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Report of Investigation

FILE NO: 19-0007 I

DATE: March 11, 2021

SUBJECT: Office of Internal Audit referral on potential fraud relating to COA CIP projects.

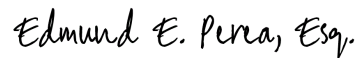
STATUS: Final

INVESTIGATOR: J. S.

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EDMUND E. PEREA, ESQ
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Executive Summary

The Office of the Inspector General (OIG) was provided with information regarding allegations of the City of Albuquerque (COA) and possible fraud as it relates to the use of Capital Improvement Program (CIP) funds.

The OIG investigation focused on the allegations as they specifically related to a sample of staff whose time was billed to the CIP fund for their work performed. The scope of the investigation addressed only the allegations. The methodology consisted of reviewing relevant documents and interviewing witnesses that could provide information regarding the allegations. The following activities were conducted as part of the investigative process:

- Review of pertinent documents as they relate to the history of the CIP funds and CIP related projects for the COA;
- Interviews of relevant staff members;
- Review of relevant City Ordinances, Standard Operating Procedures (SOP) and COA's policies and procedures;
- Review of previous investigative reports relating to the use of CIP funds for the COA; and
- Review of previous audit reports relating to the use of CIP funds for the COA.

The OIG has conducted a narrow review through this investigation of bond funds and believes that a more thorough and comprehensive audit needs to be completed by the OIA.

The review of the documentation provided through the OIA documents demonstrates that some labor recoveries and other non-capital project related operating costs expenditures are being paid with bond funds; it was identified that some funds were spent prior to the date that bond funds were received; and lastly that some deficits were moved to and from various funds in an effort to show a balance.

This investigation combined policy and procedural reviews, City Council meeting minutes and discussions, financial transaction reviews, payroll and HR documentation reviews, training documentation reviews, and staff interviews to address the concerns noted above. Investigative staff will continue to work with the OIA as they review and evaluate past and current operations.

In relation to the original allegation that possible fraud was committed in applying and utilizing bond funds, it was clear to the OIG that of the sample of staff that were selected and interviewed, there does not appear to be a malicious and knowing error in applying and charging bond funds. Based on the interviews and document reviews that were conducted, it appears that the individual staff were unaware of the codes that were applied to their payroll. In addition, staff are not required to maintain logs of their work or distinguish their time from CIP related projects and work projects that were not CIP related.

Abbreviations

AGOC - Accountability in Government Oversight Committee
 CCIP – Component Capital Improvement Plan
 CIP – Capital Improvement Program
 COA – City of Albuquerque
 DMD - Department of Municipal Development
 DRS – Developmental Review Board
 EPC - Environmental Planning Commission
 GO– General Obligation Bond
 IG – Inspector General
 NMDOT – New Mexico Department of Transportation
 OIA – Office of Internal Audit
 OIG – Office of the Inspector General
 PRD - Parks & Recreation Department
 SOP – Standard Operating Procedure

Introduction, History and Background

The General Obligation (GO) bond program is one element of the City of Albuquerque’s Capital Improvement Program (CIP). The other main elements are summary tables for the General Fund 305 Projects, Aviation and Solid Waste Departments’ Enterprise Program Capital Improvement Revenue Bond Plans; the Component Capital Improvement Plan (CCIP) for the expenditure of impact fee revenue; the Consolidated Plan, also referred to as CDBG; and the Metropolitan Redevelopment Plan. Collectively, these plans are often referred to as the Capital Improvement Program (CIP) for the City of Albuquerque. GO Bonds are bonds backed by the full faith and credit of the COA.

Major capital improvements traditionally have been funded primarily with general obligation and revenue bonds. Starting in 2005, capital funding for growth related projects has also been provided by impact fee revenues. In many cases funds described in this document leverage additional funding from either or both the Federal and State Governments. Matching funds include those that are received from the Federal Department of Transportation; Federal Aviation Administration; Environmental Protection Agency; Economic Development Administration; NM State Department of Transportation (NMDOT), The State Legislature and occasionally local special assessment districts.

GO Bonds and impact fees fund a host of capital improvements that directly affect the basic needs and quality of life of every Albuquerque resident. These improvements include critical police and fire facilities, vehicles and equipment; basic streets and storm drain improvements; public transportation improvements, including the Rapid Ride; ongoing parks, recreational and open space facilities; cultural institutions including the Zoo, Aquarium, Botanic Gardens, Albuquerque Museum and others; and Senior and Community Centers. Revenue Bonds fund capital improvements to the Sunport, Double Eagle II Airport and to the Solid Waste

Management and Disposal systems. Projects may cost millions of dollars and be funded over several bond cycles, or may cost a few thousand dollars and be funded within one bond program.

