

Office of Inspector General
Robert E. Clift, Inspector General



Attestation Report No. 14I-1001
SunRail – Contract E5L71

November 7, 2014

EXECUTIVE SUMMARY

As part of the Office of Inspector General's (OIG) annual audit plan, we conducted an examination of contract E5L71 (contract), a \$163,288,700 lump sum Design-Build-Maintain agreement between the Florida Department of Transportation's (department) District Five and Archer Western-RailWorks Contractors, a Joint Venture (contractor). The contract required final design, construction and maintenance of the acquired Central Florida commuter rail corridor for SunRail (a commuter train in the Orlando area), including five segments of new track construction, grade crossings, signal systems, station platforms, a vehicle maintenance and storage facility, and a central control center. This \$357,225,001 project was \$178,612,505 (50%) federally funded, \$89,306,248 (25%) state funded and \$89,306,248 (25%) locally funded.

We determined District Five conducted adequate monitoring and oversight of the contract requirements with one exception. District Five did not conduct an adequate review and approval process for verifying stockpiled material invoices, which resulted in a net overpayment of \$195,075.60. Although the contractor's over-billing did not result in overpayment of the lump sum contract, it did result in overpayment of actual stockpiled material costs for pay requests 9 and 16. We also determined the 21 Supplemental Agreements and Contingency Supplemental Agreements tested¹ were reasonable, necessary and included required documentation.

We recommended District Five's SunRail Construction Project Manager who oversees the Construction Engineering and Inspection (CEI) consultants for this project: 1) develop a mechanism to document the accuracy of invoiced amounts; and 2) train CEI consultants to ensure adherence to prescribed policies and procedures over items such as documenting calculations relied upon for making payments are accurate, and invoiced amounts are verified, correct and approved prior to processing payments in SiteManager.²

Corrective actions for these recommendations have been implemented by District Five effective March 2014.

¹ SAs 7, 10, 12, 13, 15, 16, 17, 19, 20, 21, 23, 24, 25, 26, 27 and 29; CSAs 11, 14, 18, 22 and 28.

² SiteManager is the department's construction application system developed by the American Association of State Highway and Transportation Officials (AASHTO).

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BACKGROUND

Contract E5L71, a \$163,288,700 lump sum agreement with payments made based on project completion percentages, was executed between the department's District Five and Archer Western-RailWorks Contractors, a Joint Venture, on March 16, 2011, to include design and construction of the SunRail project – Phase I. The contract required final design, construction and maintenance of the acquired Central Florida commuter rail corridor for SunRail (a commuter train in the Orlando area), including five segments of new track construction, grade crossings, installation of signal and communication systems, 12 station platforms, a vehicle maintenance and storage facility, and a central control center.

On July 18, 2011, a Full Funding Grant Agreement was executed between the Federal Transit Administration (FTA) and the department to provide \$357,225,001 in financial assistance from 49 United States Code (U.S.C.) §5309, New Starts program for SunRail's design and construction of new fixed guideway systems. For this project FTA's participation totaled \$178,612,505 (50%); the department's participation was \$89,306,248 (25%) and local agencies' contributed \$89,306,248 (25%).

District Five's Professional Services Agreement with consulting firm HNTB Corporation provides Construction Engineering and Inspection (CEI) services. The scope of services for SunRail required contract administration, inspection, materials sampling and testing. A management inquiry of the District Resident Engineer/SunRail Construction Project Manager revealed that generally the CEI consultant also prepares Supplemental Agreements (SAs) and Contingency Supplemental Agreements (CSAs).

RESULTS OF EXAMINATION

The **purpose** of the examination was to determine whether District Five conducted adequate monitoring and oversight of the contractor/subcontractors' compliance with federal contract requirements and whether supplemental agreements were reasonable and necessary.

