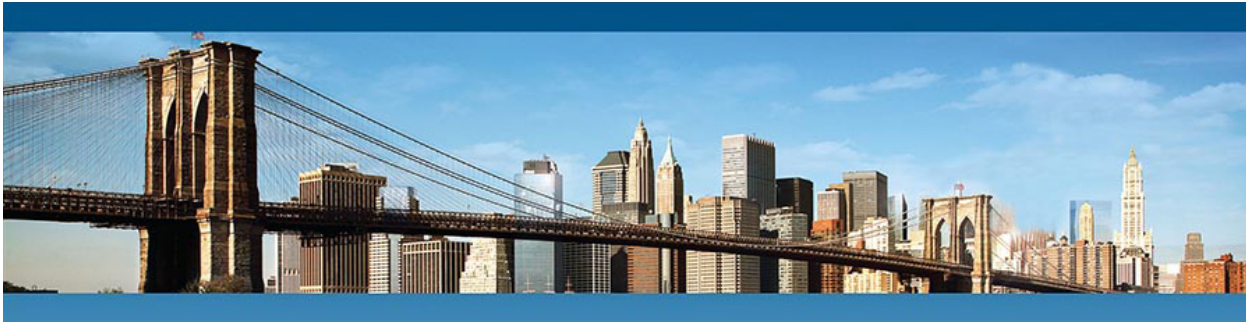




City of New York

OFFICE OF THE COMPTROLLER

Brad Lander
COMPTROLLER



FINANCIAL AUDIT

Maura Hayes-Chaffe

Deputy Comptroller for Audit

Audit Report on the Department of
Transportation's Management and
Procurement of the Brooklyn Bridge
Rehabilitation Contract No. 6

SE18-084A

June 30, 2022

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BRAD LANDER

June 30, 2022

To the Residents of the City of New York:

My office audited the New York City (NYC) Department of Transportation's (DOT's) Management and Procurement of the Brooklyn Bridge Rehabilitation Contract No. 6 to determine whether DOT complied with federal, State, City and its internal requirements when procuring the Contract and approving change orders and payments. We perform audits such as these to help ensure that government operations are effectively managed and to identify and prevent potential waste of public funds and other assets.

The audit found that DOT generally complied with federal, State, City and its internal requirements when procuring and managing Contract No. 6. However, certain weaknesses were found in DOT's internal controls that resulted in inefficient use of funds and reflected a lack of transparency and accountability in some of the agency's public procurement and contract administration processes. The auditors found that DOT accepted an inadequate bid analysis and did not require a revision of the engineer's estimate as necessitated by New York State Department of Transportation Procedure Code 7.1-5. In particular, the total price variation of \$173,986,259 between the high bids and the engineer's estimate should have signaled to DOT that a revision to the engineer's estimate was warranted. A revision was crucial for DOT to establish baseline costs necessary for gauging the extent of the City's cost beyond the engineer's estimate and to enable DOT to perform reasonable comparisons and assessments of prices of future bids.

The audit also found weaknesses in DOT's change order and payment processes. Specifically, two schedule acceleration change orders totaling \$4 million were inadequately supported, and 5 additional change orders totaling \$1,853,979 were inappropriately approved. DOT's REI consultants, Engineer-in-Charge, and Engineering Audit Bureau did not consistently follow DOT's standard procedure and did not exercise adequate due diligence during review and processing of payment requests and supporting documentation. As a result, DOT approved payment requests that included erroneous Federal and State Unemployment Tax Act charges, unsupported Workers' Compensation charges, and labor rates inconsistent with relevant certified payroll, without explanation. Weaknesses in the payment approval process resulted in overpayments to contractors, totaling \$52,228 in disallowable charges. To address these issues, the audit recommends 17 measures to DOT.

The results of the audit have been discussed with DOT officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Lander".

Brad Lander
New York City Comptroller

TABLE OF CONTENTS

EXECUTIVE SUMMARY	1
Audit Findings and Conclusion	2
Audit Recommendations.....	2
Agency Response.....	2
AUDIT REPORT	3
Background	3
Objective.....	5
Scope and Methodology Statement.....	5
Discussion of Audit Results with DOT	5
FINDINGS AND RECOMMENDATIONS.....	6
DOT Accepted an Inadequate Bid Analysis by Design Consultant URS	7
Recommendations	10
Inadequate Support for Approving Acceleration Change Orders Totaling \$4 Million .	12
Recommendations	13
Weaknesses Observed in Change Order Approval Process	13
Recommendations	14
Weaknesses in Payment Approval Process Resulted in Overpayments to Contractors, Totaling \$52,228 in Disallowable Charges	15
Details of Payment Approval Issues.....	16
Recommendations	17
Changes to Wage Rates without Explanation	18
Recommendation	18
Inconsistent Support for Workers' Compensation Charges.....	19
Recommendation	19
Non-Compliance with Directive #7.....	20
DETAILED SCOPE AND METHODOLOGY.....	21
APPENDIX I	
APPENDIX II	
APPENDIX III	
ADDENDUM	

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER AUDITS AND SPECIAL REPORTS

Audit Report on the Department of Transportation's Management and Procurement of the Brooklyn Bridge Rehabilitation Contract No. 6

SE18-084A

EXECUTIVE SUMMARY

This audit was performed to assess the New York City Department of Transportation's (DOT's) procurement of the Brooklyn Bridge Rehabilitation of Approach Spans and Ramps and Painting of the Entire Bridge contract (Contract No. 20100016889 or Contract No. 6) including analyses of approval processes for change orders and Time and Material (T&M) payments for change orders.

To maintain the transportation infrastructure critical to the economic vitality and quality of life of New York City (City) residents, between 1980 and 2017, DOT has spent approximately \$942 million on major re-construction projects of the Brooklyn Bridge. Over \$600 million of this was for work performed under Contract No. 6 (the Contract), which is the focus of this audit. The scope of work covered by the Contract included rehabilitation, repair, and re-striping of the ramps and approaches to the Brooklyn Bridge, seismic upgrades, and repainting of the entire bridge.

Within DOT, the Division of Bridges, Capital Design & Construction Bureau's East River Bridges Section is responsible for all rehabilitation/reconstruction work on the East River bridges. DOT contracted with design consultant URS Corporation (URS) to prepare the project design, the engineer's estimate (or contract estimate), and the bid analysis. For construction administration, DOT contracted with a Resident Engineering and Inspection (REI) services consultant (Greenman-Pedersen, Inc.) who worked as a project manager at the site, representing DOT. A DOT Engineer-in-Charge (EIC) oversaw and approved the REI consultant's work. For processing of payments and change order (CO) requests, additional layers of reviews and approvals were in place, including by DOT's Engineering Audit Bureau (EAB) and Agency Chief Contracting Officer (ACCO). DOT's Fiscal Affairs division was responsible for administering and processing project payment requests.

DOT awarded the contract to sole bidder Skanska Koch (Skanska) at the proposed cost of \$508 million which was 19.5% higher than DOT's engineer's estimate of \$425 million. The initial term of the contract was from January 2010 to April 2014, but due to additional work and delays, it was extended until January 2017. The original contract amount of \$508 million was revised to \$657 million, of which \$322 million was funded by the City and \$335 million was federally funded.

Audit Findings and Conclusion

DOT generally complied with federal, State, City and its internal requirements when procuring and managing Contract No. 6. However, certain weaknesses were found in DOT's internal controls that resulted in inefficient use of funds and reflected a lack of transparency and accountability in some of the agency's public procurement and contract administration processes. The auditors found that DOT accepted an inadequate bid analysis and did not require a revision of the engineer's estimate as necessitated by New York State Department of Transportation (SDOT) Procedure Code 7.1-5 (2007), which stipulates various procedures and specific analyses for cases when only a single bid is received and/or for contract estimates that exceed \$5 million. DOT generally attributed its decision not to have URS revise the engineer's estimate to an urgent need to award the contract, based on the conditions of the bridge at that time.

The audit also found weaknesses in DOT's change order and payment processes. Specifically, two schedule acceleration change orders totaling \$4 million were inadequately supported, and 5 additional change orders totaling \$1,853,979 were inappropriately approved, including \$15,508 in disallowable charges.

Further, DOT's REI, EIC and EAB did not consistently follow DOT's *Standard Procedure for Time and Material Processing* and did not exercise adequate due diligence during review and processing of payment requests and supporting documentation. As a result, DOT approved payment requests that included erroneous Federal and State Unemployment Tax Act (FUTA/SUTA) charges, unsupported Workers' Compensation charges, and labor rates inconsistent with relevant certified payrolls and without explanation. Weaknesses in the payment approval process resulted in overpayments to contractors, totaling \$52,228 in disallowable charges.

Audit Recommendations

This report makes 17 recommendations to DOT that will help the agency improve its internal controls over its public procurement and contract administration processes and ensure transparency and accountability. These appear in the body of this report.

Agency Response

In its written response, DOT agreed with eight of the 17 recommendations, partially agreed with five, and disagreed with four.

AUDIT REPORT

Background

DOT's mission is to provide for the safe, efficient, and environmentally responsible movement of the people and goods in the City and to maintain and enhance the transportation infrastructure crucial to the economic vitality and quality of life of City residents. DOT owns, operates, and maintains 793 bridges and tunnels throughout the City, including the Brooklyn, Manhattan, Williamsburg, and Queensboro Bridges, 24 movable bridges, and 4 tunnels. DOT performs many bridge construction projects, ranging from maintenance and rehabilitation to installation of new bridges, and manages an annual operating budget of about \$900 million and a five-year capital program valued over \$10 billion.

DOT records show that between 1980 and 2017 approximately \$942 million has been spent on major re-construction projects of the Brooklyn Bridge. Over \$600 million of this was for work performed under the Contract, which was the largest contract and is the focus of this audit.¹

Brooklyn Bridge Rehabilitation Project Design and Procurement Process

The original design for the project was prepared in 1978 by SDOT. In 1992, City DOT assumed responsibility for design. DOT engaged URS to develop the project design documents and prepare the engineer's estimate of construction cost. The work was postponed for 14 years due to priority projects on other East River bridges.

