

OFFICE OF THE CITY CONTROLLER



**PUBLIC WORKS AND ENGINEERING DEPARTMENT
CONTRACT COMPLIANCE REVIEW
GEORGE M. CONSTRUCTION, 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



OFFICE OF THE CITY CONTROLLER
CITY OF HOUSTON
TEXAS

SYLVIA R. GARCIA

December 12, 2000

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

SUBJECT: Public Works and Engineering Department
Contract Compliance Review – George M. Construction, Inc.
(Report No. 00-18)

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 36741 between the City and George M. Construction, Inc. (George) for the Chiswick Relief project.

MFR limited their review to determining if George'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 George'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. Rolen, 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 36741 (Construction Contract) in the amount of \$1,002,845 between the City of Houston (the City) and George M. Construction, Inc. (George). The Construction Contract represents a unit price contract for the Chiswick Relief 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 36742 (Testing Contract) to Geotech Engineering and Testing, Inc. (Geotech) in the amount of \$30,000 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. The Construction Contract was substantially completed on July 28, 1998. 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. The final Construction Contract amount of \$1,175,107 was approved and the work accepted on December 21, 1999 by City Council Motion 99-2157.

Our review was limited to determining if George'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 with the City's policies and procedures to ensure that the work performed by the contractor 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
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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 George'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 36741. The findings described and noted in this report are the only significant matters 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

**Findings and Recommendations for the Greater Houston Wastewater Program
George M. Construction, Inc., Construction Contract**

CONSTRUCTION

Background

According to the General Conditions of the Construction Contract, "A Change Order is a written instrument prepared by the City Engineer and signed by the City Engineer and the construction contractor, stating their agreement upon the following:

- a change in Work;
- the amount of adjustment in the Contract Price, if any; and
- the extent of the adjustment in the Contract Time, if any

According to the General Conditions of the Construction Contract, "the construction contractor, the Surety, and the City agree that time is of the essence and that failure to complete the Work within the Contract Time will cause damages to the City. Therefore the contractor, the Surety and the City agree that the Contractor and the Surety shall be liable for and shall pay to the City the amount stipulated in the Supplementary Conditions as liquidated damages. The amount stipulated shall be paid for each and every calendar day of delay beyond the Contract Time until the Work is substantially complete."

According to the Supplementary Conditions, "The amount of liquidated damages provided in the General Conditions, payable by the Contractor or Contractor's Surety for each and every calendar day of delay beyond the Contract Time until Work is accepted by the City as substantially complete shall be \$600 per day."

Finding and Recommendation

Finding:

According to construction contract number 36741, if substantial completion had not been attained by August 25, 1997 liquidated damages were to begin on the following day. Since the Construction Contract was not substantially complete until July 30, 1998, the City was entitled to approximately \$202,800 in liquidated damages that should have been deducted by the City from pay estimates submitted after August 25, 1997. However, none of the pay estimates submitted between August 25, 1997 and July 30, 1998 contained evidence of a waiver of these liquidated damages. In fact, a change order (No.1) was approved late December 1998 to extend the Construction Contract Time to August 13, 1999 but it did not state an effective date prior to the contract days elapsing nor state that the liquidated damages incurred up to that date would be waived.

Recommendation:

To ensure that the City complies with its construction contract completion time requirements, PW&E should review and modify its Change Order process so that the completion status of the construction work is compared to established dates in the contract. If change orders are initiated after the substantial completion date established by contract, the change order should state that liquidated damages incurred to date will be waived.

ENGINEERING TESTING

Background

According to Section II, Part A of the engineering testing contract, "The Laboratory shall submit 2 copies typed or printed showing all test results, and where required, recommendations for the guidance and direction of the City. Where material tests are involved, the report shall show conformity with or failure to meet the relevant construction specifications."

"Material test reports on construction shall be made periodically as the test results are accumulated."

"Subsurface investigation reports will be made only on completion of the investigation."

Finding and Recommendation

Finding:

For construction contract 36741, we selected 29 of the 118 engineering tests performed by the Testing Contractor under their contract number 36742. We noted that out of the 29 tests reviewed, 20 passed and 9 failed. Only one of the nine failed tests, was retested and it passed. The remaining eight failed tests were not repeated. The reports relating to the failed tests did not provide any guidance on the significance of the failed tests or the need for the City to repeat the tests.

Recommendation:

To ensure that the Testing Contractors are in compliance with their City contracts, PW&E should require its Testing Contractors to provide guidance and recommendations pertaining to the tests performed, particularly on failed tests. In addition, the City Engineer should determine if materials need to be replaced or work corrected.

Background

According to the Section II, Part B of the Testing Contract, "The Laboratory recognizes that only \$30,000 has been appropriated and budgeted by the City Council to pay the cost of the services to be performed hereunder and that, unless and until the City Council sees fit to make further appropriation and appropriations for such purpose, the obligation of the City to the Laboratory under this contract or in connection with the subject matter hereof cannot and will not exceed \$30,000. It is further expressly agreed that the liability of the City hereunder shall be limited to funds made available under the said agreement."

