



METRO

COMMUTER RAIL OPERATIONS – CONTRACT MANAGEMENT & OVERSIGHT OF HERZOG (19-08)

Terry Follmer, VP of Internal Audit

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EXECUTIVE SUMMARY

As part of our Fiscal Year 2019 Internal Audit Plan approved by the Capital Metro Board, we performed an audit to determine whether CMTA has sufficient controls in place to effectively monitor Herzog's contract compliance. The audit results including the objective, scope, and conclusion are as follows.

Background

In March 2010, Capital Metro began commuter rail service on the Red Line between Downtown Austin and the City of Leander, TX. Capital Metro has contracted out the responsibility for operating the commuter rail service, as well as the preventive maintenance activities, to Herzog Transportation Services, Inc. The current Commuter Rail Operations Contract No. 137666 commenced on October 1, 2015, has a term of seven years, and was awarded in the amount of \$117,580,749. Under this fixed price contract, Herzog is responsible for providing maintenance and overhaul services for the company's Diesel Multiple Unit (DMU) Fleet and locomotives, dispatching, operations, and signals.

Capital Metro has put in place a very specific and detailed contract covering Herzog's required activities and compliance with the contract is critical to the success of the rail program. The contract includes Exhibit I, Contract Data Requirements List (CDRL), which requires Herzog to submit 59 reports on a daily, weekly, monthly, quarterly, and annual basis (see Appendix A for CDRL listing). The purpose of the reports is to provide Rail Department staff with data to help monitor and oversee Herzog's contract performance as well as ensure that required regulatory reports are being created. Some of the reports are federally required and relate to safety. Herzog staff submit the required CDRL reports by uploading them to the extranet and Rail staff upload them to SharePoint for monitoring. Some of this information is also available to Rail staff through the Spear asset management system. The department may assess a Performance Deficiency Credit (PDC) or penalty of \$1,000 per day for each failure to submit reports on time which may be deducted from Herzog's monthly fixed price invoice (see Appendix B for Payment Adjustments).

Capital Metro has put in place various roles to help ensure the oversight, check and balances related to the monitoring of Herzog's work. The critical role within the CMP is the Project Managers (PM) who are responsible for contract deliverables by Herzog. To ensure the CDRL reports are correctly submitted, management expanded the current Contract Monitoring Plan (CMP) in March 2019 to include each report name, exhibit number, submission frequency, staff member responsible for verification, and date submitted. Assigned staff are responsible for ensuring CDRL report submissions are timely and accurate, along with completing the following special projects: Positive Train Control (PTC); TIGER V, Plaza Saltillo, and the Downtown Station projects. The Rail Operations Department resources have been stretched working on these and other highly complex projects.

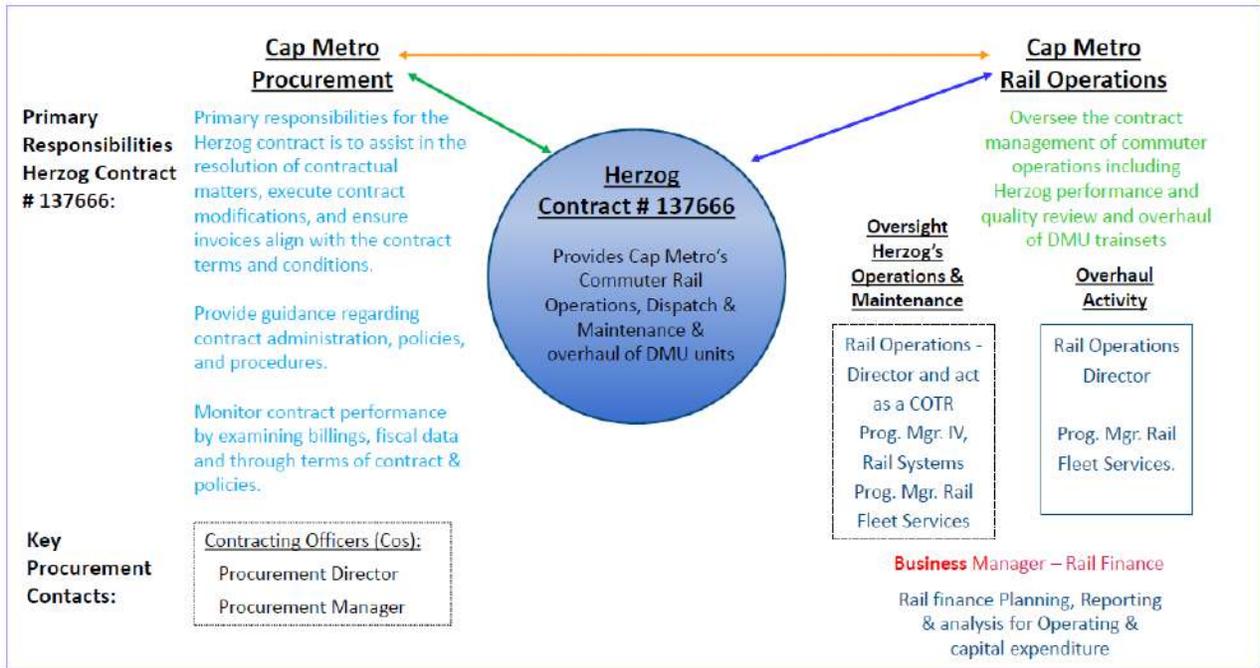
There is a Contracting Officer Technical Representative (COTR) as defined in the June 11, 2018 letter (see Appendix C) sent to Herzog, and this role has been assigned to the Director of Rail Operations. This position also provides oversight of all Capital Metro Rail Operations and Maintenance contracts, with a focus on contract management, schedules, estimates, costs controls, documentation control and quality assurance/quality control. The COTR evaluates contractor performance as directed by the Contracting Officer (CO) and acts as a final review official for issues concerning contractor's performance. The Contracting Officer listed in the COTR is the Director of Procurement. The Director of Rail Operations (COTR) also has several positions (i.e., Program Managers covering Rail