In June 2006, after in-depth DOT inspections and SDOT's biennial inspection of the bridge found significant deterioration of bridge components and paint system, an expanded project design was initiated and in November 2008 final design approval was obtained from the Federal Highway Administration (FHWA). At that time URS prepared an initial engineer's estimate of approximately \$378 million. By 2009, the engineer's estimate was revised to over \$425 million due to an expanded scope of work. The construction time was estimated to be 51 months.

DOT advertised the bid from February to April 2009. According to DOT, 68 vendors requested the bid documents but only one vendor, Skanska, submitted a bid for \$508 million on June 30, 2009. After the bid opening, DOT followed up with several vendors who were on the plan holders list but had not submitted a bid. URS conducted a bid analysis of the sole bid by Skanska, and subsequently provided DOT with a recommendation to award.

On July 31, 2009, DOT held a pre-award meeting with Skanska to discuss bid items with significant variations to the costs provided in the engineer's estimate.² Representatives from FHWA, SDOT, and URS also attended the meeting. DOT required Skanska to provide its answers in writing and Skanska submitted its response on August 5, 2009, in which it explained the variations between the engineer's estimate and its high/low bid items. DOT's Division of Bridges and URS reviewed the response and found it to be acceptable. Based on URS' bid analysis and recommendation to award, DOT accepted Skanska's bid. DOT awarded the contract at the

¹ According to DOT, approximately \$942 million was spent under Contract Nos. 1 through 6A, and for the next phase, under contract No.7 for which the budget forecast is \$432 million, DOT will improve the load carrying capacity of the arch blocks and strengthen the masonry towers while focusing on repairs of the historic brick and granite components. Contract No.7 began in late 2019 and will continue until 2023.

² Bids with significant variations are bids with price variation of 25% over and under the engineer's estimate ("high/low bids").

proposed cost of \$508,612,678 which was 19.5% higher than DOT's engineer's estimate of \$425,484,342. The initial term of the contract was from January 19, 2010 to April 12, 2014, but due to additional work and delays, it was extended until January 20, 2017. The original contract amount of \$508,612,678 was revised to \$657,418,051, and payments to Skanska as of September 21, 2017, totaled \$628,913,885.³

The use of federal, State, and City funds necessitates compliance with applicable federal, State and City requirements.⁴ Of the revised approved contract amount of \$657 million, the City funded \$322 million and the federal share was \$335 million.

Change Order Process

While managing a construction contract, hidden conditions may be revealed, actual conditions may vary from plans, and obstacles to completing the work may arise. These events may require changes to the original scope of work. That additional work is performed based on change orders (COs). According to DOT records, Contract No. 6 had 93 COs totaling \$186,516,337 as of August 17, 2017 (the auditors' cut-off date for CO reviews). Of these, 50 (54%) were Time and Material (T&M) COs totaling \$123,382,065, 34 (36%) were Unit Price COs totaling \$60,437,781, and 9 (10%) were Lump Sum COs totaling \$2,696,491.⁵

Payment Process

Skanska submitted monthly payment requests to the REI consultant, with supporting documentation. As DOT's construction supervisor at the site, the REI consultant's responsibilities included subcontractor approvals, reviews of submittals, change orders and overruns, and payment requests, which occurred concurrently with the project. The REI consultant was responsible for maintaining records for all work performed and for field approval of associated payment requests. The EIC was responsible for checking and approving all payment requests that were then passed on for subsequent review and processing by EAB, and then to the Fiscal Affairs division.

According to DOT records, there were 113 payments made to Skanska totaling \$628,913,885 including \$147,337,567 for T&M charges, as of September 21, 2017 (the auditors' cut-off date for payments reviews).

Other - DOT Internal Audit

During this audit, DOT informed the auditors of two audits of the Contract by its Office of Auditor General (OAG); one was completed, and one was in progress. The scope of the completed audit included an assessment of asbestos abatement work, and the scope of the other audit included two components: 1) a review of T&M payments for both contract work and change order work;

³ The date September 21, 2017, represents the last payment period the auditors included in the audit scope for payment reviews. The payments up to September 21, 2017, represent over 95% of the total contract payments. The contract work had ended in January 2017.

⁴ SDOT's *Procedures for Locally Administered Federal Aid Projects (PLAFAP)* includes procedures for complying with federal regulations including additional analysis of single bid and/or bids that vary significantly from the engineer's estimate.

⁵ A T&M change order occurs when the entire cost of the proposed change cannot be estimated. In this case, contractors are to track their time spent working on the change, as well as any costs associated with needed materials or equipment. A unit price change order is based on additional scope of work that can be defined by specific measurement units in the contract. The contractor must track completed work based on those specified units. A lump sum change order is used when the change in the work scope can be quantified with a firm price, resulting in an overall increase in the expense of the project. It can occur when the project owner or a hired contractor finds conditions that warrant a change in work scope.

and 2) a review of internal controls over T&M payments.⁶ The scope of OAG's payments review included DOT's approval of \$110 million in T&M payments (up to payment No. 110). The auditors examined OAG audit reports available at that time and took them into consideration in determining the scope of testing of T&M payments.

Objective

To determine whether the Department of Transportation's management and procurement of the Brooklyn Bridge Rehabilitation Contract No. 6 complied with federal, New York State, and New York City regulations.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. 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 audit evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was an assessment of DOT's procurement of the Brooklyn Bridge Rehabilitation of Approach Spans and Ramps and Painting of the Entire Bridge contract (Contract No. 20100016889 or Contract No. 6) from June 30, 2009, and analyses of change orders and T&M payments for change orders issued up to September 21, 2017. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests performed.

Discussion of Audit Results with DOT

The matters covered in this report were discussed with DOT officials during and at the conclusion of this audit. A preliminary draft report was sent to DOT on May 2, 2022, and discussed with DOT officials at an exit conference held on May 20, 2022. On June 9, 2022, we submitted a draft report to DOT with a request for written comments. We received a written response from DOT on June 27, 2022.

In its response, DOT agreed with eight of the 17 recommendations (#s 2, 7, 8, 9, 10, 11, 12 and 14), partially agreed with five (#s 1, 3, 4, 5 and 6), and disagreed with four (#s 13, 15, 16, and 17). These are discussed in the body of the report.

The full text of DOT's response is included as an addendum to this report.

⁶ The OAG issued all audit reports prior to completion of our audit work. The OAG issued its final report on *Audit of Asbestos Abatement within Arch Blocks for the Brooklyn Bridge* (AR-14-2) on July 18, 2014, which examined \$2.2 million in payments and identified \$102,898 in overcharges/disallowances. In addition, the OAG issued its final *Audit Report on Brooklyn Bridge Contract Payments* (AR16-02-00) on March 9, 2018, which showed total disallowances of \$789,711. Additionally, the OAG issued a separate report titled *Auditor's Report on Internal Control based on the Audit of Time and Material Payments* (AR-16-02-UC), on July 6, 2018.

FINDINGS AND RECOMMENDATIONS

This audit determined that DOT generally complied with federal, State, City and its internal requirements when procuring and managing the Brooklyn Bridge Rehabilitation Contract No. 6. However, certain weaknesses were found in DOT's internal controls that resulted in inefficient use of funds and reflected a lack of transparency and accountability in some of the agency's public procurement and contract administration processes.

Specifically, the auditors found that DOT accepted an inadequate bid analysis and did not require a revision of the engineer's estimate as necessitated by SDOT Procedure Code 7.1-5 (2007), which stipulates various procedures and specific analyses for cases when only a single bid is received and/or for contract estimates that exceed \$5 million. Deficiencies in URS' bid analysis should have indicated to DOT that the analysis was inadequate to properly evaluate the high/low bid prices and establish reasonable conformance with the estimated costs in the engineer's estimate. In particular, the total price variation of \$173,986,259 between the high bids and the engineer's estimate should have signaled to DOT that a revision to the engineer's estimate was warranted. A revision was crucial for DOT to establish baseline costs necessary for gauging the extent of the City's cost beyond the engineer's estimate and to enable DOT to perform reasonable comparisons and assessments of prices of future bids. DOT generally attributed its decision not to have URS revise the engineer's estimate to an urgent need to award the contract, based on the conditions of the bridge at that time.

The audit also found weaknesses in DOT's change order and payment processes. Specifically, some change orders and associated payments were not processed in accordance with the Contract terms, with City, State, and federal requirements, and with Comptroller's Directive #7, *Audit of Requests for Payment Received under Contracts for Construction, Equipment, and Construction-Related Services*. The audit identified two schedule acceleration change orders totaling \$4 million for project schedule acceleration that were inadequately supported, and weaknesses in the change order approval process that resulted in inappropriate approvals of 5 additional change orders totaling \$1,853,979 including approval of \$15,508 in disallowable charges.

Further, DOT's REI, EIC and EAB did not consistently follow DOT's *Standard Procedure for Time and Material Processing* and did not exercise adequate due diligence during review and processing of payment requests and supporting documentation. As a result, DOT approved payment requests that included erroneous Federal and State Unemployment Tax Act (FUTA/SUTA) charges, inconsistent support for Workers' Compensation charges, and labor rates inconsistent with relevant certified payrolls without explanation. Weaknesses in the payment approval process resulted in overpayments to contractors totaling \$52,228 in disallowable charges.

Improvements in its internal controls and effective use of its consultants and in-house resources will help DOT to better ensure that pricing for bid items and change orders is adequately examined, and that unsubstantiated and disallowable charges are not approved. Doing so will not only help DOT to ensure that funds are being used in the most efficient manner, but it will also enable DOT to better plan and budget, and adequately manage contracts and contract changes.

These matters are discussed in detail in the following sections of this report.

DOT Accepted an Inadequate Bid Analysis by Design Consultant URS

SDOT Procedures for Locally Administered Federal Aid Projects (PLAFAP) Section 14.3.2, *Bid Analysis* stipulates that the bid analysis process is an examination of all bid prices for reasonable conformance with the contract's (or engineer's) estimated costs. A proper bid analysis ensures that funds are being used in the most effective manner, and the bid analysis process assists in evaluating the accuracy of the contract estimate.