We determined District Five conducted adequate monitoring and oversight of the following contract requirements:

- The "Required Contract Provisions for Federal Transit Administration Federal-aid Construction Contracts" regulations were contained in the subcontractors' agreements; contractors and subcontractors' Homeland Security's E-Verify forms were signed and dated; and Disadvantaged Business Enterprise (DBE) subcontractors were used on the project. Additionally, District Five's Compliance Specialist ensured the contractor adhered to the Davis-Bacon Act labor and wage requirements. Buy America requirements per 49 U.S.C. §5323(j) and Title 49, Part 661, Code of Federal Regulations (C.F.R.) for using steel and iron were verified through certifications submitted by the contractor;

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- The 21 SAs and CSAs tested were reasonable, necessary and included required documentation, such as the Comptroller’s Fund Approval prior to SA execution date, Engineer’s Estimate, Entitlement Analysis and General Counsel’s review and approval;
- RailWorks demonstrated adequate controls through field surveys of subcontractor Railroad Controls Limited’s (RCL) progress and although RailWorks did not maintain written assurance of corrective action taken by RCL, District Five’s field inspectors provided adequate coverage through completing Daily Work Reports and maintaining oversight documentation of contractors and subcontractors (including RCL). For this contract, total services provided by subcontractor RCL were \$43,200,531, or 26% of the Archer Western-RailWorks’ contract. We interviewed RailWorks’ staff, obtained Daily Work Reports of RCL’s progress, reviewed RCL’s invoice supporting documentation, analyzed RailWorks’ job cost reports, reviewed payments made to RCL and judgmentally selected and reviewed the March 2013 payroll for timely submission. RailWorks paid RCL within one to two months of receiving their invoices and RCL’s payroll records for March 2013 were certified and submitted timely; and
- FTA conducted monthly onsite visits of the project, met with District Five’s project team, tracked the standard cost categories (which were established by FTA for monitoring purposes) and communicated with the district’s Transit Program Administrator regarding data entered in FTA’s Transportation Electronic Award Management system.

One finding was identified, which is detailed as follows:

Finding 1 – Invoiced costs

Objective

Determine if selected invoices are adequately supported.

Conclusion

The contractor’s pay requests 9 and 16 did not reflect actual amounts expended for stockpiled materials and this resulted in a net difference of \$195,075.60. Although the contractor’s over-billing did not result in overpayment of the lump sum contract, it did result in overpayment of actual stockpiled material costs for pay requests 9 and 16.

**Condition
(Supporting Evidence)**

Pay requests 9, 11 and 16 were tested to determine if they matched the *Certification and Request for Payment for Stockpiled Materials* and supporting invoices:

- Archer Western-RailWorks’ pay request 9 was \$3,000 under-billed based on the subcontractor’s invoices for track installation purchase material;

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- Archer Western-RailWorks' pay request 16 was \$125,496.70 over-billed based on the subcontractor's invoices for track installation purchase - furnish material and \$72,578.90 over-billed based on the subcontractor's invoices for signal material resulting in a difference of \$198,075.60 (\$125,496.70 + \$72,578.90) for pay request 16; and
- There were no variances for pay request 11.

Invoice Period	Stockpiled Material	AW-RW Pay Request 9	Certification - Invoices	Difference
7/11/2012 - 8/10/2012	Track	\$626,398.00	\$629,398.00	(\$3,000.00)
	Signal	\$608,318.79	\$608,318.79	\$0.00
Difference on stockpiled material – Pay Request 9				(\$3,000.00)

Invoice Period	Stockpiled Material	AW-RW Pay Request 16	Certification - Invoices	Difference
2/11/2013 - 3/10/2013	Track	\$1,148,715.34	\$1,023,218.64	\$125,496.70
	Signal	\$1,718,902.91	\$1,646,324.01	\$72,578.90
Difference on stockpiled material – Pay Request 16				\$198,075.60

Total (Net) Difference			\$195,075.60
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Criteria

The 2010 Standard Specifications for Road and Bridge Construction (as referenced in SA 1), Division I, Section 9 – Measurement and Payment, §9-5.5 Partial Payments for Delivery of Certain Materials states: The amount of partial payment will be determined from invoices for the material up to the unit price in the contract including delivery charges to the jobsite. The total quantity for which partial payment is made shall not exceed the estimated total quantity required to complete the project and the contractor shall furnish copies of certified invoices to document the value of materials received.

