



Program Evaluation and Audit

Metro Transit

Construction Contracts Review

January 1, 2010

INTRODUCTION

Background

Metro Transit awards contracts for Professional Engineering Services and for project Construction. This report is limited to Construction Contracts and associated administration processes from issuing the Contract Initiation Memo through receiving and evaluating contractor (Contractor) bids to obtaining insurance coverage certifications for two years following project completion.

Metro Transit Purchasing & Contract Services (PCS) personnel are responsible for compiling and advertising the solicitation, obtaining appropriate certifications, overseeing the process of proposal review, and awarding the contract. Upon execution of the contract to the lowest responsive, responsible bidder a Notice to Proceed letter is sent to the Contractor authorizing it to begin work and also identifying the Council's Authorized Representative (CAR) who is responsible for administering the contract. A Project Manager is also assigned to each Metro Transit construction project. The Project Manager oversees engineering requirements of the project, including approving scope changes, and is the interface between the CAR and the Professional Engineering Services firm that developed the drawings and specifications for the project.

The CAR administers the contract, assuring that the project is built according to contract specifications. The CAR reviews, revises and approves Contractor payment requests; negotiates and approves contract change orders; assures that equipment manuals are provided and that Metro Transit personnel are trained in operating and maintaining installed equipment; verifies the accuracy of "as-built" drawings and oversees project closeout. The CAR also coordinates construction with local community agencies and residents, conducts weekly progress meetings with the Contractor and major subcontractors, and administers warranty claims presented to the Contractor during the correction period following project acceptance.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

Purpose

This review was conducted to assure that Metro Transit Construction Contracts are administered in accordance with contract provisions and Council policies and procedures, to determine the effectiveness of Metro Transit contract administration practices in limiting the Council's risk on fixed priced construction projects and to assess the

effectiveness and efficiency of contract administration practices involving multiple Metro Transit departments.

Scope

The review was conducted using a sample of all construction contracts entered into between January 1, 2006 and March 31, 2009. It included a review of pre-contact award, contract award, construction period and post construction contract administration policies, procedures, Work Instructions and actual practices.

Methodology

To gain an understanding of Metro Transit Construction Contracts and contracting processes, the following methods of inquiry were used:

- Contract bid and award processes and applicable documentation were reviewed.
- Construction Contract terms and conditions were reviewed.
- Procurement and contract administration personnel were interviewed.
- Construction Contract procurement, administration and diversity files were surveyed and information analyzed.
- Metro Transit Work Instructions were reviewed.

OBSERVATIONS

Program Evaluation and Audit (Audit) reviewed a random sample of 22 contracts totaling \$9.5 million plus a judgmental sample of the eight largest Metro Transit projects totaling \$47.2 million from a universe of 43 projects totaling \$65.6 million awarded during the period January 1, 2006 through March 31, 2009. This resulted in evaluating 30 contracts totaling \$56.7 million that were awarded to 22 different Contractors. During the course of this review, twelve of the contracts were open, 14 were closed, and four were yet to be awarded. In addition, 24 were FTA funded and six were funded with local money. Please note that because projects were at different stages of initiation and completion, in some cases, data was reviewed for fewer than 30 contracts.

Contracting Process

FTA Circular 4220.1F requires that a determination be made regarding the proper type of contract to award. Metro Transit uses a standard “contract type matrix” form to fulfill this requirement. Six of the contracts were not funded by the FTA and did not require this form, although one file did contain the form. In addition, two contracts were just beginning the process, one file had no documentation, three contained the correct form and 16 contained an incorrect form. All five contract proposals received since February 2009, when it was determined that the incorrect document was being used, have the correct documentation.

