

OFFICE OF THE CITY CONTROLLER



**PUBLIC WORKS AND ENGINEERING DEPARTMENT
CONTRACT COMPLIANCE REVIEW
LAUGHLIN ENVIRONMENTAL, INC.
FOR THE PERIOD OF JUNE 16, 1993
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 – Laughlin Environmental, Inc. (Report No. 00-17)

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 33587 between the City and Laughlin Environmental, Inc. (Laughlin) pertaining to the paving, drainage, utilities, amenities and remediation for the Calle Rosa, Calle Azalea and Calle Violeta Project. During July 1994, work relating to the paving and amenities sections of the project was suspended by the City.

MFR limited their review to determining if Laughlin'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 except for the City suspended portion of the project, Laughlin'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

July 31, 2000

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

Dear Controller Garcia:

We have completed a review of the construction contract number 33587 (Construction Contract) in the amount of \$6,878,732 between the City of Houston (City) and Laughlin Environmental, Inc. (Laughlin). The Construction Contract represents a unit price contract for construction pertaining to paving, drainage, utilities, amenities and remediation for the Calle Rosa, Calle Azalea and Calle Violeta project. The City also awarded contract number 33586 (Testing Contract) to Southwestern Laboratories, Inc. (Southwestern) in the amount of \$120,000 to provide engineering testing services as required by the Construction Contract. Both the Construction Contract and Testing Contract were approved by City Council on June 16, 1993. The project was not completed as initially designed primarily due to additional unanticipated remediation costs. Also, during July 1994, work relating to the paving and amenities section of the project was suspended by the City. As of March 29, 2000, the last day of fieldwork for this report, such work has not been completed. Except for the City suspended portion of the project, the Construction Contract was substantially completed on February 9, 1998. The final Construction Contract was approved and the work accepted on March 31, 1999 by City Council Motion 99-0501.

Our review was limited to determining if Laughlin'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 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.

The scope of our review was from June 16, 1993 to January 31, 2000 and consisted of the following procedures:

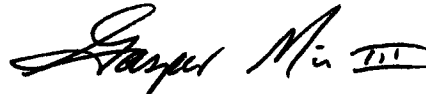
- Reviewing RCA's, contracts, schedule of values, change orders, work change directives, proposed modifications, correspondence files, engineering testing contracts and related reports.
- Reviewing bid tabulation documentation, insurance and bond information, daily inspection reports, as built drawings,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

Our procedures were performed through March 29, 2000 and have not been updated since then. Based on the procedures performed, except for the City suspended portion of the project, we determined that Laughlin'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 33587. 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 Laughlin Environmental, Inc. Construction Contract

Background

According to the General Conditions of the Construction Contract, "Each change in scope of work, whether by Change Order or Work Change Directive, which exceeds five percent of the Contract Price as set forth in the original Contract will require approval or ratification of the City Council."

"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"

Findings and Recommendation

Findings:

For construction contract number 33587, we reviewed the seven change orders that had been approved for the Construction Contract. Of the seven change orders reviewed, two appeared to be in violation of the general conditions of the Construction Contract:

- Change order number three increased the Contract Price by \$3,998,756 or 133.7%. This change order significantly increased the scope of work related to soil remediation and the amount of the original Construction Contract Price that was approved by City Council on June 16, 1993. On July 30, 1993 the Construction Contractor advised the City, in a letter, to replace 2 ½ feet of topsoil instead of the six inches specified in the original Construction Contract. The City Council subsequently approved change order number three on December 15, 1993.
- On September 30, 1994, change order number six was submitted requesting a net reduction of \$2,616 in the Construction Contract Price. The change order consisted of the addition of new work totaling \$258,991 and a reduction in the scope of work totaling \$261,607. The reduction in the scope of work pertained to the work that had been added in change order number three. By netting the two amounts, City Council was not required to approve either the addition or reduction in the scope of work. However, change order number six was approved by the City's administration.

Recommendation:

When a construction contract has a significant increase in scope of work, the City should consider requesting new bids to ensure that construction services are acquired from the most responsive bidder at the most economical price. In addition, to ensure the City complies with the Change Order process, PW&E should modify its procedures to require the preparation of separate change orders for each significant change in the scope of work.

Background

According to the General Conditions of the 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:

On change order number three to contract number 33587, the City approved an allowance for standby costs in the amount of \$105,687. However, the City paid for standby costs in the amount of \$173,475 on Pay Estimate 10 dated February 28, 1994. Pay Estimate 10 did not contain any documentation supporting the amount requested for reimbursement of stand by costs. In addition, neither the Construction Contract nor change order number three contained any particulars on how the standby costs were calculated.

