



Metropolitan Council: Southwest Light Rail Transit Construction

Performance Audit

April 2025

Financial Audit Division
Office of the Legislative Auditor
State of Minnesota

Financial Audit Division

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April 7, 2025

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Lunda/C.S. McCrossan Joint Venture
Civil Construction Contractor

This report presents the results of our performance audit of activities related to the Southwest Light Rail Transit project for the period from January 1, 2019, through March 31, 2023. The objectives of this audit were to determine if the Metropolitan Council and Lunda/C.S. McCrossan Joint Venture complied with requirements we tested. We also determined whether the Metropolitan Council had adequate internal controls over the areas tested.

This audit was conducted by Kayla Borneman, CPA (Audit Director); and auditors Tyler Billig, CPA; Daniel Hade; Dylan Harris; Kelly Lehr; and Alec Mickelson.

We received the full cooperation of the Metropolitan Council and Lunda/C.S. McCrossan Joint Venture staff while performing this audit.

Sincerely,



Judy Randall
Legislative Auditor



Lori Leysen, CPA
Deputy Legislative Auditor



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Introduction

In 2022, the Legislature directed the Office of the Legislative Auditor (OLA) to conduct a special review, a program evaluation, or both, of the Southwest Light Rail Transit (Southwest LRT) project.¹ In response to this law, OLA released a special review in September 2022 describing Southwest LRT's project budget and timeline, and two program evaluations, one in March 2023 and another in June 2023, of the Metropolitan Council's (Council's) management of Southwest LRT construction.²

Based on what we learned in our prior reports, we initiated this performance audit. Our audit focused on certain Southwest LRT construction activities and the work performed by the civil construction contractor, Lunda/C.S. McCrossan Joint Venture.

Our audit also specifically examined some of the Council's internal controls. Internal controls are the policies and procedures management establishes to govern how an organization conducts its work and fulfills its responsibilities. A well-managed organization has strong controls across all of its internal operations. If effectively designed and implemented, controls help ensure, for example, that inventory is secured, computer systems are protected, laws and rules are complied with, and authorized personnel properly document and process financial transactions.

Auditors focus on internal controls as a key indicator of whether an organization is well managed. In this audit, we focused on whether the Council had controls to ensure that it monitored and properly managed the Southwest LRT project and complied with state and federal laws, contract requirements, and the Council's internal policies.

¹ *Laws of Minnesota 2022*, chapter 39, sec. 1.

² Office of the Legislative Auditor, Special Review, *Southwest Light Rail Transit: Project Budget and Timeline* (St. Paul, 2022); Office of the Legislative Auditor, Program Evaluation Division, *Southwest Light Rail Transit Construction: Metropolitan Council Decision Making* (St. Paul, 2023); and Office of the Legislative Auditor, Program Evaluation Division, *Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors* (St. Paul, 2023). We also published an October 2021 memorandum summarizing a dispute between the Metropolitan Council and the Southwest LRT design contractor, AECOM Technical Services, Inc. Joel Alter, Director of Special Reviews, Office of the Legislative Auditor, memorandum to Senator D. Scott Dibble and Representative Frank Hornstein, *Southwest Light Rail Project Costs and Management*, October 28, 2021.



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Report Summary

Conclusions

The Metropolitan Council had instances of noncompliance with the requirements we tested and weaknesses in internal controls in each area we reviewed.

Lunda/C.S. McCrossan Joint Venture had instances of noncompliance with the requirements we tested in the areas of its use of disadvantaged business enterprises and physical security of the project site.³

Findings and Recommendations

Finding 1. The Metropolitan Council did not apply a consistent variance threshold, or establish guidance that includes the factors and conditions to consider, when comparing its change order cost estimates against Lunda/C.S. McCrossan Joint Venture's estimates. (p. 14)

Recommendation

The Metropolitan Council should develop and use an acceptable variance threshold, or guidance that includes the factors and conditions to consider, when comparing its change order cost estimates against Lunda/C.S. McCrossan Joint Venture's estimates.

Finding 2. The Metropolitan Council's monitoring of disadvantaged business enterprises' performance on the project did not comply with federal requirements or internal policy. (p. 20)

Recommendations

- The Metropolitan Council should conduct and document the required monitoring visits.
 - The Metropolitan Council should include requirements for monitoring disadvantaged business enterprises' activities in its internal policy, including how often and when such monitoring reviews should be performed.
-

³ We did not test Lunda/C.S. McCrossan Joint Venture's controls as part of the audit.

Finding 3. Lunda/C.S. McCrossan Joint Venture did not accurately report its use of disadvantaged business enterprises on the project to the Metropolitan Council. In addition, the Metropolitan Council did not have adequate internal controls to detect the incorrect amounts. (p. 21)

Recommendations

- Lunda/C.S. McCrossan Joint Venture should review its use of all disadvantaged business enterprises and ensure amounts are accurately reported in the contract management system.
 - The Metropolitan Council should strengthen internal controls over its monitoring of disadvantaged business enterprises' activities in the contract management system to ensure amounts being reported are accurate.
-

Finding 4. The Metropolitan Council did not adequately monitor the disposal of contaminated soils. In addition, the Metropolitan Council overpaid Lunda/C.S. McCrossan Joint Venture for the disposal of contaminated soils. (p. 25)

Recommendations

- The Metropolitan Council should strengthen monitoring over the disposal of contaminated soils to ensure that it authorizes the amounts disposed, verifies the accuracy of the amounts disposed, and makes accurate payments for the disposal.
 - The Metropolitan Council should reconcile, at least on a sample basis, the amounts disposed to date to ensure Lunda/C.S. McCrossan Joint Venture only billed for disposal of contaminated soils from Southwest Light Rail Transit project sites.
 - The Metropolitan Council should verify the contaminated soils payments to date to ensure the amounts it paid are accurate, and make adjustments as needed.
-

Finding 5. Lunda/C.S. McCrossan Joint Venture did not always have physical security restrictions and safeguards in place at laydown areas, as required by the contract.

In addition, the Metropolitan Council did not adequately monitor Lunda/C.S. McCrossan Joint Venture's compliance with required physical security restrictions and safeguards. (p. 28)

Recommendations

- Lunda/C.S. McCrossan Joint Venture should ensure that it implements and adheres to security requirements outlined in the contract.
 - The Metropolitan Council should strengthen its monitoring procedures to ensure Lunda/C.S. McCrossan Joint Venture complies with contract security requirements.
-

Background

Once completed, the Southwest Light Rail Transit (Southwest LRT) project will total 14.5 miles and run through the communities of Eden Prairie, Hopkins, Minneapolis, Minnetonka, and St. Louis Park. Funding for the project comes from the federal government; Hennepin County; the Counties Transit Improvement Board; Hennepin County Regional Railroad Authority; the State of Minnesota; and the cities of Eden Prairie, Hopkins, Minnetonka, and St. Louis Park (the City of Minneapolis has not provided funding for the project).⁴ In 2011, the Metropolitan Council (Council) projected the original budget for Southwest LRT to be \$1.25 billion. As of January 2024, the projected budget had increased to \$2.86 billion.⁵

| Projected Opening and Budget | | |
|------------------------------|------|----------------|
| | Year | Amount |
| Original | 2018 | \$1.25 billion |
| Amended | 2027 | \$2.86 billion |

The Council awarded the Southwest LRT civil construction contract to Lunda/C.S. McCrossan Joint Venture (Lunda-McCrossan) for \$799.5 million after rejecting all of the initial bid submissions.⁶ Shortly after construction broke ground in early 2019, issues began to cause costly change orders and delays. As of December 2024, the Council had increased the contract budget to \$1.065 billion. Lunda-McCrossan will also receive up to an additional \$285 million related to a settlement agreement.⁷

Civil construction is currently scheduled to be completed in 2025.⁸ A project director leads the overall Southwest LRT project, and a director of construction oversees the construction of the project. The project is split into two segments by the geographic location of the line (East and West) with a Council Authorized Representative and multiple assistants overseeing each segment.⁹ Individuals in these roles work together closely in overseeing the day-to-day construction efforts on the project.

⁴ The Counties Transit Improvement Board was formed in 2008 when five metropolitan counties (Anoka, Dakota, Hennepin, Ramsey, and Washington) entered into a joint powers agreement and approved transit-dedicated sales and use taxes of one-quarter of one-percent and an excise tax of \$20 per motor vehicle. Through the joint powers agreement, the board managed the proceeds of the taxes until the board’s dissolution in 2017.

⁵ For more information on the project’s budget, see Office of the Legislative Auditor, Special Review, *Southwest Light Rail Transit: Project Budget and Timeline* (St. Paul, 2022).

⁶ We refer to the Southwest LRT civil construction contract as “the contract” for the remainder of the report.

⁷ In March 2022, the Council and Lunda-McCrossan reached a settlement agreement, costing the Council up to \$288.1 million, to resolve issues related to project changes and delays.

⁸ The systems construction work on the project, which covers the electrically powered project components, will continue after civil construction is completed. The systems contractor will then test the line before the Council opens it to the public in 2027.

⁹ A Council Authorized Representative is a civil engineer employed by the Council.

Audit Scope, Objectives, Methodology, and Criteria

We conducted this audit to determine whether the Council and Lunda-McCrossan complied with certain requirements for activities related to the Southwest LRT project. We also reviewed the adequacy of the Council's controls over the areas tested. The audit scope included subcontractors and suppliers, contaminated soils, and physical security. The period under examination was January 1, 2019, through March 31, 2023.

Subcontractors and Suppliers

This part of the audit focused on the Council's and Lunda-McCrossan's payments to and monitoring of Lunda-McCrossan's subcontractors and suppliers. We designed our work to address the following questions:

- Were the Council's internal controls adequate to ensure accurate payment and monitoring of subcontractors and suppliers in compliance with applicable requirements?
- Did the Council and Lunda-McCrossan accurately pay and monitor subcontractors and suppliers in compliance with applicable requirements?

To gain an understanding of the Council's internal controls and compliance and Lunda-McCrossan's compliance, we interviewed Council and Lunda-McCrossan staff. We also reviewed project contracts, the Council's policies and procedures, and project plan documentation. We judgmentally selected one subcontractor and two suppliers, based on our analysis, and randomly selected an additional five subcontractors and four suppliers from Lunda-McCrossan's list of paid vendors, including a proportionate number of disadvantaged business enterprises.