Council Procurement Procedure 3.4.3a, Section 1.3, *Signature Authority and Procurement Authorization* states that “Authorization of procurement is the process by which Council funds are authorized to be expended for a procurement. Procurement authorization is generally in the form of a purchase requisition or a Contract Initiation Memorandum (CIM).” Therefore, once it is executed the CIM grants PCS authority to solicit bids and award a contract. The CIM is also a notice to Metro Transit’s Office of Diversity and Equal Opportunity (ODEO) to assign a DBE goal to the project. Other Metro Transit personnel understand the CIM to be the document that is used to initiate the competitive process and to identify what agency regulations need to be observed in conducting the procurement. All 30 project files contained a copy of the required CIM.

Each winning contractor is evaluated regarding its ability to fulfill its obligations prior to awarding the contract. This Evaluation of Responsibility was included in 12 of the files. Fourteen files contained partial documentation, three contracts were not yet to that stage in the procurement process and one file was missing documentation. However, since the fourth quarter of 2008 during which time Audit was conducting a similar review of Engineering Master Contracts, 10 of the 11 contract actions initiated contained sufficient file documentation.

At the beginning of the contacting process, engineering personnel develop an independent cost estimate (ICE). All of the 28 files reviewed contained ICE, although six were not dated. Twenty of the subsequent contracts were awarded at an amount less than

Metro Transit’s estimate; eight at an amount greater. Seven of those eight were within 10 percent of the ICE and according to *Procurement Procedure 3.4.4a*, the ICE itself served as the cost or price analysis document. The other procurement file contained an engineering analysis and explanation for the price difference. The total value of these contracts was \$55.4 million, \$10.7 million (16.5%) less than the engineering estimate.

Construction contracts less than \$500,000 require divisional general management approval, those less than one million dollars require regional administration approval, and those over one million dollars require approval of the Transportation Committee and the full Council. All files contained the required approvals. The following documentation was also located for each contract:

Solicitation	28 of 28 files
Notice of Award	26 of 26 files
Notice to Proceed	26 of 26 files
Summary of bidders	28 of 28 files
List of Contractors requesting solicitation	28 of 28 files
Copy of the contract	26 of 26 files
Bidder responsiveness	28 of 28 files
Advertisements	28 of 28 files
Price analysis	28 of 28 files
Contractor pre-bid meetings	26 of 26 files
Contractor certifications	26 of 26 files
All required bonds	26 of 26 files

Audit also reviewed contract solicitation terms and conditions to determine if they were appropriate based upon the source of funds used to fund the project. The 22 FTA and the six locally funded contracts each contained the appropriate terms and conditions.

Financial Risk (Insurance Coverage and Bonds)

Metro Transit construction contracts require that general liability and builder’s risk insurance be maintained during construction and that general liability insurance be maintained for two years thereafter. Liability insurance covers an array of possible risks including personal injury and property damage. Builder’s risk insurance protects Metro Transit against loss to buildings or structures during the course of construction.

Construction contract insurance coverage reduces Council financial risk. If Contractors are not insured, contract language also contains an indemnity clause whereby the Contractor would indemnify the Council for losses. However, if a loss is too great and insurance coverage has not been maintained according to contract requirements, the Contractor may not have the funds to indemnify the Council. As a result, the Council may bear a financial loss. In most instances, As of July 1, 2009, such a loss would be limited by Minnesota State Statute 466.04 to \$500,000 per person and \$1.5 million per occurrence.

Metropolitan Council Contract Administration Manual for Transit Related Projects, Rev 2.0, June 22, 2007 (Manual), Section IX.C states that when a transit-related construction project begins, the following procedures are to be followed regarding evidence of insurance:

- The CAR will review the conformed documents to ensure the insurance certificates are included, if required.
- The CAR will note the dates that the various forms of insurance are due to expire.
- Sixty calendar days prior to the expiration date of any form of insurance, the CAR will send a written reminder to the Contractor that new Certificates of Insurance are required to be submitted to the CAR no later than 30 days prior to the expiration date of the policy.
- If the policy renewal is not received by 30 calendar days prior to the expiration date of the policy, the CAR will send a follow-up written reminder to the Contractor indicating the due date, and stating that failure to submit proof may result in temporary suspension of work until received.
- When the renewal information is received, the CAR will make a copy for the files and forward the original to the Office of Risk Management with a request for review and comments or acceptance within 7 calendar days.
- Upon receipt of comments from the Office of Risk Management, the CAR will notify the Contractor in writing.