Construction Project Administration Manual (CPAM), Section 5.11.6.1(1) – Partial Payment for Certain Material states: “A *Certification and Request for Payment for Stockpiled Materials, Form No. 700-010-42*, executed by a person employed by the prime contractor in a supervisory capacity and all accompanying invoices, must be in the project records prior to any payment for materials being included in a progress estimate. . . . Payment for such items is to be based on the invoice price including delivery charges for delivered materials.”

Cause

CEI consultants are responsible for reviewing and ensuring accuracy of the contractor's Schedules of Values-Pay Requests.

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	<p>There were inconsistencies in the CEIs' processes for reviewing Schedules of Values-Pay Requests. Documented review and approval of stockpiled material invoices were not maintained. District Five did not identify or correct the contractor's over-billing of stockpiled material amounts prior to processing the progress estimate payment.</p>
Effect (Impact)	<p>For tested invoices 9 and 16, a \$195,075.60 total (net) difference (overpayment) of stockpiled materials occurred.</p>
Recommendation	<p>We recommend District Five's SunRail Construction Project Manager responsible for managing the CEI consultants:</p> <ul style="list-style-type: none">• develop a mechanism to document the accuracy of invoiced amounts; and• train CEI consultants to ensure prescribed policies and procedures are adhered to, including documenting calculations relied upon for approval of payments are accurate and invoiced amounts are verified, correct and approved prior to processing payments in SiteManager.
Corrective Action Taken	<p>District Five's Operations Contract Manager informed all in-house and CEI staff responsible for contracts about a new verification process "for determining that we are only paying the contractor for what is due." Training sessions were conducted during February 2014 at a District Construction Managers Meeting, Resident Office Staff Meetings and individually during Quality Assurance Reviews. Topics discussed included CPAM Chapters 5 (Project Documentation) and 6 (Contract Payments) as well as the basis for payments. In addition, a clarification email with steps and examples was sent to all in-house and CEI staff on March 18, 2014.</p> <p>The process requires district in-house and CEI staff to document the sources (e.g., Daily Work Reports, inspectors' plan sheets) used to ensure the contractor's pay request items are accurate and to include the sources next to the pay request items on the Schedule of Values or to enter notes in an Excel spreadsheet. After completing the verification, in-house and/or CEI staff scan the information into the department's Electronic Document Management System (EDMS) to justify estimates.</p>

APPENDIX A – Independent Accountant’s Report

We have examined Archer Western-RailWorks’ billings, supporting documentation and compliance with contract E5L71 for the period July 1, 2012 through July 31, 2013. Archer Western-RailWorks Contractors are responsible for the billings of contract E5L71 (financial project number 412994-4-52-01). Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and standards applicable to Attestation Engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Accordingly, this engagement included examining, on a test basis, evidence supporting Archer Western-RailWorks’ billings and performing such procedures as we considered necessary in the circumstances. We believe our examination provides a reasonable basis for our opinion.

In our opinion, Archer Western-RailWorks’ billings for contract E5L71 (financial project number 412994-4-52-01) are in conformity with the terms of the contract and present, in all material respects, allowable percentage of completion amounts (pay requests) on this lump sum contract for the period July 1, 2012 through July 31, 2013.

APPENDIX B – Purpose, Scope and Methodology

Section 20.055, Florida Statutes, requires the OIG to conduct audits, examinations, investigations and management reviews related to programs and operations of the department. This examination was performed as part of the OIG’s mission to promote accountability, integrity and efficiency for the citizens of Florida by providing objective, timely audit and investigative services.

The **purpose** of the examination was to determine whether District Five conducted adequate monitoring and oversight of the contractor/subcontractors’ compliance with federal contract requirements and whether supplemental agreements were reasonable and necessary. The examination also included determining, on a selected test basis, the allowability and accuracy of billings, whether stockpiled material costs were adequately supported and whether the contractor maintained adequate controls and oversight of subcontractor Railroad Controls Limited (RCL).

