

INTERCHANGE PROJECT SUBRECIPIENT MONITORING REPORT

PROGRAM EVALUATION AND AUDIT



**METROPOLITAN
C O U N C I L**

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INTRODUCTION

Background

The Interchange Project is a multi-modal transportation facility under construction near Target Field and the Hennepin Energy Recovery Center. When the Interchange is completed in 2014 it will serve as a node for the Metro Green Line (Central Corridor LRT), Metro Blue Line (Hiawatha LRT), Northstar Commuter Rail, and bus routes. A secondary goal of the project is to provide public space that will serve as a gateway to the North Loop and downtown neighborhoods.

The Hennepin County Regional Railroad Authority and the Met Council began long range planning for a multi-modal transportation facility in 2006. Federal funding for the project is from: 1) \$500,000 from a Congressional earmark awarded in 2010, 2) \$10 million from a Transportation Investment Generating Economic Recovery (TIGER) discretionary grant from the Federal Transit Administration (FTA) awarded in 2011, 3) \$10 million from Metro Transit's formula funding, and 4) reprogramming of \$8.9 million of previous Federal Highways Administration earmark funds. The Met Council, as the Federal Transit Administration's designated transit authority, is the recipient of these federal funds. Hennepin County Regional Railroad Authority (HCRRA) is the subrecipient. Other funding for the project will be contributed by Hennepin County, Hennepin County Housing and Redevelopment Authority (HRA), the city of Minneapolis, the state of Minnesota, the Met Council, the Central Corridor (Green Line) Project, Minnesota Ballpark Authority, and the Mississippi Watershed Management Organization. Total cost for the project is over \$79 million.

Metro Transit has primary responsibility for monitoring the subrecipient. The need to complete this project prior to beginning of rail operations on the Metro Green Line persuaded HCRRA to pursue a design-build contracting process.

Purpose

This audit evaluates the processes by which the Council and Metro Transit monitor subrecipient compliance for the Interchange Project. A supporting purpose is to find best practices with regards to monitoring of design-build projects that are funded with federal funds. In addition the audit identifies potential risks and weaknesses in monitoring, and identifies solutions to mitigate risks and strengthen monitoring.

Scope

The audit focuses on the processes followed by Metro Transit beginning at the initiation of the Interchange Project in 2012 for monitoring subrecipient compliance. The project also includes an evaluation of the effectiveness of the monitoring of subrecipient compliance with federal and Council requirements.

Methodology

To understand the implementation and impact of subrecipient compliance monitoring process and practices, the following methods of inquiry were used:

- Review FTA Master Agreements.
- Review Metro Transit grants management procedures.
- Review FTA procurement best practices.
- Review subrecipient procurement procedures.
- Review subrecipient grant agreements.
- Review Interchange solicitation documents.
- Review grant agreements with FTA.
- Review Council procurement procedures.
- Review Interchange Project contracts.
- Review design-build project delivery best practices literature.
- Review FTA guidance circulars.
- Interview subrecipient personnel.
- Interview Metro Transit, Office of Equal Opportunity, and Met Council Contracts and Procurement staff.

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*.

OBSERVATIONS

Procurement Solicitation

Design-build project delivery was selected by Hennepin County Regional Railroad Authority (HCRAA) because of design-build's expected benefit to shorten the time to completion. Combining both design and construction activities in one procurement solicitation shortens the project timeline by eliminating the need for a separate procurement solicitation later for construction in the more commonly used design-bid-build procurement process. The Interchange Project needs to be completed prior to the start of pre-revenue service in 2014 of the Green Line, and it is planned that the Interchange will be completed before the 2014 Major League Baseball season.

Hennepin County, through a master agreement with HCRAA, is the procuring agency for Interchange. HCRAA does not have statutory authority to use design-build procurement, but Hennepin County has statutory authority.

Procurement solicitation documents were reviewed by Met Council staff prior to release

Interviews with both Interchange Project Office staff and Met Council staff confirm that Met Council staff reviewed solicitation documents prior to public release. The project manager at Metro Transit forwarded the solicitation documents to the Met Council's Contracts and Procurement Department and the Office of Equal Opportunity (OEO) for review. Contracts and Procurement reviews solicitation documents for appropriate federal clauses. OEO reviews for Disadvantaged Business Enterprise (DBE) subcontracting opportunities. Copies of procurement solicitation documents are maintained in the shared project file on a network directory in Metro Transit.

Procurement solicitation documents were not readily available for review

Metro Transit Engineering and Facilities Department uses a shared network directory to store files related to projects it manages. The Interchange Project files are stored on that directory. At the start of the audit, some of the procurement solicitation documents were not saved to the shared network directory. The files were saved to the network drive over the course of the audit. Documents too large to save on the network drive are located in the project manager's work area as hardcopy or on CD-ROM.