To perform our testing, we obtained supporting documentation from the Council's project management system and from Council, Lunda-McCrossan, subcontractor, and supplier staff. We verified whether Lunda-McCrossan accurately paid subcontractors and suppliers according to the contracts or purchase orders and examined whether Lunda-McCrossan made prompt payments.

Contaminated Soils

This part of the audit focused on the disposal of contaminated soils. We designed our work to address the following questions:

- Were the Council's internal controls adequate to ensure it properly managed the disposal of contaminated soils in compliance with applicable requirements?
- Did the Council properly manage the disposal of contaminated soils in compliance with applicable requirements?

To gain an understanding of the Council's internal controls and compliance, we interviewed Council staff. We also reviewed project contracts, the Council's policies and procedures, and project plan documentation. We tested one key item, based on our analysis, and randomly selected 12 additional payment requests with contaminated soils

activity to determine whether the Council adequately monitored, tracked, reconciled, and paid for the disposal of contaminated soils. Finally, we assessed the overall accuracy of payments for contaminated soils by recalculating all payments during the audit scope.

Physical Security

This part of the audit focused on the security of the staging/laydown areas.¹⁰ We designed our work to address the following question:

- Did Lunda-McCrossan safeguard project resources at laydown areas in compliance with applicable requirements?

To gain an understanding of Lunda-McCrossan's compliance, we interviewed Council and Lunda-McCrossan staff. We also reviewed project contracts and security plan documentation. We visited and observed a judgmental sample of seven laydown areas to determine whether Lunda-McCrossan had safeguards in place that were operational in accordance with contract requirements.¹¹

We conducted this performance audit in accordance with generally accepted government auditing standards.¹² Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. When sampling was used, we used a sampling method that complies with generally accepted government auditing standards and that supports our findings and conclusions. That method does not, however, allow us to project the results we obtained to the populations from which the samples were selected.

We assessed internal controls against the most recent edition of the internal control standards, published by the U.S. Government Accountability Office.¹³ To identify compliance criteria for the activity we reviewed, we examined state and federal laws, project contracts, the Council's policies and procedures, and Lunda-McCrossan's contracts with subcontractors and purchase agreements with suppliers.

¹⁰ Lunda-McCrossan utilized staging/laydown areas along the Southwest LRT route to store construction materials and equipment that had not yet been used on the project. For the remainder of the report, we refer to these areas as laydown areas.

¹¹ As a result of our preliminary observations, we judgmentally selected 5 of 11 laydown areas based on location and whether Lunda-McCrossan was actively using the site. Locations included Beltline Boulevard Station, Blake Road Station, Excelsior Crossing site, Louisiana Avenue Station, and Shady Oak Station Park and Ride site. Two of the five laydown areas we tested consisted of two separate, distinguishable laydown areas, which we included in our testing. This resulted in performing observation testing for a total of seven laydown areas.

¹² Comptroller General of the United States, Government Accountability Office, *Government Auditing Standards, 2018 Revision* (Washington, DC, Technical Update April 2021).

¹³ Comptroller General of the United States, Government Accountability Office, *Standards for Internal Control in the Federal Government* (Washington, DC, September 2014). In September 2014, the State of Minnesota adopted these standards as its internal control framework for the executive branch.



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Subcontractors and Suppliers

The prime contractor for the Southwest Light Rail Transit (Southwest LRT) project—Lunda/C.S. McCrossan Joint Venture (Lunda-McCrossan)—works with subcontractors and suppliers to complete project work.

- **Subcontractors** contract directly with Lunda-McCrossan or another subcontractor to perform a portion of the project, such as track or electrical work.
- **Suppliers** manufacture, fabricate, supply, distribute, or sell materials or equipment directly to Lunda-McCrossan or a subcontractor.

Lunda-McCrossan supervises and coordinates the work for its subcontractors and suppliers. As of May 2023, Lunda-McCrossan had utilized 88 subcontractors and 40 suppliers for the Southwest LRT project.

Exhibit 1 lists the billed and paid amounts between Lunda-McCrossan and the six subcontractors and six suppliers we tested.

Exhibit 1

Amounts Billed and Paid by Subcontractor and Supplier, as of August 2023

| Subcontractor/Supplier | Original Billed | Additional Billed ^a | Total Billed | Total Paid ^b |
|--|-----------------|--------------------------------|---------------|-------------------------|
| Subcontractor | | | | |
| H&R Construction, Inc. | \$ 300,667 | \$ 195,435 | \$ 496,102 | \$ 471,297 |
| On Call Pavement Sweeping, Inc. | 517,500 | 946,929 | 1,464,429 | 1,430,550 |
| RailWorks Delta Joint Venture ^c | 69,352,996 | 18,717,209 | 88,070,205 | 86,652,768 |
| Ryan Builders, Inc. | 1,060,466 | 92,311 | 1,152,777 | 1,152,777 |
| Stonebrook Fence, Inc. ^c | 3,795,628 | 2,785,250 | 6,580,878 | 6,469,532 |
| Zahl-Petroleum Maintenance Co. | 37,603 | — | 37,603 | 37,603 |
| Supplier | | | | |
| Aura Fabricators, Inc. | \$ 5,492,358 | \$ 67,241 | \$ 5,559,599 | \$ 5,559,599 |
| Barnes Pipe & Steel Supply | 12,121,146 | 4,364,826 | 16,485,972 | 16,485,223 |
| Chippewa Wood Products | 152,926 | 62,038 | 214,964 | 214,964 |
| Commercial Fabricators, Inc. | 360,257 | 16,395 | 376,652 | 376,252 |
| Commercial Metals Company | 1,143,924 | 95,559 | 1,239,483 | 1,208,039 |
| Glas Mesh Company, Inc. | — | 46,657 | 46,657 | 46,657 |
| Total | \$94,335,471 | \$27,389,850 | \$121,725,321 | \$120,105,261 |

^a Additional billed amounts include any additional work performed or supplies provided that were not part of the base contract or purchase agreement with Lunda-McCrossan.

^b Total paid amounts do not always equal the total billed amounts due to the timing of billing versus payment, and the retainage withheld for subcontractors.

^c RailWorks Delta Joint Venture and Stonebrook Fence, Inc. received additional amounts due to a settlement agreement between the Council and Lunda-McCrossan, which is discussed later in the report. As of August 2023, the billed amounts related to the settlement agreement totaled about \$14.8 million and \$491,000, respectively, for the two subcontractors, and are included in the “Additional Billed” column.

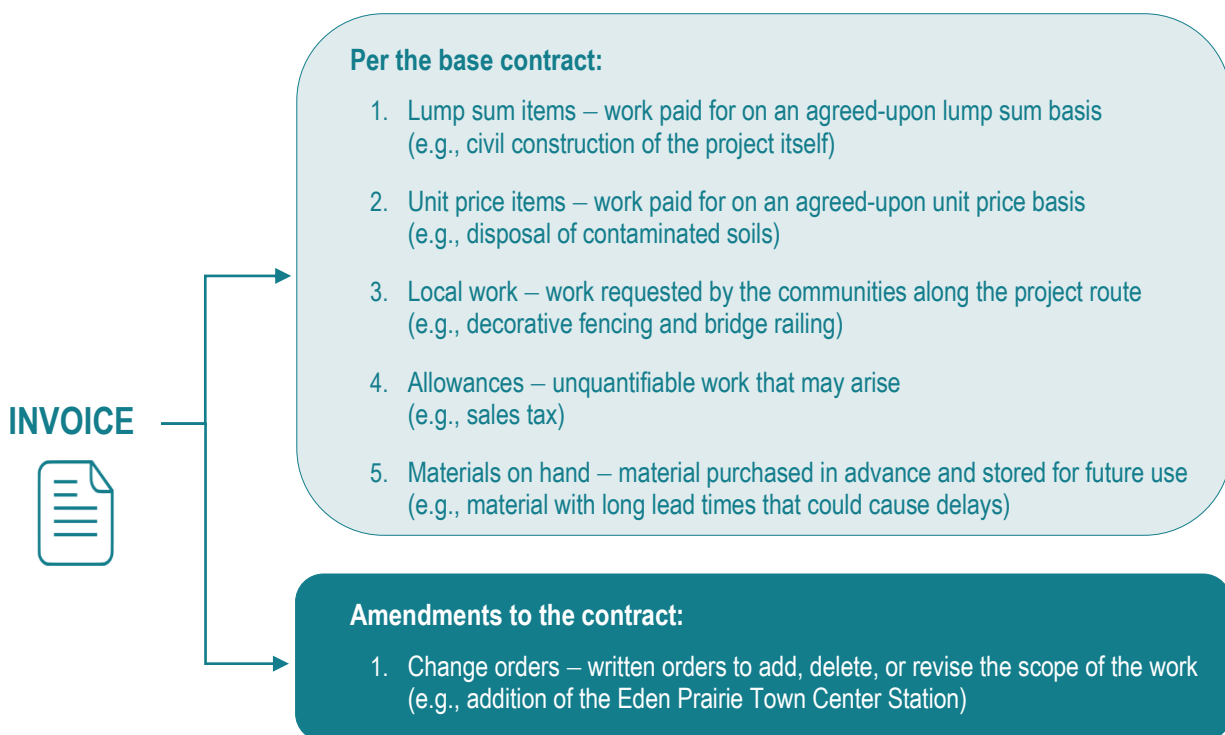
Source: Office of the Legislative Auditor, based on subcontractor and supplier invoices and proofs of payment.

The Metropolitan Council's (Council's) contract with Lunda-McCrossan is a lump-sum contract—an agreed-upon amount for the total project, regardless of actual cost. As a result, both parties took risks that the actual cost would be more or less than the amount negotiated. The contract requires that any changes to the amount negotiated must be done through change orders.¹⁴ Because of this, Lunda-McCrossan told us that it has chosen to absorb some of the changes with its subcontractors and suppliers instead of amending the amount negotiated with the Council; from our sample testing, this absorbed amount totaled about \$1.8 million.¹⁵

The Council is responsible for ensuring the adequacy of the work performed and the accuracy of payments made to Lunda-McCrossan. Lunda-McCrossan sends a monthly invoice to the Council based on its own work, the work of subcontractors, and the purchase of supplies. Lunda-McCrossan's invoice does not itemize all work conducted by its subcontractors and suppliers, but the invoice does identify costs associated with different aspects of the contract. Exhibit 2 illustrates the various items contained on a typical invoice. In the rest of this section, we discuss our testing, findings, and recommendations related to subcontractors and suppliers.