SDOT Procedure Code 7.1-5 (2007), *Comparison and Evaluation of the Lowest Responsible Bid with the Department's Engineer's Estimate* (SDOT Procedure) stipulates various measures and specific analyses for cases where only a single bid is received and requires Regional Case I and Case II analyses to be performed on contract estimates that exceed \$5 million. As defined in the SDOT Procedure, Regional Case I analysis is a review of the bidder's estimate and generally consists of a review of the engineer's estimate to determine whether item quantities and prices are accurate and whether assumptions made during the estimate process were valid. It also requires evaluation of bids with significant variations from the engineer's estimate (i.e., bids with price variation of 25% over and under the engineer's estimate, or "high/low bids"), or where obvious unbalancing of the unit prices has occurred. Regional Case II analysis is a "coordinated review of all significant considerations" and, per the SDOT Procedure, "if it is determined that changes to the engineer's estimate would be appropriate, the design consultant must provide descriptions of the revisions to prices for each item that is revised, and a revised total of the engineer's estimate. *All revision descriptions must include dollar amounts and not general statements [emphasis added].*"

URS, as part of its bid analysis, performed Regional Case I and II analyses of its prepared engineer's estimated costs and Skanska's bid prices, confirmed that quantities were accurate, and provided explanations for price variations of high/low bids. However, the auditors identified deficiencies in URS' bid analysis that indicate (1) that the bid analysis was inadequate to properly evaluate the high/low bid prices and establish reasonable conformance with the estimated costs in the engineer's estimate, and (2) that a revision to the engineer's estimate was warranted. Specifically, the auditors found that:

- URS' explanations for significant price differences, in certain cases, were either ambiguous, inaccurate, or insufficient (i.e., they did not cover the complete scope of work and the differences could not be adequately evaluated). Throughout its bid analysis, URS stated that its estimate was lower than the contractor's estimate because the contractor included costs for constraints on tasks in the bid documents. However, URS should have included costs for constraints in its bid analysis. In certain instances, URS admitted that its estimate did not include all costs that the contractor may have reasonably included in the scope of work. Further, URS' explanations for revisions to prices were not supplemented by dollar amounts as required by the SDOT Procedure; and
- URS' evaluation of bid prices with significant variations (i.e., high/low bid items) was deficient because they did not evaluate all bid items with significant variations, only major bid items. Specifically, URS grouped together and provided explanations for price differences at a group level instead of analyzing price differences of all high/low bid items at an individual item level as required by the SDOT Procedure. URS further limited the analysis by only including the groups of items where the difference was over \$1 million.

As a result, URS' evaluation of high/low prices depicted misleading and inaccurate price differences.

Audit analyses revealed that approximately 50% of the bid items—both in terms of cost and number of items—were high bids. An analysis of the high bid items showed that the price variation between the bid items and engineer's estimate totaled \$173,986,259. At the item level, two variations were over 3,500% (or 35 times) higher than the estimated price by URS, which should have raised red flags and signaled that a revision to the estimate was crucial. See below a summary of the auditors' high bids analysis.

Table I

Analysis of High Bids Variances

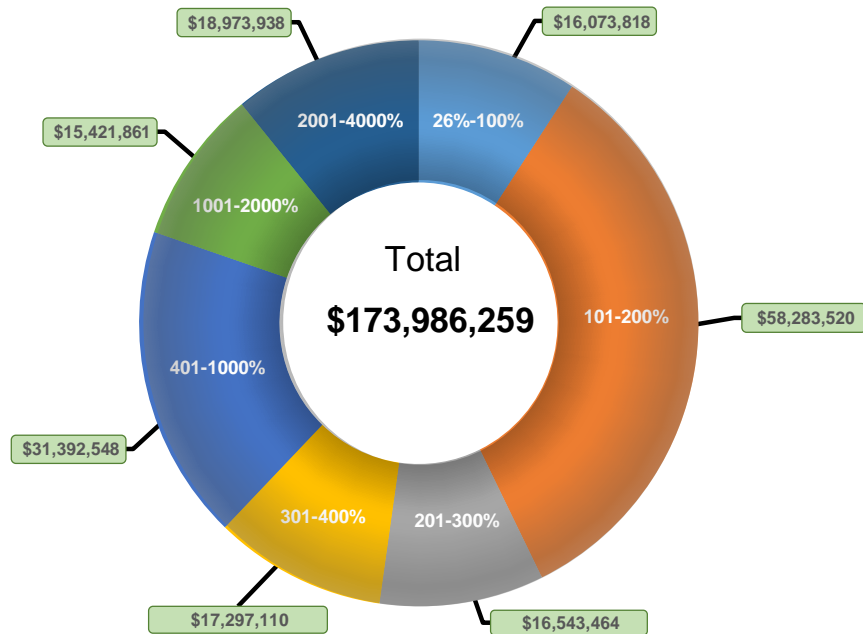
Bid Prices > 25% over EE	Number of Bid Items	Engineer's Estimate (DOT)	Bids (Skanska)	Difference between Skanska and Estimate
26%-100%	54	\$ 29,720,513	\$ 45,794,331	\$ 16,073,818
101-200%	36	\$ 38,074,561	\$ 96,358,081	\$ 58,283,520
201-300%	16	\$ 6,790,571	\$ 23,334,035	\$ 16,543,464
301-400%	10	\$ 4,876,108	\$ 22,173,218	\$ 17,297,110
401-1000%	23	\$ 6,145,272	\$ 37,537,820	\$ 31,392,548
1001-2000%	5	\$ 1,039,979	\$ 16,461,840	\$ 15,421,861
2001-4000%	2	\$ 526,062	\$ 19,500,000	\$ 18,973,938
Total	146	\$ 87,173,066	\$ 261,159,325	\$ 173,986,259

One item was 3,578% higher and the other one was 3,987% higher than the engineer's estimated costs.

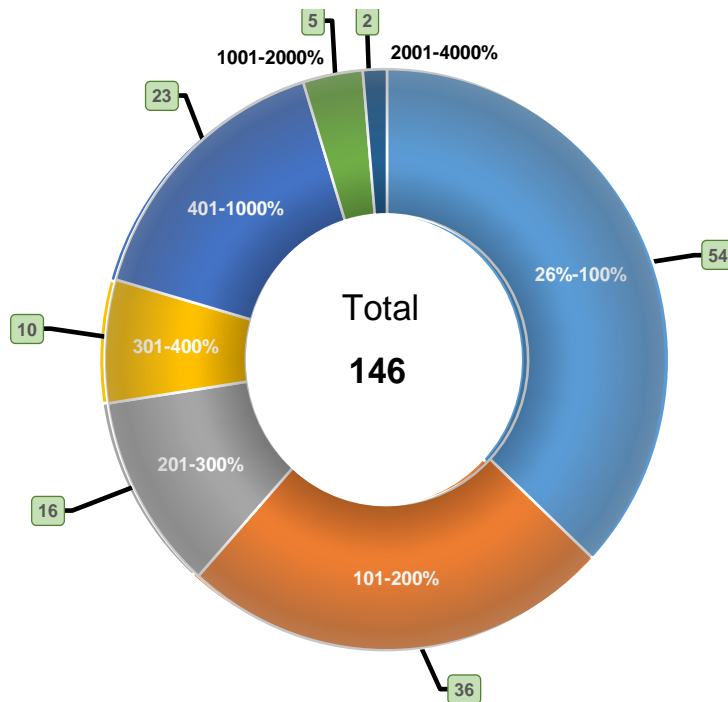
Figure 1

Extent of Differences between Bid Prices and Engineer's Estimates (High Bid Items)

by \$\$ Amount



by # of Bid Items



As noted earlier, DOT generally attributed its decision not to have the engineer's estimate revised to the urgent need to award the contract, based on the conditions of the bridge at the time (steel and bridge flags), an urgency DOT communicated to the Mayor's and Comptroller's offices. Additionally, DOT's ACCO stated that although the bid advertisement was extended twice, DOT received only one bid. DOT's recommendation to award included a statement that DOT relied on URS' bid analysis and its review of the bid analysis in making the recommendation but did not include any other justification or details of other factors. DOT informed the auditors that the agency does not retain any third-party consultants to evaluate the bid analysis and that it does not maintain any cost databases or have in-house estimating staff who can perform this kind of bid appraisal. According to DOT, the agency relies on design consultants for these services. Comments by other senior DOT officials indicated that DOT was aware of factors affecting the accuracy of URS' estimated costs and that an assessment of the bid analysis was performed and accepted by DOT. One senior DOT official acknowledged that the engineer's estimate should have been revised.

Overall, the auditors did not disagree with DOT's rationale for moving forward with the contract award. However, the auditors found DOT's acceptance of an inadequate bid analysis problematic and concluded that the agency did not receive the expert services for which it paid. Moreover, the auditors concluded that DOT's decision not to require URS to revise the engineer's estimate was a missed opportunity for DOT to establish baseline costs necessary for gauging the extent of the City's cost beyond the engineer's estimate on this project and to perform reasonable comparisons and assessments of prices of future bids as well. Requiring a revision from URS likely would not have stopped DOT from moving forward with awarding the contract, assuming DOT had adequately documented details in its justification to award.

The following potential causes may have also contributed to DOT's decision not to require URS to revise the engineer's estimate. First, SDOT Procedure Code 7.1-5 does not clearly set out all conditions, qualitatively or quantitatively, for when a revision to an estimate should be deemed appropriate. Next, DOT does not have a standard procedure specifying requirements for reviewing and accepting bid analyses prepared by consultants, for documenting such reviews, or for which details to include in a recommendation to award memo, such as a list of factors considered by the agency in making the recommendation to award. These are all measures necessary for ensuring transparency and accountability in the award process.

Recommendations

DOT should:

1. Prepare a standard procedure for preparation and review of a bid analysis that includes City, State, and federal requirements that can be used for review and acceptance of bid analysis prepared by consultants, and the conditions under which the engineer's estimate is to be revised.

