



Metro

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Metropolitan Transportation Authority

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CONSTRUCTION COMMITTEE

January 17, 2013

**SUBJECT: STATUS REPORT ON OIG REVIEW OF I-405 COMMUNITY CLAIM
PROCESS**

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive and file this Office of the Inspector General (OIG) Report.

ISSUE

On December 13, 2012, the Metro Board passed a motion that directed the OIG to conduct an independent audit/review of the I-405 Sepulveda Pass Widening Project claims process, including the response time, subcontractor oversight, investigative process, and overall due diligence. The Board asked the Inspector General to report back in January 2013 on findings/status of the investigation.

DISCUSSION

A. Background

In April 2009, Metro awarded a contract to Kiewit Pacific Company (Kiewit) for the construction of the I-405 Sepulveda Pass Widening Project. This project requires removing and replacing three bridges, realigning 27 on and off ramps, widening 13 underpasses and structures, and building 18 miles of retaining and sound walls, which might have certain impacts on the adjacent communities including the traffic, noise, vibration, and property damages.

B. Work to Date

Immediately following the Board motion, we:

- Met with the Metro Community Relations Manager, the Kiewit Community Relations Manager, the Metro Executive Officer Highway Project Management, and an attorney from the County Counsel Office.
- Analyzed data for 238 claims received by Metro as of November 2012.
- Determined the claims process at Metro and Kiewit.
- Reviewed the contract for the I-405 Sepulveda Pass Widening Project.

- Visited the Kiewit's office to gain an understanding of the claims process and records maintained such as claim logs, claim related documents and letters, and investigation files.
- Visited the Metro I-405 Sepulveda Pass Widening Project office, interviewed the Metro Executive Officer for the project and Community Relations Manager, reviewed the I-405 widening project map, and toured the adjacent communities that had the most claims filed by the property owners.

C. Preliminary Observations

1. Responsibility/Liability for Community Claims

- From review of the contract and discussions with Metro and Kiewit officials, it appears that Metro is not liable for community claims on the I-405 Sepulveda Pass Widening Project. The contractor (Kiewit) is responsible for preventing damage or loss and for insuring against claims for property damage. Section 7.10 (Prosecution of Claims) of the contract between Metro and Kiewit states:

“Unless otherwise directed by LACMTA in writing, the Design Builder shall be responsible for reporting and processing all potential claims by the Design Builder, LACMTA, or other additional insureds against the insurance required to be provided. The Design Builder agrees to report timely to the insurer(s) any and all matters that may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of LACMTA, whether for defense or indemnity or both. LACMTA agrees to promptly notify the Design Builder of LACMTA's incidents, potential claims, and matters that may give rise to an insurance claim by LACMTA, to tender its defense or the claim to the Design Builder, and to cooperate with the Design Builder as necessary for the Design Builder to fulfill its duties hereunder.”

- The Kiewit's Community Relations Manager said that they are responsible for investigating claims where Kiewit's action is purported to have caused damage, and paying the claim if Kiewit's actions are found to have caused the damage. If the claim concerns actions of a subcontractor, the subcontractor is responsible for investigating the claim and paying the claim if it is determined that the subcontractor's actions caused the damage.

2. Claims Process at Metro

The Metro Community Relations Office receives claims directly from claimants; but in some instances, claims are forwarded to the Community Relations Office from Metro's Communications Office or Caltrans. We were advised that when a claim is received, the Community Relations Officer:

- Enters the claim information onto a manually kept field report log and assigns a sequential control number.
- Prepares a "Community Relations Field Report" that contains the claimant's contact information and narrative description of the claim.
- Reviews the claim to determine if the claim concerns the I-405 project. If so, sends a letter notifying the claimant that the claim was submitted to the construction contractor, Kiewit, for investigation and resolution; and the claim will be addressed through Kiewit's claim process.
- Forwards notification letter, the Community Relations Field Report, and any supporting documents submitted by the claimant to Kiewit.
- Follows up periodically on the claims with Kiewit.