Recommendation:

To ensure that the City does not overpay for allowances on construction contracts, PW&E should ensure that all calculations are defined in the construction contract and related change orders. The Pay Estimate should also contain adequate supporting documentation on how amounts requested for reimbursement are determined.

Background

All property maintained by the City should have adequate physical safeguards to prevent physical injury to individuals and creating a potential legal liability for the City.

Finding and Recommendation

Finding:

During our on-site visit, we noted that there were several open holes on the vacant land that were not adequately safeguarded to prevent physical injury to individuals especially from the surrounding neighborhood. We also noted one instance in which a manhole cover was missing.

Recommendation:

To reduce legal liability and ensure that the property is adequately safeguarded, the City should immediately install the necessary physical safeguards such as appropriate fencing and a manhole cover.

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 Guan 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.

LAUGHLIN ENVIRONMENTAL, INC. (CONTRACT #33587)

I. Change Order Process

Of the seven (7) change orders reviewed, two (2) appeared to be in violation of the general conditions of the Construction Contract:

- Change order number three (3) increased the Contract Price by \$3,998,756 or 133.7%.
- On September 30, 1994, change order number six (6) was submitted requesting a net reduction of \$2,616 in the Construction Contract price. The change order consisted of the addition of new work totaling \$258,991 and a reduction in the scope of work totaling \$261,607. By netting the two (2) amounts, City Council was not required to approve either the addition or reduction in the scope of work. However, the change order number six (6) was approved by the City's administration.

*Views of Responsible
Officials*

EXHIBIT 1

Mir - Fox & Rodriguez, P.C.
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RECOMMENDATION:

When a construction contract has a significant increase in the scope of work, the City should consider requesting new bids to ensure the construction services are acquired from the most responsive bidder at the most economical price. In addition, to ensure the City complies with the Change Order process, PW&E should modify its procedures to prepare separate change orders to reflect significant changes in the scope of work.

RESPONSE:

This project was substantially completed on October 18, 1994. The current staff of the Construction Division, was unable to ascertain all justifications for Change Orders which had been processed by previous management.

Currently, changes in the scope of work are not allowed for construction projects. A procedure has been implemented, whereby the Project Manager monitors the monthly estimates to verify that no project will exceed 105% of the contract amount.

II. Allowance for Standby Costs

On change order number three (3), the City approved an allowance for standby cost in the amount of \$105,687. However, the City paid for an allowance for standby costs in the amount of \$173,475 on Pay Estimate 10 dated February 28, 1994. Pay Estimate 10 did not contain any documentation supporting the allowance amount requested for reimbursement. In addition, neither the Construction Contract nor change order number three (3) contained any particulars on how the standby costs were to be calculated.

RECOMMENDATION:

To ensure that the City does not overpay for allowances on the Construction Contract, PW&E should ensure that all calculations are defined in the Construction Contract and related change orders. The Pay Estimate should also contain adequate supporting documentation on how the allowance amount for payment was determined.

RESPONSE:

This project encountered unusually costly circumstances due to unknown field conditions, necessitated by environmental remedial considerations. The bid tabulations received for this project were as follows: the lowest bid was \$2,998,766; the second lowest bid was \$5,919,373; and the third lowest bid was \$5,977,230. The difference between the lowest bidder and the second/third bidders should have been a signal of potential difficulties with the project. The City opted to go with the lowest bidder since this was a priority project. The expenditures for contractor's down time were approved by the previous management group.

At the present time, no standby costs are provided in current construction contract documents.

III. Adequate physical safeguards for city property

During our on-site visit, we noted there were several open holes on the vacant land that were not adequately safeguarded to prevent someone especially from the surrounding neighborhood from hurting themselves. We also noted one (1) instance in which a manhole cover was missing.

Views of Responsible
Officials

7530-0178415-00

EXHIBIT 1

Mir - Fox & Rodriguez, P.C.
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RECOMMENDATION:

To reduce legal liability and ensure that the property is adequately safeguarded, the City should immediately install the necessary physical safeguards such as appropriate fencing and a manhole cover.

RESPONSE:

The Right-of-Way Maintenance Division has restored the Milby Bus Barn site to safe conditions and will provide routine maintenance.

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

Cordially,



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

TJR:HL:lwg
hw

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**