Interchange Project has had four project managers in sequence since the inception of the project concept. Organizing and storing the various files varied by project manager which led to delays in locating documentation. The current project manager found and organized the documents by the time of the completion of the audit.

Procurement solicitation documents for design-build contract included best practices elements

Design-build project delivery has differing areas of risk compared to design-bid-build project delivery. Soliciting proposals before designs are completed leads to uncertainty about final construction costs. The uncertainty is mitigated through best practices in design-build project delivery.

A review of design-build best practices found the following criteria for improving the likelihood of design-build project delivery success.

- Clearly defined goals and criteria within the RFP.
- Construction and design responsibility and risk are primarily assigned to the contractor.
- Technical and cost criteria are evaluated separately during evaluation of proposals.
- Selection criteria within the RFP indicate the rationale for awarding the contract.
- Design-build Request For Qualifications (RFQ) clearly states the criteria for responsiveness and selection.
- Dispute resolution process is included within the contract.

A review of solicitation documents found the above best practices were included during the solicitation phase.

The review of best practices indicates that the owner of the project has other expectations when compared to design-bid-build project delivery. Experience with design-build procurements and active review by the project owners of the design plans are some of the activities that best practices encourage for design-build project delivery. Design plans prior to solicitation are to be somewhere between 10% and 35% complete in order to allow the design-builder flexibility for creativity.

In the case of the Interchange Project, HCRRA has contracted with a consultant that was the director of the Hiawatha Project Office during Hiawatha (Blue Line) LRT construction, which was also constructed under a design-build contract. Interviews with Metro Transit staff and HCRRA staff indicate that design and construction meetings with the contractors, HCRRA, and Met Council staff are held biweekly. The design plans were 25% or less complete at the time of the award of the design-build contract.

Compliance with FTA Master Agreement

The FTA Master Agreement states the work products, reporting, leveraged financial resources, and other requirements for use of the \$10 million grant and the \$500,000 Congressional appropriation. Additional requirements are included in 49 CFR Subtitle A, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government; and FTA Circular C 5010.1D – Grant Management Guidelines.

Certifications and assurances are submitted

Subrecipients of FTA grants must provide assurance that it meets several requirements including the procurement system complies with federal rules, satisfactory continuing control of project equipment and facilities will be maintained, the agency is not disbarred or suspended from working with federal agencies, complies with prohibitions against discrimination according to Title VI of the Civil Rights Act, and federal flow down clauses will be in all lower tiered contracts. Subrecipients must annually submit the certifications and assurances to the FTA and a copy must be provided to the recipient. Copies of the certifications and assurances for all years since 2010 had been submitted by the subrecipient to the Met Council and to the FTA.

Federal clauses in the Master Agreement were in the subrecipient grant agreements

Grant agreements between the Metropolitan Council and FTA require that the conditions placed upon the Met Council flow-down to the subrecipients and their contractors. A review of the subrecipient grant agreements found that all agreements contained language and exhibits that stated that the federal and grant requirements flow down to the subrecipients and the contractors.

DBE goals are monitored

In September 2011 the Met Council OEO department approved the sub-recipient contract initiation memo (SCIM) and assigned the Council's overall DBE goal of 15 percent. This was based upon the availability of subcontracting opportunities and FTA funding.

The primary contractor submitted a list of likely DBE certified subcontractors in February 2012 with their proposal. Because designs were less than 30 percent complete, the primary contractor could not know how much it would need to procure for each type of service or material. As the design for Interchange developed, the contractor could better determine where subcontracting opportunities for DBEs were possible. The Met Council Office of Equal Opportunity (OEO) staff worked with the contractor in December 2012 to determine the contract cost goals for individual DBE subcontractors. The dollar goal is \$10,479,442.73, or 15.04 percent, out of the \$69,678,941 design-build contract.

OEO staff persons perform periodic site visits to both the construction site and to sites of subcontractors, such as engineering firms, to verify DBE participation on Interchange. DBE site visits occur once or twice every two weeks. The frequency of visits may vary due to activity on the project. OEO has a shared network drive for submitting its notes and photos while on the sites.

Monthly invoices from the subrecipient to the Met Council include a DBE progress report. The report is sent to OEO for review. Payment will not be made if a DBE progress report is not provided.

Federal flow down clauses are included in contractor and subcontractor agreements

The Master Agreement requires that all FTA requirements for the recipient and subrecipient also flow down to third party contractors and low tiers of contractors. A review of the contract with the primary contractor indicated that FTA requirements were included. A review of the primary contractor's invitation to bid manual also incorporates the flow down clauses into the subcontractor agreements.