Exhibit 2

Items Included on a Typical Lunda-McCrossan Invoice



Source: Office of the Legislative Auditor, based on review of Southwest LRT project documentation.

¹⁴ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, 00700 General Conditions, Article 10.1 (2018). Change orders are introduced in Exhibit 2 and discussed further in a subsequent section.

¹⁵ In our testing, we identified an additional \$986,000 in billed amounts from subcontractors and suppliers that may also have been costs absorbed by Lunda-McCrossan.

Materials on Hand

Materials on hand (MOH) are materials that Lunda-McCrossan purchases in advance and is permitted to store for future use on the project. These materials typically have long lead times for receiving the materials and could cause delays in construction if they are not acquired in advance. MOH requests do not add to the cost of the project; instead, they are accounted for as part of materials already budgeted for in the contract.¹⁶ As of March 2023, the Council had paid about \$87.6 million for MOH.

For the MOH requests we tested, we verified whether the Council reviewed and appropriately approved the MOH requests, and whether the costs in the MOH requests matched the amounts reported on the payment requests. We also verified whether the MOH requests contained the required supporting documentation. We did not identify any reportable issues.

Allowance Use Authorization

Allowance use authorization (AUA) amounts are intended to allow for quick handling of unquantifiable or unforeseen work that may arise during the course of the project, such as sales taxes on supplies purchased or freight railroad maintenance. While intended to increase efficiency, AUAs can add costs to a project if not accurately estimated. The contract originally budgeted \$31.8 million for AUAs. Over the course of the project, contract amendments resulted in a total budgeted amount for AUAs of about \$39.5 million. As of March 2023, the Council had paid about \$27.3 million for AUAs.

AUA Budget

Original: \$31.8 million

Amended: \$39.5 million

Exhibit 3 illustrates the budgeted and paid amounts by AUA type.

Exhibit 3

Budgeted and Paid Amounts by Allowance Use Authorization Type, as of March 31, 2023

| Type | Original Budget | Amended Budget | Total Allowed | Total Paid |
|---|-----------------|----------------|---------------|--------------|
| Sales tax | \$20,000,000 | \$ – | \$20,000,000 | \$15,142,768 |
| Asbestos and regulated waste – structures | 3,300,000 | 200,000 | 3,500,000 | 3,487,196 |
| Unforeseen conditions work | 2,000,000 | 3,312,465 | 5,312,465 | 3,614,273 |
| Beltline park-n-ride construction | 2,500,000 | – | 2,500,000 | – |
| Freight railroad maintenance | 1,000,000 | 3,424,298 | 4,424,298 | 3,950,537 |
| Flagger ^a | 3,000,000 | (1,987,516) | 1,012,484 | 412,484 |
| Source of power | – | 1,275,000 | 1,275,000 | 262,531 |
| Cedar Isles Condominium Association | – | 1,000,000 | 1,000,000 | – |
| Steel price | – | 525,000 | 525,000 | 439,313 |
| Total | \$31,800,000 | \$ 7,749,247 | \$39,549,247 | \$27,309,102 |

^a Flagger allowance is payment for utilizing a flagman when project rail lines are adjacent to freight lines. The flagman is responsible for protecting freight operations while Lunda-McCrossan works on an adjacent project rail line.

Source: Office of the Legislative Auditor, based on payment request data.

¹⁶ The contract originally budgeted a total of \$273.8 million for materials.

For the AUAs we tested, we verified whether the Council reviewed and appropriately approved the AUAs, and whether the AUA amounts reported on the payment requests did not exceed the approved AUA amounts. We also verified whether the AUAs contained the required supporting documentation. We did not identify any reportable issues.

Change Orders

A change order is a written order, issued by the Council to Lunda-McCrossan, authorizing a revision to the project from the project's initial construction plans. Change orders often result in changes to the amount paid to the contractor or the time needed to complete the work.¹⁷ As of March 2023, the Council had paid Lunda-McCrossan approximately \$210.4 million on about 580 change orders.

Change Order Budget

| | |
|-----------------------|-----------------|
| As of September 2019: | \$1.3 million |
| As of March 2023: | \$227.7 million |

The Council's standard change order process involves first determining that a change to the contract is necessary and then negotiating an agreement with the contractor before the work begins. In order to negotiate the terms of the change order, both the Council and Lunda-McCrossan independently prepare an estimated cost of the change order. The Council, or its cost estimating consultant, prepares a cost estimate based on industry rates and other information.¹⁸ Lunda-McCrossan develops a separate change proposal stating what it believes the Council should pay Lunda-McCrossan for the change order.¹⁹ The Council then reconciles quantity and cost differences between the estimates and determines whether the differences between the estimates are "fair and reasonable."²⁰

Included in the estimates are Lunda-McCrossan's fees for profit and overhead, known as markup percentages; markup percentages are standard in construction contracts. While the contract allowed the Council and Lunda-McCrossan to negotiate different markup percentages, it established default "not to exceed" markup percentages as follows: 15 percent of payroll costs for staff directly employed by Lunda-McCrossan in the performance of the project, 5 percent of the cost of materials and equipment incorporated into the project, 5 percent of subcontractor or special consultant work, and 5 percent of the cost of rental equipment and machinery.²¹

¹⁷ For further information regarding change orders, see Office of the Legislative Auditor, Program Evaluation Division, *Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors* (St. Paul, 2023), 7.

¹⁸ The Council's cost estimating consultant during the audit period was AECOM Technical Services, Inc. (AECOM). Early in the construction process, the Council lost trust in the cost estimates produced by AECOM and began to conduct some of its own estimates. For more information, see Office of the Legislative Auditor, Program Evaluation Division, *Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors* (St. Paul, 2023), 23-24.

¹⁹ We refer to the independent cost estimate and change proposal as "estimates" for the remainder of the report.

²⁰ Metropolitan Council, *Change Orders Procedure*, revised August 2019, 8.

²¹ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, 00800 Supplemental Conditions – Revision 3, Article 10.6 (2018).

Beginning in January 2019, the Council and Lunda-McCrossan agreed to a new markup structure equal to 23 percent for payroll, materials, and equipment, and 15 percent for subcontractors.²² The one exception was when the Council reimbursed change orders on a “time and materials basis,” in which case the markup was 18 percent.²³ In January 2022, as a result of a settlement agreement, the Council and Lunda-McCrossan agreed to another revision to the markup structure.²⁴ The revised rates are now 21 percent for payroll costs, 15 percent for materials, Blue Book flat rates for equipment, and 10 percent for subcontractors.²⁵ Exhibit 4 provides the three different markup percentage structures.

Exhibit 4
Agreed-Upon Change Order Markup Percentages

| Timeframe | Payroll | Materials | Equipment | Subcontractors |
|--|------------------|-----------|-----------------|----------------|
| November 27, 2018 – January 8, 2019 | 15% | 5% | 5% | 5% |
| January 9, 2019 – December 31, 2021 ^a | 23% | 23% | 23% | 15% |
| January 1, 2022 – present | 21% ^b | 15% | 0% ^c | 10% |

^a The markup percentage for payroll, materials, and equipment was 23 percent; and 15 percent for subcontractors. The one exception was when the Council reimbursed on a “time and materials basis,” in which case the markup percentage was 18 percent. The percentages in this markup structure include a 3 percent markup for insurance and bonds.

^b When the Council reimburses on a “time and materials basis” the markup percentage is 62 percent on the actual taxable rate of wage rather than 21 percent on the burdened wage rate, which includes taxable wages, fringe benefits, and employer paid taxes.

^c No markup is applied to equipment; rather, the cost to use the equipment is based on Blue Book flat rates.

Source: Office of the Legislative Auditor, based on review of Southwest LRT project documentation.

Once the Council prepares the change order document, the Council’s procedure requires the appropriate authority to approve and sign the change order, depending on its value.²⁶ For example, a Council Authorized Representative must approve change orders under

²² In a 2022 peer review of Southwest LRT, the Minnesota Department of Transportation (MnDOT) noted that due to differing opinions of interpretation of how the markups should be applied, the Council and Lunda-McCrossan agreed to a new markup structure. Minnesota Department of Transportation, Office of Construction and Innovative Contracting, *SWLRT MnDOT Peer Review Report* (St. Paul, December 30, 2022), 4.

²³ “Time and materials basis” occurs when Lunda-McCrossan’s actual costs for time (labor) spent and materials used are billed to the Council after work under the change order is complete. Often when the cost of a change order is unpredictable, the Council and Lunda-McCrossan agree to work up to a certain, not-to-exceed dollar amount. Then, upon completion of the work, Lunda-McCrossan submits documentation supporting the actual labor and material costs to the Council for review and approval prior to payment.

²⁴ We discuss the settlement agreement in more detail later in the report.

²⁵ Blue Book flat rates for equipment are industry standard rates that the equipment owner will charge in order to recover the cost of owning the equipment and excludes any markup costs.

²⁶ Metropolitan Council, *Change Orders Procedure*, revised August 2019, 9-10.

\$10,000, while the Council's governing board must approve change orders greater than \$2,500,000.²⁷

For the change orders we tested, we verified whether the Council reviewed and appropriately approved the change orders, and whether the costs of the change orders matched the change order amounts reported on the payment requests. We also verified whether the Council had retained the required documentation to support the change orders. We did not find any issues. We also tested whether the Council and Lunda-McCrossan appropriately completed change orders for additional work not included in the contract and did not find any issues.²⁸

In addition, we verified whether the Council and Lunda-McCrossan used the correct markup percentages in the approved change orders and did not find any reportable issues. Finally, we examined the explanations for the approved change orders to determine whether the Council applied a consistent threshold for variances between the Council's and Lunda-McCrossan's change order estimates when concluding that the cost of the change orders were fair and reasonable. The Council's procedure does not describe what constitutes fair and reasonable, nor does it include an acceptable variance threshold when comparing the differences to determine what is fair and reasonable.²⁹

FINDING 1

The Metropolitan Council did not apply a consistent variance threshold, or establish guidance that includes the factors and conditions to consider, when comparing its change order cost estimates against Lunda/C.S. McCrossan Joint Venture's estimates.

We found that for the 41 change orders we tested, the Council accepted a wide range of variances in estimates when approving change orders. In Exhibit 5, we detail the differences between the Council's cost estimate and Lunda-McCrossan's cost estimate for a select group of change orders.³⁰

²⁷ *Minnesota Statutes* 2024, 473.123, subds. 1 and 3. The Metropolitan Council has a 17-member governing board appointed by the governor.