Audit’s review of PCS and CAR contract files disclosed that during construction 20 of 26 projects had up-to-date liability insurance certifications and six did not, while after construction, only four of 14 files contained evidence of continued liability coverage and 10 did not. Only eight of 17 contract files contained evidence of current builder’s risk insurance, nine did not. Nine other projects were of a kind that builder’s risk insurance was not needed. Improvement has been made since February 2008 in providing evidence of both liability and builder’s risk coverage during construction. Because most of the recent projects are not complete, no conclusions can be made concerning liability coverage after construction has been completed.

	During Construction					After Construction		
	Liability		Builder’s Risk			Liability		
	Yes	No	Yes	No	N/A	Yes	No	N/A
Pre- February 2008	9	4	4	6	3	3	9	1
Post-February 2008	11	2	4	3	6	1	1	11
Total	20	6	8	9	9	4	10	12

Eight of 26 files contained evidence that the Council’s Risk Management Department had reviewed the contract. This is especially important in regards to builder’s risk insurance which can vary depending upon the nature of the project, for this type of insurance that protects the Council’s interests during construction, also helps avoid delays and eliminates the issue of which party is responsible if a loss occurs. As noted above, nine

of the projects did not require builder's risk insurance. In addition, other types of coverage such as an equipment floater policy may be more appropriate. All eight documented reviews by the Risk Management Department have occurred since February 2008 during which time 13 of the sampled procurement actions were initiated.

During the course of this review, Metro Transit Work Instruction E-81, *Updating Certificates of Insurance*, August 3, 2009 was issued. It moved responsibility for obtaining Certificates of Insurance from the CAR to administrative personnel. Metro Transit personnel have stated that the Manual will now be revised to reflect this change in procedure.

Generally three types of bonds are also required. A bid bond in the amount of 10% of the Contractor's bid is required on all construction projects. This bond imposes a punitive penalty if a bidder pulls out of the procurement prior to contract execution. In such instances, the bond is retained and deposited by the Council.

Payment and performance bonds represent 100 percent of the contract amount and are required on all projects totaling \$75,000 or more. The payment bond is a guarantee by a surety that Contractors who supply work and materials to a construction project will pay their suppliers and subcontractors. It can be used by the Council for payment of subcontractors and suppliers who look to the Council if they have not been paid by the Contractor. A performance bond guarantees that the contract will be performed by the Contractor and provides for a cover remedy; that another contractor can be hired to finish the work for the same cost as stated in the contract with the original Contractor.

A bid bond is required at the time a Contractor submits its bid to the Council. Performance and payment bonds and Contractor certifications are required prior to contract execution. Audit found that all 26 contract files contained these required bonds and certifications.

Diversity

The CIM is sent to ODEO for the assignment of a project DBE goal. Twenty-three project CIMs contained DBE goals, six of the 10 locally funded projects did not. In three instances, locally funded projects that did not require DBE goals were assigned them. Upon receipt of Contractor bids, the three apparent low bidder DBE plans are forwarded to ODEO for evaluation. Twenty files contained ODEO DBE evaluation memos regarding those plans. Seven others were given a zero goal initially and were not further evaluated and three contracts have yet to get to that stage in the procurement process.

The Manual, Section CM06, paragraph VI.A.1.d. states, "The CAR will conduct monthly site visits to observe DBE participation and will complete the DBE Site Visit Compliance Report to document his or her observations. The CAR forwards the completed DBE Site Visit Compliance Report with the payment request." However, discussions with Metro Transit personnel disclosed that this responsibility was transferred to ODEO in response to the September 5, 2008 audit of *Non-Rail Construction Project DBE Compliance*.