The planning process for preparation of the capital program is a collaboration among the Mayor and his staff, the public, and the City Council. The process begins with adoption by the City Council of a resolution establishing policies and criteria by which projects submitted for inclusion in the capital program were to be evaluated. Staff and senior management of the City of Albuquerque evaluated those projects and final recommendations were approved by the Mayor. The Mayor sent his recommended CIP to the Environmental Planning Commission (EPC), who hold a public hearing on the program. EPC will determine if the program as presented conformed to the policies and criteria established by the City Council for preparation of the program. The City Council will undertake an analysis of the capital program and conduct public hearings, may amend and then adopt. The general obligation bond program will then be placed on the ballot for voter consideration in the next municipal election.

Monies in a particular bond project or purpose can be reallocated within that same purpose only after City Council has a public hearing and gives their formal approval to the reallocations. Generally, the City's policy is to issue general obligation bonds for a thirteen year, or shorter, period.

On October 1, 2019, the Office of Internal Audit (OIA) met with OIG to discuss fraud risk factors and potential violations or non-compliance with laws, regulations, ordinances and administrative instructions that were noted during the current audit of Fiscal Management for CIP Projects. This audit was originally on track for reporting at the October 23, 2019 Accountability in Government Oversight Committee (AGOC) meeting but has been postponed at the direction of the City Auditor to allow additional time for OIA and OIG to further evaluate the risks identified during the audit.

Article 10 of the Accountability in Government Ordinance requires that the City Auditor report to the AGOC certain matters as described under Section 2-10-7 (A), which notes: *"If the City Auditor detects apparent or potential violations of Law or apparent instances of misfeasance or nonfeasance by an official or auditee, the City Auditor shall report the irregularities in writing to the Committee. If the irregularity is criminal in nature, the City Auditor shall immediately refer the irregularity to the appropriate prosecuting authority and notify the Inspector General."*

The following concerns have been referred to the OIG for further investigation:

- In June, 2019, OIA issued a draft strategic review report 19-304, Capital Implementation Plan Labor Recovery, to the AGOC that disclosed a risk of potential non-compliance with state law which discourages the expenditures of bond proceeds on noncapital items. The use of bond proceeds was not the focus of the strategic review but general labor recovery risks were identified and reported. The AGOC approved OIA's report on June 27, 2019 which was published and provided to City management. OIA's current audit of Fiscal Management for CIP Projects is specific to the use of 2015 GO Bonds.
- Proceeds from GO Bonds and audit procedures relative to labor recovery. In applying OIA's audit procedures to the 2015 GO bond expenditures, OIA identified specific instances relative to the use of bond proceeds for labor recovery and other non-capital items that are significant to the current bond issuance of \$82 million.

- In discussions with bond council, OIA noted that there is a risk of bond non-compliance with IRS regulations (e.g., 26 U.S.C. Section 141) relative to the following:
 - Reimbursement of expenditures made prior to the date of bond financing.
 - Use of bond proceeds for non-capital expenditures (e.g., labor recovery and operating costs charged to a bond project that are not within the scope or purpose of the bond project).
- A journal entry was posted to transfer 2015 GO funds from Fund 305 to Fund 661 to cover an operating budget deficit in Fund 661. The supporting documentation to the journal identifies the Fund 661 budget deficit, then further identifies a portion of the Transit department's repair and maintenance costs as the amount to be transferred. The department is inferring that the repair and maintenance would qualify as "associated equipment" within the purpose and scope of the bond. Similar journal entries may have been posted in other bond years. If it is determined that these transfers are budget violations then the following criteria may apply:
 - New Mexico Constitution Article IV § 30 Payments from Treasury to be Upon Appropriations and Warrant - Funding should only be spent when appropriated;
 - City Ordinance Section 2-11-12 (A) ROA 1994 Approval Constitutes Proposal as Budget; Expenditures Must be Authorized - Public funds should not be spent unless it is authorized in the budget and is made or encumbered in the fiscal year covered by the budget; and
 - Administrative Instruction 2-20 Budgetary Control Responsibilities - It is unacceptable to spend in excess of the appropriated budget. (Note: AI 2-20 also includes references section 900 of the City Personnel Rules and Regulations).
- R-17-201 was used to modify the scope of the transit bond purpose to allow for the payments of debts. OIA will consult with bond council to determine if this could be a potential violation of Section 10.4 of the bond Tax Certificate. Language from the R-17-201 updating the 2011 and 2015 GO bond scope and the tax certificate are included below:
 - Revenue Vehicle Replace/Expansion 11 GO Bond - The scope of the project is hereby replaced to read: Purchase revenue and support vehicles and plan, design, acquire and construct associated equipment and bus related infrastructure. These local GO Bond funds are required to obtain federal funds and provide sufficient combined funding for revenue vehicles and associated equipment. (Approximately 1 to 4 ratio, i.e., one (1) local dollar can release up to four (4) federal dollars). These funds may be used for payments to buy down loans, leases, or bonds and related debt service.
 - Revenue Vehicle Replace/ Expansion 15 GO Bond - The scope of the project is hereby replaced to read: Purchase revenue and support

