



CALIFORNIA
High-Speed Rail Authority

Contract Amendment Process

January 2023

EXECUTIVE SUMMARY

The Audit Office of the California High-Speed Rail Authority (Authority) performed an audit to evaluate the Authority's contract amendment process. Contract amendments are used to change existing contracts the Authority has executed. Changes include, but are not limited to, time extensions, budget changes, and revisions to terms and conditions.

The purpose of the audit was to evaluate the Authority's process for requesting, approving, and executing contract amendments. The objectives were to determine if the Authority:

- has documented processes in place for approving and executing contract amendments,
- complies with the contract amendments process,
- has an efficient contract amendment process.

The scope of the engagement was limited to executed contract amendments during the period of January 1, 2019, through December 31, 2021. Our audit included examining policies, procedures, and other relevant criteria, interviewing personnel, and conducting tests necessary to complete the objectives.

We found that there were documented processes in place and executed contract amendments generally complied with the procedures. However, the documented processes lacked sufficient key performance indicators (KPIs) to determine the efficiency of the processes. Moreover, the Business Oversight Committee procedures had yet to be finalized and distributed. Also, we found that longer terms for third-party and inter-agency contracts could reduce the number of time-only amendments, procedures for contract change management require updating, and the Business Oversight Committee Charter may need revisions.

We look forward to following up with the corrective actions in 90-day increments until the issues are resolved.

Paula Rivera

Paula Rivera, Audit Chief

February 3, 2023

Date

Audit Report

BACKGROUND

The California Legislature created the California High-Speed Rail Authority (Authority) as part of the California High-Speed Development Act of 1994. The Authority is responsible for planning, designing, building and operation of the first high-speed rail system in the nation. California high-speed rail will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs, and preserve agricultural and protected lands. The Authority is responsible for overall management, oversight, and monitoring of state and federal awards received. This function requires accountability and transparency and must provide a means of tracking and monitoring program goals, accomplishments, and compliance with grant requirements.

To achieve the Authority's goals and obligations, the Authority's Administrative Office, specifically the Contract Assessment Branch is responsible for ensuring compliance with the Authority's Contract Management Policy. The policy requires Contract Managers to work with Contractors and they "must manage all contracts in a uniform, transparent, efficient, and ethical manner." The Authority must adhere to Authority policies and procedures, grant requirements, laws and regulations, and the California State Contracting Manual, as applicable during the administration and management of contracts, including the change management process of requesting, approving, and executing contract amendments.

The contract amendment process begins when a change is needed for an existing contract. Changes to a contract include time, budget, and/or terms. The contract manager must submit a Budgets and Contract Request Form to the Contract and Procurements Branch to initiate the amendment process. The Change Management Policy recommends the request be submitted to allow six months for processing. For capital funded contracts, a business case is submitted to the Business Oversight Committee to be approved. Any time and/or budget changes to a contract must receive approval from the Business Oversight Committee. When approved, the contract manager then submits the package to the Contracts and Procurement Branch for review and approval.

OBJECTIVES, SCOPE, and METHODOLOGY

The purpose of the audit was to evaluate the Authority's process for requesting, approving, and executing contract amendments. The objectives of the audit were to ensure that the Authority has documented processes in place for approving and executing contract amendments, executed contract amendments comply with the process, and the contract amendment process is efficient.

The scope of the engagement was limited to executed contract amendments during the period of January 1, 2019, through December 31, 2021. Our audit included examining policies, procedures, and other relevant criteria, interviewing personnel, and conducting tests necessary to complete the objectives. We tested 15 of the 147 executed contract amendments in the audit period for time and/or budget from 11 different branches/offices.

The audit was conducted in accordance with the International Standards for the Professional Practice of Internal Auditing. The results of this audit were discussed with the Chief Administrative Officer, Director of Risk Management and Project Controls, Chief Deputy Director, Assistant Chief Operating Officer, and the Principal Transportation Engineer of the Contract Management Branch on September 20, 2022. Risk Management and Project Control Office provided a collaborative response on behalf of the Administrative Office and the Risk Management and Project Controls Office, which is included as Attachment A. The report is intended as information for Authority management's use; however, this report is a public document, and its distribution is not limited. We appreciate the Authority's time and cooperation throughout the audit and look forward to assisting the Administrative Office and the Risk Management and Projects Control Office as needed.