²⁸ As reported in our June 2023 program evaluation, we did have concerns with the change order estimating process and the final agreed-upon amounts. For further information, see Office of the Legislative Auditor, Program Evaluation Division, *Southwest Light Rail Transit Construction: Metropolitan Council Oversight of Contractors* (St. Paul, 2023), 23.

²⁹ A threshold could be defined in terms of either dollar or percentage. For example, in order to conclude that a variance is acceptable, it must be within a certain dollar amount or percentage of the Council's estimate. The Council's procedure does not, however, include language detailing an acceptable variance threshold.

³⁰ We include 10 of the 41 change orders in Exhibit 5. These ten change orders include the five largest variances when Lunda-McCrossan's estimate was greater than the Council's estimate and the five largest variances when the Council's estimate was greater than Lunda-McCrossan's estimate.

Exhibit 5
Selected Change Orders, by Estimate

| Change Order | Council Estimate | Lunda-McCrossan Estimate | Initial Variance | Council's Revised Estimate ^a |
|--|------------------|--------------------------|------------------|---|
| Conclude construction of the barrier protection wall next to the BNSF Railway freight railroad in Minneapolis ^b | \$36,609,462 | \$82,604,905 | \$45,995,443 | \$83,445,175 |
| Begin construction of the barrier protection wall next to the BNSF Railway freight railroad in Minneapolis | \$1,908,997 | \$10,045,134 | \$8,136,137 | \$9,834,942 |
| Modify walls east of Glenwood Avenue in Minneapolis | \$3,108,456 | \$9,310,000 | \$6,201,544 | \$6,600,000-\$8,400,000 |
| Add Eden Prairie Town Center Station | \$8,243,200 | \$11,413,550 | \$3,170,350 | N/A |
| Add wall near Target Field and Cedar Lake Trail in Minneapolis to accommodate BNSF Railway access to its freight railroad | \$1,174,950 | \$2,342,570 | \$1,167,620 | N/A |
| Update source of power and lighting units for trail lighting for new pedestrian tunnel lights in Eden Prairie | \$291,160 | \$234,808 | \$(56,352) | \$261,475 |
| Add concrete curb to retaining walls to match elevation of track to accommodate a discrepancy in the plans | \$127,027 | \$76,778 | \$(50,249) | \$87,217 |
| Modify spacing and dimension clarifications to the embedded track straining rail separator block | \$64,750 | \$19,487 | \$(45,263) | N/A |
| Remove additional vegetation, trees, rocks, and other debris near Trunk Highway 212 | \$73,018 | \$46,413 | \$(26,605) | N/A |
| Modify ornamental railings from stainless steel to galvanized steel | \$(58,532) | \$(80,758) | \$(22,226) | N/A |

^a The Council calculated its revised estimate when it determined its estimate (either prepared by itself or its cost estimating consultant) had deficiencies or incorrect assumptions. For these change orders, the Council adjusted its estimate, then used its revised estimate as the basis for its conclusion. If a change order in Exhibit 5 does not list a revised estimate, identified as "N/A" in the exhibit, the Council compared its initial estimate against Lunda-McCrossan's estimate and decided to use Lunda-McCrossan's estimate.

^b BNSF Railway is the name of the company, not an abbreviation.

Source: Office of the Legislative Auditor, based on review of Southwest LRT change order documentation.

In all ten of these change orders, the Council ultimately determined Lunda-McCrossan's estimates were "fair and reasonable" and approved these estimates as the final change order cost. However, as illustrated in Exhibit 5, there was a wide range of acceptable variances where the Council had to significantly change its initial estimate to bring it closer to Lunda-McCrossan's estimate.³¹ The Council's policy does not specify a particular threshold or provide additional guidance on how to determine whether the variance between a contractor's estimate and the Council's estimate (or revised estimate) is fair and reasonable.

³¹ According to the Council, some variances occurred because its cost estimating consultant used incorrect assumptions in its estimates. For other variances, the Council's estimates used different construction assumptions than Lunda-McCrossan's. If the Council thought it was a significant enough variance, it adjusted its estimate, otherwise the Council accepted Lunda-McCrossan's estimate.

Without an established threshold or guidance for variances when comparing estimates, it is difficult to determine if the Council received fair and reasonable costs for project change orders.

RECOMMENDATION

The Metropolitan Council should develop and use an acceptable variance threshold, or guidance that includes the factors and conditions to consider, when comparing its change order cost estimates against Lunda/C.S. McCrossan Joint Venture's estimates.

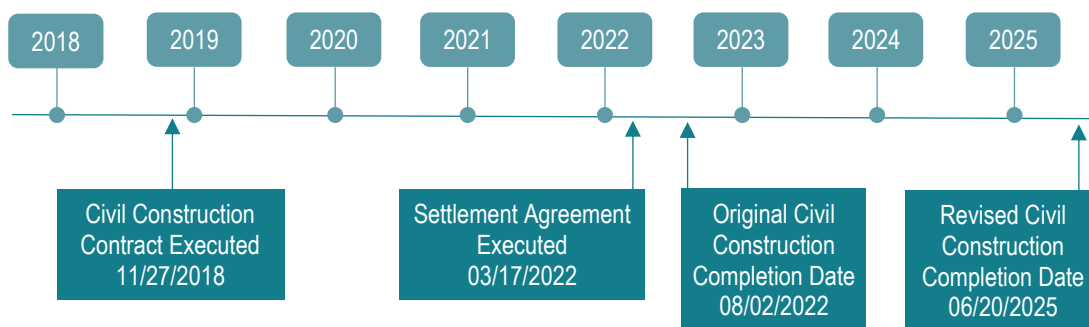
Settlement Agreement

In March 2022, the Council and Lunda-McCrossan agreed to a settlement to address compensation for project delays and unresolved change orders.³² The payments from the settlement were to ensure Lunda-McCrossan and its subcontractors were able to complete the project.³³

The Council and Lunda-McCrossan also extended the timeline to complete the civil construction phase. Before the settlement, Lunda-McCrossan was scheduled to be substantially complete with the project in August 2022. The revised date is now June 2025. As part of the settlement agreement, the Council took responsibility for 30 of the 34.5 months the project was delayed.

Exhibit 6 illustrates the timeline of the Council's contract with Lunda-McCrossan and the revised completion date.

Exhibit 6
Southwest LRT Civil Construction Timeline



Source: Office of the Legislative Auditor, based on review of Southwest LRT project documentation.

³² The Council and Lunda-McCrossan agreed to resolve open change orders that were in dispute, and to engage in an alternative dispute process to settle any future disputes.

³³ Examples of what Lunda-McCrossan and its subcontractors used the settlement payments for include additional overhead costs, labor and material price increases, and loss of productivity.

Under the settlement agreement, the Council agreed to pay Lunda-McCrossan an additional amount of at least \$210 million and at most \$288.1 million. As of March 31, 2023, the Council had paid Lunda-McCrossan an additional \$106.3 million, which constitutes about 51 percent of the agreed-upon settlement. In August 2023, the Council's 17-member governing board authorized the Council to increase the total settlement payment amount up to \$285 million.³⁴

The total amount the Council must pay under the settlement agreement is in addition to the original contract amount plus the total amount of executed change orders. The original contract amount was about \$799.5 million, and the total amount of executed change orders, as of March 31, 2023, was about \$227.7 million, for a total contract amount of about \$1.027 billion.

Contract Amount and Settlement

Original: \$799.5 million
 Change Orders: \$227.7 million
 Settlement (up to): \$285.0 million
 Total: \$1.312 billion

The settlement agreement also listed several types of disputed costs between the Council and Lunda-McCrossan and the maximum amount the Council would pay Lunda-McCrossan for each cost. Per the agreement, the maximum additional amount the Council would pay Lunda-McCrossan for its subcontractors is \$112 million. According to Lunda-McCrossan, approximately 30 of its subcontractors will receive a portion of the settlement. To determine how to allocate the \$112 million, the subcontractors submitted proposals for how much it would cost them to extend their involvement with the project. Lunda-McCrossan then determined the final allocation of the settlement amount for each subcontractor. The Council was involved in determining the total maximum amount for all subcontractors, but not in determining the allocation to each subcontractor.

Exhibit 7 identifies the two subcontractors who will receive settlement payments that we reviewed as part of our testing.

Exhibit 7

Subcontractor Contracted Amounts and Payments

| Subcontractor | Original Contract Amount | Change Orders Amount | Settlement Amount | Total Payment | Paid ^a |
|-------------------------------|--------------------------|----------------------|-------------------|---------------|-------------------|
| RailWorks Delta Joint Venture | \$85,317,000 | \$5,903,667 | \$25,785,295 | \$117,005,962 | \$86,652,768 |
| Stonebrook Fence, Inc. | 4,980,479 | 1,163,109 | 855,299 | 6,998,887 | 6,469,532 |
| Total | \$90,297,479 | \$7,066,776 | \$26,640,594 | \$124,004,849 | \$93,122,300 |

^a The paid amounts do not equal the total subcontracted amounts because the subcontractors had not completed all work at the time of our testing.

Source: Office of the Legislative Auditor, based on subcontractor contracts and proofs of payment.

The total amount in the settlement column, about \$26.6 million, represents 23.8 percent of the \$112 million allocated to subcontractors.

³⁴ The Council increased the payment, per board minutes, to resolve the remaining disputes outlined in the settlement agreement, and to resolve additional matters related to civil construction.

Prompt Payment

Upon successful delivery of work and materials, Lunda-McCrossan is expected to pay its subcontractors and suppliers for their work. Minnesota statutes, which were incorporated into the Council's contract with Lunda-McCrossan, requires a "prime contractor to pay any subcontractor within ten days of the prime contractor's receipt of payment from municipality for undisputed services provided by the subcontractor."³⁵

We reviewed all 104 payments Lunda-McCrossan made to the six subcontractors we tested to determine if Lunda-McCrossan made payments within ten days as required by law. We did not identify any issues with the timeliness of payments to the six subcontractors.

Lunda-McCrossan is also required to pay the six suppliers we tested within 10 days "of receipt by the party responsible for payment of payment for undisputed services provided by the party requesting payment."³⁶ We tested a sample of 190 invoices submitted by the six suppliers to determine if Lunda-McCrossan made payments within ten days as required by law. We were not always able to track Council payments to specific invoices so we could not determine whether Lunda-McCrossan met the requirement in law.

