

Memorandum

*Flex your power!
Be energy efficient!*

To: KOMÉ AJISE
Deputy Director
Planning and Modal Programs

Date: August 20, 2013

File: P1575-0022

ORIGINAL SIGNED BY:

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **INCURRED COST AUDIT – COUNTY OF SACRAMENTO, ENGINEERING SERVICES**

We have audited the costs claimed by, and reimbursed to, the County of Sacramento, Department of Transportation (County) totaling \$19,679,396 for work performed under projects STPL-5924(082) and RPSTPL-5924(059) with the California Department of Transportation (Caltrans). The audit also included reviewing the procurement of three professional services contracts procured through the Request for Proposal process with a total stated contact value of \$1,916,831 of which \$30,019 had been billed to, and reimbursed by, Caltrans on projects BRLO-5924(175), BRLS-5924(164), and BRLS-5924(155) as of December 31, 2011. The audit was performed to determine whether the costs were supported and in compliance with the agreement provisions and State and federal regulations. Additionally, it was performed as a service to Caltrans Management to assist them in fulfilling their fiduciary responsibilities to State and federal regulatory agencies. Attached is the audit report that includes the County's response.

Based on our audit, we determined that reimbursed project costs totaling \$18,490,688 were supported and in compliance with respective agreement provisions and State and federal regulations. However, reimbursed project costs totaling \$1,185,736, were not adequately supported and in compliance with respective agreement provisions, and State and federal regulations. In addition, all three procurements were not adequately supported and in compliance with respective agreement provisions, and State and federal regulations and therefore all costs reimbursed under the three contracts are questionable.

Please provide Audits and Investigations an action plan related to the audit recommendations within 90 days of this memorandum. We thank you and your staff for their assistance provided during this audit. If you have questions or need additional information, please contact me at (916) 323-7122 or Zilan Chen, Chief, External Audits, at (916) 323-7877.

Attachments

- (1) Final incurred cost audit report for the County of Sacramento

- c: Michael J. Penrose, Director, City of Sacramento, Department of Transportation
- Brian P Kelly, Secretary, California State Transportation Agency
- Michael Tritz, Deputy Secretary for Audits and Performance Improvements, California State Transportation Agency
- Janice Richard, Director of Financial Services, Federal Highway Administration
- Andre Boutros, Executive Director, California Transportation Commission
- Malcolm Dougherty, Director, Caltrans
- Norma Ortega, Acting Chief Deputy Director, Caltrans
- Jody Jones, District Director, District 3, Caltrans
- Ray Zhang, Acting Chief, Division of Local Assistance, Caltrans
- Xin "Stella" Liao, District Local Assistance Engineer, District 3, Caltrans
- Clark Paulsen, Chief, Division of Accounting, Caltrans
- Jeff Pulverman, Deputy Director, Planning and Assistance, District 3, Caltrans

P1575-0022
Incurring Cost Audit County of Sacramento
August 2013

Zilan Chen
Chief, External Audits – Local Governments
Audits and Investigations
California Department of Transportation

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Summary

The California Department of Transportation (Caltrans) Audits and Investigations (A&I) audited costs claimed and reimbursed totaling \$19,679,396 by the County of Sacramento, Department of Transportation (County) on projects STPL-5924(082) and RPSTPL-5924(059) from July 1, 2009 through December 31, 2011. Based on our audit, we determined that reimbursed project costs totaling \$18,490,688 were supported and in compliance with respective agreement provisions and State and federal regulations. However, reimbursed project costs totaling \$1,185,736 (See Attachment I) were not adequately supported and in compliance with respective agreement provisions, and State and federal regulations. The total unsupported amount may change as the County performs additional analysis of the conditions identified in the audit. In addition, the County did not reconcile average labor rates used for billing and can improve its procurement policies and procedures.

The audit also included reviewing three Request for Proposal (RFP) procurements of professional services contracts that were not part of the two projects noted above with a total stated contract value of \$1,916,831. As of December 31, 2011, \$30,019 were billed and reimbursed by Caltrans on projects BRLO-5924(175), BRLS-5924(164), and BRLS-5924(155). We found that the procurements for all three contracts were not in compliance with respective agreement provisions, and State and federal regulations and therefore all costs billed and reimbursed under these three contracts are questioned.