CONCLUSION

Our audit of the contract amendment process found that there were documented processes in place and executed contract amendments generally complied with the procedures. We acknowledge the improvement efforts of the various offices and branches involved in the process. The Contract and Procurement Branch is currently reviewing their desk procedure and is working on an updated version. The Contract Assessment Branch, through the Contract Management Workgroup, has begun to develop a continuous improvement process for reviewing and revising policies and procedures to align with existing processes. Also, the Risk Management and Project Controls Office has revisited their draft BOC procedures to determine necessary revisions.

Our sample tested, of 15 executed contract amendments and 10% of the audit universe, generally complied with the documented procedures. However, the documented processes lacked consistent key performance indicators (KPIs) to determine the efficiency of the processes.

PROC-1007 Contract Change Management procedure implements the Authority's Contract Management Policy (POLI-1005). The purpose of the policy is to ensure the Authority's contract managers perform their contract management duties effectively and efficiently. In the current contract amendment processes, some tasks contain expected completion time frames that could be used as KPIs to measure efficiency. KPIs set measurement of progress in meeting goals for the process.

Federal Standards for Internal Controls states that management defines objectives in measurable terms so that performance towards achieving those objectives can be

assessed¹. However, management has not established consistent KPIs nor maintained consistent and measurable data throughout the current processes to assess performance. The current KPIs and available data are insufficient to reasonably assess efficiency. Consequently, we could not determine whether the current process is efficient.

The audit identified one issue related to documented processes and three observations related to documented procedures detailed below.

¹ GAO Standards for Internal Control in the Federal Government (Green Book) Principle 6.04

Issue 1: Draft Business Oversight Committee Procedures

The draft Business Oversight Committee procedure dated August 12, 2020, which provides guidance to submit and execute a business case for review has not been finalized nor distributed to any parties including end users. Timeline and progress to finalize and approve the procedure was not provided to auditors.

Although the Contract Change Management Procedure contains a section describing the Business Oversight Committee process, this section is at a very high level and does not detail the necessary steps to successfully submit and execute a business case. Consequently, the Authority does not have documented and published procedures detailing the specifics of the governance process.

Recommendations

The Risk Management and Project Controls Office should review and finalize the draft Business Oversight Committee Procedures and distribute them to the appropriate parties. Alternatively, the Risk Management and Project Controls Office could collaborate with the Administrative Office to update and integrate detailed procedures into the Contract Change Management Procedure, PROC-1007, to include all required steps to successfully submit and execute a business case.

Response

“The RMO agrees that additional documentation regarding the various steps to navigate through the change management process of the BOC should be finalized and distributed to Authority staff. We also support that as a matter of business efficiency, procedures that are in draft form should be finalized as expeditiously as possible when those procedures are necessary.

The RMO has collaborated with the Administrative and Financial Offices to take a holistic look at the draft BOC procedures and the current contract management policy and procedures. We have determined that the best strategy is to convert the draft BOC procedure into an Instruction document to provide the next level down guidance, required steps, and navigation of the BOC process. All corresponding links and references will be updated as necessary. More specifically, the RMO will do the following:

1. The RMO will finalize a comprehensive Instruction document to supplement the existing approved Contract Management Policy (POLI-1005) and Contract Change Management Procedure (PROC-1007).
2. The RMO will submit the Instruction document to the Administrative and Financial Office for comment and review and amend Contract Change Management Procedure (PROC-1007) to include applicable references and links to the new Instruction document.

3. Once all materials are finalized, the RMO will submit the new documents into the Authority's RAS system for review and finalization prior to distribution to all current contract managers and contract support staff.
4. The RMO will incorporate the new Instruction document into the existing trainings for all contract managers and support staff (including contract management training that is conducted by the Contract Administration Branch and monthly e-BOC training that is already being conducted by the RMO).
5. The RMO plans to review the Instruction document annually to ensure the document stays consistent with Contract Management Policy (POLI-1005) and Contract Change Management Procedure (PROC-1007).
6. All corrective steps above are planned to be completed no later than June 30, 2023."

Analysis

We agree with Risk Management and Project Controls Office's plan to convert the draft BOC procedure into an Instruction document, and we look forward to reviewing the documentation before finalization.

Observation 1: Longer Terms for Third-Party and Inter-Agency Contracts

Contracts were generally executed with three-year terms based on State Contract Manual guidance, vol. 1, 7.80. However, this section also permits contract terms greater than three years with written justification for business reasons.