Transportation, Rail Fleet Services and Maintenance) who help her in the oversight and monitoring of the Herzog contract.

Audit Objective & Scope

The primary objective of this audit is to determine whether the Contract Data Requirements List (CDRL) is being fulfilled by Herzog and is being adequately monitored by Rail Operations. Additionally, the oversight and monitoring of contractor performance by Capital Metro was evaluated to ensure that controls are in place and operating effectively to verify that the contractor is fulfilling key responsibilities and complying with contract terms. The audit scope was limited to Fiscal Year 2019 through the month of July 2019 and we performed compliance testing related to CDRL documents and any incentives/disincentives related to the CDRL documents. See Figure 1 below for a summary of the functional relationships among CMTA departments and Herzog related to the Commuter Rail Operations Contract.

Figure 1. Functional Relationships among CMTA Departments and Herzog



Source: Internal Audit analysis of CMTA information

Opinion

In our opinion, internal controls are in place to monitor Herzog's contract compliance. We identified several opportunities to improve the monitoring of contract compliance as follows:

1. Ensure contractually required CDRL's are properly reviewed and appropriate incentives/disincentives are taken from Herzog's monthly fixed price invoice.
2. Ensure the content of each CDRL is clearly defined in future contract modifications as well as considering if the report is not necessary, then delete this requirement from the next contract modification.
3. Document the CDRL status in the CMP tracking spreadsheet to evidence that staff opened and reviewed CDRL reports. Staff should document red flags, incorrect reports, late submissions, and deadlines they give Herzog to submit late reports in this column so that management can monitor this contract requirement.
4. Review all CDRL's that are listed as NTP (Notice to Proceed – see Appendix E) submitted once at the beginning of the contract and require periodic review and updates as required.

This audit was conducted in accordance with US Government Accountability Office's Generally Accepted Government Auditing Standards (GAGAS) and the Institute of Internal Auditor's International Standards for the Professional Practice of Internal Auditing. These 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 objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was conducted by the following staff members in the Capital Metro Internal Audit Department:

- Sarah Daigle, Internal Auditor II (Project Lead)
- Terry Follmer, VP of Internal Audit

Recommendations to strengthen controls and improve accountability were provided to management. Management agrees with the internal audit recommendations and has provided target completion dates which are included in the detailed audit report below. A follow-up audit is performed semi-annually (i.e. May and November) to ensure management action plans for all issued audit reports are completed timely.

We appreciate the cooperation and assistance provided to us throughout this audit.

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
|---|--|--|
| <p>1. <u>HERZOG DID NOT SUBMIT ALL CDRL'S AND PDC'S WERE NOT ENFORCED</u></p> <p>Contract terms require Herzog to submit various CDRL reports at specified frequencies, otherwise, they may be assessed a \$1,000 PDC or penalty per day for noncompliance. Additionally, the COTR certifies that department staff monitor and check for the CDRL reports and documents this certification on a Word document that is uploaded into AX Accounting System. We reviewed a sample of submissions for all 59 of the CDRL reports submitted in Fiscal Year 2019 and found 10% (6 out of 59) were not submitted and the department did not assess any monetary PDC penalties for them as required by the contract. We noted the contract was vague as to purpose and required content in each CDRL. The 6 missing CDRL reports were as follows (see Appendix D for additional details on these reports):</p> <ol style="list-style-type: none"> 1. Audit Summary Report – Quarterly 2. Contingency Plan – Annually* 3. Fuel Usage Audit – Annually* 4. Incident Corrective Action Plan – Annually* 5. Inspection Reports on Safety and Integrity – Annually* 6. Long-Term Out-of-Service Release Plan – As Needed. <p>*Management informed us that they have been having discussions with Herzog for the last several years regarding updating the contract requirements as to which CDRL's are required and what the content should be.</p> | <p>The VP of Rail should develop the following internal control enhancements:</p> <ol style="list-style-type: none"> a) Ensure contractually required CDRL's are properly reviewed and appropriate incentives/disincentives are taken from Herzog's monthly fixed price invoice. b) Ensure the content of each CDRL is clearly defined in future contract modifications and as part of the contract update evaluate the list of CDRL's to determine the need and required frequency. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>4/30/2020</p> |