Objectives

The audit was performed to determine whether costs claimed by and reimbursed to the County were allowable, adequately supported, and in compliance with respective agreement provisions and State and federal regulations. The audit was performed as a management service to Caltrans to assist in its fiduciary responsibility.

The County is responsible for the claimed costs, compliance with applicable agreement provisions, and State and federal regulations, and the adequacy of its financial management system to accumulate and segregate reasonable, allocable, and allowable costs.

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. The audit was less in scope than an audit performed for the purpose of expressing an opinion on the financial statements of the County. Therefore, we did not audit and are not expressing an opinion on the County's financial statements.

**Methodology
(Continued)**

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and the records selected. An audit also includes assessing the accounting principles used and significant estimates made, as well as evaluating the overall presentation.

Scope

The scope of the audit was limited to financial and compliance activities. Our audit of the County's financial management system included interviews of County staff necessary for obtaining an understanding of the County's accounting and internal controls. Based on the risk assessment performed, the audit focused on the County's procurement process and contract management of consultant contracts and construction contracts. The audit consisted of transaction testing of claimed costs to evaluate compliance with Title 2 Code of Federal Regulations (CFR), Part 225; Title 48 CFR, Ch. 1, Part 31; Title 49 CFR, Part 18; Caltrans's Local Assistance Procedures Manual; and requirements stipulated in the County's Master Agreements with Caltrans. Our field work was completed on September 30, 2012, and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not pertain to costs or credits arising after this date. We believe that our audit provides a reasonable basis for our conclusion.

Because of inherent limitations in any financial management system, misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the financial management system to future periods are subject to the risk that the financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our findings and recommendations take into consideration The County's response dated July 22, 2013, to our June 13, 2013, draft report. Our findings and recommendations, the County's response, and our analysis of the response are set forth in the Findings and Recommendations of this report. A copy of the County's response is included as Attachment V. Documents referenced in the County's response may be provided upon request.

Background

Sacramento County was incorporated in 1850 as one of the original 27 counties of California. The geographic boundaries of Sacramento County include seven incorporated cities (Sacramento, Folsom, Galt, Isleton, Citrus Heights, Elk Grove and Rancho Cordova).

Sacramento County has a charter form of government which was established in 1933. It is governed by a five-member Board of Supervisors, who is elected on a non-partisan basis to serve four-year terms. Each is elected from one of the five supervisorial districts of Sacramento County. Other elected

**Background
(Continued)**

officials include the Assessor, District Attorney and Sheriff. A County Executive appointed by the Board of Supervisors runs the day-to-day business of Sacramento County.

The financial reporting entity of Sacramento County includes all the funds of the primary government (i.e., Sacramento County as legally defined), as well as all of its component units, if applicable. Component units are legally separate entities for which the primary government is financially accountable. Sacramento County is supported by many departments and agencies to deliver the countywide services out of which one is the Department of Transportation.

Conclusion

Based on our audit, we determined that reimbursed project costs totaling \$18,490,688 were supported and in compliance with respective agreement provisions and State and federal regulations. However, reimbursed project costs totaling \$1,185,736, were not adequately supported and in compliance with respective agreement provisions and State and federal regulations. In addition, the County did not reconcile average labor rates used for billing and can improve its procurement policies and procedures.

In addition, we found all costs billed through the contracts awarded under the three RFP procurements tested are questioned because the procurements were not in compliance with State and federal regulations. As of December 31, 2011, \$30,019 were billed and reimbursed by Caltrans on projects BRLO-5924(175), BRLS-5924(164), and BRLS-5924(155).

This report is intended for the information of the County, Caltrans Management, the California Transportation Commission, the Federal Highway Administration and the Federal Transit Administration. However, this report is a matter of public record and its distribution is not limited. In addition, this report will be placed on Caltrans' website.

If you have any questions, please contact Lisa Moreno, Auditor, at (916) 323-7885, or Cliff Vose, Audit Manager, at (916) 323-7917.