Metro Transit will be updating the Manual to reflect this change. Therefore, no further review of monthly site visits was conducted.

When the lowest priced responsive, responsible Contractor is identified, the CAR conducts a pre-construction meeting to acquaint the Contractor with important project requirements, schedules, and other valuable information. One item covered in this meeting is DBE utilization. Eighteen files contained minutes of DBE topics discussed during the pre-construction meeting with the Contractor; 10 projects were not assigned DBE goals and 2 projects were not in this stage of procurement. As the project progresses, the CAR conducts weekly construction update meetings with the Contractor. Nine files contained minutes of DBE topics discussed during the weekly meetings with the Contractor; eight did not; 10 projects were not assigned DBE goals and 3 projects were not in this stage of procurement.

The Contractor is required to submit monthly DBE progress reports with its pay requests to the CAR. The CAR then forwards these reports to ODEO for evaluation. The intent of these reports is to track progress toward achieving the project DBE goal and to alert the Contractor, the CAR and ODEO if it appears that additional good faith efforts (GFE) need to be expended to ensure the project meets its goal. Fourteen files contained monthly DBE progress reports; one did not; 10 projects were not assigned DBE goals, 4 projects were not in this stage of procurement and one was assigned a goal but the Contractor only bid GFE and did not submit reports.

Metro Transit Work Instruction C-26, Rev 3, January 14, 2009, states “that the CAR should remind the Contractor at each project meeting, of the continuing DBE requirements as contained in Document 00710 Supplemental Conditions For FTA-Funded Projects.” In addition, the Manual, Section CM06, paragraph IX.A.1 states that “Weekly jobsite meetings follow a standard agenda format similar to the [Jobsite Progress Meeting Agenda](#). Other project meetings can use the same format or a variation of the standard if an item shown is not applicable or if there are other items that must be added due to the nature of the project or the meeting.” Although the standard form found to be used for weekly progress meetings included a section for reporting those subcontractors that were on-site during the week, it did not include a section regarding monitoring the DBE participation of those subcontractors.

Progress Payment Requests

Contractors submit progress payment requests to the CAR for review, approval and payment. Such requests are based upon a Schedule of Values (SOV) submitted by the Contractor shortly after contract award. The SOV is a detailed allocation of the Contractor’s bid price to individual project elements. Each payment request includes a percentage of work completed for each of these elements. The sum of the individual elements represents the total work that the Contractor has completed to date. Subtracting that from the total amount paid for the previous month plus an additional five percent retention determines the current month payment request.

The Contractor submits its preliminary pay request to the CAR for review. The CAR reviews the percent complete as stated by the Contractor for each SOV element and adjusts it based upon his review of the work, notes in his daily construction log and discussions with the Contractor. Depending upon project complexity, additional assistance may also be obtained from mechanical and electrical specialists and inspectors. Audit reviewed each of the project pay request files to determine the extent of CAR review and adjustments made to the Contractor's initial request and determined that each pay request showed evidence of adequate review.

Prevailing Wage Payments

Federally funded projects require that Contractors comply with the provisions of the Davis-Bacon Act and pay their workers not lower than the prevailing wage for each trade. The Manual, Section CM06, paragraphs VI.B.3 and VI.B.4 state the following:

- For projects of six months or longer duration, and when required under contract, the CAR is to review random certified payrolls at least once every three months, to compare that the certified pay rates for each identified work classification are not less than the rates identified in the contract. Use the [Quarterly Certified Payroll Review form](#) (Form C-50B) to record results and place a copy in the project files.
- At least once every six months, the CAR is to interview randomly selected employees of the Contractor and the subcontractors, making an effort to obtain a cross section of the workforce and interviewing at least 10% of the workforce on the job site at the time of the sampling. Record results on [Form C-50C Workforce Pay Information](#) and file in the project files.