| <i>Issues & Risk</i> | <i>Recommendation</i> | <i>Management Action Plan</i> |
|--|--|--|
| <p>2. <u>IMPROVE MONITORING AND OVERSIGHT OF CDRL DOCUMENTS</u></p> <p>The Rail Department has put controls in place to help monitor Herzog’s contract compliance with CDRL report requirements (e.g. CMP spreadsheet with responsible staff and date completed), however, we found that staff do not always follow them and adequately check the CDRL reports. For example, while the federally required Highway-Rail Grade Crossing Warning System Failure Report was submitted and is available through SPEAR, we found the report had another month’s cover page and several important fields within the report were unreadable which shows that it was not opened or reviewed by the responsible Rail Department staff. Additionally, we found the following areas of weaknesses:</p> <ul style="list-style-type: none"> • Staff do not document in the CMP the status of report submissions or red flags identified in the report and instead just document the date checked. Additional details would help management assess PDC penalties and monitor Herzog’s performance. • Some of the CDRL reports listed in the contract were only required to be submitted once when the contract was first initiated in 2015 after a set number of days after the Notice to Proceed (NTP – see Appendix E). However, some of these documents are related to safety and may need to be submitted as needed or periodically to help management oversee rail operations. According to the Rail Department, they already request and review many of these reports periodically, it’s just not written into the contract. | <p>The VP of Rail should develop the following internal control enhancements:</p> <ol style="list-style-type: none"> a) Document the CDRL status in the CMP tracking spreadsheet to evidence that staff opened and reviewed CDRL reports. Staff should document red flags (e.g. incorrect reports, late submissions, and deadline extensions they give Herzog to submit late reports, etc.) in this column so that management can monitor performance over time. b) Review all CDRL’s that are listed as NTP submitted once at the beginning of the contract and require updates for any changes and periodic review and updates as required by regulations. | <p>Management agrees with the recommendations.</p> <p><u>Target Completion Date:</u></p> <p>4/30/2020</p> |

Appendix A

| Exhibit I - Contract Data Requirements List (CDRL) | | | |
|--|-------------|--|---------------|
| Number | Section # | Report Name | Frequency |
| 1 | 22.3 | Dispatcher Turnover | 3 Times Daily |
| 2 | 22.1 | Transportation Staffing Report | Daily |
| 3 | 12.25.4 | Maintenance Report | Weekly |
| 4 | 22.2 | Track Outage Report | Weekly |
| 5 | 23.2 | Maintenance Production Report | Weekly |
| 6 | 23.2 | System-Wide Service Property Inspection Report | Weekly |
| 7 | 4.8 | Job Site Safety Inspections | Monthly |
| 8 | 6.15.6 | Monthly Staffing Report | Monthly |
| 9 | 10.22.1.1 | Supervisory Track and Right of Way Inspection Report | Monthly |
| 10 | 10.22.2 | Summary Track Inspection Report | Monthly |
| 11 | 11.19.4 | Field Communications System Inspection Report | Monthly |
| 12 | 11.29.1 | Signal and Train Control Tests and Inspection Reports | Monthly |
| 13 | 13.1 | FRA Operations Testing Plan Report | Monthly |
| 14 | 13.1.3.14.7 | Training Report | Monthly |
| 15 | 15.5.8 | Customer Comment and Complaint Report | Monthly |
| 16 | 16.7a | Long-Term Out-of-Service Status Report | Monthly |
| 17 | 16.9.5.4 | DMU Service Vehicle MDBF Report | Monthly |
| 18 | 22.4.3 | Accident/Incident Report Summary | Monthly |
| 19 | 22.4.4 | Maintenance Report of Vehicle, Track, Bridges, Signals, and Communications | Monthly |
| 20 | 22.4.8 | Training Schedule | Monthly |
| 21 | 22.4.9 | NTD Report | Monthly |
| 22 | 22.10 | Signal Report | Monthly |
| 23 | 22.12 | FRA Highway-Rail Grade Crossing Warning System Failure Report | Monthly |
| 24 | 4.16.2.10 | Safety Performance Report | Quarterly |
| 25 | 5.9.3 | Security Issue and Incident Report | Quarterly |
| 26 | 6.4.1 | Organization Chart | Quarterly |
| 27 | 17.13.4 | Audit Summary Report | Quarterly |
| 28 | 22.5.2 | Special Bridge Inspections | Quarterly |
| 29 | 22.5.3 | MOW Service Plan | Quarterly |