Disadvantaged Business Enterprises

A subset of the subcontractors and suppliers that Lunda-McCrossan works with are classified as disadvantaged business enterprises (DBEs). A DBE is a small business that is owned by a socially and/or economically disadvantaged person (federal law defines such persons as women, veterans, persons of color, persons with a disability, and immigrants).³⁷ In accordance with the U.S. Department of Transportation and Council policy, the Council is required to utilize DBEs to construct a portion of the project.³⁸

Lunda-McCrossan and its subcontractors have contracted with about 70 DBE subcontractors for the Southwest LRT project. As of March 31, 2023, 50 DBEs had billed the project for a total of about \$182.1 million.

³⁵ *Minnesota Statutes* 2024, 471.425, subd. 4a; and Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, 00700 General Conditions, Article 14.13 (2018).

³⁶ *Minnesota Statutes* 2024, 337.10, subd. 3.

³⁷ 49 *CFR*, sec. 26.5 (2024).

³⁸ 49 *CFR*, sec. 26.1 (2024); and Metropolitan Council, *Inclusion of Disadvantaged Business Enterprises (DBEs) and Metropolitan Council Underutilized Business (MCUBs)*, revised October 2020, 1.

Monitoring

Federal law requires that the Council's DBE program must include a monitoring and enforcement mechanism to ensure that DBEs perform work that has been committed or subcontracted to them. The mechanism must include written verification that the Council reviewed contracting records and monitored work sites.³⁹ Council policy states that it will periodically review DBE subcontractor performance, and its reviews will consist of on-site visits, interviews, and reviews of relevant records.⁴⁰

Although federal law does not specify the frequency of the reviews and site visits, federally issued guidance states that monitoring must occur while the DBE is active on the jobsite, and recommends monitoring a DBE's participation in the early stages of the contract to provide sufficient time to correct any issues.⁴¹ Council policy also does not state how often monitoring will occur; however, the Council told us it has informally made the decision to attempt to complete site visits annually, but, at a minimum, meet with all DBEs once every four years during the life of the project.

The Council's on-site visits consist of the following:

- Conducting a commercially useful function review⁴²
- Reviewing documentation, such as invoices, contracts, lease agreements, and purchase orders
- Reviewing samples of work, such as design plans, if needed
- Taking pictures of DBE staff performing work on the project⁴³

Our testing included all 50 DBEs that had submitted invoices to Lunda-McCrossan or its subcontractors as of March 31, 2023.⁴⁴

³⁹ 49 *CFR*, sec. 26.37(b) (2024).

⁴⁰ Metropolitan Council, *Contractor Compliance and Monitoring for Federal Disadvantaged Business Enterprise and Metropolitan Council Underutilized Business Programs*, revised October 2020, 5-6. The policy does not specify how often the reviews will occur. Relevant records per the policy and discussion with Council staff include documents such as purchase orders, contracts, and invoices.

⁴¹ U.S. Department of Transportation, *Recipient Responsibilities for Oversight and Monitoring of DBE Participation* (August 22, 2018), <https://www.transportation.gov/sites/dot.gov/files/docs/mission/civil-rights/disadvantaged-business-enterprise/318146/oversight-and-monitoring-dbe-participation.pdf>, accessed September 29, 2023.

⁴² 49 *CFR*, sec. 26.55(c)(1) (2024) states, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself."

⁴³ Pictures are not a requirement in federal law or internal policy; however, per discussion with Council staff, it used photos as evidence to show DBEs performing the work.

⁴⁴ This testing was separate from the testing we performed for the six subcontractors and six suppliers, where we tested two DBE subcontractors and one DBE supplier.

FINDING 2

The Metropolitan Council's monitoring of disadvantaged business enterprises' performance on the project did not comply with federal requirements or internal policy.

We found that for 21 of 50 DBEs, the Council's monitoring did not fully meet federal requirements or internal policy.

- For 9 of the 50 DBEs, the Council did not have sufficient documentation of its monitoring visits. For all nine deviations, the Council either did not document the completion of the commercially useful function review; document the completion of the visit; or obtain supporting documentation, such as invoices or contracts. In addition, the Council did not adequately follow up with DBEs. For example, the Council requested additional documentation, but it did not ensure that it received and reviewed the documentation; or DBE field staff did not have knowledge of or access to the contract or invoices, so the Council only took photos at the site and did not follow up to complete the visit. According to the Council, this was due to not having sufficient staff to follow up with DBEs.⁴⁵
- For 12 of the 50 DBEs, the Council had not yet initiated monitoring visits as of March 31, 2023. For these 12 deviations, the Council did not have an adequate plan to schedule visits once work started. For example, 10 of these 12 deviations occurred because the DBEs had not started their work when the Council was performing the majority of its visits in summer 2020.⁴⁶ However, a significant amount of time had passed since those DBEs started work, and the Council still had not planned monitoring visits. According to the Council, internal staffing changes resulted in not having sufficient staff to perform the monitoring visits.

When monitoring visits do not occur or are incomplete, the Council is not able to confirm whether the DBE is performing the agreed-upon work.

RECOMMENDATIONS

- **The Metropolitan Council should conduct and document the required monitoring visits.**
 - **The Metropolitan Council should include requirements for monitoring disadvantaged business enterprises' activities in its internal policy, including how often and when such monitoring reviews should be performed.**
-

⁴⁵ The Council often relies on interns to perform the monitoring visits. Interns are employed during the summer months.

⁴⁶ For two of these ten deviations, the DBEs had started work by October 2020. The remaining eight DBEs had started work by September 2021.

Reporting

The Council's contract with Lunda-McCrossan requires Lunda-McCrossan to report all DBE billings and payments each month through the Council's DBE contract management system.⁴⁷ The Council requires the reporting to ensure Lunda-McCrossan is meeting the DBE participation goal.⁴⁸ Lunda-McCrossan runs a report each month from its accounting system that contains the approved billings and payments made to each subcontractor or supplier for that period. Lunda-McCrossan then enters the amounts, less retainage, into the Council's contract management system.

As part of the payment request each month, Lunda-McCrossan also submits a DBE tracking log, which contains similar information to what is entered into the contract management system. The Council performs a reconciliation of payment amounts between this DBE tracking log and what was entered in the contract management system.

FINDING 3

Lunda/C.S. McCrossan Joint Venture did not accurately report its use of disadvantaged business enterprises on the project to the Metropolitan Council. In addition, the Metropolitan Council did not have adequate internal controls to detect the incorrect amounts.

For two of three DBEs tested, Lunda-McCrossan reported incorrect billing and payment amounts in the contract management system.⁴⁹ For each DBE, there were several instances in which the total billed to date in the contract management system did not match the total DBE invoices, and where the total paid to date in the contract management system did not match the actual amount paid to the DBE. Due to these incorrectly reported amounts, Lunda-McCrossan underreported its use of DBEs on the project. For one DBE, this caused an underreported variance of \$1,598,773. For the other DBE, this caused an underreported variance of \$181,856.

The errors occurred because the report Lunda-McCrossan created to obtain the billing and payment amounts is not cumulative, and Lunda-McCrossan could miss invoices depending on when it enters them into its accounting system. Additionally, the reconciliation the Council performs is not effective because it compares two reports that Lunda-McCrossan completes from the same data source.

Since the Council relies on information reported by Lunda-McCrossan, inaccurately reported DBE costs could cause the Council to incorrectly determine whether DBE participation requirements were met. That being said, the errors we identified in our sample were not large enough to result in an incorrect determination.

⁴⁷ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 10 Disadvantaged Business Enterprise and Workforce Inclusion, Parts 1.05.C and E (2018).

⁴⁸ The Council set the DBE participation goal as 16 percent of the civil construction contract amount. The Council determined the goal based on the type of work that would be completed and the DBEs available to perform the work.

⁴⁹ This testing was part of the testing performed for the six subcontractors and six suppliers. We tested two DBE subcontractors and one DBE supplier.

RECOMMENDATIONS

- **Lunda/C.S. McCrossan Joint Venture should review its use of all disadvantaged business enterprises and ensure amounts are accurately reported in the contract management system.**
 - **The Metropolitan Council should strengthen internal controls over its monitoring of disadvantaged business enterprises' activities in the contract management system to ensure amounts being reported are accurate.**
-

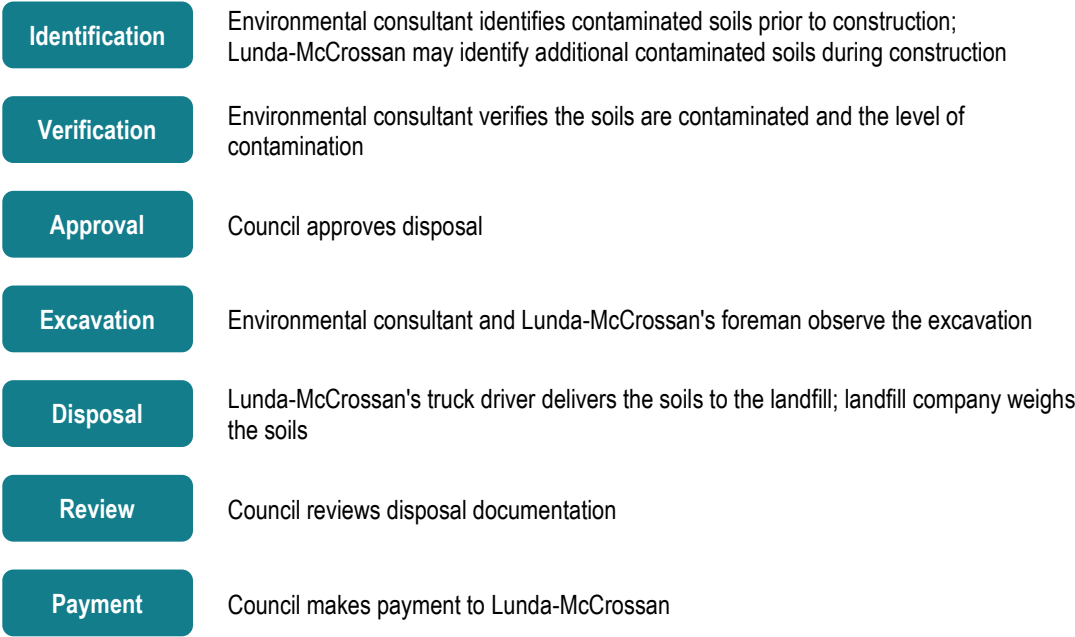
Contaminated Soils

Contaminated soils are soils that are polluted, contaminated, or hazardous. Due to their negative environmental impact, the Metropolitan Council’s (Council’s) contract with Lunda/C.S. McCrossan Joint Venture (Lunda-McCrossan) requires contaminated soils be removed from the project when the environmental consultant or Lunda-McCrossan identifies them.⁵⁰ The original budget amount in the contract for the disposal of contaminated soils totaled about \$18.6 million. During the scope of the audit, the Council amended the total budgeted amount to about \$39.7 million. The total paid amount for contaminated soils as of March 31, 2023, was about \$29.8 million.