ORIGINAL SIGNED BY:

**ZILAN CHEN, Chief
External Audits – Local Governments
Audits and Investigations**

FINDINGS AND RECOMMENDATIONS

Finding 1 - Request for Proposal Procurement Practices Need Significant Improvement

The County of Sacramento, Department of Transportation (County) did not follow procurement procedures, as required by Title 49 Code of Federal Regulations (CFR), Part 18.36, Federal Aid Master Agreement 03-5924R, and the California Department of Transportation's (Caltrans) Local Assistance Procedure Manual (LAPM). As a result, all costs billed through the contracts awarded under the three Request for Proposal (RFP) procurements tested are questioned (see attachment III), and as of December 31, 2011, \$30,019 were billed to and reimbursed by Caltrans on projects BRLO-5924(175), BRLS-5924(164), and BRLS-5924(155). Without following required procurement procedures, the County risks entering into contracts that may not be fair and reasonable.

Our audit included testing of the County's procurement procedures of two construction contracts, contract numbers 39090 and 4010, which utilized an Invitation for Bid (IFB) procurement process and three consultant contracts, contract numbers 81287, 81283, and 81299, which utilized a RFP procurement process. While the two IFB procurements appear to be adequate, we found significant issues with the three RFP procurements as detailed below:

- The County did not list the relative importance of each evaluation factor in all three RFPs. (For criteria see Attachment II, Finding 1, 1a, 1b, 1f, and 1g.)
- The County could not locate the interview evaluation sheets for two of the three RFPs. (For criteria see Attachment II, Finding 1, 1c and 1h.)
- A County employee who participated in two of the three procurements failed to use the evaluation factors identified in the RFP and established for the panels. (For criteria see Attachment II, Finding 1, 1a, 1b, 1c, 1d, 1f and 1g.)
- The County did not prepare an independent cost estimate in all three procurements. (For criteria see Attachment II, Finding 1, 1e.)

These conditions appear to be a result of the County staff not fully understanding State and federal procurement requirements. Further, the County does not have comprehensive procurement policy and procedures when State and federal funds are used as noted in Finding 5.

Recommendation

The County should take the following corrective action:

- Cease to bill Caltrans on the above referenced contracts procured through the RFP process until notified by Caltrans.
- Review project billing records to identify all costs billed and reimbursed for the three projects identified and associated with the three questioned contracts and notify Caltrans of the review results.

**Recommendation
(Continued)**

- Review other RFP procurements used to bill cost on State or federally funded projects to determine if they were procured in accordance with all State and federal regulations and notify Caltrans of the review results.
- Provide Caltrans Division of Local Assistance (DLA) with a plan, including an estimated time for the completion of the reviews and assessment.
- Ensure proper procurement procedures are followed in accordance with Title 49 CFR Part 18.36, Title 23 CFR, LAPM, Master Agreements between the County and Caltrans, and the County's written procurement procedures.
- Identify, and include all evaluation criteria and factors with their relative importance in future RFPs.
- Ensure all evaluations are consistent with the factors and relative importance as identified in the RFP's.
- Create an independent cost estimate prior to receiving bids under an RFP process.
- Seek training for management and staff in proper procurement practices.
- Maintain adequate documentation to support procurement procedures in accordance with required State and federal regulations.

Caltrans should take the following corrective action:

Caltrans DLA should consult with the FHWA to determine if Caltrans should seek reimbursement from the County for \$30,019 in questioned costs claimed and any other amounts associated with the three questioned contracts identified. Ensure that the County performs a review of the procurements of other contracts that were used to bill State and federal funds and determine if Caltrans should seek reimbursement for any costs associated with any questioned procurements/contracts identified by the County's review.

**County's
Response**

The County agreed that certain items specified in the State and federal guidelines were not included in the RFP's for the three contracts reviewed and that specific improvements are needed to the County's procurement procedures, and has taken some steps to correct the issues. However, the County believes that its process ensures fair and open competition for prior and current procurements and no protests were filed nor did any disputes arise. For the County's full response to this finding see Attachment V.