The use of the three-year contract term benchmark could hinder the efficiency of the Authority's contract amendment process as it could create a greater number of time extension amendments. Three-year contract terms may not align with the timing of a project segment for contracts that fall within the Public Utility Code, PUC 185036 and now PCC 10106(a)(6), which allows the Authority to execute contracts with government entities which are exempt from competitive bidding, and with private or public entities for relocation of highways and utilities without Department of General Services (DGS) approval.

Recommendations

Authority contracts that fall under the Authority's Public Utility Codes as noted should have longer terms that match the expected timing of the project segments to decrease the need for time only amendments. Contract managers should utilize the justification of longer contract terms when initiating contracts and the Administrative Office should consider accepting the longer terms if justified.

Response:

“The Administrative Office and RMO agree with the recommendation and believe the alignment of terms of a contract duration should be consistent with project segments’ objectives. The RMO will add instructional guidance to the BOC business case for Contract Managers to consider the alignment when completing the justification for longer contract terms under PUC, as well as those contracts that require the Department of General Services approval. This update will be completed by March 30, 2023.”

Analysis

We agree with the corrective action identified.

Observation 2: Contract Change Management Procedure, PROC-1007, Revisions

PROC-1007, Contract Change Management procedure has references to outdated policy and procedures no longer in use by the Authority. These references were intended as guidance for the process and require updating to better assist in the contract amendment process. As the reference material was updated, PROC-1007 was not updated. Consequently, the procedure references outdated material that is no longer in use.

Also, there was inconsistent verbiage in the procedure to denote required steps as opposed to recommended steps. This could lead to misunderstanding by Contract Managers.

Recommendations

The Contract Change Management procedures, PROC-1007, should be updated to reference the correct guidance material and revisions to the procedure should be made to clearly state the necessary steps to complete requirements. Consistent verbiage should be considered to define which steps are required and which are suggested.

Response

“The Administrative Office and the RMO agree with this recommendation and will work together to update PROC-1007 so that guidance material and links are the most up-to-date. In addition, both offices will review the procedures for clarity and consistency to ensure all the required steps necessary to complete a contract amendment are clearly stated in the document. Then the updated procedure will be submitted for finalization through the Authority’s policy and procedure approval process. These updates are planned to be completed by June 30, 2023.”

Analysis

We agree with the corrective action identified.

Observation 3: Business Oversight Committee Charter Revisions

The current Business Oversight Committee Charter, approved in 2019, requires action on board approved contracts, specifically changes to an executed contract (Item 6.C.c). The Business Oversight Committee minutes do not clearly state if the Charter has been reviewed since the last revision, therefore the Business Oversight Committee Charter could be outdated.

Recommendations

The Business Oversight Committee should review the charter to determine if there have been any changes since the last revision and update as necessary. The Committee should also consider revising item 9 – Charter Update, to require review of the Charter every other year instead of an annual basis if the Charter is not currently being reviewed annually.

Response

“The RMO agrees with this recommendation. The Business Oversight Committee (BOC) will review the current BOC charter and adopt changes, if needed, by June 30, 2023.”

Analysis

We agree with the corrective action identified.



Memorandum

DATE: January 20, 2023

TO: Paula Rivera, Chief Auditor, Audit Office

FROM: Jamey Matalka, Director of Risk Management and Project Controls, Risk Management Office
Jeannie Jones, Chief Administrative Office, Administrative Office

CC: Jon Carter, Deputy Director of Risk Management and Project Controls, Risk Management Office

SUBJECT: Response to *Contract Amendment Process Audit Report*

The Risk Management Office (RMO) and the Administrative Office appreciate the opportunity to provide a response to the *Contract Amendment Process Audit Report* and the opportunity to improve the Authority's contract amendment process. We also appreciate that the audit recognizes the Authority has documented processes in place for contract amendments and acknowledged the improvement efforts of various groups to continually improve our documentation processes.

The Authority's Contract Management Policy (POLI-1005) establishes a governing structure for managing contracts, defines Contract Manager roles and responsibilities, and identifies the internal and external sources for Contract Manager duties. In addition, the Authority has developed eight contract management procedures to provide further guidance on process, roles and responsibilities, and specifies standardized procedures for documentation. Furthermore, the Contract Change Management Procedure (PROC-1007) outlines the requirements for Authority staff to adhere to when amendments to contracts are necessary. More specifically, PROC-1007 identifies the documents necessary to prepare and submit a business case as well as the responsible parties involved in the completion of the document to bring a request to the Business Oversight Committee (BOC) for consideration to approve. It also identifies the BOC administrator as the point of contact for all questions on BOC processes, which involves the guidance, advice, examples, templates, and all other questions to easily navigate contract amendment consideration.