Commuter Rail Operations – Contract Management & Oversight of Herzog (19-08)

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|---|-----------|---|------------------|
| 30 | 10.23.1 | Ultrasonic Test Report | 2 Times Annually |
| | | | |
| 31 | 4.16.1.12 | Contractor Safety Compliance Plan | Annually |
| 32 | 4.18.1 | Emergency Preparedness | Annually |
| 33 | 5.6.1 | Contractor System Security Compliance Plan | Annually |
| 34 | 7.4 | Transportation Service Plan | Annually |
| 35 | 10.17.1 | Maintenance of Way Plan | Annually |
| 36 | 10.27.1 | Structure Inspection Report | Annually |
| 37 | 10.28.1 | Bridge Maintenance and Repair Plan | Annually |
| 38 | 11.11.6 | Signal System Failure Reduction Plan | Annually |
| 39 | 11.28 | Signal System Failure Reduction Program | Annually |
| 40 | 12.26.1 | Rail Vehicle Maintenance Plan | Annually |
| 41 | 13.1.1 | Training Program Plan | Annually |
| 42 | 13.2.1 | Employee Training Program Plan | Annually |
| 43 | 22.6.2 | On-Time Performance Analysis Report | Annually |
| 44 | 22.6.3 | Railroad Improvement Recommendation List | Annually |
| 45 | 22.6.4 | Grade Crossing Improvement Plan | Annually |
| 46 | 22.6.5 | Flood Prone Locations and Mitigation Measures | Annually |
| 47 | 22.6.6 | NTP Annual Report | Annually |
| 48 | 22.7.7 | Fuel Usage Audit | Annually |
| 49 | 22.8.1 | Contractor Licenses Review | Annually |
| 50 | 22.8.6 | Contingency Plan | Annually |
| 51 | 22.8.7 | Drug and Alcohol Policy | Annually |
| 52 | 22.8.8 | Drug and Alcohol Test Guidelines | Annually |
| 53 | 22.9.1 | Independent Audit Financial Statement | Annually |
| 54 | 22.9.2 | Incident Corrective Action Plan | Annually |
| 55 | 22.9.6 | Inspection Reports on Safety and Integrity | Annually |
| | | | |
| 56 | 9.15.2 | Delay Report | As Needed |
| 57 | 16.7 | Long-Term Out-of-Service Release Plan | As Needed |
| 58 | 22.9.3 | Final Incident/Accident Analysis Report | As Needed |
| 59 | 22.11 | Operating Rules Violation Report | As Needed |
| Source: Prepared by Internal Audit Staff using information from the Herzog contract. | | | |

Appendix B

Exhibit H of Herzog Contract – Payment Adjustments

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

**EXHIBIT H Revised - 1
PAYMENT ADJUSTMENTS**

Summary of Performance Goals, Performance Incentives and Disincentives

The following performance matrix sets forth the performance goals that will be used by Capital Metro to measure performance under this contract. Certain incentives and disincentives will be applied based on performance by Contractor.

"Incentives" are defined as additional compensation allowed Contractor under the contract for meeting or exceeding the requirements. "Disincentives" or "PDC(s)" are defined as performance deficiency credits against amounts owing to Contractor for failure to meet contract requirements. Incentives and Disincentives shall be applied to the total invoiced amount on a monthly basis. Incentives and Disincentives are applied one month in arrears Performance goals, Incentives and Disincentives are set forth below.

Accidents. An accident is any contact with an object, vehicle or person which results in property damage or injury.

Passenger accidents are calculated as the total number of reported passenger accidents by the risk management department monthly, divided by the total passenger miles reported by the planning department monthly, times 10,000 miles.

| <u>Passenger Accident Rate</u> | <u>Disincentive/Incentive</u> |
|--------------------------------|-------------------------------|
| 0 | 0.25% |
| .25 - .01 | 0.00% |
| .26 – 2 | - 0.25% |
| 2.01 and Above | -0.50% |

Vehicle accidents are calculated as the total number of vehicle accidents, reported by risk management monthly. For the purpose of disincentives the contractor performance must be determined to be a contributing factor to the cause of the accident.

| <u>Total Vehicle Accidents</u> | <u>Disincentive/Incentive</u> |
|--------------------------------|-------------------------------|
| 0 | 0.25% |
| 2 - 1 | 0.00% |
| 3 – 5 | - 0.25% |
| 6 and Above | -0.50% |