DOT Response: DOT partially agreed with the recommendation. DOT stated, "NYCDOT continues to adhere to the New York State Department of Transportation ('NYSDOT') and Federal Highway Administration ('FHWA') guidelines for all bridge projects with respect to review and acceptance of bid analysis. NYCDOT believes that the existing NYSDOT procedures referenced in the report are sufficient and there is no ambiguity as to the need to revise the engineers estimate. Procedure 7.1-5 states 'the

revised total engineers estimate must also be provided but is only valid for this analysis. The original engineer's estimates will not be changed.”

Auditor Comment: The auditors urge DOT to fully implement this recommendation. Notwithstanding current DOT policy, the bid analysis did not confirm whether Skanska’s bid was reasonable and created doubt as to the competency of the engineer’s estimate and the budget for this project.

2. Ensure that the bid analysis examines all bid prices with significant variations for reasonable conformance with the engineer’s estimated costs, details criteria that are not followed, and provides justification and approval for noncompliance. Additionally, bid analyses should include quantified explanations for price differences to account for costs/scope of work that should have been included and/or to correct inaccurate prices in the engineer’s estimate.

DOT Response: DOT agreed with the recommendation.

3. Ensure that acceptance of a bidder’s explanations for high/low bid prices with subsequent determination as to whether the engineer’s estimate should be revised is officially documented with adequate details.
4. Ensure that the engineer’s estimate reflects the scope of work in the bid documents accurately and completely.
5. Ensure that a detailed justification is prepared, summarizing the factors DOT considered in its recommendation to award, including an explanation for when the agency does not deem a revision to the estimate appropriate.

DOT Response to Recommendation #s 3, 4 and 5: DOT partially agreed with the recommendations. DOT stated, “NYCDOT will follow NYSDOT and FHWA guidelines for all bridge projects. The engineer’s estimates are finalized prior to bid and they reflect the scope of work in the bid documents accurately and completely, as understood at that time. As part of the bid analysis, including discussions with the apparent low bidders, NYCDOT’s design consultants update their assumptions and engineer’s unit costs, which then are documented in the bid analysis.”

Auditor Comment: The auditors appreciate that DOT recognizes the significance of finalizing the engineer’s estimate with adequate details. However, in consideration of the dollar amounts the auditors noted were missing from the revision descriptions in the bid analysis, and with a view towards ensuring transparency and accountability in the award process, the auditors urge DOT to reexamine the findings and fully implement these recommendations.

6. Evaluate and consider the possibility of retaining third-party consultants for an independent appraisal of bid analyses of large projects and/or investing in a bid analysis software such as Bid Analysis and Management System/Decision Support System (BAMS/DSS) from the American Association of State Highway and Transportation Officials (AASHTO).

DOT Response: DOT partially agreed with the recommendation. DOT stated, “NYCDOT will consider the possibility of retaining third-party consultants for independent appraisals of bid analyses on a project by project basis, however,

NYCDOT believes that will not be an effective or efficient way of [analyzing] bids, leading to disputes between consultants and delays in contract awards.”

Auditor Comment: The auditors are pleased with DOT’s commitment to considering the possibility of retaining third-party consultants for independent appraisals of bid analyses on a project-by-project basis, but the auditors continue to recommend investing in bid analysis software, as one means to facilitate independent appraisal of bid analyses for large projects. Software would also provide access to a cost database for the construction industry. This is expected to improve efficiency and effectiveness in assessing both contract and change order costs.

Inadequate Support for Approving Acceleration Change Orders Totaling \$4 Million

The NYS *Contract Administration Manual*, Section 105-14, *Disputed Work and Dispute Resolution* defines “acceleration” as an addition of the contractor’s labor forces and/or equipment to increase work production as directed by a written order from the agency. Part C requires that “[a]ny directive to accelerate should clearly indicate what additional costs are expected, and what the Contractor will be reimbursed for.” Part II of Section 90, *Record Keeping Procedures*, states that “[t]he EIC should ensure that each contract pay item in the contract is sufficiently documented to undergo an audit years later without the need for any personal explanations.” Additionally, NYC Comptroller’s Directive #7, Section 3.5.1 *Contract Changes* stipulates additional agency oversight, specifically that “the Engineering Audit Officer [EAB] must evaluate the change order to ensure that it is not for work already required by the contract.”

The audit found that DOT did not prepare a baseline contract cost analysis to identify the acceleration costs (i.e., costs “over and above” original contract costs) in two change orders totaling \$4 million (#2012-0135 and #2013-0113; for \$2 million each) for project schedule acceleration. Based on a review of documentation provided for these two change orders, the auditors could not distinguish the cost attributable to schedule acceleration and the amount attributable to the original contract work which should not have been approved as acceleration costs.

For example, CO #2013-0113, issued on September 9, 2013, for Schedule Acceleration Measures lacked adequate support. The CO indicated that the contractor had added 8 acceleration proposals, bringing the total to 57 acceleration proposals. The proposals were plans to recover from impacts on the project schedule caused by unforeseen issues due to Hurricane Sandy, such as obstructions, fascia stringer replacement, and the impact of embargoes. The auditors found that documentation was not detailed enough to establish which acceleration proposals were complete, which were in process, or which were pending startup. Moreover, information as to the total cost of acceleration proposals, the percent complete for each acceleration proposal, and the balance to finish was also unavailable and could not be determined.⁷

When discussed at the audit wrap-up meeting, DOT generally agreed with the finding. DOT stated that all update schedules (i.e., CPM schedules) were not received and it was difficult to establish baseline schedules. DOT stated that approvals were granted due to urgency of the work. In addition, per DOT, there were 130 acceleration proposals that were examined on a case-by-case

⁷ The cost of the acceleration proposals was not included with the COs, the COs did not include documentation connecting completed work to the accepted acceleration proposals, and the summary sheets prepared by the REI could only be partially correlated with approved acceleration measures hindering determination as to how acceleration charges were accumulated and validated.

basis. DOT indicated that “90%” of the time they were properly granted and “10%” they were not. Further, one senior DOT official acknowledged that proper procedures were not followed.

Without clear and sufficiently supported change orders there is an increased risk of approval of unsupported and/or inflated costs.⁸

Recommendations

DOT should:

7. Prepare a baseline contract cost analysis with adequate details to identify the scope of work for each acceleration measure once it is determined that acceleration measures are needed.
8. Ensure that the Engineer-in-Charge (EIC) and Engineering Audit Bureau (EAB) ascertain that acceleration measures and costs are adequately substantiated.
9. Ensure that change orders relating to schedule acceleration measures include descriptions of approved activities including:
 - a. price category of the item (i.e., lump sum, unit price, and fixed price lump sum or FPLS);
 - b. location of work;
 - c. how the items are accelerated (i.e., overtime, night shift, complete closure vs. partial closure, etc.);
 - d. credit for base contract work where applicable; and
 - e. estimate of potential schedule impact.
10. Ensure that all acceleration proposals and their costs are adequately tracked and can be readily reconciled.

DOT Response to Recommendation #s 7, 8, 9 and 10: DOT agreed with the recommendations.

Weaknesses Observed in Change Order Approval Process

According to the Contract terms, the contractor was responsible for submitting a change order request to the REI consultant who was then required to review and negotiate a CO cost in accordance with the contract requirements and DOT procedures. Once agreed on the scope and cost of work, the REI would submit the CO request and substantiating documentation (including the contractor’s proposal and the REI consultant’s independent estimate) to the EIC. Upon the EIC’s review and approval, the CO was forwarded to DOT’s EAB for additional review and approval. Subsequently, additional fiscal checks were performed, and approvals were obtained from the ACCO. DOT EAB’s *Checklist for General Requirements for Change Order Request* requires the REI consultant to provide an independent cost estimate for each change order

⁸ In concurrence with the audit’s findings, the OAG had questioned \$5.3 million in acceleration costs in its audit of payments. Additionally, OAG reported that the project office did not have documentation to establish a baseline schedule at the time acceleration was being ordered that could tie into the cost analysis used to determine which costs were considered over and above the cost of the original contract work. Further, OAG stated that the contractor did not update on a regular monthly basis the Progress/CPM schedule as required by Contract item no 637.355120M.

request. There are additional requirements for a T&M change order when the requested work amount is estimated to be over \$100,000, according to NYS Contract Administration Manual (MURK Part 1A) Section 104-02, C.1 *Force Account [T&M] Work – Estimate*.

DOT's approvals were generally in accordance with the requirements. However, auditors noted that 5 of the 66 (8%) sampled change orders, totaling \$1,853,979 of the total \$105,556,318 sampled value, were either approved without REI estimates or approved with REI estimates that were incomplete, flawed, or contained computational errors. Auditors determined approvals of charges totaling \$15,508 in the five sampled COs that should have been disallowed for the reasons above. (See *Appendix I* for details of issues with the five change orders.)

In one of the 5 cases, the REI estimate was inaccurate and resulted in approval of an inflated T&M change order. The REI estimate for CO #2015-0080 for \$240,000 for Lightning Protection Repair Work included Workers' Compensation (WC) charges. WC charges were already included in the labor rates for the electricians. Nevertheless, the CO was approved at the same amount as the REI independent estimate of \$240,000. After adjusting the duplicate WC charges, the revised amount should have been \$231,732, with a disallowance of \$8,268.

Recommendations

DOT should:

11. Ensure that stakeholders consistently follow applicable procedures, including that:
 - a. the REI makes certain that an independent estimate is prepared and the contractor's proposal is obtained and evaluated prior to field approval;
 - b. the REI adequately checks the independent estimate and the contractor's proposal for accuracy and completeness, identifies disallowable charges, and verifies that costs are substantiated; and
 - c. the Engineer-in-Charge (EIC) and Engineering Audit Bureau (EAB) adequately review change order requests prepared by the REI prior to approving them and verify that the CO requests are justified.

DOT Response: DOT agreed with the recommendation.

12. Consider updating the REI Instruction Manual to incorporate the MURK requirements for the REI's estimate of T&M change orders over \$100,000.

DOT Response: DOT agreed with the recommendation.

13. Examine whether the \$15,508 in disallowances identified in this audit were adjusted during the payments and recover as appropriate.

DOT Response: DOT disagreed with the recommendation. DOT stated, "The change orders that auditors identified to have disallowances of \$15,508 based on Engineer's estimates were Time and Material Change Orders. As such, actual payments were made on the basis of Time and Material. The actual payments were less than the Engineer's Estimate."

