

TxDOT Internal Audit Maintenance Contracts, 301-7 Department-wide Report

Introduction

This report has been prepared for the Transportation Commission, TxDOT Administration and management. It presents the results of a regularly scheduled audit of the TxDOT maintenance contract administration function. The audit was conducted as part of the Fiscal Year 2003 Annual Audit Plan. The objective of this audit was to evaluate the monitoring and documentation of routine, emergency, and state use program maintenance contracts.

Scope

Contract administration activities for a sample of forty-five routine maintenance contracts, twenty-two emergency contracts, and thirty-three state use program contracts were examined in thirteen districts. The audit evaluated the routine maintenance contracts after the letting stage, the emergency contracts from the emergency request forward, and the state use program contracts from the inception of the negotiation step. The assessment included:

- Contract Execution
- Contract Scheduling
- Project Oversight
- Payment Support
- Time Charges
- Contract Changes
- Contractor Selection for emergency contracts
- Emergency Notifications
- Technical Analysis for state use program contracts, and
- Project Close Out

Reports detailing the results found in each of the thirteen individual districts were distributed to the District Engineers, all of whom responded with plans for corrective action. All audit work was performed in accordance with the *Standards for the Professional Practice of Internal Auditing* of the Institute of Internal Auditors.

Opinion

In general, the districts have acceptable processes in place to support compliance with TxDOT policies and procedures. However, many problems were found that stem from a lack of substantive guidance concerning the administration of maintenance contracts. This needs to be addressed by the Maintenance Division. The specific problems found, and suggested corrective action for each, are described below in the Detailed Findings and Recommendations section.

Detailed Findings and Recommendations

Finding No. 1: The standards for effective job diary documentation have not been consistently applied. Some diaries had broad, descriptive, and timely entries, whereas others involved poor documentation and were missing fundamental information such as: traffic control information; inspector arrivals and departures; condition of equipment; number and types of vehicles or equipment in use; time work started and ended; location of work; days charged, or quality of work.

Job diaries are the official day-to-day record of the contractor's progression of work during the life of a contract. An accurate diary is essential to effective contract administration.

The *Maintenance Contract Inspector's Course Manual* (Revised 7/25/01), Chapters 5 & 6, outline the standards for proper inspection and job diary documentation.

Inspectors' documentation diligence ranges from excellent to poor. While not all the job diary documentation elements described in the *Training Manual* apply in every instance, the districts' general perception is that the standards outlined in the *Training Manual* are merely suggestions and not requirements. Additionally, Supervisors are not presently required to review the job diaries for conformance with standards.

Effect: Accurate payments to contractors and compliance with contract specifications cannot be assured if job diary documentation is inadequate.

Recommendation: The job diary documentation elements described in the *Training Manual* should be established as official policy and procedure. Policy and procedure should also be established for the periodic review of job diaries by Supervisors. Supervisors should spot check the diaries, during the project as well as at the end of the project, for conformance with policy.

Management Response and Action Plan:

Through the Routine Maintenance Contract Inspection Course we will further reinforce the importance of proper job diary documentation and content. A memo documenting appropriate policy regarding diary procedures will be prepared and transmitted to the Districts. Periodic review of job diaries by Supervisors will be made policy. Periodic review of job documentation by the District Maintenance Staff will be recommended but will not be made mandatory due to limited staff levels and already established reviews by local internal audits.

Finding No. 2: The audit revealed several instances of improper payment support documentation. In some cases, Work Reports (Forms 1257 & 1258) were not completed according to standard and/or did not accurately reflect the information in the job diaries. Some Contract Information System (CIS) reports, including the 01, 02, & 05 reports, contained errors, were not updated to reflect contract changes (such as time extensions or additional days granted),

and did not contain proper review and/or approval signatures. At least 2 districts did not use the CIS.02 Final Time Summary Report. Several Forms 132 (when used in lieu of CIS) did not have the invoices as support or the invoice data did not correlate to the job diary information.

The *Maintenance Contract Inspector's Course Manual* (Revised 7/25/01), Chapter 5 & 6 provides guidance for proper documentation of Work Reports (Forms 1257 & 1258). Forms 1257 and/or 1257A are to be completed each day a contract pay item is inspected. Form 1258 is to be completed each time a pay item is completed. The CIS reports require signatures from the individual proofing the data input, the individual reviewing the support documents, and the individual approving the report.

The review of the 1257s, 1257As, 1258s, Forms 132, and CIS reports seems to have become a mechanical exercise, however, there is no existing policy or procedure governing the review process for these documents. Nor is there a policy that outlines which CIS reports are required. When contracts with monthly payments are not processed in CMCS, some of the controls for monitoring payments, time, and prosecution of work are lost.

