



Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors

The Metropolitan Council has not adequately enforced several aspects of its key Southwest Light Rail Transit (Southwest LRT) construction contracts, nor does it have adequate documentation to support some project decisions.

Report Summary

Change Order Processes and Contractor Requirements

- The Metropolitan Council did not hold the civil construction contractor accountable for requirements in its contract to estimate change order costs. (pp. 12-13)
- In six change orders we reviewed, the Metropolitan Council settled change order costs while allowing potential schedule delays to remain unresolved. (pp. 13-14)

Recommendation ► The Metropolitan Council should require its contractors to meet contractual obligations related to change orders and ensure contracts include adequate language to hold contractors accountable for change order requirements. (pp. 16-17)

- When using alternative change order processes, the Metropolitan Council has not adequately limited the Council's risk for future cost increases. (pp. 20-21)
- For some change orders we reviewed, the Metropolitan Council paid the contractor even though it could not fully validate the contractor had incurred the costs it claimed. (p. 21)

Recommendation ► The Metropolitan Council should make greater efforts to limit change work that occurs before costs are negotiated and improve its policies for managing change orders based on a contractor's reported costs. (pp. 21-22)

Independent Cost Estimates and Change Order Negotiations

- The Metropolitan Council directed its cost estimating consultant to systematically increase its Independent Cost Estimates. (pp. 25-28)

Recommendation ► The Metropolitan Council should hold its cost estimating consultant accountable for delivering acceptable estimates and consider changing its cost estimation policies and contracts. It should not accept estimates it considers deficient and then systematically increase them. (pp. 28-29)

Background

The Metropolitan Council is the responsible authority for the Southwest LRT project. At the start of construction, the Council estimated Southwest LRT would cost \$2.003 billion and the line would open in 2023. The Council now estimates that it will cost \$2.767 billion to complete and will open in 2027.

The Metropolitan Council oversees the work of contractors who design, engineer, and construct the Southwest LRT project.

Our report focuses on how the Metropolitan Council has addressed work that deviates from contract requirements. The Council uses the **change order** process to alter the project's specifications so that the contractor does the work differently than originally planned. The Council uses the **nonconformance report** process to address project work that does not align with contract requirements.

- The Metropolitan Council paid its civil construction contractor the price the contractor initially set for change orders about half of the time, including some instances when the Council’s Independent Cost Estimates for the same change orders were significantly lower. (pp. 30-31)
- For five of the change orders we reviewed, the Metropolitan Council agreed to pay the civil construction contractor what it requested with little or no explanation for the Council’s conclusion that the proposed costs were reasonable. (pp. 33-34)

Recommendation ► The Metropolitan Council should reform its processes for determining and justifying final change order costs. (p. 35)

Nonconformance Reports

- For the cases we reviewed, the Metropolitan Council did not adequately document its decisions or track costs related to nonconformance reports. (pp. 40-43)
- The Metropolitan Council plans to deduct money for nonconforming work from future payments to the contractor, but it has not fully estimated the amount it plans to deduct and has not collected adequate documentation to do so. (p. 44)

Recommendation ► The Metropolitan Council should improve its documentation practices regarding nonconformance reports and related deduction amounts. (p. 45)

Civil Construction Contract

- The Metropolitan Council’s original contract with its civil construction contractor did not provide sufficient mechanisms for the Council to enforce contract requirements. (pp. 50-51)

Recommendation ► The Metropolitan Council should ensure its future contracts include sufficient enforcement mechanisms. (pp. 51-52)

Summary of Agency Response

In a letter dated June 23, 2023, Metropolitan Council Chair Charles Zelle wrote that the Council appreciated “the Office of the Legislative Auditor’s attention to this matter” but stated that the report’s recommendations “do not align with [federal] guidance or construction law, are not appropriate for a project of this size and complexity, and in some instances could have contributed to additional delay.” Chair Zelle stated that the “root cause of the change order administration issues and inefficiencies on the Project are...due to the extraordinary number of change orders on the Project.” He affirmed that the Council is “committed to continuous improvement,” as exemplified by its intent to review and implement recommendations it has received from the Minnesota Department of Transportation. Chair Zelle closed by declaring the Council has “a proven track record for delivering significant Transitway projects which are significant investments that improve our transportation system and advance the region’s vision for the future.”