Auditor Comment: The auditors are pleased that the disallowances identified were recognized during the payments. However, DOT did not provide any evidence that would enable the auditors to independently verify that those disallowances were adjusted during the payments.

Weaknesses in Payment Approval Process Resulted in Overpayments to Contractors, Totaling \$52,228 in Disallowable Charges

DOT's *Standard Procedure for Time and Material Processing* (T&M Procedure) requires the use of standardized Excel spreadsheets to "document information pertaining to Labor, Material and Equipment from MURK 11a, 12C, 13D and 17 forms that were signed and approved by the resident engineer [REI]," upon submission by the contractor. In particular, the T&M Procedure requires that:

- The name, trade classification, local/union and hours worked shall be obtained from the signed daily reports;
- Regular hourly wage rate, fringe benefits and OT premium hourly wage rate shall be obtained from certified payroll reports (CPRs). The CPR shall be cross-referenced with the Comptroller's Prevailing Wage Schedule; and
- Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA) charges shall be two (2) percent of Regular Hourly (Base) wages⁹ not to exceed the yearly limitation.¹⁰

However, the REI and EIC did not always follow DOT's T&M Procedure during review and processing of payment requests and supporting documentation. Specifically, the audit found a total of \$52,228 in disallowances in T&M payments for three selected subcontractors: (1) Underpinning and Foundation Skanska (Underpinning and Foundation), (2) Walker Diving Underwater Construction (Walker Diving), and (3) Empire State Piping Company (Empire) associated with the two sampled contract items.

The auditors' assessment showed that the payment requests included erroneous FUTA and SUTA charges. Specifically, the REI accepted varying reimbursement rates for FUTA and SUTA taxes instead of the stipulated 2% rate and did not use DOT's standardized spreadsheet to calculate the reimbursements. There is no indication that the actual FUTA/SUTA costs per payroll period were provided by the subcontractors, which could explain the REI's acceptance of varying reimbursement rates.

In addition, the auditors' assessment showed inconsistent support for WC charges and labor rates in billings that were not consistent with relevant certified payrolls. During the audit, the auditors confirmed their methodology and shared the findings, and DOT agreed with the findings. However, after the exit conference, DOT provided explanations for the noted inconsistencies and

⁹ Regular Hourly Wages (Base Wages) are (Regular Hours + OT Hours) x Regular Hourly Wage Rate.

¹⁰ DOT has instituted a simplified process for the contractors to get back the payroll tax costs (FICA (7.65%) plus FUTA/SUTA) on T&M work to process the payments effectively. The actual process appears to be time consuming and requires a good deal of effort from both the owner and contractors. [*Actual process* - The Unemployment Insurance contribution rate is determined annually for each employer based upon their experience in the Unemployment Insurance program. New York State SUTA tax can vary from a minimum of 1.3% to 9.1% maximum paid on the first \$11,100 of earnings for each employee. FUTA is a 6% payroll tax on the first \$7,000 per employee but there is a credit of up to 5.4% for State taxes paid. Hence, depending on the length of time employees have been on the payroll, the amount of FUTA/SUTA taxes paid can vary greatly from pay period to pay period.]

informed the auditors that taxable fringe benefits were added to regular hourly wage rates in order for contractors to receive reimbursements from the City for payroll taxes paid on taxable fringe benefits. Further, DOT used a different method to present the WC charges in several of the payments. These practices created ambiguities in validating the WC charges and wage rates and are discussed in detail below.

Details of Payment Approval Issues

FUTA/SUTA Disallowances

Of the total \$52,228 in disallowances in T&M payments, \$22,631 was for Fender System Restoration work and \$29,597 was for Incidental Repairs work, detailed below. Subsequent to the audit wrap-up meeting, this detailed assessment was reviewed and discussed with EAB and OAG officials and they agreed with the findings. The audit assessment spreadsheet was also shared with DOT.¹¹ After the exit conference, DOT provided additional explanations and the disallowances were revised accordingly.¹² See *Table II* below for a summary of total disallowances by payment component for both sampled contract items.

Table II

Summary of Total Disallowances (by Payment Component*)

	T&M Payment Component	Sampled Contract Items		Total
		Fender System Restoration	Incidental Repairs	
		Amounts	Amounts	
1	Total Billed (Labor, Material, and Equipment)	\$ 1,889,315	\$ 2,317,485	\$ 4,206,800
2	Original Base Wages Billed	\$ 567,181	\$ 754,885	\$ 1,322,066
3	FUTA / SUTA Charged	\$ 33,877	\$ 43,564	
4	FUTA / SUTA Allowed	\$ 11,246	\$ 13,967	
5	FUTA SUTA Disallowance (3-4)	\$ 22,631	\$ 29,597	\$ 52,228

*Differences in totals are due to rounding

¹¹ The T&M Procedure was provided to the auditors as the standard procedure used by DOT for review and approval of payments. However, after the exit conference, one EAB official disputed the use of the T&M Procedure as the DOT standard by the auditors.

¹² In its response, DOT stated that "the issues concerning payments to contractors were not accurately reported and although NYCDOT discussed this matter with the Comptroller's audit team subsequent to the exit conference, the Draft Audit Report still reflects the identified inaccuracies." Contrary to DOT's assertion, after several discussions with DOT and a careful review of evidence and explanations provided by DOT after the exit conference, the auditors revised the audit finding concerning overpayments to contractors from \$95K to \$52K in the draft report submitted on June 9, 2022.

Fender System Restoration

The auditors identified \$22,631 in disallowances during their review of FUTA/SUTA overcharges in 15 T&M payment request packages for Fender System Restoration totaling \$1,889,315 (including \$567,181 in gross wages¹³). Of that amount, \$21,795 was for Walker Diving and \$836 was for Underpinning and Foundation. (See *Appendix II* for a breakdown of issues with Fender System Restoration payment approvals.)

Incidental Repairs

The auditors identified \$29,597 in disallowances during their review of 15 T&M payments, 13 of which included labor charges. Of these 13 payments, 4 were to Underpinning and Foundation, 4 were to Walker Diving, and 5 were to Empire, totaling \$2,317,485 (including \$754,885 in gross wages). Of the \$29,597 in disallowances, \$25,800 was for Walker Diving, \$1,678 was for Underpinning and Foundation, and \$2,119 was for Empire State Piping. (See *Appendix III* for a breakdown of issues with Incidental Repairs payment approvals.)

Overall, the audit's review of the 28 T&M payments, totaling \$4,206,800, including \$1,322,066 in gross wages, found \$52,228 or 4% of labor in disallowable FUTA/SUTA Payroll tax charges.

Although the total potential disallowances are not being projected to all payments, it is worth noting that overpayments may occur if DOT's 2% standard for reimbursement for FUTA/SUTA taxes is not used consistently. For an agency with a 5-year \$10 billion capital budget, just 1% in overpayments can exceed \$100 million over five years.

Recommendations

DOT should:

14. Ensure that REI consultants and in-house EICs consistently approve FUTA/SUTA reimbursements in accordance with DOT's T&M Procedure.

DOT Response: DOT agreed with the recommendation.

15. Investigate and recoup the \$52,228 in disallowances identified by this audit, as appropriate.

DOT Response: DOT disagreed with this recommendation. DOT stated, "The disallowance of \$52,228 was calculated using the 2% rate as proposed in the T&M SOP issued in 2014. However, the subject Brooklyn Bridge contract started in 2010 and the contractor charged FUTA/SUTA less than 2% of total wages. For total population of T&M, the contractor charged \$344k of FUTA/SUTA which is 0.95% of the total wages."

Auditor Comment: Instead of the stipulated 2% FUTA/SUTA charges, 7% was charged without review of actual charges. DOT disregarded its own SOP and endorsed overpayment to certain contractors without any explanation. The

¹³ Gross Wages are ((Regular Hours + OT Hours) x Regular Base Pay) + (OT Hours x OT Premium Pay differential).

auditors urge DOT to revisit this recommendation and recoup any monies due and owing to the City.

Changes to Wage Rates without Explanation

The T&M Procedure requires that regular hourly wage rates, fringe benefits, and OT premium hourly wage rates shall be obtained from certified payroll reports (CPRs) and that the CPR shall be cross-referenced with the Comptroller's Prevailing Wage Schedule. However, the auditors' assessment showed that the labor rates in billings were not consistent with relevant CPRs. Specifically, the wage base was inflated in the payment packages. Although the recorded totals of the wage and benefit rates were approximately the same in the T&M payment packages and in the CPRs, the contractor had redistributed those amounts, making the wage amount higher and the benefit amount lower, which would result in additional reimbursements from the City. Of the 28 payment packages that had labor, one was missing CPRs. Of the remaining 27 that had CPRs, 18 of them had T&M rates billed that did not match the rates certified in the CPRs. (See *Appendix II* and *Appendix III*; non-zero amounts (7+11) shown under column heading "Taxable Benefits Shifted").

During the audit, the auditors confirmed the audit methodology with DOT and shared the finding, and DOT agreed with the finding. However, after the exit conference, DOT provided explanations for the noted inconsistencies and informed the auditors that taxable fringe benefits were added to regular hourly wage rates in order for contractors to receive reimbursements from the City for payroll taxes paid on taxable fringe benefits. However, no notations or explanations were present on the payment packages to validate the accuracy of the rates.

By not following the procedure, which requires confirming that wage and benefit rates match the CPR, and not documenting explanations for inconsistencies, DOT can be exposed to the risk of overpayments.

Recommendation

DOT should:

16. Require clear notations to be made on the standardized spreadsheets when situations require adding taxable benefits to regular wages. Also,
 - a. Consider revising the standardized spreadsheets to allow for recording of taxable fringe benefits and addition of those charges to regular wages for reimbursement of payroll taxes on taxable benefits.

DOT Response: DOT disagreed with the recommendation. DOT stated, "Taxable and non-taxable fringe benefit rates are recorded and tracked in separate columns in the standardized spreadsheets. The formula in the spreadsheet already considered the taxable benefit rate when calculating the payroll taxes."