Effect: Discrepancies arise between the inspection documents (job diaries) which record a pay item when inspected, and the work reports which record the same pay item when completed. In addition, dependability in the process is diminished to the extent that legitimate inaccuracies are overlooked.

Recommendation: The use of the forms and the hierarchy of checks and approvals need to be clearly outlined within the context of the maintenance function. The Maintenance Division should establish policy and procedure that clearly delineate who is responsible for reviewing the documents at the maintenance section level, area office level, and district contract office level as well as the purpose of each level of review and the specific verification process involved. Further, MNT should establish or update policy to require all routine maintenance contracts, including state use contracts, to be processed through CMCS (Construction/Maintenance Contract System).

Management Response and Action Plan:

We concur and will include in detail the hierarchy of checks and approvals in the Maintenance Contract Administration Manual. Since inception of CMCS, all Districts have been directed to utilize the system for all contracts that can be entered into it. However, some contracts are impractical to enter into CMCS. As has been found, these contracts include certain State Use and emergency contracts. We regularly work with the Districts and Divisions to broaden the use of CMCS to address projects not routinely entered into the system due to these impracticalities. We do not feel requiring mandatory entry of every contract into CMCS at this time is practical due to the limitations of the system. While CMCS certainly provides for consistent bookkeeping it is not the only method available to TxDOT Districts to satisfy this need.

Finding No. 3: Several contract changes were not processed adequately or timely. In some instances, change orders were prepared after the work had been started or after the work had been completed. On other occasions, major changes in the quantity of contract pay items were made without a change order. Time extensions or time suspensions were either not documented in the file or were not approved by the proper level of authority. Many of the time changes were not accurately reflected in the CIS.01 or .02 time statements.

The *Maintenance Contract Inspector's Course* (Revised 7/25/01), page 4.28, states that change orders are required "when a major item of work is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity." A major item is defined as "any individual bid item included in the proposal that has a total cost equal to or greater than 5 percent of the original contract or \$100,000.00, whichever is less." This criterion is also documented in the *Construction Contract Administration Manual*, chapter 7, (online). The *Construction Manual*, chapter 10, section 3 states that time extensions and time suspensions may be granted via a letter.

In several districts, personnel stated they were unaware of the change order requirements. In other instances, personnel were not tracking the quantity increases on the Forms 1258 (Summary of Work Performed) or CIS.06 report (Verification & Discrepancy Report) which would have alerted them in a timely manner to the thresholds necessitating a change order. In addition, policy and procedure regarding time suspensions, time extensions, and the granting of additional days for maintenance contracts is not well documented. (Using the *Construction Contract Administration Manual* as policy for maintenance contracts is not always applicable, or is sometimes contradictory. For example, the *Construction Contract Administration Manual* states that "The authority on contract time charges, time extensions, and time suspensions rests with the AE or the DE." However, Area Engineers do not have change order authority on routine maintenance contracts.)

Effect: Documentation and approval of contract changes after work has already begun leaves the department vulnerable to disputes over the agreed upon terms of those changes. Moreover, unilateral time extensions or time suspensions may not be properly registered in CIS creating conflicts with contracts involving liquidated damages or incentive /disincentive provisions.

Recommendation: The Maintenance Division should incorporate into policy the standards for proper processing of change orders as outlined in the *Maintenance Contract Inspector's Course*. Change orders should be initiated as soon as the need for any additional work arises or an adjustment in quantities is recognized. Policy and procedures should also be established for the proper execution and approval of time extensions, time suspensions, and additional days granted. Procedures should include requirements for communicating time changes to district contract management personnel so that CMCS can be accurately updated.

Management Response and Action Plan:

We concur and will include processing procedures in the Maintenance Contract Administration Manual similar to that included in the CST manual but specifically for maintenance contracts. Approval authority will be outlined in detail with reference to CSO's website showing appropriate signature authority. We would point out that maintenance contracts are subject to the same laws as construction contracts with a few procedural exceptions to routine maintenance contracts included. It has been recognized that a Maintenance Contracting Administration Manual is needed and we are endeavoring to achieve this. In the interim, as we have previously discussed, the Construction Contract Administration Manual is applicable in the majority of contract administration needs since we are both subject to the same applicable laws. The basic exception is routine maintenance contracts are not typically subject to federal bookkeeping requirements associated with included federal monies within a project. They can be, however, and then these requirements would be applicable.

Finding No. 4: The execution of some maintenance contracts lacked certain essential procedural requirements. Some projects lacked evidence that insurance coverage was in effect for the life of the project. Some contracts lacked written work orders authorizing the contractor to start work. Additionally, work orders are not customarily used to initiate separate cycles of work.