Contaminated Soils Budget
Original: \$18.6 million
Amended: \$39.7 million

Exhibit 8 outlines the process for handling contaminated soils from when the environmental consultant or Lunda-McCrossan first identifies contaminated soils to when the Council pays for their disposal.

Exhibit 8
Contaminated Soils Disposal Process



Source: Office of the Legislative Auditor, based on interviews with Metropolitan Council staff.

⁵⁰ Metropolitan Council, *Green Line LRT Extension (“Southwest LRT”) Civil Construction (Rebid)*, Conformed Documents, 00700 General Conditions, Article 4.5 (2018). The Council contracted with an environmental consultant prior to construction to investigate the construction sites for contaminated materials that could affect construction. The Council contracted with the same environmental consultant for the construction phase to monitor the excavation and hauling away of contaminated soils to the landfill.

We tested 12 random samples and one key item, based on our analysis, of the 42 payment requests containing the Council's payments to Lunda-McCrossan to dispose of contaminated soils.

Excavation and Disposal Process

Prior to construction, the Council contracted with the environmental consultant to review the construction site and identify areas where contaminated soils were either present or likely to be present, and to determine the perimeters of the contaminated areas. The Council's contract with Lunda-McCrossan requires a Council Authorized Representative to approve the disposal prior to any excavation.⁵¹ Lunda-McCrossan obtains approval from the Council, which is documented on a soils hauling authorization form, or manifest.⁵² The contract also states that manifests shall be organized and traceable to the contaminated areas described in the contract.⁵³ We found deficiencies in this process, and we discuss them in detail in Finding 4.

The Council's contract with Lunda-McCrossan further requires the environmental consultant to be present for the excavation of all contaminated soils.⁵⁴ Before excavation begins, the environmental consultant performs an observation test and field screening to ensure the soils should be excavated. In addition, the environmental consultant observes the hauling of contaminated soils and documents the number of truckloads and any other pertinent information in field logs, which are entered into the Council's project management system.⁵⁵ We identified concerns regarding the environmental consultant's role, and we discuss them in detail in Finding 4.

Lunda-McCrossan then disposes of the contaminated soils at the SKB Environmental landfill site. SKB Environmental determines whether or not to accept the contaminated soils, and if so, weighs the material in tons and produces a ticket with receipt information. Lunda-McCrossan provides these tickets to the Council, which the Council enters into an internal spreadsheet it uses to track the disposal of contaminated soils.

Payment Verification

The Council reconciles its internal spreadsheet to the soil amounts reported by Lunda-McCrossan monthly to ensure accuracy by soil type, weight, and date. The

⁵¹ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 00 Special Procedures, Part 3.05.C (Revision 3) (2018).

⁵² We refer to these as manifests through the remainder of the report.

⁵³ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 20 00 Price and Payment Procedures, Parts 1.05.E and F (Revision 13) (2018).

⁵⁴ *Ibid.*, Section 01 35 00 Special Procedures, Part 3.05.C (Revision 3) (2018).

⁵⁵ The Council's project management system is known as e-Builder. According to the Council's contract with Lunda-McCrossan, e-Builder "is required to be used to submit and track all project documentation, communication, meeting minutes, scheduling, submittal schedule, shop drawings, product data, and other submittals, substitution requests, application for payments, construction field reports and other reports, photographs, change orders, RFIs [requests for information], non-compliance reports, project schedules, etc." Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 31 23 Project Management System, Part 1.04.B (2018).

Council then uses the reconciliation to confirm the total tons to date reported on the payment request.

The Council's contract with Lunda-McCrossan states that the payment for the disposal of contaminated soils shall be made on a per-ton basis and shall be for the full compensation of costs for such things as labor, equipment, fuel, and overhead.⁵⁶ Furthermore, the Council's internal payment request policy requires a Council Authorized Representative to review the accuracy of the Lunda-McCrossan payment request, to certify that the goods/services have been received by the Council, and to verify that the amounts billed are valid charges.⁵⁷ We found issues with the Council's payment verification procedures.

FINDING 4

The Metropolitan Council did not adequately monitor the disposal of contaminated soils. In addition, the Metropolitan Council overpaid Lunda/C.S. McCrossan Joint Venture for the disposal of contaminated soils.

Approval. According to the contract, Lunda-McCrossan should obtain authorization from the Council to dispose of contaminated soils.⁵⁸ However, in our discussions with Council staff, we learned that the Council Authorized Representatives sign manifests in bulk at the beginning of the workday and leave them for Lunda-McCrossan to use as needed. The manifests are blank at the time of signing, meaning the Council does not include the location and estimated quantity of contaminated soils, only the signature and date. The Council stated that this was done because it did not have the resources to be present to oversee and authorize all contaminated soils hauls. In addition, we found that the Council did not store the copies of the manifests that are traceable to the identified contaminated areas in the project management system with the landfill tickets, and the Council did not use the manifests for any reconciliations to ensure the quantity disposed appears reasonable for each contaminated area.

Excavation. According to the contract and the environmental consultant's response action plan, the environmental consultant should perform a field screening to confirm that the soils are contaminated, and be present to monitor the excavation and hauling of the soils.⁵⁹ We tested six payment requests and found that the environmental consultant's field logs did not reconcile with the number of tickets from the landfill company for five out of the six payment requests tested. These five samples included 96 days of soils disposal activity; 47 of those days contained deviations. Deviations included no field logs for some days when truckloads were brought to the landfill and truckload counts that did not match the counts provided by the landfill company.

⁵⁶ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 20 00 Price and Payment Procedures, Parts 1.05.E and F (Revision 13) (2018).

⁵⁷ Metropolitan Council, *Processing Construction Contract Payment Requests*, June 2018, 2.

⁵⁸ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 00 Special Procedures, Part 3.05.C (Revision 3) (2018).

⁵⁹ *Ibid.*; and Short Elliot Hendrickson, Inc., *Construction Response Action Plan*, 4.2 (November 2015), 20. The response action plan provides a description of the methods that will be used to manage contaminated materials during project construction.

Despite the contract stating the environmental consultant must be present during excavation, the Council did not require the environmental consultant to be present for all excavations, depending on the severity of the contamination.⁶⁰

Payment. According to Council policy, the Council should verify the payment amount on the payment request.⁶¹ We tested 13 payment requests and found that the payment request did not reconcile with our calculated amount for 5 of the 13 payment requests. Due to the inaccurate payments we noted in our sample testing, we performed an additional analysis to review the accuracy of all contaminated soils disposal payments in the audit scope. We determined that the Council overpaid Lunda-McCrossan by \$329,517 for the disposal of contaminated soils.

As of March 31, 2023, the total budget for the disposal of contaminated soils had more than doubled from the original budgeted amount.⁶² Due to this increase and the issues identified from our testing, we asked the Council whether it performed reconciliations or other procedures to ensure that the soils hauled were only from contaminated areas and that the amount in tons was accurate. The Council told us it did not perform any reconciliations or other procedures to verify the amounts because it believes the risk was minimized by the procedures it has in place.

Because the Council did not adequately monitor the disposal of contaminated soils, Lunda-McCrossan could have excavated and disposed of soils that were not contaminated, or potentially disposed of soils that were not from Southwest LRT project sites. In addition, due to the ineffective review of the contaminated soils portion of the payment requests, the Council overpaid Lunda-McCrossan.

RECOMMENDATIONS

- **The Metropolitan Council should strengthen monitoring over the disposal of contaminated soils to ensure that it authorizes the amounts disposed, verifies the accuracy of the amounts disposed, and makes accurate payments for the disposal.**
 - **The Metropolitan Council should reconcile, at least on a sample basis, the amounts disposed to date to ensure Lunda/C.S. McCrossan Joint Venture only billed for disposal of contaminated soils from Southwest Light Rail Transit project sites.**
 - **The Metropolitan Council should verify the contaminated soils payments to date to ensure the amounts it paid are accurate, and make adjustments as needed.**
-

⁶⁰ Prior to construction, the environmental consultant investigated the construction areas for contaminated materials that could affect construction. The environmental consultant identified contaminated areas based on the level of severity of contamination: unregulated fill areas are not contaminated; urban fill areas contain low-level contaminated materials and can be reused on the project where possible; or discrete areas contain medium- to high-level contaminated materials and must be removed from the project. The Council required the environmental consultant to be present in discrete areas, but not during all excavations in urban fill areas.

⁶¹ Metropolitan Council, *Processing Construction Contract Payment Requests*, June 2018, 2.

⁶² The original budget totaled about \$18.6 million. Due to Council amendments, the total budgeted amount now totals about \$39.7 million.

Physical Security

The Metropolitan Council's (Council's) contract with Lunda/C.S. McCrossan Joint Venture (Lunda-McCrossan) requires a variety of security measures to ensure the safety of construction staff, and to safeguard valuable materials and equipment. For example, Lunda-McCrossan must limit and control access to the construction sites.⁶³

The contract also requires Lunda-McCrossan to submit a security plan, for review by the Council, to supplement the security measures listed in the contract.⁶⁴ The security plan identifies the project's security representatives and security staff, emergency contact information for local partners, guidelines to implement security procedures, and specific actions proposed to secure the project, including all laydown areas. Lunda-McCrossan must amend the plan as needed when changes to security procedures occur.⁶⁵ As of March 31, 2023, Lunda-McCrossan submitted its most recent security plan for the Council to review in October 2022.

Exhibit 9 provides a list of the security requirements we tested in accordance with the contract and the Southwest Light Rail Transit (Southwest LRT) security plan.