Finding and Recommendation

Finding:

The City paid a total of \$32,348 to Geoscience Engineering & Testing, Inc. for engineering testing services contract number 36742. The Testing Contract amount of \$30,000 was exceeded in the amount of \$2,348. No documentation pertaining to an additional appropriation was in the Testing Contract files. However, we did note that the Price Agreement Summary from the City's Advantage Financial Management System (AFMS) showed \$32,501 was the authorized limit for the Testing Contract.

Unlike the Construction Contract, the Testing Contract does not address the need for additional funding nor additional days during the project. If the engineering testing contractor has to perform additional tests due to additional work performed by the construction contractor, there is no clearly defined process to extend contract price or contract days.

Recommendation:

To reduce the risk of an overpayment to a Testing Contractor, PW&E should ensure that all contract amendments are kept in their contract files. PW&E should consider a contingency allowance similar to those included in construction contracts to cover unforeseen circumstances that could increase contract time or contract price.

EXHIBIT 1



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.

GEORGE M. CONSTRUCTION, INC. (CONTRACT #36741)

I. Effective Date on Change Orders

According to the contract, if substantial completion was not attained by August 25, 1997, liquidated damages were to begin on the following day. Since the contract was not substantially completed until July 30, 1998, the City was entitled to approximately \$202,800. A change order (No. 1) approved in late December, 1998 to extend the construction contract time to August 13, 1999 did not state an effective date prior to the contract days elapsing nor state that the liquidated damages incurred up to that date would be waived.

RECOMMENDATION:

PW&E should review and modify its Change Order process so that the completion status of the construction work is compared to established dates in the contract. If change orders are initiated after the substantial completion date established by the contract, the change order should state that liquidated damages incurred to date would be waived.

RESPONSE:

Liquidated Damages were not assessed after the substantial completion date because the Area Manager was in negotiations for additional work and contract time. The Estimate is exactly what the name implies - an estimate. On Estimates Nos. 12 through 17, the Area Manager noted that no liquidated damages would be assessed pending a Change Order. Change Order No. 1 added 354 days to the Contract; thus, eliminating the liquidated damage debit and bringing the Contract to a close.

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Views of Responsible
Officials

EXHIBIT 1

Mir - Fox & Rodriguez, P.C.
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In response to the question asked during the audit review meeting, "When is a Contract over?", a Contract is over when Council approves the Request for Council Action (RCA) to accept the work.

II. Failed Engineering Testing Records

For construction contract number 36741, out of 29 engineering tests selected, 20 passed and 9 failed. Only one (1) of the nine (9) failed tests was retested and passed. The reports relating to the failed tests did not provide any guidance on the significance of the failed tests or the need for the City to repeat the tests.

RECOMMENDATION:

PW&E should require its Testing Contractors to provide guidance and recommendations pertaining to the tests performed, particularly on failed tests. In addition, the City Engineer should determine if materials need to be replaced or work corrected.

RESPONSE:

Failed tests are immediately reported to both the Contractor and City Project Managers. Those failed in all cases should be documented; however, if a failure is known at the field level and is corrected at the field level, in most instances would probably not be recorded because it was corrected immediately in the field. However, the Inspector could have reported a failed test but did not record its correction. Currently, we adhere to the notification process mentioned in the first sentence. To ensure that this process is followed, we will instruct our Inspectors of the problem and will comply with the above procedure.

III. Contract Overruns for Testing Labs

The City paid \$32,348 to Geoscience Engineering & Testing, Inc. for testing services and this amount exceeded the contract amount (\$30,000) by \$2,348. There was no documentation in the files pertaining to an additional appropriation. However, The City's Advance Financial Management System (AFMS) did show \$32,501 was the authorized limit for the Testing Contract.

Unlike the Construction Contract, the Testing Contract does not address the need for additional funding nor additional days during the project. If the engineering testing contractor has to perform additional tests due to additional work performed by the construction contractor, there is no clearly defined process to extend contract price or contract days.

RECOMMENDATION:

To reduce the risk of an overpayment to a Testing Contractor, PW&E should ensure that all contract amendments are kept in their contract files. PW&E should consider a contingency allowance similar to those included in construction contracts to cover unforeseen circumstances that could increase contract time or contract price.

RESPONSE:

To address overruns, procedures currently in place include obtaining a letter from the Testing Lab when the contract reaches 80% of the contract amount for each project. The labs were also notified that the City pays only up to 100% of the contract. If the tests billed exceed the contract amount, the City is not liable for payment.

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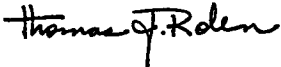
**Views of Responsible
Officials**

EXHIBIT 1

Mir - Fox & Rodriguez, P.C.
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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

TJR:HL:hw
HL
2 Attachments

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

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**Views of Responsible
Officials**