The **scope** of our examination consisted of reviewing four pay requests from July 1, 2012 through July 31, 2013. We judgmentally selected pay requests 9, 11, 16, 20 and supporting documentation. We also reviewed 21 SAs and CSAs³ for contract E5L71 (financial project number 412994-4-52-01).

Our **methodology** consisted of interviewing appropriate personnel and reviewing:

- Full Funding Grant Agreement, contract E5L71, supplemental agreements, nine subcontractor agreements and consulting firm HNTB Corporation’s Standard Professional Services Agreement;
- 49 United States Code (U.S.C.) §5309, Capital Investment Grants and 49 U.S.C. §5323(j), Buy America;
- Title 49, Part 633, Code of Federal Regulation (C.F.R.), Project Management Oversight and 49 C.F.R. 661, Buy America Requirements;
- Section 337.11, Florida Statutes (F.S.), Contracting; Acquisition Disposal, and Use of Property;
- Rule 14-78.005, Florida Administrative Code (F.A.C.), Participation by Disadvantaged Business Enterprises;
- department Design-Build Rules, Procedures and Guidelines (revised August 8, 2012);
- department Construction Program Administration Manual (CPAM);
- department 2010 Standard Specifications for Road and Bridge Construction and Special Provisions for project milestones as referenced in Supplemental Agreement 1;
- department Disbursement Operations Office – Disbursement Handbook (last updated January 28, 2014. Section on Invoices, effective August 7, 2012 – unchanged with subsequent revisions);

³ See “Executive Summary” on page 1 for a full listing of SAs and CSAs.

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- department Procedure No. 625-020-010, Design-Build Procurement and Administration (effective December 5, 2011);
- department Procedure No. 350-020-200, Contract Funds Management – Funds Approval (effective January 20, 2011);
- District Five’s Project Management Plan Construction Phase – Initial Operating Segment for the Central Florida Commuter Rail Transit Project (revision 8 dated January 31, 2012); and
- examining Schedules of Values-Pay Requests, stockpiled material invoices and supporting documentation on a test basis.

APPENDIX C – Archer Western-RailWorks Contractors’ Response

On September 26, 2014, Mr. James Lapp, Project Manager with Archer Western-RailWorks Contractors Joint Venture provided a reply to the draft report stating “the JV has no comment at this time.”

APPENDIX D – Management Response

On October 26, 2014, Mr. John Tyler, District Five Construction Manager, responded to the draft report by stating: “I appreciate the review conducted by the Office of Inspector General of the SunRail Design Build Project. We consider these opportunities to confirm our strengths and identify improvement areas. We have taken your recommendations and implemented mechanisms to document the accuracy of invoices paid and to train all our CEI staff and consultants on the policies and procedures to be adhered to prior to authorizing payments. Training sessions were held in February, 2014 reviewing CPAM Chapters 5 (Project Documentation) and 6 (Contract Payments).”

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Diane Poitras, District Five Transit Programs Administrator
Edward F. Connolly II, District Five Passenger Operations Manager
Jonathan Duazo, SunRail Public Transportation Manager
Tawny Olore, SunRail Program Manager (URS sub-consultant)
James Lapp, Project Manager – Archer Western Contractors
Ed Fenn, P.E., Project Manager – RailWorks Corporation
Melinda Miguel, Chief Inspector General, Executive Office of the Governor
Andres Ramirez, Federal Transit Administration Project Manager, Region IV

Project Team:

Engagement was conducted by Helen Titoff, Auditor
Under the supervision of:
Intermodal Audit Manager; and
Kristofer B. Sullivan, Director of Audit
Approved by: Robert E. Clift, Inspector General

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Statement of Accordance

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to provide a safe transportation system that ensures the mobility of people and goods,
enhances economic prosperity, and preserves the quality of our environment and communities.*

*The mission of the Office of Inspector General is
to promote integrity, accountability and process improvement in the Department of
Transportation by providing objective fact-based assessments to the DOT team.*

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General and the American Institute of Certified Public Accountants and standards contained in Government Auditing Standards issued by the Comptroller General of the United States.

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