



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Ave, Suite 613, Portland, Oregon 97204 ■ Mingus Mapps, Commissioner ■ Dawn Uchiyama, Director

## M E M O R A N D U M

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**TO:** KC Jones, Director, Audit Services Division

**FROM:** Dawn Uchiyama, BES Director

**CC:** Millicent Williams, PBOT Director  
Todd Perimon, BES Engineering Supervisor

**DATE:** October 10, 2023

**RE:** Bureau Response to Fraud Hotline report regarding use of City resources

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This memorandum is prepared in response to the September 20, 2023 Fraud Hotline Memorandum (Memo) issued by KC Jones, Director, Audit Services Division.

The events surrounding the construction of this ramp are somewhat of an anomaly that led to challenges for the project team. Environmental Services (BES) is in agreement with the recommendation of the audit. BES considers this a learning opportunity for the Contractor, the sub-contractor and City staff. Lessons learned will be incorporated into BES processes and procedures going forward. BES will continue to work with Transportation (PBOT) and the contracting community to improve how we fulfill our mission and provide best value to our rate payers.

More specific discussion and explanation is provided below regarding the background, results and recommendations identified in the Memo.

### **Background**

In fulfilling the bureau mission, BES routinely partners with PBOT to build PBOT curb ramp assets as part of BES construction projects. This allows the City to realize the benefits of economies of scale due to the larger BES projects while bringing outdated ADA ramps into compliance with current requirements.

The site of the ADA curb ramp, that is the subject of the Hotline complaint, was challenging in that there were steep slopes and nearby obstructions. Multiple design iterations were required to ultimately meet the ADA design criteria.

## **Response to Audit Results**

The following are offered in response to the Audit findings by section corresponding to the Memo.

- A. The Contractor was paid for all work associated with construction of the ramp using the established, competitively bid, unit costs. The total unit cost paid to the contractor for this work (City cost) and the contractor's actual cost to complete the work (contractor's cost) are discussed in detail in Paragraph B. Below.

In discussions with the auditor, BES Construction staff indicated that total project cost of the ramp, which includes staff time, would be difficult to determine because tracking of field staff time is not typically documented to that level of detail. Typical staff time on a ramp is 8 hours of Public Works Inspector, 2 hours of Senior Public Works Inspector and 2 hours of Construction manager time, or approximately \$910 using average rates for those classifications. This level of effort varies by ramp, location, and complexity. The perception that a cost of the ramp was unavailable is apparently due to a miscommunication between the Auditor and BES Construction staff.

- B. BES acknowledges that the BES Public Works Inspector did not do an adequate job documenting the project in their daily reports. BES attempted to coach and train this individual, who no longer works for the City of Portland. BES Construction Services procedures include documentation to verify compliance with the contract and contractor level of effort in the inspector daily reports.

The project design was complete and the plans were approved on May 6, 2020. The project was competitively bid and awarded and construction Notice to Proceed was issued on October 26, 2020. As stated in the Memo, the original ramp design did not meet ADA requirements due in part to existing field conditions that were not apparent on the approved plans that the contractor bid. The contractor worked with their sub-contractor and BES and PBOT inspection staff to attempt to construct an ADA compliant ramp through multiple modified designs and attempts to field fit the ramp. Unfortunately, the ramp still did not comply. This occurred twice, resulting in three pours of the ramp, and BES paid the contractor three times.

The initial ramp designs would not conform to ADA requirements given existing field conditions. Therefore, the ramps would not have passed inspection even if the sub-contractor had constructed them per plan. In other words, by providing a design that did not meet ADA requirements, the City had created a situation that made it impossible for the sub-contractor to be successful and provide compliant work on the contract. To prevent this in the future, BES will improve coordination with PBOT and the designer, so that the approved plans factor in actual field conditions and reduce the likelihood of rework.