Audit reviewed 23 projects for which certified payrolls were required. Twelve project files contained evidence of certified payroll reviews meeting Manual requirements, including evidence of both hourly wage reviews and random discussions with workers on site. Six projects were not far enough along in the construction phase for reporting to begin, two contained either the Form C-50B or C-50C, and the files for three projects that were initiated prior to 2008 did not contain the required documentation.

Contract Change Orders

The construction contracts included in this review are fixed price contracts awarded to the lowest priced responsive, responsible bidder based upon its response to a detailed statement of work (SOW). A change to the SOW requires a contract change order (CO) as does a change in conditions, an error in the initial drawings upon which the bid was developed or for other miscellaneous reasons. The change in cost and/or time of completion and a concise description of the work to affect the change are specified in the CO document.

When determined by the CAR that a CO is required, the Contractor and the CAR independently develop estimates for the work. If the Contractor's estimate was deemed reasonable, the CAR normally accepted it and wrote the CO accordingly. However, if it was deemed too high, the CAR would negotiate with the Contractor to arrive at a fair and reasonable price.

In general, CARs adequately documented CO rationale, background and details. Audit reviewed 115 standard COs written at a net credit to Metro Transit of -\$70,008; \$1,230 (1.6%) more than the CAR's estimate, but -\$75,590 (98.4%) less than the Contractor's proposal. Four additional COs were written upon project completion for over or under use of material quantities included in the specifications. These COs resulted in a net credit of -\$34,433.

In situations where the CAR and the Contractor cannot agree on a lump sum price adjustment for performing the extra work, or where the exact scope of the extra work is unpredictable, the work may be performed on a time and material basis. In this case a two-part CO would be written; the first part being an estimate so that work could begin and funds budgeted. When the work was completed, actual cost would be the basis for finalizing the CO. Three two-part COs were reviewed at a final cost of \$94,728, a 3.1% reduction from the initial \$97,750 Contractor bids.

Two other COs totaling -\$31,800 were written crediting projects for liquidated damages charged Contractors for not meeting their contracted completion dates. In addition, one CO was written for \$6,403 as interest for late payment. In this case, Metro Transit paid interest at the rate of 18% annually (1.5% per month) for paying the Contractor 13 days late. The Contractor requested \$14,776.00, but that was negotiated to \$6,403. Assuming a five percent annual cost of capital, had Metro Transit used its own funds to pay the Contractor while negotiating with the third party, the interest cost would have been only \$1,778.

Of the 125 total COs reviewed, 29% represent changed conditions, 45% were for scope changes, 8% represent possible consultant engineer errors/omissions and 18% were for other reasons. Twenty-four percent of the dollar value was due to changed conditions, 43% was for scope changes, 13% was for time and material two-part COs and seven percent was for other reasons. The average cost for all COs was a -\$281 credit; however, it ranged from a credit of -\$15,900 for completing projects beyond the contracted dates on two contracts to \$31,576 for three time and material COs.

Construction Project Close-Out

Fourteen of the 30 projects reviewed have been completed; the Contractor having submitted its request for final payment. As stated in standard contract General Conditions Section 14.11, the items listed below are required with the Contractor's final payment request, all of which are included in Metro Transit's standard "Final Payment Procedures" letter sent to Contractors. Of the 14 closed contract files requiring this

documentation, the number of instances in which documentation was located is as follows.

- Consent of Surety for Final Payment 12 of 14 (Note 1)
- Compliance with Tax Withholding; Forms IC-134 14 of 14
- Certificate by Contractor that all bills have been paid 14 of 14
- Final Inspection Certificate 13 of 14 (Note 1)
- Guarantee work was completed in compliance with specs 11 of 14 (Note 2)

Note 1: The documents not located were related to projects initiated prior to 2008. Since then, procedures have been tightened regarding obtaining and filing required project documents.

Note 2: This document restates aspects of the guarantees stated in the signed contract. The Auditor regards the absence of these documents, although not in compliance with Metro Transit Work Instructions, as being of minimal risk. In addition, two of the three documents that could not be located were related to projects initiated prior to 2008.