Compliance with Subrecipient Grant Agreements

Two subrecipient grant agreements between the Met Council and HCRRA have been executed for Interchange. The first agreement is for the \$500,000 Congressional earmark in 2010 and the TIGER III discretionary grant of \$10 million in 2012. The agreements are identical in terms of requirements, with differences being in the use of the respective funds.

Grant agreement provisions are monitored by Met Council staff

Key monitoring provisions of the subrecipient grant agreements were examined for evidence of Met Council monitoring. The provisions examined are listed below.

- Work scope changes
- Eligible costs
- DBE goals and reporting
- Compliance with federal requirements
- Inclusion of federal requirements in lower tier agreements
- Budget changes
- Milestone progress reporting
- Compliance with laws
- Self certification of procurement system

Met Council staff demonstrated that the above provisions were monitored. Met Council project managers have participated in project update meetings with HCRAA and contractor staff. OEO staff persons have documented ongoing monitoring of DBE compliance. Documentation is maintained by Met Council project managers to ensure certifications and assurances have been submitted by the subrecipient. Documentation retained by Met Council staff shows that federal requirements flow down to contractor and subcontractor agreements.

Newly adopted subrecipient reporting checklist had not been updated

In 2012 Metro Transit Grants and Metro Transit Finance developed a checklist for the purpose of tracking when key reporting and monitoring tasks have occurred for subrecipient projects. The checklist includes milestones/progress report submittals, financial report submittals, certifications and assurances submittals, project managers' site visits, and other related monitoring tasks. The project manager records when each task has occurred.

A review of Interchange's reporting checklist found initially that the checklist had not been updated. The project manager had within a few days afterwards updated the checklist to record the monitoring activities through the first quarter of 2013.

Financial Controls

Recipients of federal grants are accountable for the management of federal funds. FTA Circular C 5010.1D "Grant Management Requirements" lists the monitoring requirements of the recipient. These include monitoring activities that demonstrate the subrecipient's financial capacity to: carry out the project; account for project property; demonstrate and retain satisfactory continuing control over project property; and ensure effective control and accountability are maintained for all grants, subgrants, cash, real and personal property, and other assets.

Asset ownership of transit property are managed

During construction of the Interchange, existing tail track belonging to the Metropolitan Council's Northstar Corridor Commuter Rail asset needed to be removed. This original tail track was funded in part with FTA funds, and any actions taken that affect it must follow FTA requirements. Portions of the original tail track will be reused in Interchange Project. This requires accurate identification of the re-used track and proper calculation of depreciated value of the tail track. Metro Transit Finance staff is working with HCRRA staff to ensure that the tail track is properly tagged as an asset. Concurrence was reached on a methodology for determining the depreciated value of the track when Interchange is completed. Furthermore, Metro Transit Finance will verify at the completion of the Interchange Project that HCRRA has removed from its accounting ledgers the value of all transit property and has transferred it to the Met Council.

Subrecipient invoices are reviewed by project managers

The subrecipient submits invoices monthly to the Met Council's project manager. The invoices and supporting documentation are saved to the project's shared network directory. The project manager reconciles the financial information submitted with Metro Transit Finance's financial reports.

CONCLUSIONS

- 1. Monitoring by Met Council staff of the subrecipient, HCRRA, for Interchange Project is sufficient. Compliance monitoring activities performed by staff include site visits for verifying DBE participation, review of solicitation documents, periodic meetings with subrecipient and contractors, and review of invoices.*
- 2. Design-build project delivery method's strengths include shorter completion timeframes and opportunities for a contractor to offer innovative solutions. These strengths also present risks. Monitoring and active collaboration particularly early during the concept and design phases are required to manage these risks. In the case of Interchange, Met Council staff persons were engaged early in the project.*

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. (Consideration) Procedures or checklists may be developed to assist project managers for monitoring design-build subrecipient projects.

Existing project management processes provide sufficient guidance for monitoring subrecipient activities, however, design-build project delivery processes provide additional areas of emphasis for monitoring. Best practices recommend, for example, early collaboration with the design-build contractor in the design phase, clearly defined goals in the RFP, and separation of the technical and cost reviews of proposals. A checklist that incorporates monitoring activities that manages the risks inherent in design-build project delivery would be helpful for future design-build projects.

2. (Consideration) Met Council staff should prepare a lessons learned report near completion of the project.

Design-build project delivery presents different risks from the more typical design-bid-build process. Key participants in the project should be interviewed or gathered in meetings for their perspectives of aspects of the project that performed well or poorly. Suggestions for improvements may be gleaned from the participants, which will assist in future subrecipient design-build projects that Met Council staff may monitor.



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