Auditor Comment: Both of DOT's statements are incorrect. On DOT's *Force Account Summary of Labor* spreadsheet, although there is a column for recording taxable fringe benefits, there is no column for recording non-taxable benefits. In addition, the formula in the spreadsheet did not use the taxable benefit rates when calculating the payroll taxes, and instead used the regular hourly wage rates. It was determined that taxable fringe benefits were added to regular hourly wages

without notation and that the formulas used only regular hourly wages to calculate all payroll taxes. A clear notation would help DOT in properly tracking all payments. The auditors urge DOT to implement this recommendation.

Inconsistent Support for Workers' Compensation Charges

The auditors found inconsistent methods for interpreting WC charges used in DOT's T&M payment documentation. Varying methods to interpret T&M supporting documentation is confusing and creates an opportunity for errors and potential overbilling by the contractors.

The T&M Procedure includes the following computation for determining hourly WC cost: total premium per \$100 multiplied by the weekly payroll limitation¹⁴ divided by hours worked per week.¹⁵ For the formula to work for Walker Diving, a substantial increase in the weekly payroll limit or change in the percentage was required. The auditors used the statutory payroll limitation for calculations and found questionable approval of WC charges in 10 of the 28 packages, all of which were related to Walker Diving. (See *Appendix II and Appendix III*; non-zero amounts (6+4) shown under column heading "Questionable WC Charges.")

Although the methodology used by the auditors and the finding was shared with DOT during the audit, after the exit conference and several subsequent discussions and e-mail exchanges, per DOT, a different presentation method had been used for preparing 10 of the 14 payment packages for Walker Diving. The method used was (weekly pay x WC percent) divided by hours work equals the hourly WC cost. Per DOT, the actual WC charges were correct and the auditors were in agreement. However, while this method worked for 10 of 14 payment packages for Walker Diving, it would not work for the other 18 payment packages.

Failure to follow the T&M Procedure in preparation of the payment packages can create ambiguities in what is being paid and increase the potential for overpayment.

Recommendation

DOT should:

17. Modify the Workers' Compensation Calculation table used in the standardized spreadsheets to be consistent with the T&M Procedure.

DOT Response: DOT disagreed with the recommendation. DOT stated, "The workers' compensation rate used in the standardized spreadsheets already aligns with the T&M SOP. Since the start of the contract, the contractor consistently used the prescribed methodology when calculating workers' compensation (LCM Method), which is in compliance with Article 26.2.7 of the contract."

Auditor Comment: The auditors recognized that 18 of 28 payment packages complied with the T&M SOP, but in 10 cases the WC rates did not align with the T&M SOP and led to unsupported WC charges being submitted by one contractor.

¹⁴ The Weekly Payroll Limitation provides a maximum payroll limitation for eligible construction codes (used in sampled payments) so that the WC rate is comparable between high and low wage paying employers. For instance, on July 1, 2016, the payroll limitation was \$1,296 per week, so even if a worker earned \$2,500 per week the WC rate would be applied to \$1,296.

¹⁵ I.e., Hourly WC Cost = (T/100) x X/40). T= Total Premium per \$100 payroll cost, X = weekly payroll limitation, and 40 = hours worked per week.

Although the charges were ultimately determined to be accurate, the ambiguity in recording rate¹⁶ remains, thereby creating potential for overcharges to go undetected. The auditors reiterate the need for implementing this recommendation.

Non-Compliance with Directive #7

During the audit, DOT's EAB was found not to be in compliance with the Comptroller's Directive #7 requirement to audit T&M payment requests prior to processing and had not obtained a waiver from the Comptroller's Office. At the time, EAB processed a payment based on expedited review, and the final approval with all adjustments was processed after an audit by OAG. However, once informed, DOT corrected the situation by transferring some accounting staff from OAG to EAB to perform the complete review in compliance with Directive #7 requirements.

DOT Response: DOT disagreed with the reporting. DOT also stated, "EAB complied with the Comptroller's Directive #7 (Directive) throughout the contract term of Brooklyn Bridge project and all other projects. EAB performed pre-audits of each payment prior to NYCDOT approving such payment using the audit procedures (Field Audit Procedures or Desk Audit Procedures) as prescribed in the Comptroller's Directive #7 section 3.2.3 and 3.3.1.

EAB did not obtain a waiver from the Comptroller's Office because EAB has consistently complied with the Comptroller's Directive #7. As indicated in Directive's 3.1.1, 'The Engineering Audit Officer (EAO) must follow appropriate audit procedures to ensure that the payment requests are justified.' Also the Directive further states in section 3.1.2, 'The EAO is expected to exercise professional judgment, consistent with the intent of the Directive's guidelines, to determine the nature and extent of the audit procedures necessary for evaluating the payment request under review. In such instances, the EAO may add to, modify or omit audit steps as he or she deems appropriate.'

Accordingly, all payment requests after EAB's pre-audit were processed by NYCDOT's Fiscal Division prior to completion of the NYCDOT Audit Bureau's review. If the Contractor agreed to the disallowances that were found in the NYCDOT Audit Bureau's review, such disallowances were then deducted from subsequent payments.

The transfer of Audit Bureau's team to EAB was effectuated in order to make the contract payment audit process more efficient."

Auditor Comment: The auditors acknowledge DOT's explanations. However, during the early stages of the audit, EAB officials informed the auditors that they did not pre-audit T&M payments, and in only some instances conducted expedited reviews. DOT officials further stated that payments were audited post payment by the OAG. In response to the auditors' concern at the time that this represented potential non-compliance with Directive #7, DOT later informed auditors that a staff member was transferred from OAG to EAB to address the auditors' concern.

¹⁶ The T&M SOP defines rate as a percent of weekly limitation. One contractor, however, interpreted the rate as a percent of gross pay.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was an assessment of DOT's procurement of the Brooklyn Bridge Rehabilitation of Approach Spans and Ramps and Painting of the Entire Bridge contract (Contract No. 20100016889 or Contract No. 6) from June 30, 2009, and analyses of change orders and T&M payments for change orders issued up to September 21, 2017.

The auditors obtained background information about DOT from its website and the Mayor's Management Report, and reviewed DOT's 2017 Bridge Report to understand DOT's Brooklyn Bridge Rehabilitation program.

To understand the policies, procedures and regulations governing DOT's procurement and management of the contract including approvals of change orders and T&M payments, the auditors identified/obtained and reviewed the following federal, State, and City documents including rules, regulations, standards, procedures and contracts.

Federal

- Code of Federal Regulations (CFR) §635.114.
- Federal Highway Administration (FHWA) Procurement Requirements.
- Federal Acquisition Regulations (FAR) Part 36 – Construction and Architect-Engineer Contracts and §36.203 Government estimate of construction costs.

New York State

- SDOT Procedure Code 7.1-5 (2007), Comparison and Evaluation of the Lowest Responsible Bid with the Department's Engineer's Estimate.
- Procedures for Locally Administered Federal Aid Projects (PLAFAP).
- NYS Contract Administration Manual (NYS CAM, aka MURK Part 1A).
- Marchiselli-Aid Local Project Agreement between New York State, New York City and DOT re: Federal and NYS funding agreement.

City

- Procurement Policy Board Rules.
- DOT Standard Operating Procedures.
 - APR01000.0 ACCO's Approval of a Pre-Solicitation Review (PSR) Report for Competitive Sealed Bid (CSB).
 - ACMU0130.01 Competitive Sealed Bid Opening.

- AADM1100.01 Notice of Award Letter.
- ACMU0100.00 Public Notification of Availability of Bid Solicitation or Request for Proposals Document.
- ACMU0090.00 Supply & Service/Construction - Competitive Sealed Bid (CSB).
- AVRU002.00 Vendor Responsibility Determination Process.
- ACMU0120.00 Verifying Transmittal and Receipt of Bid or RFP Addenda.
- Standard Procedure for Time and Material Processing (November 24, 2014).
- DOT's Contract with Skanska Koch, Inc. for Brooklyn Bridge Rehabilitation of Approach Spans and Ramps and Painting of the Entire Bridge (CT 841 20100016889).
- Brooklyn Bridge Contract No. 6 – Resident Engineering and Inspection (REI) Instruction Manual, issued in 2009.
- DOT's Contract with REI consultant Greenman-Pedersen, Inc.
- DOT's Engineering Audit Bureau's (EAB's) Checklist for General Requirements for Change Order Request (Contract Change Request).
- NYC Comptroller's Directive #7: Audit of Requests for Payment Received under Contracts for Construction, Equipment, and Construction-Related Services.

The auditors conducted walkthroughs with various DOT officials and offices including the Agency Chief Contracting Officer (ACCO), Engineering Audit Bureau (EAB), East River Bridges Section, and Grants and Fiscal Management (GAF) to understand the procurement, funding and change order processes and the roles of those offices in the procurement process and in the approval of change orders and T&M payments. Additionally, the auditors conducted walkthroughs with DOT groups that managed the Change Order Tracking System, Contract Payment System and City's Financial Management System to understand how change orders and T&M payments were processed. The auditors also developed workflow process diagrams as needed.

The auditors performed data reliability testing to ascertain the number of change orders according to the agency records by comparing them to the relevant change order records in the Comptroller's OASIS system and found them to be accurate.

The auditors obtained, reviewed, and discussed audit scope of internal audits/reports by OAG in connection with the Contract. The OAG issued reports included: *Audit of Asbestos Abatement within Arch Blocks for the Brooklyn Bridge (AR-14-2)*; *Audit Report on Brooklyn Bridge Contract Payments (AR16-02-00)*; and *Report on Internal Control based on the Audit of Time and Material Payments (AR-16-02-UC)*.

The auditors obtained and reviewed the relevant contracts relating to the project and abstracted pertinent sections to identify the applicable requirements and inquired and followed up with DOT officials to clarify their understanding of the standards and procedures to be followed or were followed by DOT during the procurement and contract administration.

Procurement

The auditors performed data analytics of the contractor's bid prices and the prices in the engineer's estimate to determine distribution of the bid prices. The auditors performed an in-depth review of URS' bid analysis including a detailed review of URS' high/low bid analyses, and also reviewed URS' explanations about reasons for price variations and potential bid assumptions and evaluated against the requirements in the Contact documents.