Page 3-5 of the *State Use Contract Manual*, (10/94) states that “the Provider is not to begin work until the district/division issues a start-work order, the written authorization to proceed.” The work order must be signed by the District Engineer or his/her designee and is not to be issued until after the contract is fully executed. Page 6-1 of the *Contract for Emergency Work Contract Procedures Manual*, (04/92) states that the contractor can be notified orally to begin work but written confirmation must follow. Guidelines governing work orders for routine maintenance contracts are presented in the *Maintenance Contract Inspector's Course Manual*, (Revised 7/25/01), page 3.12. Additionally, TxDOT policy requires that all contracts have proof of automobile, general liability, and worker's compensation insurance before beginning work; and coverage must be maintained during the life of the project. The Contract Processing Section (CPS) of the Construction Division is the repository for insurance data for routine maintenance contracts and enters the contractors' insurance data into the Construction and Maintenance Contract System (CMCS).

The districts are not required to maintain any evidence of having verified insurance coverage, nor are they required to document insurance expiration dates in the contract file. Many districts give contractors a verbal work order and feel that suffices for authorization to begin work. Further, since most contracts are established for one-year periods, though work is performed intermittently, the impression is that a work order for separate work cycles is unnecessary.

Effect: Insurance lapses increase the department's exposure relative to damages or liability situations. In addition, the lack of a written work order to confirm such things as the date time

charges begin and amount of time allowed to complete the work could leave the department vulnerable to disputes over time charges and/or timeframes for cyclical work.

Recommendation: The districts should be required to show evidence that insurance coverage was verified and that insurance was in force for the life of the project. (This can be accomplished by printing out the CMCS E24 screen or by simply notating in the contract file the date insurance was checked, by whom it was checked, and the date coverage is scheduled to expire.) The Maintenance Division should remind the districts of the existing policies on written work orders for emergency and state use contracts. MNT should adopt as policy the standards for written work orders for routine maintenance contracts as outlined in the *Inspectors Training Manual*. MNT should clearly identify and document as policy exceptions or conditions, if any, in which verbal work orders are not required to be followed with written confirmation. MNT also needs to clarify work order procedures for contract work performed in cycles.

Management's Response and Action Plan:

We concur and will include this in the Maintenance Contract Administration Manual. Presently, CST is monitoring all contract insurance on both routine maintenance contracts and State Use contracts. We will prepare a memo to Districts reminding them of the need for written work orders and documenting insurance coverage.

Finding No. 5: Eight of the twenty-two emergency contracts examined took seven to twelve weeks to begin work, (from the date the emergency occurred to the date the contractor began work).

Emergency contracts provide for the expedited award of highway improvement contracts to meet emergency (unusual, unanticipated) conditions in which essential corrective action would be unreasonably delayed by award of contracts through the competitive bid process. The intent behind the expedited award process is to allow contractors to begin work as soon as possible to eliminate the threat to the traveling public.

Work on the eight contracts was delayed for various reasons. Four contracts were deferred because of plan development. For two contracts, selection of the contractors took four and five weeks respectively. Another contract was awarded within a reasonable amount of time, but the contractor was not required to start work until twenty-one days after award. And on the last contract, there were lease and utility issues.

Effect: The progression of these contracts did not respond to the expedient corrective action required of an emergency situation, which calls into question the appropriate use of emergency contract procedures. A perceived misuse of the emergency contract procedures could jeopardize TxDOT's stance relative to genuine, emergency situations.

Recommendation: MNT has recently implemented procedures to track the progression of emergency contracts and monitor the department's management of emergency contracts for

compliance with the law. MNT should also update the Emergency Contract Manual to emphasize the need for expediency in contract award and initiating contract work. Districts should be guided to use the regular competitive award process when plans need to be revised or developed, or when price is more of an important factor than time. MNT should also update the Emergency Contract Manual to emphasize that districts should dedicate additional resources, if necessary, to ensure that emergency situations are addressed in the most expedient and business-sound manner possible.

Management's Response and Action Plan:

A chapter on emergency contracts will be included in the Maintenance Contract Administration Manual. The existing manual is in accordance with the law and explains the contracting options available. Districts have adhered to this without exception. Problems of expediency of emergency contracts have been identified and addressed by Administration. Monitoring of progress of emergency contracts continues by MNT.

