of internal control related to the contracts were adequate.
- Determining if funds have been appropriately charged to the proper contracts.

Honorable Sylvia R. Garcia, City Controller
July 31, 2000
Page 2

The scope of our review was from July 2, 1996 to January 31, 2000 and consisted of the following procedures:

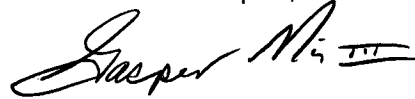
- Reviewing RCA's, contracts, schedule of values, change orders, work directives, proposed modifications, correspondence files, engineering testing contracts and related reports.
- Reviewing bid tabulation documentation, insurance and bond information, daily inspection reports, as built drawings, testing contractor results, and punch lists for adequacy and compliance with City policies and procedures.
- Testing supporting documentation to payments made by the City.
- Identifying the source of funds used to pay contracts being tested and determining the appropriateness of such funding.
- Reviewing related engineering contracts for compliance with contract terms and the City policies and procedures.

Our procedures were performed through March 22, 2000 and have not been updated since then. Based on the procedures performed, we determined that Kingsley's construction services were performed in compliance with the terms of the Construction Contract. In addition, the required engineering testing services were performed as required by Construction Contract 36735. The finding described and noted in this report is the only significant matter that came to our attention.

Mir•Fox & Rodriquez, P.C. is pleased to have assisted you with this project and we appreciate the assistance and cooperation of the Department of Public Works & Engineering personnel.

Very truly yours,

Mir•Fox & Rodriquez, P.C.



Gasper Mir, III
Principal

GM/jh

**Finding and Recommendation for the Greater Houston Wastewater Program
Kingsley Constructors Inc., Construction Contract**

CONSTRUCTION

Background

According to the General Conditions of the construction contract, "For work contracted on a Unit Price basis, on or about the last day of each month, the City Engineer will prepare an estimate of the Work completed to the end of the month based on the Unit Prices provided in the Agreement. Each estimate shall indicate the units of Work completed for each portion of the Work, multiplied by the Unit Prices listed in the Schedule of Unit Price Work, as of the end of the period covered by the estimate. The City Engineer will evaluate the actual final installed quantities of various classifications established in the Agreement before rendering a decision in writing or as a recommendation or in the final Certificate for Payment."

During the project, the project inspector is involved in the day-to-day construction activity. The project inspector completes Engineering Construction Reports (ECRs) each day to document the labor and materials used on the project. These reports are used by the City to track the progress of the project.

Finding and Recommendation

Finding:

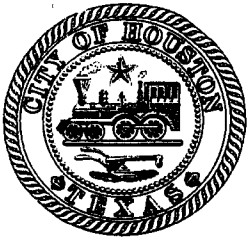
For construction contract number 36735, we compared the units of work performed and documented on the ECRs to the units of work performed as reflected on the pay estimates for five of the 90 line items in the Construction Contract. The results of our test indicated that the units of work noted on the ECRs for the five items tested did not agree to the pay estimates. See table below for comparison of units of work on the ECRs to units of work on the pay estimates for the five line items:

		ECRs	Pay Estimate
Line Item No.	Unit	Total	Total
19	square yards	21,018.00	18,431.00
20	square yards	5,266.56	6,635.59
21	square yards	1,044.00	994.00
xx07	square yards	14,228.22	7,705.00
xx08	square yards	5,218.11	3,482.11

Based on the five line items tested and documentation made available to us during the audit, the City has potentially underpaid the construction contractor approximately \$132,527 for the items of work that we tested.

Recommendation:

To ensure that the construction contractors are paid for the work that they perform, PW&E should reconcile the units of work noted on the ECRs to the units of work noted on the pay estimates. In addition, PW&E should reconcile all of the remaining quantities noted on the ECRs to the pay estimates supporting the payments made by the City to the Construction Contractor prior to finalizing the arbitration discussions.



CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-1562

Lee P. Brown, Mayor

CITY COUNCIL MEMBERS: Bruce Tatro Carol M. Galloway Mark Goldberg Jew Don Boney, Jr. Rob Todd Mark A. Ellis Bert Keller Gabriel Vasquez
John E. Castillo Annise D. Parker Gordon Quan Orlando Sanchez Chris Bell Carroll G. Robinson CITY CONTROLLER: Sylvia R. Garcia

July 7, 2000

Mir - Fox & Rodriguez, P.C.
1900 One Riverway
Houston, Texas 77056

Attn: Juanita Harbin

Re: Department of Public Works and Engineering
Contract Compliance Audit Response Report

Dear Ms. Harbin:

We have completed our response to your Contract Compliance Audit for Public Works and Engineering/
Construction Division. Listed below are the issues addressed in the findings.