Mean Distance Between Failures (MDBF) This performance goal will be measure by the total monthly vehicle miles provided by Capital Metro Planning Department, divided by the total number mechanical failures. All mechanical failures logged in the Capital Metro asset management system database regarding DMUs.

| <u>MDBF</u> | <u>Disincentive</u> |
|-----------------|---------------------|
| 15,000 – 25,000 | 0.00% |
| 12,000 - 14,999 | - 0.25% |

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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| 11,999 and below | - 0.50% |
|------------------|---------|

Customer Complaints. This performance goal will be measured per 20,000 passengers as measured by monthly counts of documented customer complaints. Ridership will be provided by the Capital Metro Planning Department. All complaints logged in the Capital Metro Customer Service database regarding Contractor's service will be counted in this measure.

| Complaint Rate | Disincentive |
|----------------|--------------|
| 3.0 and below | 0.0% |
| 5.1 – 8.0 | - 0.25% |
| 8.1 and Above | - 0.50% |

On-Time Performance. An on time trip is one that departs 0 minutes early and no more than 5 minutes and 59 seconds late departing from designated station, missed stations or annulled stations/trips.

| On-Time Performance Level | Disincentive |
|---------------------------|--------------|
| 96.00% and above | 0.0% |
| 90.00% - 95.99% | - 0.25% |
| 89.99% and Below | - 0.50% |

| Requirement | Incident | Disincentive/PDC |
|---------------------------|---|--|
| General Maintenance (all) | Failure to complete major repair work within the 30 calendar working days | A PDC of \$1000 per day until all repairs are completed and verified by Capital Metro |
| | Contractor shall maintain vehicles so that no repair requires the vehicle to be out of service more than 7 days during a fifteen (15) continuous, calendar day period | A PDC of \$1000 for each day on which Contractor fails to return a vehicle to service after exceeding 7 days out of service. |
| On Time Performance | Delay of freight or excursion rail operation. | A PDC of \$1,000 per incident the freight or excursion operation is delayed |
| Preventive Maintenance | Failed to perform Preventive maintenance (PM) Inspections as required for all revenue vehicles. | A PDC of \$1,000 per day per inspection performed later than scheduled. |
| Customer Complaints | Failure to respond to complaints within four (4) working days of receipt | A PDC of \$300 per day for each occurrence of a complaint response that fails to meet the response timeline |
| Vehicle Condition | Failure to remove a vehicle from service with out of service criteria. | A PDC of \$1000 per incident for each day a vehicle is operated with out of service criteria. |

| CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY | | |
|--|---|--|
| Bridge Maintenance | Failure to maintain bridges at a load capacity of 286,000 pounds or better in accordance with the Bridge Management Safety Program. | A PDC will be assessed in the amount of \$5000 for each bridge that is not maintained load capacity of 286,000 pounds or better. |
| Bridge Maintenance | Failure to maintain bridges at CMTA level 3 or better in accordance with the Bridge Management Safety Program | A PDC will be assessed in the amount of \$5000 for each bridge that is not maintained at CMTA level 3 or better. |
| Cleanliness | Failure to maintain clean maintenance work areas (maintenance shop and Service Island) | A PDC of \$300 for each incident Contractor fails to clean facilities as required |
| Cleanliness | Failure to clean revenue vehicles according to standards at least 2 hours prior to peak departure times | A PDC of \$300 will be assessed for each incident in which Contractor fails to clean vehicles as required. (applies to both AM and PM peak) |
| Track Maintenance | Failure to maintain track at CMTA Class IV or better | A PDC \$20,000 will be for each track segment per week until the track is restored to CMTA Class IV or better. |
| Track Maintenance | Failure to corrected temporary speed restrictions within 30 days from the date imposed. | A PDC of \$1000 per day for every location where a slow order remains over 30 days. |
| Right of Way (ROW) Maintenance | Failure to remove trash, debris and graffiti, from the right of way | A \$500 PDC will be assessed per day for each location ROW defect remains after 24 hours. |
| Right of Way (ROW) Maintenance | Failure to remove vegetation and obstructions from the ROW within 5 days. | A \$1000 PDC will be assessed per day for each location ROW defect remains after 5 days of notification. |
| Right of Way (ROW) Maintenance | Failure to remove scrap rail from ROW within 30 days | A \$1000 PDC will be assessed per day for each location ROW rail after 30 days. |
| Signal Maintenance | Failure to maintain less than 5 signal defects within 7 consecutive days | A PDC of \$1000 will be assessed per defect greater than 5 within 7 days. |
| Signal Maintenance | More than 3 repeat defects within 30 consecutive days. | A PDC of \$2500 will be assessed per repeat defect greater than 3 within 30 consecutive days. |
| Signal Maintenance | Failure to correct defects within 30 days from FRA, TXDoT or CMTA | Contract will pay any associated fines plus PDC of \$1000 per day until defect is corrected past 30 days. |
| Staffing | Failure to fill vacated positions with Capital Metro approved persons within forty five thirty (45-30) of its becoming vacant | Capital Metro shall be issued a rebate, for each day over 45 days, equal to the salary and benefits cost of the staff member which position is not filled, plus PDC of \$1,000 per day for the general manager and \$500 per day for all other key staff. |