The audit noted one issue and three observations related to the contract amendment process. The RMO and Administrative Office agrees with the recommendations provided in the audit and will take the following actions in response:

Issue 1: Draft Business Oversight Committee Procedures

Recommendation:

The Risk Management and Project Controls Office should review and finalize the draft Business Oversight Committee procedures and distribute them to the appropriate parties. Alternatively, the Risk Management and Project Controls Office could collaborate with the Administrative Office to update and integrate detailed procedures into the Contract Change Management Procedure, PROC-1007, to include all required steps to successfully submit and execute a business case.

Response:

The RMO agrees that additional documentation regarding the various steps to navigate through the change management process of the BOC should be finalized and distributed to Authority staff. We also support that as a matter of business efficiency, procedures that are in draft form should be finalized as expeditiously as possible when those procedures are necessary.

The RMO has collaborated with the Administrative and Financial Offices to take a holistic look at the draft BOC procedures and the current contract management policy and procedures. We have determined that the best strategy is to convert the draft BOC procedure into an Instruction document to provide the next level down guidance, required steps, and navigation of the BOC process. All corresponding links and references will be updated as necessary. More specifically, the RMO will do the following:

1. The RMO will finalize a comprehensive Instruction document to supplement the existing approved Contract Management Policy (POLI-1005) and Contract Change Management Procedure (PROC-1007).
2. The RMO will submit the Instruction document to the Administrative and Financial Office for comment and review and amend Contract Change Management Procedure (PROC-1007) to include applicable references and links to the new Instruction document.
3. Once all materials are finalized, the RMO will submit the new documents into the Authority's RAS system for review and finalization prior to distribution to all current contract managers and contract support staff.
4. The RMO will incorporate the new Instruction document into the existing trainings for all contract managers and support staff (including contract management training that is conducted by the Contract Administration Branch (CAB) and monthly e-BOC training that is already being conducted by the RMO).
5. The RMO plans to review the Instruction document annually to ensure the document stays consistent with Contract Management Policy (POLI-1005) and Contract Change Management Procedure (PROC-1007).
6. All corrective steps above are planned to be completed no later than June 30, 2023.

Observation 1: Longer Terms for Third-Party and Inter-Agency Contracts**Recommendation:**

Authority contracts that fall under the Authority's Public Utility Codes (PUC) as noted should have longer terms that match the expected timing of the project segments to decrease the need for time-only amendments. Contract managers should utilize the justification of longer contract terms when initiating contracts and the Administrative Office should consider accepting the longer terms if justified.

Response:

The Administrative Office and RMO agree with the recommendation and believe the alignment of terms of a contract duration should be consistent with project segments' objectives. The RMO will add instructional guidance to the BOC business case for contract managers to consider the alignment when completing the justification for longer contract terms under PUC, as well as those contracts that require the Department of General Services' approval. This update will be completed by March 30, 2023.

Observation 2: Contract Change Management Procedure, PROC-1007, Revisions

Recommendation:

The Contract Change Management Procedures, PROC-1007, should be updated to reference the correct guidance material and revisions to the procedure should be made to clearly state the necessary steps to complete requirements. Consistent verbiage should be considered to define which steps are required and which are suggested.

Response:

The Administrative Office and the RMO agree with this recommendation and will work together to update PROC-1007 so that guidance material and links are the most up-to-date. In addition, both offices will review the procedures for clarity and consistency to ensure all the required steps necessary to complete a contract amendment are clearly stated in the document. Then the updated procedure will be submitted for finalization through the Authority's policy and procedure approval process. These updates are planned to be completed by June 30, 2023.

Observation 3: Business Oversight Committee Charter Revisions

Recommendation:

The Business Oversight Committee should review the BOC charter to determine if there have been any changes since the last revision and update as necessary. The Business Oversight Committee should also consider revising item 9 – Charter Update, to require review of the charter every other year instead of an annual basis if the charter is not currently being reviewed annually.

Response:

The RMO agrees with this recommendation. The Business Oversight Committee (BOC) will review the current BOC charter and adopt changes, if needed, by June 30, 2023.

If you have any questions, please contact Jon Carter at (279) 203-9343 or by email at jon.carter@hsr.ca.gov.