vehicles and plan, design, acquire and construct associated equipment and bus related infrastructure. These local GO Bond funds are required to obtain federal funds and provide sufficient combined funding for revenue vehicles and associated equipment.

(Approximately 1 to 4 ratio, i.e., one (1) local dollar can release up to four (4) federal dollars). These funds may be used for payments to buy down loans, leases, or bonds and related debt service.

- o The Bond Tax Certificate Section 10.4 notes: *"None of the proceeds of the Bonds will be used to refund or refinance any borrowing of the City or any party that is a related party."*

The current GO bonds that the COA is operating under is Final Action R-15-150, approved at the March 2, 2015 City Council Meeting, and is titled as the Final Action C/Approving the Programming of Funds and Projects for the 2015-2024 Decade Plan For Capital Improvements Including the 2015 Two-Year Capital Budget. Of note, as it relates to this investigation, in the Council Bill is the Two-Year GO Bond Capital Budget inclusion of the *Advance Right-of-Way Acquisition (Streets)* for the amount of \$ 1,000,000. In addition, an attachment which is entitled the City Council Set-Asides includes:

- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 1. \$ 300,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 2. \$ 600,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 3. \$ 250,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 4. \$ 90,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate*

roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 5. \$ 300,000

- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 6. \$ 200,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 7. \$ 300,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 8. \$ 75,000*
- *Street Projects: study, design, develop, construct, renovate, automate, modernize, sign, enhance, landscape, and otherwise improve, and acquire property and equipment for municipal streets and roads, interstate roadways and interchanges, medians, trails, bikeways, walkways, sidewalks, railroad crossings and bridges that benefit District 9. \$ 400,000*

The OIA has and will continue to review and make recommendations on the process and methodology used by the CIP Fiscal Division, DMD, and Parks & Recreation Department (PRD) for calculating, tracking, reporting, verifying, and recording of labor cost recovery for CIP projects. OIA will also review and address the understanding of how the CIP Fiscal Division understands and implements their oversight responsibilities and reconcile CIP projects relative to labor recovery. This was and is being conducted through their audit.

The OIG will review and investigate in response to the allegation of possible fraud, waste or abuse as it relates to the labor postings and payroll documentation of instances wherein CIP funds are utilized.

After discussions with the OIA and review of payroll documentation, the OIG identified a sample of six (6) staff members who had their labor posted to Project ID 24_ADV_ROW/Project Activity Number 7545070 for various time periods between June 10, 2016 and April 12, 2019. Those six staff members were called to the OIG to be interviewed in regards to their job functions, job duties, methods of which they track and report time, and their labor postings.

While there is no criteria or requirement that mandates that employees have knowledge regarding the funding source of their salaries and benefits, OIG made inquiries regarding this in order to address parts of the original complain in each interview.

DMD-1
Senior Engineer
Department of Municipal Development

An interview was conducted with a Senior Engineer in DMD, hereinafter referred to as DMD-1, on October 29, 2019, in the Office of the Inspector General. DMD-1 stated:

The major projects that DMD-1 has been and is currently working on include but are not limited to: Westside Boulevard, 12th Street, Paradise Boulevard, Ladera, University, Atrisco, Wyoming, and Rio Grande.

DMD-1 on most days works on operational projects or those day to day assignments.

DMD-1 stated that all projects that are worked on are assigned through the Deputy Director but come from 311, capital programs, bond programs and capital outlay projects. If DMD-1 had to quantify their time, DMD-1 would say that they spend approximately sixty percent (60%) of their time on capital projects and forty percent (40%) operational projects.

DMD-1 stated that they have a project tracking system that tracks the status of the projects that are being worked on, but not all information is in this system; it is very general.

DMD-1 stated that they do not log time or work on individual projects, however, if provided with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

Although not a requirement of their position, DMD-1 was asked if they were aware of which budget or line item their salary was coded to. DMD-1 stated that they were unaware of where their salary/wages are paid through.