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

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| | | Capital Metro shall will assess a \$25,000 PDC, for each GM or direct reports that remains vacant over 30 days, per incident of vacancy. |
| Dress Code | Failure to comply with Capital Metro's dress code | A PDC of \$300 for each incident in which a public-facing employee fails to wear the approved uniform while performing duties under this contract |
| Reporting | Contractor shall submit all reports required in this agreement on time | A PDC of \$1000 per day for each incident of failure to submit reports on time |
| Reporting | Failure to provide accurate reporting of all data | A PDC of \$1,000 for each incident in which the Contractor has inaccurately reported missed mileage, or fails to report a missed trip, or fails to report a mechanical roadcall |
| Training | Failure to ensure all employees complete the training requirements specified in the contract | A PDC of \$1,500 per day for each incident involving an employee that is assigned to work and has not completed the required training, as verified by a review of the employee's training file. |
| Proper PPE | Failure to wear or provide proper PPE. | A PDC of \$500 per incident and per day for failure to provide and wear proper PPE. |

Appendix C

COTR Letter to Herzog



Capital Metropolitan Transportation Authority
2910 East Fifth Street | Austin, Texas 78702
TEL 512.389.7460 | FAX 512.389.7594 | capmetro.org

June 11, 2018

Mr. Lance Davis
General Manager
Herzog Transit Services, Inc
9315-A McNeil Road
Austin, TX 78758

via email: ldavis@htsi.com

RE: Contracting Officer's Technical Representative (COTR) on Contract 137666

Dear Mr. Davis:

The letter shall serve as notice that Ms. Muriel Friday will replace Mr. Danny Bailey as the Contracting Officer's Technical Representative (COTR) for Contract 137666 effective today. Ms. Friday's duties and responsibilities are as follows:

- Acts as the Authority's focal point for all correspondence and discussions with Herzog, referred to hereafter as the Contractor, concerning technical direction; issues all technical directions that provide specific details and milestones.
- Ensures that all technical directions are properly documented to avoid misunderstandings and disagreements, avoid unnecessary costs, and generally to maintain proper control of the contract.
- Ensures that appropriate action is taken on technical correspondence pertaining to the contract and maintaining adequate files.
- Ensures that changes in the scope of work and any impact to delivery schedules are executed by contract modifications signed by the Contracting Officer (CO) before the Contractor proceeds with the changes.
- Ensures prompt review of draft and final reports so distribution of the reports can be made within the specified completion date of the contract, and assures prompt inspection and acceptance or rejection of other deliverable items or services.
- Informs the CO immediately of any indications that Contractor is behind schedule and coordinates corrective actions with the CO.
- Provides suggestions to the CO for improvements and changes that would facilitate better work performance or streamline processes to the advantage of the Authority and/or the Contractor.
- Furnishes to the CO a copy of Authority-Contractor conference reports and correspondence, including coordinating with the CO on the content of any contractually significant correspondence addressed to the Contractor in order to prevent possible misunderstanding or the creation of a condition that may be the basis of a later claim.
- Reviews the Contractor's invoices to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, including validating and certifying acceptance of deliverables.
- Negotiates changes for the Authority and presents the negotiated settlement to the CO for final approval and issuance of a Contract Modification.
- Furnishes the CO a notice of satisfactory or unsatisfactory completion of delivery or performance of the contract or any modification thereto.
- Tracks and reports equipment and system downtime to the CO.
- Reports promptly and directly to the Authority's Ethics Officer and the CO, any suspected procurement fraud, bribery, conflicts of interest, and other improper conduct.
- Reviews and submits recommendations to the CO on subcontracts, considers the privities of the contract that exists between the prime contractor and subcontractor.
- Recommends to the CO approval/disapproval of the Contractor's requests for public release of information regarding work being performed under the contract.
- Notifies the CO of inventions made by the Contractor during the performance of the contract.



Capital Metropolitan Transportation Authority
2910 East Fifth Street | Austin, Texas 78702
TEL 512.389.7460 | FAX 512.389.7594 | capmetro.org

- Furnishes the CO a formal request for contract termination, when required.
- Evaluates Contractor performance as directed by the CO and provides support to the CO and acts as final review official in subsequent issues concerning the Contractor's performance.
- Notifies the security office at contract completion for the timely collection of security badges.