3. Contractor Claim Process

The Kiewit Community Relations Manager provided us with a flowchart (see Attachment A) and described their 3rd party claims process as follows:

- The Metro Community Relations Office forwards claims received from the public to Kiewit on a standard form called "Community Relations Field Report." Kiewit also receives some community claims directly from claimants.
- Kiewit staff assigns a control number and records the claim information onto a log.
- The Kiewit Project Claims Coordinator investigates the claim by contacting the claimant to gather additional information, and tries to verify the damage incident through review of work activity records, vibration monitoring records, traffic control records, field inspections, photos, witnesses, supervisor interviews, weather reports, equipment records, roadway maintenance records, etc.
- The Project Claims Coordinator uses a standard checklist ("Third Party Claim Checklist") to record the claimant's contact information, incident background, coordinator's investigation notes, and other information.
- The Project Claims Coordinator completes an investigation summary (Community Relations Incident Report) that summarizes the investigation and gives a recommendation for resolving the claim.
- Community Relations Manager reviews the incident report.
 - a. If the claim has potential to cost more than \$2,500, involves personal injury, or requires assistance from the insurance administrator, the Project Claims Coordinator files the claim with Kiewit's Insurance Department, which will monitor the case. The Community Relations Office at the I-405 follows up quarterly with the Insurance Department on the status of claims.
 - b. If the investigation finds that Kiewit is at fault, the Project Claims Coordinator prepares settlement documentation and Kiewit makes payment to the claimant.

- c. If the investigation finds that Kiewit is not at fault, the Project Claims Coordinator prepares a denial letter to the claimant. The claimant has 30 days to provide additional documentation for the Coordinator to review and consider. If the claimant does not provide additional documentation within 30 days, the Kiewit Community Relations Office closes the case.
- d. If the Project Claims Coordinator investigation finds that the claim concerns a subcontractor, the Coordinator sends a tender letter to the subcontractor. The subcontractor and/or its insurance company is responsible for investigating and resolving the claim, paying for any damage that is the fault of the subcontractor, and issuing a denial letter if the subcontractor is not at fault. The Kiewit Project Claims Coordinator maintains a separate log showing the status of claims forwarded to the subcontractors, and periodically monitors case status of these claims.

4. Analysis of Claims Data

a. Claims Initially Received by Metro

We reviewed the field report log maintained by the Metro Community Relations Office as of November 15, 2012. We determined that Metro had received and forwarded to Kiewit 238 claims associated with the I-405 Sepulveda Pass Widening Project. The last sequential number on the log was 338, which is the number of claims mentioned in the Metro Board Motion. This discrepancy of 238 versus 338 claims resulted from a data entry error when staff mistakenly skipped 100 numbers when assigning claim control numbers on the field report log.

Based on information¹ as of November 15, 2012, provided by Metro and Kiewit, we made the following preliminary analysis of the 238 claims initially received by Metro and forwarded to Kiewit (see Attachment B for schedule of analysis):

- Kiewit has completed or is working on 234 of the 238 claims. We determined that 3 of the claims forwarded by Metro were duplicates and 1 claim was not related to the I-405 project.
- Of the 234 claims that Kiewit is handling, 7 were submitted by businesses, 160 by commuters (vehicle damage), and 67 by residents. For 191 of the 234 claims, the amount claimed totaled \$272,575. No dollar amount was claimed for the remaining 43 claims.
- Kiewit is handling 184 (\$219,863) of the 234 claims; subcontractors are handling 46 (\$51,512) claims, and other entities (Caltrans and Chevron) are handling 4 (\$1,200) claims. We are in the process of analyzing claims handled by the subcontractors.

¹ We are in the process of validating the accuracy of this information, which will be done before we complete this review.