DMD-2
Business Tech Specialist
Department of Municipal Development

An interview was conducted with a Business Tech Specialist from DMD, hereinafter referred to as DMD-2, on October 30, 2019, in the Office of the Inspector General. DMD-2 stated:

DMD-2 enters all time worked into KRONOS, since they are an hourly worker.

DMD-2 stated that they do not log time or work on individual projects, however, if provided with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

DMD-2 is in an IT support function position for DMD and does not work on projects. Their primary functions include but are not limited to working with HR for all computer related permissions for new staff, cellular phones issuance and troubleshooting, day to day computer assistance and support for DMD staff, and working with COA IT for networking issues.

Although not a requirement of their position, DMD-2 was asked if they were aware of which budget or line item their salary was coded to. DMD-2 stated that they were unaware of where their salary/wages are paid through.

DMD-3
Planning and Program Manager
Department of Municipal Development

An interview was conducted with a Business Tech Specialist from DMD, hereinafter referred to as DMD-3, on October 30, 2019, in the Office of the Inspector General. DMD-3 stated:

The major projects that DMD-3 has been and is currently working on include but are not limited to: Transportation Improvement Program, researching long range plans, roadway improvements, federal funding source, processing of capital outlay program, finding funding sources, and right of way project assistance. DMD-3 did state that they do less with the right of way projects lately since most is given to the staff at Real Property Division.

DMD-3 stated that they do not log time or work on individual projects, however, if provided with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

Although not a requirement of their position, DMD-3 was asked if they were aware of which budget or line item their salary was coded to. DMD-3 stated that they were unaware of where their salary/wages are paid through.

DMD-4
Project Manager
Department of Municipal Development

An interview was conducted with a Project Manager from DMD, hereinafter referred to as DMD-4, on October 30, 2019, in the Office of the Inspector General. DMD-4 stated:

DMD-4 works on any assigned Engineering Project. DMD-4 states that the project assignments typically come from three main sources: residents through 311 (approximately ten percent), CIP's (approximately fifty percent) and City Council (approximately forty percent).

DMD-4 stated that they do not log time or work on individual projects, however, if provided with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

DMD-4 stated that they do very little with Right of Way Acquisitions, and that the bulk of that work is completed through the Real Property Staff.

Although not a requirement of their position, DMD-4 was asked if they were aware of which budget or line item their salary was coded to. DMD-4 stated that they do not know where their salary/wages are paid through.

DMD-5
Project Coordinator
Department of Municipal Development

An interview was conducted with a Project Coordinator from DMD, hereinafter referred to as DMD-5, on October 30, 2019, in the Office of the Inspector General.

DMD-5 stated that their day to day functions and approximate percentage of time on each is as follows:

- Manage and investigate 311 matters, 30%
- DRB (Developmental Review Board, 20%
- Project Research, 10%
- ROW Research, 30%
- Review of CPC cases for County, 10%

DMD-5 stated that the job description the OIG had printed of their position was inaccurate on most duties. Most of DMD-5's time was spent on research and 311.

DMD-5 stated that they do not log time or work on individual projects, however, if provided with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

Although not a requirement of their position, DMD-5 was asked if they were aware of which budget or line item their salary was coded to. DMD-5 stated that they do not know where their salary/wages are paid through.

DMD-6
Principal Engineer
Department of Municipal Development

An interview was conducted with a Principal Engineer from DMD, hereinafter referred to as DMD-6, on October 30, 2019, in the Office of the Inspector General. DMD-6 provided the following information:

DMD-6 stated that they work 100 percent on right of way projects and acquisitions. These can be from both public and private inquiries.

DMD-6 stated that the job description the OIG had printed of their position was inaccurate and that they go by a different title all together.

DMD-6 stated that they do not log time or work on individual projects, however, if I provided them, with time periods, they may be able to reconstruct some of their work projects via emails, their calendar, notes, etc.

Although not a requirement of their position, DMD-6 was asked if they were aware of which budget or line item their salary was coded to. DMD-6 stated that they were unaware of where their salary/wages are paid through but assumes it is through the general fund.

Numerous calls were made to the various approvers and supervisors in the financial system in an attempt to ascertain why the aforementioned staff were paid utilizing CIP/Bond funds when all of their work was not related. The common answer was 'this is the way I was taught' or 'this is how it is done'. It appears staff were unaware of the need to ensure that CIP/Bond funds are used for only CIP/Bond related projects.