Change Orders

The auditors evaluated DOT's change order review performed by EAB and OAG and followed up with and advised DOT accordingly. This included a review of change order packages (many over 200 pages) to determine whether COs were adequately substantiated, appropriately approved and allowed independent verification of approvals. In particular, the review determined whether the contractor's costs accurately reflected allowable charges/markups and whether the engineer's estimate and contractor's proposal supported the price negotiations and approvals. 66 consecutive change orders (starting from No. 1 through 66) totaling \$105,556,318 were reviewed. According to DOT records, Contract No. 6 had 93 COs totaling \$186,516,337, as of August 17, 2017 (the audit cut-off date for CO reviews based on available change orders data from DOT).

Payments

The auditors reviewed Fiscal Vouchers to determine whether they allowed independent validation of payment approval. The auditors documented the review process of Fiscal Vouchers/payment request packages (most over 800 pages each), by preparing a Fiscal Voucher map for a sampled payment. According to DOT records, there were 113 payments made to Skanska totaling \$628,913,885 including \$147,337,567 for T&M charges, as of September 21, 2017 (the audit cut-off date for payments reviews based on available payments data from DOT).

DOT OAG had reviewed \$110,756,811 in payments and recommended disallowances totaling \$892,609 over two audits, hence the auditors elected to limit their review. Specifically, the auditors judgmentally selected two categories of work, Fender System Restoration and Incidental Repairs, as the audit samples as that work included higher risk activities.¹⁷ Further, the auditors limited their reviews to payments associated with two subcontractors, Walker Diving and Underpinning and Foundation.¹⁸ For Fender System Restoration, auditors selected all 5 payment packages from Underpinning and Foundation (100%) totaling \$458,070 and 10 of 19 payment packages from Walker Diving (53%) totaling \$1,431,245 of \$1,806,596 (79%) sampled. For Incidental Repairs, 6 of 7 (86%) payment packages for Underpinning and Foundation were selected totaling \$939,293 of \$980,001 (96%), and all 4 payment packages for Walker Diving (100%) totaling \$1,305,444. Auditors also reviewed 5 of 30 (17%) payment packages for an associated subcontractor, Empire totaling \$72,748 of \$308,622 (24%). The auditors also reviewed and analyzed related documentation such as REI summaries, Certified Payroll Reports (in Fiscal vouchers to verify labor rates charged) and Daily reports (with T&M payment packages to validate hours). In addition, the auditors reviewed FUTA, SUTA and WC charges and compared to the stipulated requirements in the DOT's procedure for T&M Processing.

¹⁷ Fender System Restoration entailed repairs at the base of bridge towers and underwater repairs by specialty contractors including engineer divers. Incidental Repairs involved incidental work at various location. The nature of the work hinders direct observation and is difficult to track and therefore poses increased risk of overpayment.

Overall, the auditors requested additional information, clarifications, and documents from DOT as needed during the audit and at the end of their fieldwork to ensure that DOT submitted all substantiating documentation. The auditors met with DOT officials to review and discuss audit findings and also shared audit analyses with DOT.

The auditors developed their findings and conclusions based on results of their procedures and analyses. The results of the audit samples cannot be projected to the entire populations. However, the test results provided a reasonable basis to determine whether DOT complied with the applicable requirements.

Issues with Change Orders

Change Order #	Change Order Work Description	Amount	Disallowable Amount	Missing Independent Estimate	Incomplete and/or Inaccurate REI Estimate	Missing/ Incomplete Contractor's Proposal	Auditor Comments
2011-0190	Planting of Trees and Pruning	\$ 150,000	\$ 7,240		x	x	The contractor's proposal did not include a complete scope of work, i.e., it did not include all corresponding items and estimated costs included in the REI's independent estimate; the REI estimate was \$150,000 and the contractor's proposal was \$37,500. Regardless, the awarded CO included higher estimated costs for trees removal, pruning and transplant of \$44,740 estimated by REI even though the contractor proposed lower costs totaling \$37,500 for those items. Therefore, the approved CO included \$7,240 (\$44,740 - \$37,500) in disallowable charges.
2013-0048*	Galvanization of Steel Curb	\$ 41,004			x		The REI's independent estimate was prepared for the credit portion of the work only (\$581) and did not include estimate for requested CO work.
2013-0275*	Electrical Items (insulated conductors)	\$ 1,259,975			x		REI's estimate is inaccurate because: 1) underlying hourly wage rates for Electrician Foreman and Electrician Journeyman to calculate the negotiated rates include Workers' Compensation (WC) benefit amount twice. First as EESIS (i.e., Electrical Employers Self Insurance Safety Plan) and second time as "Workman's Comp". The resulting difference in rates is \$8.65 per hour; and 2) the negotiated price calculation for Insulated Conductor No. 2 work is mathematically inaccurate, even after adjusting for extra WC benefit amount. In addition, the CO did not include a design consultant's cost estimate, review and recommendation of the requested extra work, in accordance with EAB's checklist for construction change order.

Issues with Change Orders (Cont.)

Change Order #	Change Order Work Description	Amount	Disallowable Amount	Missing Independent Estimate	Incomplete and/or Inaccurate REI Estimate	Missing/ Incomplete Contractor's Proposal	Auditor Comments
2014-0024	Extended Mechanical Sweeping	\$ 163,000	\$ -	x			Missing independent estimate for extended Mechanical Sweeping by the REI. The estimate was based on a subcontractor's proposal of \$155,324 plus 5% allowable markup for the general contractor.
2015-0080	Lightning Protection Repair	\$ 240,000	\$ 8,268		x		The REI's estimate included Workers' Compensation twice. It was included in the labor rates for the electricians and the CO was awarded at the same amount as the engineer's estimate of \$240,000. With the corrected electrician journeyman's rate, the revised amount would have been \$231,700. Therefore, the approved CO amount included \$8,268 in disallowable charges.
Total		\$ 1,853,979	\$ 15,508	1	4	1	

*Indicates no cost change order which is used to document scope-of-work changes that do not affect the contract value. For these COs, the funds are transferred from other contract items.

Issues with Payment Approvals
(Fender System Restoration)

#	T&M Package #	Contractor Name	Total Amount Billed	Taxable Benefits Shifted*	Count	FUTA/ SUTA Disallowance	Questionable WC Charges	Count
1	1948	Walker Diving	\$ 88,594	\$ -		\$ 1,251	\$ -	
2	1995	Walker Diving	\$ 305,174	\$ -		\$ 3,596	\$ -	
3	2049	Walker Diving	\$ 236,489	\$ -		\$ 3,675	\$ -	
4	2111	Walker Diving	\$ 167,067	\$ 6,913	x	\$ 2,761	\$ 1,849	x
5	2150	Walker Diving	\$ 36,824	\$ 1,152	x	\$ 441	\$ -	
6	2201	Walker Diving	\$ 54,194	\$ 1,880	x	\$ 807	\$ 714	x
7	2237	Walker Diving	\$ 107,542	\$ 4,730	x	\$ 1,876	\$ 1,689	x
8	2279	Walker Diving	\$ 155,721	\$ 6,610	x	\$ 2,741	\$ 1,888	x
9	2302	Walker Diving	\$ 66,792	\$ 2,426	x	\$ 1,026	\$ 954	x
10	2305	Walker Diving	\$ 212,847	\$ 8,490	x	\$ 3,621	\$ 3,428	x
11	2140	Underpinning	\$ 57,333	\$ 1,197	x	\$ 67	\$ -	
12	2153	Underpinning	\$ 268,716	\$ 8,485	x	\$ 471	\$ -	
13	2193	Underpinning	\$ 36,027	\$ 1,956	x	\$ 89	\$ -	
14	2240	Underpinning	\$ 61,815	\$ 1,936	x	\$ 120	\$ -	
15	2246	Underpinning	\$ 34,180	\$ -		\$ 88	\$ -	
Totals			\$ 1,889,315	\$ 45,773	11	\$ 22,631	\$ 10,521	6

*After the exit conference, the auditors were informed that this was a shift of taxable benefits to regular wages.

Underpinning	\$ 836
Walker Diving	\$ 21,795
	\$ 22,631

Issues with Payment Approvals
(Incidental Repairs)

#	T&M Package #	Contractor Name	Total Amount Billed	Taxable Benefits Shifted*	Count	FUTA / SUTA Disallowance Cost	Questionable WC Charges	Count
1	2344	Walker Diving	\$ 261,280	\$ 11,374	x	\$ 4,788	\$ 4,469	x
2	2392	Walker Diving	\$ 421,636	\$ 18,308	x	\$ 8,066	\$ 6,942	x
3	2447	Walker Diving	\$ 620,318	\$ 24,830	x	\$ 12,899	\$ 10,042	x
4	2236	Walker Diving	\$ 2,210	\$ 121	x	\$ 46	\$ 40	x
5	2139	Underpinning	\$ 65,886	\$ 2,103	x	\$ 78	\$ -	
6	2152	Underpinning	\$ 336,088	\$ -		\$ 446	\$ -	
7	2192	Underpinning	\$ 335,211	\$ 8,367	x	\$ 866	\$ -	
8	2239	Underpinning	\$ 202,108	\$ 4,471	x	\$ 289	\$ -	
9	1364	Empire	\$ 23,495	\$ -		\$ 659	\$ -	
10	1365	Empire	\$ 25,953	\$ -		\$ 734	\$ -	
11	1463	Empire	\$ 14,213	\$ -		\$ 407	\$ -	
12	1469	Empire	\$ 4,368	\$ -		\$ 164	\$ -	
13	2454	Empire	\$ 4,718	\$ -		\$ 155	\$ -	
	Totals		\$ 2,317,485	\$ 69,574	7	\$ 29,597	\$ 21,493	4

**After the exit conference, the auditors were informed that this was a shift of taxable benefits to regular wages.*

Walker Diving	\$	25,800
Underpinning	\$	1,678
Empire	\$	2,119
	\$	29,597



June 27, 2022

Brad Lander
Office of the Comptroller
1 Centre Street
New York, NY 10007

Re: Draft Audit Report SE18-084A, Dated June 9, 2022, NYCDOT's Management and Procurement of the Brooklyn Bridge Rehabilitation Contract No. 6.