Ms. Friday is prohibited from taking the following actions:

- Making commitments or promises to any Contractor relating to a contract.
- Writing contract requirements around the product or capacity of one source.
- Soliciting proposals.
- Modifying any of the stated terms of the contract.
- Issuing instructions (oral or written) to Contractor to start or stop work.
- Approving items of cost not specifically authorized by the contract.
- Directing changes (oral or written).
- Signing supplemental agreements.
- Taking any action with respect to termination, except to notify the CO that the action is desired and to assist with the process as requested.
- Authorizing delivery or disposition of Authority-furnished property.
- Giving guidance, either orally or in writing, that might be interpreted as a change in scope or terms of the contract.

Ms. Friday can be reached at Muriel.Friday@capmetro.org. If you have any questions concerning any of the elements of this letter please contact me.

Respectfully,

Muhammad Abdullah
Procurement Director &
Contracting Officer

cc: Mr. David Dech, VP Rail Operations
Ms. Muriel Friday, Program Manager, Rail Operations
Ms. Anita Delbert, Procurement Manager
Mr. Kirk Perry, Contracts Administrator

Appendix D

6 CDRL Reports Not Submitted by Herzog as Required by Contract Terms

| Number | Section # | Report Name | Frequency | Contract Description |
|--------|-----------|--|-----------|--|
| 1 | 17.13.4 | Audit Summary Report | Quarterly | An Audit Summary Report shall be prepared and submitted to CMTA on a quarterly basis. The specific schedule for submission of these reports shall be included in the Audit Plan. |
| 2 | 22.7.7 | Fuel Usage Audit | Annually | By the 20th of August, the Contractor shall submit a complete annual report to include the following: Annual Fuel Usage Audit. |
| 3 | 22.8.6 | Contingency Plan | Annually | By the 20th of March, the Contractor shall submit a complete annual report to include the following: Contingency Plan. |
| 4 | 22.9.2 | Incident Corrective Action Plan | Annually | By the 15 of November, the Contractor shall deliver the following: Incident Corrective Action Plan summarizing engineering responses taken and their effectiveness shall be included. In the event that any corrective actions are left open a time line for completion is expected to be included. |
| 5 | 22.9.6 | Inspection Reports on Safety and Integrity | Annually | By the 15 of November, the Contractor shall deliver the following: The contractor shall provide annual inspection reports on safety and integrity, including recommendations for any necessary repairs (minor and major) as well as a summary of all maintenance activities that have been performed during the previous year. |
| 6 | 16.7 | Long-Term Out-of-Service Release Plan | As Needed | The Contractor shall submit a Long-Term Out-of Service Release Plan to CMTA for review and approval within five (5) days of the Long-Term Out-of-Service designation. This plan shall provide details on the procedures and schedule for restoration of all Contractor's Long Term Out-of-Service Status Report (CDRL 16.7) to CMTA every month. |

Appendix E

CDRL Reports With Required Submission Within Set Days of NTP

FPR

CAPITAL METROPOLITAN TRANSPORTATION AUTHORITY

EXHIBIT I Revised - 2

CONTRACT DATA REQUIREMENTS LIST

| Section | Contract Data Requirements List | Days from NTP |
|-----------|---|---------------|
| 4.3 | PPE List | 60 NTP |
| 4.13 | Internal Control Plan for Accident and Incident Reporting | 120 NTP |
| 4.14 | Safety Committee Policy and Procedures Manual | 120 NTP |
| 4.16 | Contractor Safety Compliance Plan | 90 NTP |
| 4.16.1.1 | 49 CFR 217 PLAN (Railroad Operating Rules) | 90 NTP |
| 4.16.1.2 | 49 CFR 219 PLAN (Control of Alcohol and Drug Use) | 90 NTP |
| 4.16.1.3 | 49 CFR 225 PLAN (Railroad Acc/Inc Reporting) | 90 NTP |
| 4.16.1.4 | 49 CFR 239 PLAN (Emergency Preparedness) | 90 NTP |
| 4.16.1.5 | 49 CFR 240 Plan (Qualification/Certification) | 90 NTP |
| 4.16.1.6 | Close Call Reporting Evaluation Procedure | 90 NTP |
| 4.16.1.7 | Environmental Hazard Procedures/Policy | 90 NTP |
| 4.16.1.8 | Roadway Worker Safety Program | 90 NTP |
| 4.16.1.9 | System Safety Program Plan | 90 NTP |
| 4.16.1.10 | Hazard Risk Reduction Plan | 90 NTP |
| 4.16.1.11 | Public Safety Plan | 90 NTP |
| 4.16.1.13 | Emergency Response Plan | 90 NTP |
| 5.6.1 | Contractor System Security Compliance Plan | 90 NTP |
| 5.9.3 | Security Issue and Incident Report | 120 NTP |
| 6.3.10 | List of Designees | 30 NTP |
| 6.4.1 | Organization Chart (functional) | 60 NTP |
| 6.15.4 | Staffing Plan | 60 NTP |
| 6.18.1 | Recommended List of Rehires | 30 NTP |
| 6.18.2 | Hiring Process | 30 NTP |