The OIG sent an email to the Director of DMD which stated:

The Office of Inspector General is conducting an investigation and review of documentation on GO Bond spending and labor recovery. I have attached hereto

the Strategic Review that was submitted to you, by the Office of Internal Audits regarding this area as well as other labor recovery topics. In this report, the OIA made several recommendations regarding the labor recovery process and record keeping. Can you please let me know and/or forward to me, if any, adoptions of these recommendations or corrective actions that you and your staff may have taken in response.

In response to this email, the OIG was sent two emails, the first which stated:

Thank you for sending the attachment. Although the report is dated June 29th. DMD has not had the time and opportunity to discuss the findings or recommendations. While I realize that by implementing these recommendations and I acknowledge that these are just recommendations, allocation of costs can be more accurate. Over the next few weeks I will sit with key staff and all 3 deputy directors to see how we go about implementing any change to the way our costs are allocated. I would be happy to meet with you to see what your expectations are relating to the audit.

The second responsive emailed stated:

So I went back through my records and found an e-mail where a final draft was sent out on June 24th. However, I never received the final report dated June 27, 2019. I also checked with {the Deputy Directors} to see if they ever received a final report. None of us did.

So thank you for sending me the final. This was the first time DMD has seen the June 27, 2019 results.

Conclusion

The OIG has conducted a narrow review through this investigation of bond funds and believes that a more thorough and comprehensive audit needs to be completed by the OIA.

The review of the documentation provided through the OIA documents demonstrates that some labor recoveries and other non-capital project related operating costs expenditures are being paid with bond funds; it was identified that some funds were spent prior to the date that bond funds were received; and lastly that some deficits were moved to and from various funds in an effort to show a balance.

This investigation combined policy and procedural reviews, City Council meeting minutes and discussions, financial transaction reviews, payroll and HR documentation reviews, training documentation reviews, and staff interviews to address the concerns noted above. Investigative staff will continue to work with the OIA as they review and evaluate past and current operations.

In relation to the original allegation that possible fraud was committed in applying and utilizing bond funds, it was clear to the OIG that of the sample of staff that were selected and interviewed, there does not appear to be a malicious and knowing error in applying and charging bond funds. Based on the interviews and document reviews that were conducted, it appears that the individual staff were unaware of the codes that were applied to their payroll. In addition, staff are not required to maintain logs of their work or distinguish their time from CIP related projects and work projects that were not CIP related.

The OIG also makes the following recommendations:

1. That the process and methodology used by the CIP Fiscal Division, DMD, and Parks & Recreation Department (PRD) for calculating, tracking, reporting, verifying, and recording of labor cost recovery for CIP projects needs reviewed, written policy and procedures need to be developed and that all staff working in this area need to be trained. This training should be documented with a signature acknowledgment.
2. OIA should review and address the understanding of how the CIP Fiscal Division understands and implements their oversight responsibilities and reconcile CIP projects relative to labor recovery.
3. An audit be conducted to review and detail any possibility of waste or abuse as it relates to the above or the mischaracterization of CIP bond funds and any discrepancies or errors be rectified.

After discussions with leadership at DMD, the following response was received from the department:

The Department of Municipal Development (DMD) offers this response to the Office of Inspector General (OIG) investigation of Capital Improvement Program (CIP) labor expenditures.

DMD has worked with both the Office of Internal Audit (OIA) and the OIG the since early 2019 on issues related to CIP expenditures. This work included responding to OIA's 2015 GO bond audit, the OIG's strategic review and the OIGs investigation of labor recovery.

DMD appreciates the opportunity to work collaboratively to understand and improve processes related to the application of CIP funds and the tracking of labor expenditures.

The strategic review published in June of 2019 provides recommendations for tracking project related staff time. Since the release of the review DMD has met with accounting, budget and enterprise resource planning (ERP) staff to discuss process improvement. During these meetings allocation methodologies as well as time

tracking options have been discussed at length. The current timekeeping system has grant functionality that may be useful in tracking staff labor on capital funded projects. CIP is currently moving forward with a pilot project using the timekeeping functionality. Challenges identified include balancing the cost of labor required to maintain the great many project activities by funding source for each capital project with the benefit of detailed tracking as well as the training and oversight needed to ensure compliance with the process.

During the past three years DMD has been successful in shifting labor costs for several positions completely away from capital funding. We will continue to work with budget to migrate additional positions away from capital funding for labor costs. Capital projects require planning and management by City staff so a complete migration to non-capital funding sources is not anticipated.

The completion of the OIA's 2015 audit would provide additional support to champion the migration of labor as well as the policy and process changes contemplated. We look forward to continuation and completion of that audit. We are committed to improving processes that have been in place for over a decade and increasing the effectiveness of every capital dollar and ensuring compliance.