Exhibit 9

Security Requirements Tested

According to the contract and security plan, Lunda-McCrossan shall:

- Use electronic surveillance systems at laydown areas. The systems shall be equipped with a camera capable of recording video surveillance and a light.
- Only allow those who require access to the project work areas be granted access.^a
- Enclose laydown areas with a minimum six-foot-high chainlink fence.
- Provide temporary construction screens or barriers to limit views into laydown areas.
- Gate each laydown area to allow passage of vehicles and personnel.
- Patrol each laydown area with a security representative.
- Control all laydown area access locations during active use and secure these locations during off hours and nonuse times.^b
- Post "No Trespassing" signs along the perimeter of the site. The "No Trespassing" signs should be a minimum of six square feet in size and securely mounted.

^a The contract requires that Lunda-McCrossan develop procedures to record all site access on a daily basis, including log in/log out, person identifications, and visitor escort procedures in its security plan.

^b Off hours and nonuse times occur when construction staff are not present at the laydown areas, which are typically on weekends, and between the hours of 6:00 p.m. and 7:00 a.m.

Source: Office of the Legislative Auditor, based on Council contract with Lunda-McCrossan and the Southwest LRT security plan.

⁶³ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 53 Security Procedures (Revision 2) (2018). The contract does not require Lunda-McCrossan to complete a periodic inventory of materials and equipment.

⁶⁴ *Ibid.*, Section 01 35 53 Security Procedures, Part 1.04 (Revision 2) (2018).

⁶⁵ *Ibid.*

While the contract stipulates Lunda-McCrossan has ultimate responsibility over the security of the laydown areas, the Council should ensure that Lunda-McCrossan complies with the contract.⁶⁶

FINDING 5

Lunda/C.S. McCrossan Joint Venture did not always have physical security restrictions and safeguards in place at laydown areas, as required by the contract.

In addition, the Metropolitan Council did not adequately monitor Lunda/C.S. McCrossan Joint Venture's compliance with required physical security restrictions and safeguards.

We performed observation testing of the laydown areas during work hours and nonwork hours. Our testing included 7 of the 14 active laydown areas at the time of observation. We found security deficiencies in all seven of the Southwest LRT project laydown areas we tested. Our testing identified the instances of security deficiencies listed in Exhibit 10.

Exhibit 10

Security Deficiencies Found During Laydown Area Observation Testing

- None of the seven laydown areas had video surveillance footage available for the day of our visit. In addition, Lunda-McCrossan had installed a camera at only one of the seven areas we visited.
- None of the seven laydown areas had an access log to document personnel entering and leaving the areas.
- Six of the seven laydown areas did not have a six-foot fence that enclosed the entire area. Deficiencies included gaps in fencing or bent fencing, allowing access to the area. Six of the seven areas had a six-foot fence around a portion of the area.
- None of the seven laydown areas had screens or barriers, including natural barriers, enclosing the entire area to prevent or obstruct views into the area. Six of the seven had screens or barriers for a portion of the area.
- One of the seven laydown areas did not have gates to control access to the area.
- None of the seven laydown areas had a dedicated security representative patrolling the area.
- One of the three laydown areas had an unlocked gate during off hours and nonuse times.^a
- One of the seven laydown areas did not have "No Trespassing" signs on the perimeter of the area.

^a Our main observation of the laydown areas was conducted during normal work hours, and all laydown areas had at least one gate unlocked because the laydown area was in use. We observed three laydown areas during off hours to determine whether the laydown areas had locked gates when the areas were not in use.

Source: Office of the Legislative Auditor, based on observation testing.

⁶⁶ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 53 Security Procedures, Part 1.06.A (Revision 2) (2018).

Video Surveillance Cameras. Lunda-McCrossan informed us that video surveillance footage was available for only 20 or 30 days after recording, depending on the type of camera installed on the project. Without cameras, the Council and Lunda-McCrossan might not be made aware of or be able to investigate theft or vandalism that occurs within its laydown areas.

Access Log. The contract stated that Lunda-McCrossan should develop log in/log out procedures in the security plan to monitor the personnel accessing the laydown areas to ensure only the appropriate personnel are entering the area. Lunda-McCrossan informed us that rather than requiring personnel to sign an access log when entering and leaving the laydown areas, it requires all personnel to complete safety training. After successfully passing the training, personnel affix a sticker to their hard hat indicating that they have completed the training. Those personnel are then expected to act as security representatives and identify and report individuals without a sticker to help control access to the laydown areas. The Council and Lunda-McCrossan agreed to this alternative security procedure early in the construction process, which was in spring 2019. However, Lunda-McCrossan did not develop a procedure to record all laydown area access on a daily basis, including the use of an access log, or state that the new procedure was in lieu of an access log in its security plan.

Fencing. Lunda-McCrossan performed periodic checks of bent or gapped fencing and made corrections, which were reported in its monthly security reports to the Council. However, these checks did not identify the gaps and bent fencing deficiencies we identified, including one laydown area that did not have any fencing. According to the Council and Lunda-McCrossan, Lunda-McCrossan was likely in the transition of removing the original fence to begin work in the area with new fencing to put up around the laydown area as work progressed. For this same laydown area, Lunda-McCrossan also did not have a gate to limit access, nor did it affix “No Trespassing” signs. While removing fencing to allow construction to begin and adding it back to the area is reasonable, it is unknown how long the fencing was missing. Any length of time without a fence increases the risk that materials, tools, or equipment may be stolen or vandalized.

Barriers and Screens. Barriers and screens were on portions of the perimeter fence for six of seven laydown areas, but no laydown area was completely encompassed by a barrier. Some areas had natural barriers, such as shrubs or trees, but they did not obstruct the entire perimeter. According to the Council and Lunda-McCrossan, both accepted the risk to not screen entire laydown areas because it was not feasible. Individuals walking or driving near laydown areas that are not obstructed may be more tempted to enter the laydown areas for theft and vandalism purposes.

Gate Access. We observed one laydown area in which the gate was open and unlocked during off hours and nonuse times. For this area, we requested the observation report for the day we performed this testing (a Sunday). However, neither the Council nor its quality assurance contractor had completed an observation report indicating that it was reasonable for construction staff to be in the laydown area that day.⁶⁷

⁶⁷ According to the Council, Lunda-McCrossan has access to the project 24 hours a day, and the Council or its quality assurance contractor prepare observation reports to document what type of work Lunda-McCrossan and its subcontractors perform each day.

Without proper security controls over Lunda-McCrossan's laydown areas, the risk of improper actions, including theft of valuable tools, equipment, and materials, increases. While we did not identify any instances of theft as part of our observation testing, Lunda-McCrossan has reported in its monthly security reporting process to the Council that incidents of theft of tools and materials have occurred at laydown areas.⁶⁸

If the Council identifies inadequate measures for protecting security or public safety, it can require Lunda-McCrossan to take additional measures.⁶⁹ While we did not identify any Council actions citing inadequate safety measures, we believe the results of our observations should compel the Council to require Lunda-McCrossan to take additional security measures.

RECOMMENDATIONS

- **Lunda/C.S. McCrossan Joint Venture should ensure that it implements and adheres to security requirements outlined in the contract.**
 - **The Metropolitan Council should strengthen its monitoring procedures to ensure Lunda/C.S. McCrossan Joint Venture complies with contract security requirements.**
-

⁶⁸ We reviewed some monthly security reports to understand what Lunda-McCrossan typically includes but did not perform testing of the reports. In the security reports we reviewed, we noted incidents of stolen tools and materials, but we did not inquire on the extent that this occurred throughout the project. It is our understanding that Lunda-McCrossan is responsible for replacing the stolen items.

⁶⁹ Metropolitan Council, *Green Line LRT Extension ("Southwest LRT") Civil Construction (Rebid)*, Conformed Documents, Section 01 35 53 Security Procedures, Part 3.01.G (Revision 2) (2018).



April 7, 2025

Judy Randall, Legislative Auditor
Office of the Legislative Auditor
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Sent via email: Legislative.Auditor@state.mn.us

Dear Ms. Randall,

Thank you for the opportunity to review the Office of the Legislative Auditor's (OLA) Report (Report) of the Metropolitan Council's (Council) METRO Green Line Extension Light Rail Transit Project (Project). We appreciate the OLA's insights and agree there are opportunities to improve the Council's processes and future project delivery.

The Council remains on track to meet the timeline for revenue service in 2027 and to remain within the updated Project budget of \$2.86 billion, which was confirmed by the Federal Transit Administration in January 2025. The Council values the OLA's recommendations for improvement contained in this audit. Additionally, the Council appreciates the opportunity to showcase progress made in alignment with several of those recommendations since the OLA audit concluded its testing in March 2023. Furthermore, the Council wishes to outline its commitments to continually improve practices and procedures.

Finding 1

The Metropolitan Council did not apply a consistent variance threshold, or establish guidance that includes the factors and conditions to consider, when comparing its estimates against Lunda/C.S. McCrossan Joint Venture's estimates.

Recommendation

- 1. The Metropolitan Council should develop and use an acceptable variance threshold, or guidance that includes factors and conditions to consider, when comparing its change order cost estimates against Lunda/C.S. McCrossan Joint Venture's estimates.*

Response

The Council agrees to review its guidance for comparing estimates with contractor proposals to ensure transparency and clarity. This aligns with a previous recommendation from the OLA to reform processes for determining and justifying final cost of changed work. The Council's change order policy complies with Federal Transit Administration (FTA) cost analysis requirements, including documentation of rationale for determining equitable adjustments to allowable costs that are fair and reasonable. It considers factors like scope differences, engineering judgment, efficiency, risks, complexity, field conditions, and market conditions. The

Council will review its policies to determine whether additional factors would improve transparency in the cost analysis process to ensure public resources are spent as efficiently and effectively as possible.

As additional factors are considered by the Council, it wants to note that publicly establishing and setting variance thresholds could potentially lead to information imbalances, which may encourage contractors to anchor to those figures and, in turn, increase costs for changed work.

The Council acknowledges instances of a wide range of variances in cost estimates and contractor proposals. Following a December 2022 MnDOT peer review, which identified issues with the Project's cost estimates, a new cost estimating consultant was hired, improving the process of preparing realistic construction estimates for the work to be performed, reflecting a clear understanding of the unique SWLRT Project requirements.

Finding 2

The Metropolitan Council's monitoring of disadvantaged business enterprises' performance on the project did not comply with federal requirements or internal policy.