**Auditor's
Analysis to
County Response**

The County did not provide additional documentation relating to the three questionable procurements. In addition, as noted in Finding 5, the County lacks a procurement appeal process. Therefore, the finding remains.

**Finding 2 –
Construction
Contract
Administration
Need
Improvement**

The County did not maintain adequate construction contract documentation to ensure that costs billed were supported in accordance with the terms, conditions, and specifications of its contracts. As a result, the County billed Caltrans costs that were not supported and therefore are not reimbursable. We identified \$1,111,484 of questioned costs billed to and reimbursed by Caltrans.

We reviewed 33 line items associated with 15 construction invoices on the two audited projects. Of the 33 line items 19 were associated with project STPL-5924(082) and of the 19 line items, 10 had inadequate documentation (see Attachment IV). The exceptions include:

- The County did not process change orders for bid items that had significantly changed in quantities. (For criteria see Attachment II, Finding 2, 2a, 2b, 2c)
- The project files lacked documentation to reflect the quantity reimbursed. (For criteria see Attachment II, Finding 2, 2d, 2e, and 2f)
- The project files lacked documentation to identify the location of the work. (For criteria see Attachment II, Finding 2, 2g, and 2h)
- The project files lacked documentation of the removal and salvage of a signal light. (For criteria see Attachment II, Finding 2, 2g, and 2i.)

Recommendation

The County should take the following corrective actions:

- Ensure the County properly justifies significant changes to bid item quantities through change order process.
- Ensure compliance with all State and federal regulations as they pertain to construction projects.
- Seek training for management and staff in proper construction management practices.
- Ensure project files support all line item quantities billed and reimbursed.
- Ensure that the County adequately document all work performed on projects through daily diaries, inspector reports, etc.
- Assess if similar transactions within project STPL-5924(082) are adequately supported and provide Caltrans DLA with a review plan, including an estimated time for the completion of the review plan.

Caltrans DLA should consult with FHWA to determine if Caltrans should seek reimbursement from the County for \$1,111,484 in questioned costs claimed and any other amounts identified by the County's review.

**County's
Response**

The County states that based on the Contract Special Provision, the questioned items did not require change orders. In addition, the County states that it has provided sufficient documentation to the Audit team and that all questioned costs are appropriate and eligible for federal reimbursement. For the County's full response to this finding see Attachment V.

**Auditor's
Analysis to
County Response**

The County provided numerous attachments indicating that it has implemented a better construction tracking system. However, the exhibits provided were not for the projects audited.

The Contract Special Provision provided by the County lacks any line item constraints or maximums allowed for project. Therefore, it appears that the Special Provisions may conflict with State and federal regulations which require that a change in a line item exceeding five percent of the contract amount and is 125 percent over the bid quantity requires a change order. Also, the County did not provide any additional evidence or documents for the removal and salvage of items and quantities billed and reimbursed. Therefore, the finding remains for these items.

The County did provide additional documentation that identified the location for line item 122, therefore Attachment IV, item 122 was modified to remove the location issue.

**Finding 3 –
Professional
Service Contract
Administration
Needs
Enhancement**

The County did not maintain an adequate contract administration system to ensure that consultants are providing services in accordance with the terms, conditions, and specifications of its contracts. As a result, the County risks billing Caltrans costs that are not supported.

Specifically, in our testing of contract administration of the three consultant agreements (see Attachment III); we found seven of 11 consultant invoices tested include the following exceptions: (For criteria see Attachment II, Finding 3.)

- Within the first seven month of the contract, the consultant charged more hours to specific tasks than originally proposed without justification.
- The consultant project engineer approves his/her own time.
- A subcontractor charging a 15 percent fee on other direct costs, such as a permit provided by the California Department of Fish & Game and services provided by the County's own Construction Management Inspection Division.

Recommendation

The County should take the following corrective actions:

- Ensure that staff assigned as contract managers have knowledge of contract terms, and ensure contractor work is complete, accurate, and consistent with terms, conditions and specifications of the contract.
- Train staffs that engage in contract management functions on the applicable standards and ensure the standards are followed.
- Ensure that profit negotiations include both the prime contractor profit and any profit charged by sub-contractors. Also, ensure that profit is not applied to other direct costs.

