

OFFICE OF THE CITY CONTROLLER



**PUBLIC WORKS & ENGINEERING DEPARTMENT
CONTRACT COMPLIANCE REVIEW
KINSEL INDUSTRIES, INC. - CONTRACTOR
FOR THE PERIOD OF NOVEMBER 1, 1994
THROUGH NOVEMBER 30, 1997**

Sylvia R. Garcia, City Controller

Judy Gray Johnson, Chief Deputy City Controller

Steve Schoonover, City Auditor



OFFICE OF THE CONTROLLER
CITY OF HOUSTON
TEXAS

SYLVIA R. GARCIA

March 6, 1998

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

SUBJECT: Public Works & Engineering Department
Contract Compliance Review
Kinsel Industries, Inc. - Contractor

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 Greater Houston Wastewater Program's (GHWP) contract with Kinsel Industries, Inc. (Kinsel), contract number 36529.

MFR limited their review to determining if Kinsel's construction services were performed and its fees billed and paid in accordance with the terms of the Construction Contract. Their report, attached for your review, notes that the City should review its process for acquiring flagman and traffic control services. Draft copies of the matter contained in the report were provided to Department officials. The views of the responsible Department officials as to actions taken or being taken are appended to the report as Exhibit 1.

We appreciate the cooperation extended to the MFR auditors by City and GHWP personnel during the course of the review.

Sincerely,


Sylvia R. Garcia
City Controller

xc: City Council Members
John Baldwin, Deputy Director, Public Works & Engineering Department
Wendell Barnes, Deputy Director, Public Works & Engineering Department
Richard Lewis, Director, Finance & Administration Department
Jimmie Schindewolf, Director, Public Works & Engineering Department

January 2, 1998

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 36529 (Construction Contract) in the amount of \$4,969,860 between the City of Houston (City) and Kinsel Industries, Inc. (Kinsel). The Construction Contract represents a unit price contract for the construction of sanitary sewers and water mains in the Camp Logan Relief Sewer. 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.

Our review was limited to determining if Kinsel's construction services were performed and its fees billed and paid in accordance with the terms of the Construction Contract. The scope of our review was for the period of October 30, 1995 through December 19, 1997, and consisted of the following procedures:

- Obtained an understanding of the project by reviewing the Construction Contract, change orders, Requests for Council Action (RCA), submittal files, engineering test reports, minutes of meetings, and correspondence files.
- Interviewed GHWP personnel and reviewed supporting documentation to determine whether Kinsel performed services in accordance with the terms of its Construction Contract.
- Reviewed and analyzed daily Engineering Construction Reports (ECRs), monthly "Estimates and Certificates for Payment, Unit Price Work" (Pay Estimates), cash allowance, materials, shop drawings, and management fees.
- Reviewed contingencies and compared certain cost overruns to the Work Change Directives (WCDs) and corresponding change orders.
- Interviewed Kinsel personnel and reviewed a sample of timesheets and invoices related to flagman and traffic control services.

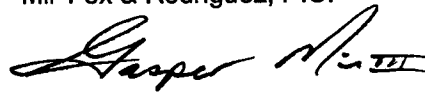
Honorable Sylvia R. Garcia, City Controller
January 2, 1998
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Our procedures were performed through the date of this report and have not been updated since that date. Based on the procedures performed, we determined that Kinsel's construction services were performed and its fees were billed in accordance with the terms of the Construction Contract. However, we noted that the City should review its process for acquiring flagmen and traffic control services.

Mir•Fox & Rodriguez, P.C. is pleased to have assisted you with this project, and we appreciate the assistance and cooperation of the Kinsel and GHWP personnel.

Very truly yours,

Mir•Fox & Rodriguez, P.C.

A handwritten signature in cursive script, appearing to read "Gasper Mir, III".

Gasper Mir, III
Principal

GM/sf

**Finding and Recommendation for the Greater Houston Wastewater Program
Kinsel Industries, Inc. Construction Contract**

Background

The City awarded Kinsel construction contract number 36529 that required Kinsel to provide flagmen and traffic control services for a total lump sum amount of \$150,000 during the sixteen month period of scheduled construction work.

Finding and Recommendation

Finding:

According to the "Schedule of Unit Price Work" that is included in the Construction Contract, \$130,000 of the \$150,000 pertained to flagmen services. According to the Construction Contract documents, GHWP had determined the minimum price of \$130,000 prior to requesting any bids from the construction contractors. Bidders were instructed that the price could be increased by crossing out the minimum amount of \$130,000 and noting the bidder's revised price on the line above. However, no reference was made in the bidders documentation to any potential reduction in the construction contract price for flagmen services or the minimum hours of flagmen services to be provided. In addition, according to GHWP policies and procedures the GHWP inspector is required to note the presence of a flagman on the construction site but is not required to note the name, badge number, or hours worked.

During our review of the Pay Estimates and ECRs related to construction contract number 36529, we noted that the City paid Kinsel approximately \$150,000 for flagmen and traffic control services. We understand that the construction work was performed in approximately two months less time that was originally scheduled. Kinsel's records indicated that approximately \$73,000 was paid for flagmen and traffic control services pertaining to the Construction Contract.

Recommendation:

To reduce the risk of the City overpaying its construction contractors, GHWP and the City should review and revise the process for contracting flagmen and traffic control services. The review would include devising a system of internal control to ensure that the construction contractor provides the City a minimum number of hours of service for the contracted lump sum amount for flagmen and traffic control services.



CITY OF HOUSTON

Post Office Box 1562 Houston, Texas 77251-1562

Lee P. Brown, Mayor

CITY COUNCIL MEMBERS: Bruce Tatro Michael J. Yarbrough Martha J. Wong Jew Don Boney, Jr. Rob Todd Ray F. Driscoll Jean Kelley Felix Fraga
John E. Castillo Annise D. Parker Joe Roach Orlando Sanchez Chris Bell Carroll G. Robinson CITY CONTROLLER: Sylvia R. Garcia

Chief of Staff
Office of the Mayor

JIMMIE SCHINDEWOLF, P.E.

Director of Public
Works & Engineering

January 26, 1998

Mr. Gasper Mir
Mir*Fox & Rodriguez
1300 Riverway
Houston, Texas 77056

Dear Mr. Mir:

In response to your audit report on Contract No. 36529, Job No. 4469AS-1, I have the following reply:

We disagree that the contractor finished the job ahead of the original schedule. The contractor did receive the full amount as included in the bid documents --\$130,000 for flagmen and \$20,000 for traffic control. Contractors are required to include these amounts in their bid as a line item. These values were incorporated into the contractor's total bid price. The Contractor is being paid bid prices to accomplish tasks. What the Contractor pays for those tasks is not germane to the contract or this audit.

These set values are estimates by the design engineer and included in the Contract to ensure that the Contractor has adequate traffic control, thereby reducing any liability to the City of Houston in the event of an accident. Because we disagree with the finding, we do not believe the recommendation is relevant.

Please let me know if I can provide additional information.

Sincerely,

Wendell L. Barnes, P.E.

Deputy Director

Department of Public Works and Engineering

WLB:fh