The contractor submitted a Notice of Change (NOC) as required by Section 196.10 and 199.30 of the 2010 City of Portland Standard Construction Specifications (Standard Specs). This NOC # 32 indicated additional time, labor, equipment and materials were needed due to multiple designs and field adjustments. As a result, BES staff began keeping work records in preparation for paying the additional work on a Force Account basis per Section 197 of the Standard Specs. The contractor ultimately submitted a Change Order Request (COR-17) based on those work records requesting **\$90,336** above

the bid amount for labor, equipment and materials associated with the additional work. However, based on Section 195.20(a) of the Standard Specs the construction management team determined the additional ADA ramp pours did not “materially change the character of the work” and the additional work should be paid for using existing unit costs. This amounted to **\$12,420** above the bid amount. BES agrees that better documentation of the decision making for paying non-conforming work and will review the current process and make sure it is clear that decisions need to be included in project records. In this case, a memo to include with the approved change order would have been sufficient. The justification in this case is that the approved design that the contractor bid was not feasible to be built. The repours resulted from design changes driven by actual field conditions.

Due to the lack of experience of the sub-contractor, BES staff spent additional time with the sub-contractor to facilitate successful project completion. There were challenges in sub-contractor performance as the subcontractor proceeded with work prior to finalizing discussions and decisions with the City on several occasions. The environmental and financial impact of materials due to the re-work was partially mitigated by reusing materials, such concrete forms. Recycled concrete was also used in the project for aggregate base and trench backfill material.

- C. The initial ramp design included in the bid documents was completed and sealed by a design consultant as part of the BES project. A second revised design was completed and sealed by the design consultant and reviewed by PBOT on October 14, 2021. The final design was completed by a PBOT registered Professional Engineer on April 28, 2022. As the sewer and stormwater bureau, BES does not have staff that specialize in ADA ramp design and inspection. BES inspectors do not have the equipment or training and are not knowledgeable about ADA ramp requirements as BES’ asset systems are mostly underground utilities. PBOT does have staff with ADA ramp expertise. This underscores the criticality of engagement with PBOT early in the project delivery process. BES has requested that PBOT provide a clear process and procedures for the design, forming, inspecting, and pouring of ADA curb ramps to eliminate confusion to all parties. including clear roles and responsibilities.

The project documentation does not reference any field activity by the sub-contractor between November 18, 2021 and April 4, 2022. Section 180 of the Standard Specs governs the Contractor’s time to complete the work. This was expressed as 400 Calendar days in the bid documents. The contract did not include interim milestones for specific elements of work, such as the ramp. Therefore, the sub-contractor temporarily demobilizing without impacting the overall project completion timeframe was not considered a breach of the contract or specifications and would not be subject to assessment of liquidated damages.

- D. BES agrees with the importance of stronger controls on these types of projects to reduce the risk of the outside factors noted.

## Recommendations

1. *Environmental Services should develop a process for closer oversight of Americans with Disability Act ramp construction projects that includes an emphasis on avoiding cost and schedule overruns and better-defined roles and responsibilities between Bureaus and with contractors. It is especially important that this work be done correctly and in a timely manner given the importance of serving Portlanders with disabilities and complying with federal disability law.*

Environmental Services agrees with this recommendation and is working on process improvements with PBOT as there are projects in process with ADA ramps. As curb ramps are a PBOT asset, PBOT staff are better equipped and trained to oversee the design, construction, inspection, and acceptance of curb ramps and determine their ADA compliance. BES is actively engaging and coordinating with PBOT to develop improved processes for design, construction, and inspection of ADA ramps on BES projects. When finalized, these improved processes will be implemented for ADA ramps on BES construction projects in the future.

2. *Environmental Services should develop criteria for when it is allowed to diverge from its stated practice of only paying for work that meets its standards, including a requirement to document the rationale for those decisions.*

Environmental Services agrees with this recommendation to improve decision making and documentation on non-standard types of projects such as these, where BES is not the subject matter expert in design and inspection and also not the asset owner after construction. The current practices for construction contract management are per the 2020 City of Portland Standard Construction Specifications (Standard Specifications) and project specific provisions. BES pays for accepted work meeting the contract requirements per Sections 150 and Section 195 of the Standard Specifications. When changed conditions, design clarifications and/or changes that impact the amount of work required by the contractor are necessary, BES follows established change management procedures in conformance with Sections 196, 197 and 199 of the Standard Specifications. Field Inspectors and Senior Inspectors review, and document finished work products to determine compliance with standards and acceptance for payment. Construction managers implement change management procedures as required. BES will review existing processes and procedures for both work product acceptance, and change management, and implement new guidance on project documentation when work product acceptance and change management overlap as in this case.