Dear Mr. Lander:

The New York City Department of Transportation ("NYCDOT") is in receipt of the Office of the New York City Comptroller's (the "Comptroller") Draft Audit Report (SE18-084A) on NYCDOT's Management and Procurement of the Brooklyn Bridge Rehabilitation Contract No. 6 (the "Draft Audit Report"). On behalf of Ydanis Rodriguez, NYCDOT Commissioner, please accept the following as NYCDOT's written response to the Draft Audit Report.

NYCDOT generally agrees with the Draft Audit Report's summary conclusions, findings and recommendations. However, as detailed below, NYCDOT has specific responses to each recommendation. Most significantly, the issues concerning payments to contractors were not accurately reported and although NYCDOT discussed this matter with the Comptroller's audit team subsequent to the exit conference, the Draft Audit Report still reflects the identified inaccuracies.

Draft Audit Report Recommendations:

1. Prepare a standard procedure for preparation and review of a bid analysis that includes City, State, and federal requirements that can be used for review and acceptance of bid analysis prepared by consultants, and the conditions under which the engineer's estimate is to be revised.

NYCDOT Response: Partially Agree

NYCDOT continues to adhere to the New York State Department of Transportation ("NYSDOT") and Federal Highway Administration ("FHWA") guidelines for all bridge projects with respect to review and acceptance of bid analysis. NYCDOT believes that the existing NYSDOT procedures referenced in the report are sufficient and there is no ambiguity as to the need to revise the engineers estimate. Procedure 7.1-5 states "the revised total engineers estimate must also be provided, but is only valid for this analysis. The original engineer's estimates will not be changed."



2. Ensure that the bid analysis examines all bid prices with significant variations for reasonable conformance with the engineer's estimated costs, details criteria that are not followed, and provides justification and approval for noncompliance. Additionally, bid analyses should include quantified explanations for price differences to account for costs/scope of work that should have been included and/or to correct inaccurate prices in the engineer's estimate.

NYCDOT Response: Agree

NYCDOT will examine all bid items for significant price variations of 25% or more, over or under the engineer's estimate for such item, and include a written explanation for the variance as per NYSDOT and FHWA guidelines for all bridge projects.

3. Ensure that acceptance of a bidder's explanations for high/low bid prices with subsequent determination as to whether the engineer's estimate should be revised is officially documented with adequate details.
4. Ensure that the engineer's estimate reflects the scope of work in the bid documents accurately and completely.
5. Ensure that a detailed justification is prepared, summarizing the factors DOT considered in its recommendation to award, including an explanation for when the agency does not deem a revision to the estimate appropriate.

NYCDOT Response to Recommendation 3, 4 and 5: Partially Agree

NYCDOT will follow NYSDOT and FHWA guidelines for all bridge projects. The engineer's estimates are finalized prior to bid and they reflect the scope of work in the bid documents accurately and completely, as understood at that time. As part of the bid analysis, including discussions with the apparent low bidders, NYCDOT's design consultants update their assumptions and engineer's unit costs, which then are documented in the bid analysis.

6. Evaluate and consider the possibility of retaining third-party consultants for an independent appraisal of bid analyses of large projects and/or investing in a bid analysis software such as Bid Analysis and Management System/Decision Support System (BAMS/DSS) from the American Association of State Highway and Transportation Officials (AASHTO).

NYCDOT Response: Partially Agree



NYCDOT will consider the possibility of retaining third-party consultants for independent appraisals of bid analyses on a project by project basis, however, NYCDOT believes that will not be an effective or efficient way to analysis bids, leading to disputes between consultants and delays in contract awards.

7. Prepare a baseline contract cost analysis with adequate details to identify the scope of work for each acceleration measure once it is determined that acceleration measures are needed.
8. Ensure that the Engineer-in-Charge (EIC) and Engineering Audit Bureau (EAB) ascertain that acceleration measures and costs are adequately substantiated.
9. Ensure that change orders relating to schedule acceleration measures include descriptions of approved activities including:
 - a. price category of the item (i.e., lump sum, unit price, and fixed price lump sum or FPLS);
 - b. location of work;
 - c. how the items are accelerated (i.e., overtime, night shift, complete closure vs. partial closure, etc.);
 - d. credit for base contract work where applicable; and
 - e. estimate of potential schedule impact.
10. Ensure that all acceleration proposals and their costs are adequately tracked and can be readily reconciled.

NYCDOT Response to Recommendation 7, 8, 9 and 10: Agree

NYCDOT revised its specifications for acceleration in or about September 2018. The revised specification requires any payment thereunder to be contingent upon the submission of a project schedule, referred in the specification as a Resource Loaded CPM Schedule, which sets forth, among other things, key project milestones.

In accordance with the revised specification, a contractor may charge NYCDOT for acceleration measures on a NYCDOT project only after it obtains written approval from the Assistant Commissioner. The contractor must substantiate its costs and NYCDOT is drafting a standard written procedure to memorialize its internal procedures and enhance oversight.



11. Ensure that stakeholders consistently follow applicable procedures, including that:
- a. the REI makes certain that an independent estimate is prepared and the contractor's proposal is obtained and evaluated prior to field approval;
 - b. the REI adequately checks the independent estimate and the contractor's proposal for accuracy and completeness, identifies disallowable charges, and verifies that costs are substantiated; and
 - c. the Engineer-in-Charge (EIC) and Engineering Audit Bureau (EAB) adequately review change order requests prepared by the REI prior to approving them and verify that the CO requests are justified.

NYCDOT Response: Agree

NYCDOT will reinforce and follow current procedures. The resident engineering inspection service consultant ("REI") is required to provide an independent engineer's estimate prior to a change order request.

12. Consider updating the REI Instruction Manual to incorporate the MURK requirements for the REI's estimate of T&M change orders over \$100,000.

NYCDOT Response: Agree

In accordance with NYCDOT's SOP the REI is required to provide an independent engineer's estimate prior to a change order request. NYCDOT will update the REI Instruction Manual.

13. Examine whether the \$15,508 in disallowances identified in this audit were adjusted during the payments and recover as appropriate.

NYCDOT Response: Disagree

The change orders that auditors identified to have disallowances of \$15,508 based on Engineer's estimates were Time and Material Change Orders. As such, actual payments were made on the basis of Time and Material. The actual payments were less than the Engineer's Estimate.



14. Ensure that REI consultants and in-house EICs consistently approve FUTA/SUTA reimbursements in accordance with DOT's T&M Procedure.

NYCDOT Response: Agree

NYCDOT issued a Time & Material Procedure ("T&M SOP") for FUTA/SUTA reimbursement in 2014. However, the T&M SOP was not implemented on the subject Brooklyn Bridge contract because it was awarded in 2010.

15. Investigate and recoup the \$52,228 in disallowances identified by this audit, as appropriate.

NYCDOT Response: Disagree

The disallowance of \$52,228 was calculated using the 2% rate as proposed in the T&M SOP issued in 2014. However, the subject Brooklyn Bridge contract started in 2010 and the contractor charged FUTA/SUTA less than 2% of total wages. For total population of T&M, the contractor charged \$344k of FUTA/SUTA which is 0.95% of the total wages.

16. Require clear notations to be made on the standardized spreadsheets when situations require adding taxable benefits to regular wages. Also,
- a. Consider revising the standardized spreadsheets to allow for recording of taxable fringe benefits and addition of those charges to regular wages for reimbursement of payroll taxes on taxable benefits.

NYCDOT Response: Disagree

Taxable and non-taxable fringe benefit rates are recorded and tracked in separate columns in the standardized spreadsheets. The formula in the spreadsheet already considered the taxable benefit rate when calculating the payroll taxes.

17. Modify the Workers' Compensation Calculation table used in the standardized spreadsheets to be consistent with the T&M Procedure.

NYCDOT Response: Disagree

The workers' compensation rate used in the standardized spreadsheets already aligns with the T&M SOP. Since the start of the contract, the contractor consistently used the



Department of Transportation

Ydanis Rodriguez, Commissioner

prescribed methodology when calculating workers' compensation (LCM Method), which is in compliance with Article 26.2.7 of the contract.

Non-Compliance with Directive #7

NYCDOT Response: Disagree

EAB complied with the Comptroller's Directive #7 (Directive) throughout the contract term of Brooklyn Bridge project and all other projects. EAB performed pre-audits of each payment prior to NYCDOT approving such payment using the audit procedures (Field Audit Procedures or Desk Audit Procedures) as prescribed in the Comptroller's Directive #7 section 3.2.3 and 3.3.1.

EAB did not obtain a waiver from the Comptroller's Office because EAB has consistently complied with the Comptroller's Directive #7. As indicated in Directive's 3.1.1, "The Engineering Audit Officer (EAO) must follow appropriate audit procedures to ensure that the payment requests are justified." Also the Directive further states in section 3.1.2, "The EAO is expected to exercise professional judgment, consistent with the intent of the Directive's guidelines, to determine the nature and extent of the audit procedures necessary for evaluating the payment request under review. In such instances, the EAO may add to, modify or omit audit steps as he or she deems appropriate."

Accordingly, all payment requests after EAB's pre-audit were processed by NYCDOT's Fiscal Division prior to completion of the NYCDOT Audit Bureau's review. If the Contractor agreed to the disallowances that were found in the NYCDOT Audit Bureau's review, such disallowances were then deducted from subsequent payments.

The transfer of Audit Bureau's team to EAB was effectuated in order to make the contract payment audit process more efficient.



Department of Transportation

Ydanis Rodriguez, Commissioner

Sincerely,

A handwritten signature in black ink, appearing to read "Ydanis Rodriguez", written over a horizontal line.

Commissioner Ydanis Rodriguez
NYCDOT

Cc: **NYCDOT**
M. Forgione
S. Pondish
N. Carolan
P. Schwartz
D. Dunn
M. McDonnell
R. Livermon
C. Patel
J. Economos

Mayor's Office of Operations
D. Giuliano