CONCLUSIONS

1. *Contract and project files contained most of the required documentation. In addition, file documentation practices have improved over the past year in those instances in which files were incomplete.*

Fifteen of the 18 types of documentation reviewed in the contracting process phase of the audit were located in each project file reviewed. The remaining three types of documentation (contract type matrix, contract log and Evaluation of Responsibility) were missing or not appropriately documented in a substantial number of procurement files. However, documentation has shown improvement in projects initiated within the past year compared to those projects initiated prior to October 2008. For example, prior to determining that incorrect documentation was being used to support a determination of contractor responsibility, only two 2 of 16 project files contained sufficient documentation. Since October 2008, 10 of 11 project files contain sufficient documentation.

2. *Metro Transit Purchasing and Contract Services Department personnel adequately compile applicable funding source solicitation terms and conditions when initiating the bid process.*

The terms and conditions included in 28 solicitations for construction projects were reviewed; 22 that were funded in part by the FTA and six that were funded with only local dollars. Those projects funded with grants provided by the FTA require supplemental terms and conditions in addition to those that are included in contracts funded locally. Each of the 22 FTA funded projects contained the supplemental FTA terms and conditions and each of the six locally funded projects contained those terms and conditions required when a project is funded with local dollars.

3. *Metro Transit receives proof that Contractors are obtaining required liability insurance at the time of contract award. However, documentation of builder's risk insurance during construction and of continuing liability insurance coverage during construction and for two years after project completion is inconsistent.*

Contract and project files contained documentation that liability insurance was provided prior to contract award. However, it is common for insurance certificates to lapse during the time of construction. Of the 26 projects reviewed for proof of liability insurance coverage, no documentation could be located for six of them. Regarding builder's risk insurance coverage, documentation could not be located for nine of the 17 projects required to have such coverage. For the two year period after project completion, only four of 14 project files contained evidence of liability insurance coverage. Although documentation has improved since February 2008, continued diligence is required.

According to the *Metropolitan Council Contract Administration Manual for Transit Related Projects*, Rev 2.0, June 22, 2007 it is the responsibility of the CAR to obtain the required proof of insurance coverage. However, during the course of this review, Metro Transit Work Instruction E-81, *Updating Certificates of Insurance*, August 3, 2009 was issued, transferring responsibility from the CAR to administrative personnel.

4. *DBE utilization during construction is not sufficiently monitored to assure that goals will be attained upon completion of the project.*

DBE topics were discussed during pre-construction meetings with Contractors. However, almost half of the projects requiring DBE participation did not document if DBE monitoring activities were discussed during subsequent weekly progress meetings. The CAR, in coordination with ODEO is responsible for monitoring DBE progress throughout the project; however, the standard format used to administer weekly meetings does not mention that responsibility or provide a space within the context of the meeting for such discussion. It is important for the CAR to closely monitor DBE utilization during construction so that Metro Transit can be assured that the project goal is met and that the Contractor's proposed utilization actually occurs.

5. *Council Authorized Representatives review Contractor monthly pay requests in compliance with Metropolitan Council Contract Administration Manual for Transit Related Projects, Rev 2.0, June 22, 2007 requirements.*

The CAR received the Contractor's preliminary monthly pay request, including detailed SOV completion percentages. Upon reviewing the pay request and reconciling SOV percentages with daily site inspection notes, his own estimate of the SOV and through discussions and correspondence with the Contractor, the CAR revises these preliminary estimates. The revised version was then used by the Contractor to finalize its pay request which the CAR verified and approved, all in compliance with Manual requirements.