KINGSLEY CONSTRUCTORS, INC. (CONTRACT #36735)

I. Differences in Units of Work between ECRs and Pay Estimates

The units of work noted on the ECRs for the five (5) items tested did not agree to the pay estimates. Based on the five (5) line items tested and documentation made available to us during the audit, the City has potentially underpaid the construction contractor approximately \$132, 527 for the items of work that we tested.

RECOMMENDATION:

To ensure that the construction contractors are paid for the work that they perform, PW&E should reconcile the units of work noted on the ECRs to the units of work noted on the pay estimates. In addition, PW&E should reconcile all of the remaining quantities noted on the ECRs to the pay estimates supporting the payments made by the City to the Construction Contractor prior to finalizing the arbitration discussions.

RESPONSE:

We have reviewed the Contract Compliance Audit Preliminary findings on Kingsley Contractors, Inc. We conducted a thorough review of the Engineering Construction Reports (ECRs), Pay Estimates, P/Mods, and correspondence. Our focus during the review was to verify that the reported Bid Items No. 19, 20, 21, XX07 and XX08 were paid accurately and in accordance with the Contract Documents.

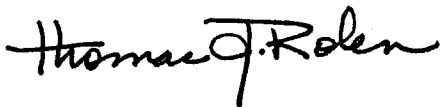
In the preliminary findings by Mir-Fox & Rodriguez, they indicated that the City may have potentially underpaid Kingsley by approximately \$132,527 through differences between the Pay Estimates and the ECRs.

The quantities reported by the project's Inspector on the ECR were disputed and could not be verified. The ECR reported quantities were adjusted by the GHWP Project Manager to reflect quantity adjustments in P/Mod Nos. 1, 4, 7, 8 and 12; Change Order Nos. 1, 3, 5, and 7, and Kingsley's correspondence of May 22, 1998. A table of the adjustments is presented in Attachment 1. The revised control quantity matches the quantities in Pay Estimates for Bid Item Nos. 19, 20, 21, XX07 and XX08.

The ECR's and the pay estimates should always match. If they do not, documentation should be presented in the file to explain the differences. This is the process that is in place. Audits are performed upon project completion to ensure correct payments.

If you have any further questions, please call Herbert Lum, P.E. at (713) 837-7194.

Cordially,



Thomas J. Rolen, P.E.
Acting Director
Department of Public Works and Engineering

HL
TJR:HL:lw
lw

Attachment

cc: Herbert Lum, P.E.
Carl Lowery *cl*
Anthony Crisci, P.E.
Michael K. Ho, P.E.
Godwin Okoro
File

**ATTACHMENT 1
CONTROL QUANTITY VERIFICATION
4462-1 CENTRAL WEST RELIEF**

BID ITEM	ORIGINAL CONTRACT QUANTITY	ADJUSTMENT TO ORIGINAL CONTRACT QUANTITIES	CONTROL QUANTITY
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19	7,215 SY (@\$20/SY)	1,640.00 SY P/MOD 1, C/O #1 2,594.00 SY P/MOD 8, C/O #5 6,982.00 SY P/MOD 12, C/O #7	18,431 SY
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Description: Pavement Repair & Resurface Asphalt Concrete Pavement Surface - 2" Thick
Base Course 10" Thick

20	5,720 SY (@\$36/SY)	<3,482.11>SY P/MOD 4, C/O #3 3,240.00 SY P/MOD 8, C/O #5 1,157.70 SY P/MOD 12, C/O #7	6,635.59 SY
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Description: Pavement Repair & Resurface - Concrete Pavement - 8" Thick

21	17,755 SY (@\$6.20/SY)	<3,220.00> SY P/MOD 1, C/O #1 <6,532.00> SY P/MOD 7, C/O #7 <7,009.00> SY P/MOD 12, C/O #7	994 SY
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Description: Pavement Repair & Resurface - Asphaltic Concrete Overlay - 2" Thick

XX07	0	6,964.22 SY in P/MOD 4, C/O #3 740.78 SY in P/MOD 12, C/O #7	7,705.00 SY
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Description: 2" Asphalt Concrete on 8" Base Course

XX08	0	3,482.11 SY in P/MOD 4, C/O #3	3,482.11 SY
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Description: Pavement Removal