

Proposed Ordinance 2004 – 0101

Atlantic Central Base Construction funds

As requested, the Finance Division Project Control Officer specifically reviewed this contract and all issues raised within the 4/28/04 Council staff report. For clarity, this report addresses each issue in the same order using reference titles as those presented in the Council staff report

Contracting Policies and Procedures

1. Consultant agreement not amended:

Background:

Executive policy and procedure, **current contract terms & conditions (terms) and the County's procurement manual require an executed amendment if scope is added, deleted or revised prior to the consultant performing the work.** Current terms also require an amendment to move work and or funds from one task to another. These requirements are in place to ensure that Department Directors and managers make informed decisions about adding funds to a contract prior to authorization. Without these requirements, funds for work tasks could be depleted to pay for other tasks and set the stage for after-the-fact amendments to cover over expended tasks.

The Transit and Finance Division Project Control Officers (PCO's) have jointly reviewed the Atlantic Base contract terms, scope and the issue of "reduced scope" for the AFB building cited in the April 28th, 2004 Council Staff report.

It is important to note, **the terms for the Atlantic Base are a slightly older version.** Current terms address specific requirements for moving scope and costs between tasks. The Atlantic Base terms contain a provision (on page two) which basically authorizes a Project Representative (PR) to modify or approve changes to task budgets (in writing) as long as it does not impact the total price. Another provision in section 4a & c (page 4) requires a written amendment to add, delete or revise portions of the work. Given the two contract provisions, in this particular case, the action to be taken was subject to some interpretation. However, these contract provisions should be viewed in concert whenever addressing changes in a contract.

The scope and budget for the transit police, revenue processing and service quality areas were simply moved from one contract design task to another. The work was not added to, revised or deleted from the contract and **didn't exactly fit the requirement for an amendment.**

However, the **transaction did require written documentation in the contract file.** Such written documentation should indicate the specific scope and funds being moved and noting that no additional funds were being added, deleted or required for the contract.

The County has a number of older active contracts where language exists allowing the PR to move funds between tasks which used to be more commonplace. The intent of Executive P&P, current terms and the procurement manual is to ensure that all departments execute amendments prior to authorizing changes regardless of older contract language. It takes time to get that message across. To support this effort procurement has developed and is conducting specific training on these issues.

Actions:

Transit prepared documentation regarding the **scope transfer for 6/10/04 contract amendment that addresses all contract issues to date.** Transit had all **project managers attend May 10th, 2004 training.**

2. Additional Contract Changes

The Council staff report cited written communication between Transit and the consultant confirming a verbal agreement (after the transfer of design work) where the design amount remaining for the communications center (in Tasks 11.3 & 14.3) would be \$475 thousand dollars. Unfortunately, the verbal

agreement and subsequent correspondence citing **\$475 thousand dollars did not account for additional proportional funds from other tasks** that were also part of this design effort.

For example, there are separate contract tasks for project management, LEED documentation, seismic analysis, commissioning etc. A proportional share of each of these tasks should have been added to the \$475 thousand (in design tasks) to represent the full allocation for the communications center design. When invoicing for this work tasks 5, 11.3 & 14.3 as well as other tasks should have been billed.

Some miscommunications occurred both internally and with the consultant about total funds allotted for the communications center design. The end result was that the **consultant billed all work activities only to the design task budgets**. This set the stage for the consultant requesting additional contract changes when funds for design tasks 11.3 & 14.3 ran low.

This situation may have been averted if either formal written documentation or an amendment and revised budget spreadsheets had been prepared at the time of the verbal agreement. While some of the additional contract changes represent added work, much of it is not. **When appropriate task budgets are combined and invoiced correctly, available funds are sufficient to cover the added work**. The added scope is now documented by amendment as new work with no additional funds required.

Actions:

Transit **prepared budget and scope revision documents** to address the contract changes for **6/10/04 amendment**. The **consultant amended previous invoices to charge all appropriate task areas** for the communications center design.

3. Consultant Claim

As explained (under item 2 above) the **correct total allocated budget** (from the Atlantic Base Design Contract) **for the communications center** was actually larger than \$475 thousand dollars. The spreadsheet in the attached amendment documentation demonstrates the entire Atlantic Base Design Contract budget and the proportional share of each design task allocable to the communications center design **totals \$ 852,631**. (See Exhibit A- Part E of 6/10/04 contract amendment)

Transit Project Management and the Finance PCO **specifically reviewed** the terms, contract scope and **each of the scope additions** (extra services) listed in the Consultants May 3, 2004 (claim) letter.

The terms in section 4B1 and B1a specifically require: *If the consultant believes work identified in a directive is not within scope ...immediately.... and prior to beginning any work... request in writing an equitable cost and/or time adjustment. ... shall not perform the work ... until ...execute an amendment.*

No documentation demonstrates the consultant followed the requirements of the contract to indicate added work in a timely manner and obtain an amendment prior to performing the work. Instead the consultant presented the request in the form of a claim. Notification of additional costs should be made in sufficient time to address issues and amend the contract if necessary before the work is completed.

Transit and FIN PCO specifically reviewed each item in the "claim". On the surface, it appeared by the limited descriptions that some of the work should have been covered within the original base scope. However, with further examination and discussion it was found that **a number of items are indeed additional work** for which **clearer justification was created**. **Other items were denied** for additional compensation.

With the clarification of the total allocated design budget for the communications center, costs for **additional work** (in claim letter) **will be covered without adding funds to the contract**. **Added work requires an amendment**. The amendment documents also address whether or not additional required funds are required.

Actions:

Consultant was required to resubmit descriptions & justifications for added work w/ cost backup. This information was reviewed by the FIN PCO to determine reasonableness. The **added work justifications in the 6/10/04 amendment**. Also, a **4/20/04 letter was sent to consultant citing appropriate contract provisions for addressing added work** and stating the county's position if these

requirements are disregarded in the future. The County's Project Manager will obtain written documentation of all future requests, seek Finance PCO review of amendments early and ensure that added work proceeds after required documentation.

4. Amendments Precede Work

The council staff report correctly cites that ***Executive policy and procedure requires cost price analysis, documentation and PCO reviews of amendments if value meets the threshold (over \$150K).***

However, in this case each request for additional work individually was less than the \$150K threshold. The Project Representative, in this case, was not out of compliance with policy. Now that ***Transit has combined these requests into a single amendment which now meets the threshold;*** the FIN PCO is reviewing the amendment documentation.

After review meetings with Transit, ***it appears*** that the ***common practice is to negotiate and issue amendments prior to authorizing new work.*** Both the Transit PCO and Finance (FIN) PCO will be ***conducting periodic and random reviews of project files*** to spot check compliance.

Actions:

The County's Project Manager (***PM***) for this contract ***will secure written documentation in future amendment/change requests*** according to policy thresholds, ***seek FIN PCO review of amendments*** early and ensure that added work proceeds only after required documentation is completed. The FIN PCO will review project documentation periodically to ensure continued compliance with Executive P&P. All ***Transit Project Managers attended P&P training w/ special emphasis on amendments.***

5. Finance Division review

As requested in the council staff report, the FIN PCO began working through the specific issues of this contract with Transit on 4/29/04. Process culminated with completion of amendment documentation.

Actions:

- Conducted numerous meetings w/transit discussing Communications Center issues
- Reviewed amendment & backup documentation
- Reviewed budget reconciliation documentation
- Conducted Special training sessions