6. *Metro Transit CAR personnel conduct reviews of wages paid to workers assigned to FTA funded projects in accordance with Federal requirements. Although evidence of such reviews was not located for some projects initiated prior to 2008, documentation has improved over the past two years.*

When conducting prevailing wage reviews, the CAR is required to conduct a desk review of certified payrolls submitted by the Contractor and its subcontractors to determine if the stated wages and benefits paid workers at least equal the federally required prevailing wage (Form C-50B). The CAR is also required to visit the construction site and interview some of the workers to verify worker classifications and wage rates (Form C-50C). Audit found that of 23 projects for which certified payrolls were required, two contained either Form C-50B or C-50C but not the other and three project files contained neither form. The three projects for which evidence of certified payroll reviews were absent were initiated prior to 2008.

7. Metro Transit CARs generally negotiated project change orders in an effective manner; although in some instances it appears that change orders were written to cover engineering Consultant errors and/or omissions and for late payment interest.

Audit reviewed 125 COs and found that CARs generally oversee the interests of the Council in an effective manner. In the negotiating process for standard COs, the price was raised 1.6% more than Metro Transit desired, but lowered 98.4% less than the Contractor desired. In addition, two COs totaling -\$31,800 were written crediting projects for liquidated damages charged Contractors for not meeting their contracted completion dates.

Metro Transit CARs also negotiated 10 of the 125 COs valued at \$42,488 that appeared to make corrections for engineering Consultant errors and/or omissions in project specifications. Finally, one CO was written for \$6,403 as interest for late payment. In this case it would have been less costly for Metro Transit to pay the Contractor's pay request on time with its own funds than incurring interest at the equivalent of an 18% annual rate as stated in contract General Provisions 15.5 and 14.13.1.

8. Since 2008, Metro Transit personnel have obtained the required contract closeout documentation from the Contractor.

The CAR's standard "Final Payment Procedures" letter sent to Contractors identifies those documents required for the Contractor to be included with its final payment request. It includes those items stated in the contract except for an updated Certificate of Liability Insurance, the responsibility for which rests with administrative and not CAR personnel. Some documentation for projects initiated prior to 2008 could not be located; however, file documentation has improved over the past two years.

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

1. (Significant) Metro Transit Procurement and Contract Services personnel should continue to improve their contract file documentation practices to ensure that all required documentation is retained.

Audit reviewed 18 types of documentation required to be retained in the contract procurement files. Fifteen of those were retained in every project file that was reviewed. However the contract type matrix, the Evaluation of Responsibility and an appropriately documented contract log were not located for a substantial number of projects. The presence of previously missing documentation has improved in projects initiated within the past year compared to those projects initiated prior to October 2008. However, efforts should continue to ensure that all documents are consistently included in contract files.

***Management Response:** Metro Transit Procurement and Contract Services will continue to improve contract file documentation to ensure all required documents are retained. Over the past year, the requirement that the Evaluation of Responsibility and contract type matrix documents must be in the contract file have been clarified in discussions with staff, and a final administrative file review has been instituted to ensure that all required documents are contained in the contract file.*

***Staff Responsible:** Procurement and Contract Services personnel*

***Timetable:** Implemented*

2. (Significant) Metro Transit construction contract files should be maintained to assure that Contractors hold the required insurance coverage during construction and for two years following project completion.

Construction contracts require liability and builder's risk insurance coverage during the term of the project and that liability coverage be maintained for two years after completion of construction. Purchasing and Contract Services Department contract files contained documentation that liability insurance and, in all but one instance, builder's risk insurance was provided prior to contract award. However, there was no information indicating that all required forms of insurance or equivalent coverage was maintained during the construction period or that liability coverage was maintained for two years after project completion. Although, the *Metropolitan Council Contract Administration Manual for Transit Related Projects* specifies the steps the CAR should take to assure receipt of Contractor proof of insurance coverage and although documentation has improved over the past 18 months, CARs were unaware of their responsibility to obtain such documentation. Therefore, in an effort to improve controls over obtaining proof of insurance, on August 3, 2009, Metro Transit issued Work Instruction E-81, *Updating Certificates of Insurance*, transferring that responsibility from the CAR to administrative personnel. It is too early to assess the effectiveness of this change, but it is hoped that administrative personnel will be more available in the office to monitor this process and obtain the necessary proofs of insurance.