Recommendations

1. *The Metropolitan Council should conduct and document the required monitoring visits.*
2. *The Metropolitan Council should include requirements for monitoring disadvantaged business enterprises' activities in its internal policy, including how often and when such monitoring reviews should be performed.*

Response

The Council agrees with these recommendations and believes its pending monitoring activities on this ongoing Project fully comply with all mandatory federal requirements. The Council is required to continue monitoring DBE contractor activities until the Project's official close-out. Work remains to fulfill the recommendations, and the Council will provide updates in future status reports to the OLA.

DBEs account for 22.3% of the total work, surpassing the 15% goal. The Council has conducted 145 documented monitoring and Commercially Useful Function (CUF) touch points with the 56 different DBEs that have worked on the Project to date. These visits ensure that the Project DBEs perform the work as committed and meet the CUF criteria. No issues have been identified with any DBEs on the Project meeting these criteria, and all subcontractor work continues to be properly monitored.

The Council affirms its DBE monitoring complies with the requirements of Title 49 of the Code of Federal Regulations (CFR) and Council policy, ensuring:

- DBE firms committed to the Project perform the subcontracted work (49 C.F.R. § 26.37(b)).
- Regular payment tracking aligns with work progress, with issue resolution if discrepancies arise (49 C.F.R. § 26.37(c)(2)).
- Verification that DBE firms complete the work they were contracted for (49 C.F.R. § 26.55).
- Ongoing evaluation of subcontracted work, industry practices, payment fairness, and DBE credit accuracy (49 C.F.R. § 26.55(c)(1)).

The 2018 FTA Guidance cited in the Report by definition is not prescriptive nor is it a binding legal requirement. Nevertheless, the Council also will continue to review its policies and practices for consistency with this and other applicable FTA Guidance to clarify or improve its DBE monitoring practices.

Finding 3

Lunda/C.S. McCrossan Joint Venture did not accurately report its use of disadvantaged business enterprises on the Project to the Metropolitan Council. In addition, the Metropolitan Council did not have adequate internal controls to detect the incorrect amounts.

Recommendations

- 1. Lunda/C.S. McCrossan Joint Venture should review its use of all disadvantaged business enterprises and ensure amounts are accurately reported in the contract management system.*
- 2. The Metropolitan Council should strengthen internal controls over its monitoring of disadvantaged business enterprises' activities in the contract management system to ensure amounts being reported are accurate.*

Response

The Council agrees with these recommendations. Regarding Recommendation 2, the Council currently validates amounts paid to DBEs by verifying documentation provided by the contractor and utilizing a Contract Management System (CMS) to confirm the amounts paid to DBEs. The Council is in the process of updating the technology used to verify payments, which is expected to improve the speed, transparency and accuracy of reporting in alignment with this recommendation.

Finding 4

The Metropolitan Council did not adequately monitor the disposal of contaminated soils. In addition, the Metropolitan Council overpaid Lunda/C.S. McCrossan Joint Venture for the disposal of contaminated soils.

Recommendations

- 1. The Metropolitan Council should strengthen monitoring over the disposal of contaminated soils to ensure that it authorizes the amounts disposed, verifies the accuracy of the amounts disposed, and makes accurate payments for the disposal.*
- 2. The Metropolitan Council should reconcile, at least on a sample basis, the amounts disposed of to date to ensure Lunda/C.S. McCrossan Joint Venture only billed for disposal of contaminated soils from Southwest Light Rail Transit project sites.*
- 3. The Metropolitan Council should verify the contaminated soils payments to date to ensure the amounts it paid are accurate, and make adjustments as needed.*

Response

The Council agrees with these recommendations and will review its contaminated soil disposal process and develop lessons learned for future projects relative to industry changes. The industry is shifting to electronic manifests which will improve the tracking process. The landfill used for the Council's Hopkins Rail Support Facility already employs this process.

Oversight and manifest tracking procedures were developed with the MnDOT Environmental Investigation Unit to align with MnDOT's practices. This includes:

- An embedded MnDOT Environmental Coordinator supports contaminated soils management and monitoring.
- The Coordinator validates that manifest locations align with the Response Action Plan.
- The Coordinator confirms loads are attributable to the Project.
- The Coordinator coordinates with the Council's environmental consultant on discrepancies.

The Report’s claim of overpayment is incorrect. The identified variance was a point-in-time accounting issue, already under reconciliation before the audit began. With the additional time since the conclusion of the audit testing period in March 2023, the Council has verified that all variances have since been resolved.

Finding 5

Lunda/C.S. McCrossan Joint Venture did not always have physical security restrictions and safeguards in place at laydown areas, as required by the contract. In addition, the Metropolitan Council did not adequately monitor Lunda/C.S. McCrossan Joint Venture’s compliance with required physical security restrictions and safeguards.

Recommendations

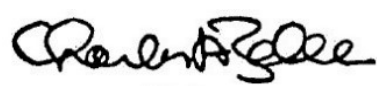
- 1. Lunda/C.S. McCrossan Joint Venture should ensure that it implements and adheres to security requirements outlined in the contract.*
- 2. The Metropolitan Council should strengthen its monitoring procedures to ensure Lunda/C.S. McCrossan Joint Venture complies with contract security requirements.*

Response

The Council agrees with these recommendations. While site control is the contractor's responsibility, the Council recognizes the importance of proactive security measures and will continue monitoring contractor adherence to contractual requirements. To date, no loss or damage claims have been filed on this Project, and the Council has not incurred any related costs.

The Council appreciates the OLA’s recommendations and remains committed to transparency, accountability, and continuous improvement. Our efforts to refine cost estimation, enhance DBE monitoring, improve payment verification, strengthen environmental oversight, and reinforce security measures will ensure better project delivery. We will continue to update the OLA on our progress.

Sincerely,



Charles A. Zelle
Chair, Metropolitan Council



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Via Email

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April 3, 2025

RE: OLA's Redline Performance Audit Report Findings of April 2, 2025

Legislative Auditor Randall,

We appreciate your offer to provide a response to the OLA's Audit of the Lunda/C.S. McCrossan Joint Venture's, (LMJV's), contract performance on the Southwest LRT Project and offers the following comments:

The OLA informed LMJV during prior discussions that the document shared with the JV was only the portion of the report that applied to LMJV's scope of work. That being the case, LMJV reserves the right to comment further after the full report is issued.

The Report indicates LMJV had instances of deviating from requirements related to disadvantaged business enterprises reporting and the physical security of the Project laydown areas. Considering the civil portion of the Southwest Light Rail Transit Project contracted to LMJV was subject to 1.) over 2000 scope and design changes, 2.) over 3 years of delay for which LMJV had no fault, and 3.) that the contract work proceeded through the height of the COVID epidemic, LMJV finds the overall report positive with minimal findings.

We do agree that the OLA has identified some lapses related to contract requirements. LMJV is fully committed to reviewing its use of all disadvantaged business enterprises and ensure amounts are accurately reported in the contract management system going forward. Further LMJV will adhere to laydown area security requirements outlined in the contract or provide a basis for any deviations.

Change Order Markups

The OLA's report indicates: *"Lunda-McCrossan used the correct markup percentages in the approved change orders and did not find any reportable issues"*, however, LMJV does not agree with the OLA's interpretation that the contract *"established default 'not to exceed' markup percentages."* The Article 10.6 of the contract clearly states that that overhead and profit on changes can be a *"10.6.1 a mutually acceptable fixed fee; or" ... "10.6.2 if an agreement is not*

reached within paragraph 10.6.1 ... a fixed fee based on the following not-to-exceed values". The contract clearly allows the fees for overhead and profit to be negotiated, "or" the default percentages applied but only "if an agreement is not reached". Not only does the plain language of the contract support this, the December 2022 MnDOT peer review came to the same conclusions, stating; "The language as written in the special provisions allows the Council full latitude to negotiate the mutually acceptable fixed fee, which they did."

Finding 3, Reporting on Disadvantaged Business Enterprises

The report indicates that LMJV reported "incorrect" billing and payment amounts in the contract management system for the three DBEs tested. The report is accurate to the extent that on any given date the total payments to DBE's may have been different than what was reported to Council for inputting in the CMS monitoring system. The LMJV on a rolling basis reported its use of disadvantaged businesses and routinely met with Council Project Staff and the Disadvantaged Business Enterprise and Workforce Advisory Committee (DWAC) to discuss the performance of DBE participation against our stated commitment. The CMS reporting is a snapshot and is only a tool to evaluate, not audit, DBE participation as the percentage of contract value is constantly changing based on timing of Council payments, timing of DBE invoices, and the DBE scope value weight as compared to other work completed in a given period. The DBE participation percentage will only be 100% accurate at the completion of the project.

Our reporting had periods of inaccuracies due to the timing of the entry to payments to DBEs but is self-corrected over time as partial payments are reconciled when final contract amounts are finalized. At no time during the Project did LMJV's reporting of DBE goals show that the DBE goals were not being met. Rather, consistent with LMJV's commitment to meeting or exceeding the DBE goals, DBE goal reporting consistently showed the estimated DBE participation at or above our stated commitment. As of writing this letter, with more than 90% of our work complete, our DBE participation of 23.51% on the Base Scope Contract and 20.87% on the Base Scope Contract and CHG 900 and substantially exceeds the 16% DBE participation goal. LMJV believe if there is any deficiency with our DBE reporting to the contract management system, it could be characterized as a lag in the timeliness of entry of DBE invoices rather than an "inaccuracy". LMJV will review our processes and procedures to improve the timeliness of our DBE reporting in order to eliminate the underreporting cited for future payments.

Finding 5, Physical Security

The report indicates the LMJV did not always have physical security restrictions and safeguards in place at laydown areas as required by the contract. The findings appear to be accurate. The LMJV finds the security requirements and safeguards for this Project complex considering the Project location, extent of the Project and other constraints. Further the requirements specified in the contract are considered inadequate to address the type of theft encountered on the Project. Theft is solely at the contractor's risk. At no time did the LMJV request the Council to pay for stolen materials or request additional contract time for the replacement thereof. The LMJV suggests future contracts be modified to be less specific unless it is being suggesting that the public should bear some risk for theft on construction contracts. The LMJV will review our current laydown areas for compliance with our Site Security Plan and Contract Requirements.

Respectfully,

Dale F. Even

Digitally signed by Dale F. Even
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O=Lunda Construction Company,
CN=Dale F. Even
Reason: I am the author of this
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