- Kiewit has paid \$81,209 for 41 claims and denied 110 other claims (claimed amount is \$111,180). As of November 15, 2012, 25 claims were open and 8 others² were on hold.
- It took an average of 90 days to complete the processing of the 41 claims paid, and an average of 99 days to complete the 110 claims denied. In addition, the 25 open claims have been open for an average of 76 days as of November 15, 2012.

b. Claims Submitted Directly to Kiewit

In addition to the 238 claims received from Metro, Kiewit received 105 claims directly from the claimants. The Metro Community Relations Office was not aware of these claims until OIG staff advised them of this fact during a meeting on December 4, 2012. One of these 105 claims was a duplicate claim of the claims Metro forwarded to Kiewit. We are in the process of analyzing these claims as well.

NEXT STEPS

- We will continue our review of claims process to evaluate response time, subcontractor oversight, the investigative process, and overall due diligence.
- We plan to report results to the Board in March/April.

ATTACHMENTS

Attachment A – Contractor’s 3rd Party Claims Procedure Flow Chart

Attachment B – Preliminary Analysis of Claims Metro Forwarded to Kiewit

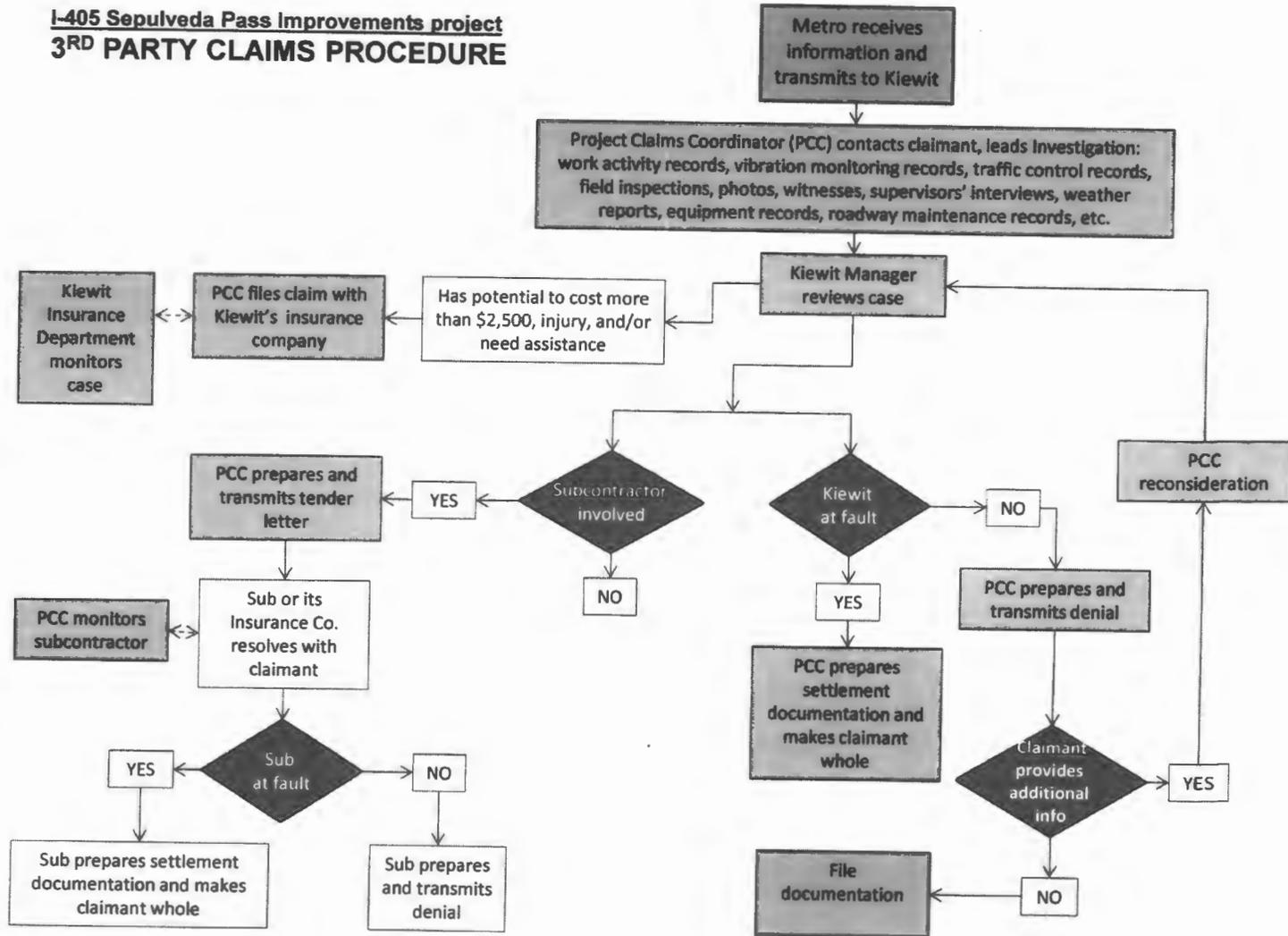
² According to the Kiewit Community Relations Manager, there is a mutual agreement between the resident and Kiewit to place the claim on “hold” so that all claims by the resident can be consolidated. These residents are located along or near Sepulveda Boulevard between Montana Avenue and Sunset Boulevard where Sepulveda Boulevard is being widened, which requires construction of a high retaining wall adjacent to a residential area.