***Management Response:** Engineering & Facilities recommends that representatives from Risk Management, Audit, Purchasing, and E & F meet to further discuss this recommendation, determine what actions should be taken to minimize risk to the Council and to develop procedures to implement those actions.*

***Staff Responsible:** Engineering & Facilities personnel
Timetable: July 1, 2010*

***Audit Note:** During the course of the review, E & F transferred the responsibility for tracking Certificates of Insurance to Administrative personnel in an effort to maintain more effective control over this process. Audit considers that action as meeting the intent of this recommendation. The Management Response provided above goes beyond that intent of maintaining Certificates of Insurance to determining what additional steps should be taken to further minimize risk. Audit concurs in this response and will consult with E & F, Risk Management and Purchasing to achieve that goal. However, it is the responsibility of the operating units to develop and implement the resulting procedures.*

3. (Significant) Metro Transit CAR personnel should conduct and document continuous DBE project monitoring. In addition, standard weekly progress meeting forms should be revised to include provisions for such monitoring.

The CAR and ODEO discuss the project's DBE requirements during the pre-construction meeting with the Contractor; however, these discussions are not continued by the CAR through to project completion. The CAR is responsible for including DBE discussions in

weekly progress meetings; however, the standard form used to administer such meetings does not include DBE utilization progress as a subject matter for discussion. As a result, almost half the project weekly progress meeting minutes made no mention of DBE utilization being discussed.

Management Response: *Engineering & Facilities Work Instructions relating to the CAR's DBE responsibilities are contained in three instructions: C-13 Project Meetings; C-26 DBE Reporting Requirements and C-70 CAR DBE Requirements. Engineering & Facilities personnel will review these Work Instructions and modify if needed.*

The E & F Construction Manager will ensure DBE responsibilities are included as a discussion item in weekly progress meetings.

Staff Responsible: *Engineering & Facilities personnel*

Timetable: *Review and modify Work Instructions: March 1, 2010*

Include DBE discussion item in weekly progress meetings: Completed

4. (Significant) Metro Transit personnel should review project change orders that appear to make adjustments due to engineering Consultant errors and/or omissions and if appropriate invoice the Consultant.

Of the 115 standard COs reviewed, 10 valued at \$42,488 appeared to make corrections for engineering Consultant errors and/or omissions when developing the original project specifications. In such instances when it can be shown that an actual error/omission was made, Metro Transit has an obligation to invoice the Consultant requesting reimbursement.

Management Response: *Engineering & Facilities personnel reviewed the ten change orders identified by Audit as appearing to be due to Consultant errors and/or omissions and determined that eight appeared to warrant further investigation as to seeking consultant responsibility. Based on further analysis we'll determine if we are going to pursue additional reimbursement from the consultants.*

Engineering & Facilities personnel will develop guidelines and instructions for classifying change orders and for deciding whether or not to pursue reimbursement from the Consultant.

Staff Responsible: *Engineering & Facilities personnel*

Timetable: *July 1, 2010*

5. (Significant) Metro Transit should pay Contractor monthly pay requests timely and avoid excessive late payment expenses.

In one instance, Metro Transit paid a Contractor's pay request 13 days late, resulting in a CO totaling \$6,403 for interest calculated at an annual rate of 18 percent. Assuming a five percent annual cost of capital, had Metro Transit used its own funds to pay the Contractor while negotiating with the third party, the interest cost would have been only \$1,778.

Management Response: *E&F concurs and will review and modify its Work Instructions to clarify: 1) when an invoice is received; 2) when the "30-day" period begins; and 3) the procedures to assure invoices are reviewed and paid in a timely manner to avoid excessive late payment expenses.*

Staff Responsible: *Engineering & Facilities personnel.*

Timetable: *April 1, 2010*