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| 6.21.9 | Audit Plan & Report Protocol | 60 NTP |
| 6.23.2 | Safety Sensitive Positions (include subcontractor) | 5 NTP |
| 7.4 | Transportation Service Plan | 60 NTP |
| 9.17.1 | Incident Management and External Notification Procedures | 60 NTP |
| 10.17.1 | MOW Plan | 90 NTP |
| 10.17.3.1 | Rail Replacement Plan | 90 NTP |
| 10.17.3.2 | Tie and OTM Replacement Plan | 90 NTP |
| 10.17.3.3 | Grade Crossing Surface Improvement Plan | 90 NTP |
| 10.17.3.4 | Tamping and Surfacing Program | 90 NTP |
| 10.17.3.5 | Rail Polishing Program | 90 NTP |
| 10.17.3.6 | Drainage Maintenance Plan | 90 NTP |
| 10.17.3.7 | Bridge Maintenance Plan | 90 NTP |
| 10.17.3.8 | Timber Bridge Deck Plan | 90 NTP |
| 10.17.3.9 | Culvert Maintenance and Replacement Plan | 90 NTP |
| 10.17.3.10 | Vegetation Removal Control Plan | 90 NTP |
| 10.17.3.11 | 49 CFR 213 CWR Plan | 90 NTP |
| 10.17.3.12 | Rail Grinding Plan | 90 NTP |
| 10.17.3.13 | Trash Removal Plan | 90 NTP |
| 10.25.5 | Schedule to Resolve Temporary Speed Restrictions | 120 NTP |
| 10.28.1 | Bridge Maintenance and Repair Plan | 120 NTP |
| 10.36.1 | List of Calibration tools and Equipment | 60 NTP |
| 10.38.4 | Calibration Management Procedures | 60 NTP |
| 11.1 | Wayside/Signal and Communication/System Maintenance Plan | 60 NTP |
| 11.10.1 | Signal System Maintenance Plan | 90 NTP |
| 11.10.2 | Signal System Maintenance Procedures | 90 NTP |
| 11.10.3 | Signal System Inspection and Test Plan | 90 NTP |
| 11.10.4 | Signal System Inspection and Test Procedures | 90 NTP |

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| Section | Contract Data Requirements List | Days from NTP |
|------------|---|---------------|
| 11.10.5 | Signal System Inspection and Test Data Sheets | 90 NTP |
| 11.10.6 | Signal Failure Reduction Plan | 90 NTP |
| 11.14 | Signal Forms | 90 NTP |
| 11.28 | Signal Failure Reduction Program | 120 NTP |
| 12.1.3 | Comprehensive Preventive Maintenance, Inspection and Cleaning Program | 120 NTP |
| 12.3.1 | Rail Vehicle Fleet Cleaning List | 5 NTP |
| 12.3.2 | Rail Vehicle Cleaning Plan | 15 NTP |
| 12.4.1 | Maintenance Interval Forms | 90 NTP |
| 12.14.14 | Maintenance Report | 60 NTP |
| 12.22.3 | Maintenance Plan for Other Equipment | 60 NTP |
| 12.25.1 | Rail Vehicle Maintenance Plan | 60 NTP |
| 12.26.4 | Asset Management Systems data | 60 NTP |
| 12.27.2 | Rolling Stock Condition Assessment | 120 NTP |
| 12.27.3 | Maintenance Program | 120 NTP |
| 13.1.1 | Training Program Plan | 60 NTP |
| 13.1.3.8.1 | Customer Service SSI | 90 NTP |
| 13.2.1 | Employee Training Program Plan | 90 NTP |

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| 14.1.5 | Draft Employee Timetable, System Special Instructions, Timetable General Orders, ABTH and Train Dispatcher's Manual | 90 NTP |
| 15.7.1 | Alternate Transportation Protocol | 90 NTP |
| 17.11.1 | Contractor Quality Assurance Plan | 120 NTP |
| 17.12.11 | Workmanship Standards | 120 NTP |
| 17.12.14 | Masterlist of All Contract Service Functions/process/procedures not already covered | 120 NTP |
| 17.13.1 | Audit Plan | 120 NTP |
| 19.14.7 | Fuel and Fueling Procedure | 90 NTP |
| 21.4.1 | FRA Compliance Management Plan | 60 NTP |
| 24.2 | Spreadsheet of Document | 5 NTP |