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Karen Gorman
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**I-405 Sepulveda Pass Improvements project
3RD PARTY CLAIMS PROCEDURE**



**Preliminary Analysis of Claims Metro Forwarded to Kiewit
As of November 15, 2012**

Type of Claims				
	Number of Claims		Total Amount Claimed	
Business	7	3%	\$1,160	
Commuter (vehicle damage)	160	68%	153,300	
Resident	<u>67</u>	<u>29%</u>	<u>118,115</u>	
Total	<u>234</u>	<u>100%</u>	<u>\$272,575</u>	
Entity Handling the Claims				
	Number of Claims		Total Amount Claimed	
Claims handled by Kiewit	184	78%	\$219,863	81%
Claims Kiewit forwarded to subcontractors	46	20%	51,512	19%
Claims forwarded to others	<u>4</u>	<u>2%</u>	<u>1,200</u>	<u>0%</u>
Total	<u>234</u>	<u>100%</u>	<u>\$272,575</u>	<u>100%</u>
Dollar Amount Claimed				
	Number of Claims		Total Amount Claimed	
Claim more than \$2500	20	9%	\$142,817	52%
Less than \$2500	171	73%	129,758	48%
Unknown	<u>43</u>	<u>18%</u>		<u>0%</u>
Total	<u>234</u>	<u>100%</u>	<u>\$272,575</u>	<u>100%</u>

**Preliminary Analysis of Claims Metro Forwarded to Kiewit
As of November 15, 2012**

Status of Claims Handled by Kiewit	Number of Claims		Total Amount Claimed		Total Amount Paid	Average Days to Complete Claims
Closed: Claims Paid	41	27%	\$83,220	43%	\$81,209	90
Closed: Claims Denied	<u>110</u>	<u>73%</u>	<u>111,180</u>	<u>57%</u>	<u>0</u>	99
Subtotal: Claims Completed	<u>151</u>	<u>100%</u>	<u>\$194,400</u>	<u>100%</u>	<u>\$81,209</u>	
Completed	151	82%	\$194,400	88%		97
On Hold (Mutual Agreement)	8	4%	13,500	6%	-	472
Open	<u>25</u>	<u>14%</u>	<u>11,963</u>	<u>6%</u>	-	76
Total Claims	<u>184</u>	<u>100%</u>	<u>\$219,863</u>	<u>100%</u>		
Aging for Claims Handled by Kiewit	<u>Completed</u>	<u>Open</u>	<u>On Hold</u>			
30 days or less	42	12	0			
31 to 60 days	42	7	0			
61 to 120 days	38	3	0			
121 to 180 days	12	0	0			
over 181 days	<u>17</u>	<u>3</u>	<u>8</u>			
Total claims	<u>151</u>	<u>25</u>	<u>8</u>			