Finding No. 6: Certain contract administration procedures for State Use Program contracts are not being performed. Over half of the districts visited do not examine historical costs or keep any documentation regarding the negotiation of contract costs. Only one district was found to use the "Technical Analysis" – the document which identifies the elements required to successfully complete a proposed project. Not all the districts conduct the Provider Evaluations, but for the ones that do, deficient ratings do not necessarily impede a low-rated Provider from consideration on an ensuing contract for the same location and type of work. Moreover, most districts do not monitor or document contract time charges.

The objective of the State Use Program is to provide employment to Texans with disabilities through Community Rehabilitation Programs (CRP), who can provide services and/or products while, at the same time, providing government agencies with a means of accomplishing work. The law requires the use of this program if a CRP can provide the needed service on time for a fair market value. The *State Use Contract Manual* (10/94), chapters 2 and 4, outlines the requirements for developing a Technical Analysis, negotiating the contract, and conducting Provider Evaluations.

The State Use Program has developed into an environment of recurring contracts with little deliberation for price except for possible inflationary concerns. Because the department is required to use state use contracts when/where applicable, districts are of the opinion that there is little recourse against a high priced or poorly performing provider. Existing policy for state use contracts does not focus on management of these contracts from a cost or quality standpoint. Additionally, most contracts do not have provisions for bonds or liquidated damages so monitoring time charges is a moot point.

Effect: Anecdotally, the unit prices for state use contracts appear to have risen more dramatically than other routine maintenance contract prices, for conceivably lower quality work.

(A direct price comparison is difficult because of the varying nature of the contracts.) A cost of living increase of 3% is usually allowed on state use contracts without question - it is doubtful that competitively bid contracts have increased annually by that same amount. Providers who perform poor quality work are allowed to continue because the districts feel they have no choice. By continuing to renew contracts with the same Providers, particularly if work is substandard, the department misses the opportunity to afford work to other, perhaps better performing, Providers.

Recommendation: The districts need to be instructed on the use of the “Technical Analysis” and the establishment of reasonable pricing. Districts should document the negotiation process as well as historical prices and/or trends, which can in turn be used in future contract negotiations. Provider Evaluations should be linked to renewal of contracts and, in the case of problematic Providers, used as justification for not renewing contracts or for incorporating bonds or liquidated damages into the contracts. The Maintenance Division should update State Use Program policy to include conditions in which bonds or liquidated damages would be appropriate in state use contracts.

Management’s Response and Action Plan:

MNT administration does not subscribe to the attitude of allowing providers to under perform in any manner or to accept pricing submitted by providers without question. This was explained in the contracting breakout session at the Maintenance Conference held in April, 2003. If a District provides proper documentation and has worked with the provider to address the problem and, if necessary, with TIBH and/or MNT and the provider is unable to perform, we can and have terminated their contract. However, these services may not be removed from the program if TIBH can obtain another provider to perform them in accordance with Chapter 122 of the Human Resources Code. This was explained as well in the contracting breakout session at the Maintenance Conference. It should be noted that a Provider Evaluation that is negative is not adequate justification unilaterally for termination of a provider or as an attempt to remove services from the State Use Program. Provider Evaluations are subjective and can be utilized negatively when prejudices exist in the attitude of the evaluator thereby resulting in a biased evaluation. In addition, Districts have been working to address the pricing. This is a slow process and can be highly volatile with political ramifications.

MNT and CSO are presently working on revising the State Use Program guidelines. These guidelines will be included in a chapter of the CSO online manual. In addition, we are including a section on the State Use Program and contracts in the upcoming November, 2003, statewide teleconference on negotiated contracts.

In regards to the observation concerning the use of LIDS, we have been working with these Districts to help them understand the program and utilize it.

As stated above, the objective of the State Use Program is to provide employment to Texans with disabilities through Community Rehabilitation Programs who can provide services and/or products while, at the same time, providing government agencies with a means of accomplishing work. TxDOT is the leading state agency in this program and has been since inception. It is our goal to administer this program fairly in all aspects to achieve the highest level of service at a reasonable cost in accordance with the law.

Observation:

Some districts are not using the Litter Identification Data System (LIDS) as intended. LIDS was developed by the Maintenance Division (MNT) to act as a standard means of collecting litter pick-up information. It was intended to be used as a tracking system to document litter densities that are subsequently assigned a cost rate based on different density levels. Some districts stated that the LIDS outputs are massaged until the numbers they want are obtained. Other districts do not even use LIDS data because their experience has shown that the date is not representative of their operations.

Closing Comments

An exit conference with Mr. Joe Graff, Maintenance Section Director, and Mr. Robert Blackwell, Maintenance Contracts Manager, occurred on August 7, 2003. We wish to thank the districts' and division personnel for their cooperation and assistance during the audit. Special thanks to the Houston Internal Review Officers for conducting fieldwork in the Houston district.