County's Response

The County agrees with this finding. For the County's full response to this finding see Attachment V.

Finding 4 – Average Labor Rates Used not Reconciled

Our audit found that the County bills labor rates based on averages of a job classification within a work unit, including anticipated salary increases. However, the County does not reconcile labor costs billed to actual labor costs. Since the County does not reconcile the rates used, the County may be over or under billing State and federal projects. The master agreement between the County and Caltrans requires actual allowable project costs to be reimbursed. (For detailed criteria see Attachment II, Finding 4.)

The County stated it would be difficult and not cost effective to reconcile the average rates to actual cost. Additionally, the County stated that it would be difficult to use actual labor rates because of the number of employees within the County.

Recommendation

The County should take the following the corrective action:

- Revise its labor rates to reflect actual costs, or reconcile labor costs billed to Caltrans using average labor rates to actual labor costs at least annually.
- Bill Caltrans projects at actual labor costs or the County should adjust project billings for any variances identified between average and actual labor costs at least annually and at project completion.

County's Response

The County states that its methodology of calculating direct labor rates and method of reconciliation is sufficient to ensure an immaterial variance between billed and actual direct labor costs and provided reconciliation reports for fiscal year 2012 as evidence. For the County's full response to this finding see Attachment V.

Auditor's Analysis to County Response

We disagree with the County's response. The County provided divisional level reconciliation reports to support its position, however the County labor rates are developed at a work unit and job classification level. Therefore the County's reconciliation is not sufficient. In addition the reconciliation reports provided showed quarterly variances by division ranging from 0.26 to 53.00 percent, and a cumulative variance for the County's Department of Transportation's 11 Divisions of a negative 1.68 percent. The County did not provide any evidence that all Divisions and all classifications consistently bill Caltrans projects throughout the year. Therefore, the finding remains.

**Finding 5 –
Policy and
Procedures Can
be Improved**

The County lacks comprehensive procurement policies and procedures when State and federal funds are being used. (For criteria see Attachment II, Finding 5, 5a)

Specifically, the County:

- Does not require the RFPs to include the relative importance of the evaluation factors listed. (For criteria see Attachment II, Finding 1, 1a, 1b, and 1g.)
- Does not require the retention of documents containing date and time when bid proposals are received for RFP/IFB. (For criteria see Attachment II, Finding 5, 5c, and 5g)
- Sole source procurement procedures did not include the procedures required by State and federal regulations. (For criteria see Attachment II, Finding 1, 1f, and Finding 5, 5f, and 5j)
- Does not have procedures for procurement of items less than \$100,000. (For criteria see Attachment II, Finding 5, 5a, 5e, and 5i.)
- Lacks a procurement appeal process. (For criteria see Attachment II, Finding 1, 1f, and Finding 5, 5d.)
- Does not prohibit personal interest in its Conflict of Interest clause as required by federal regulations. (For criteria see Attachment II, Finding 5, 5b)

In addition, the County lacks policies to ensure that materials are being properly disposed. (For criteria see Attachment II, Finding 5, 5h, and 5k)

Recommendation

The County should take the following corrective actions:

- Implement a comprehensive County procurement manual to ensure the minimum standards as proscribed by State and federal regulations are met.
- Revise County's conflict of interest policy to include language to reflect personal interest in its policy.
- Revise County's policy to require materials to be properly disposed.

**County's
Response**

The County concurs. For the County's full response to this finding see Attachment V.

Audit Team

Zilan Chen, Chief, External Audits - Local Governments
Cliff Vose, Audit Manager
Lisa Moreno, Auditor
Gerald Lee, Auditor

Incurred Cost Audit
 County of Sacramento
 List of Audited Agreements & Questioned Costs

Attachment I

Federal Master agreement 03-5924R			
Project Code:	Total Cost	Questioned Cost	Finding
STPL-5924(082)	\$8,002,482	\$1,185,736	2
RPSTPL-5924(059)	\$11,676,914	\$0	
Total:	\$19,679,396	\$1,185,736	

RFP Procurement Reviewed	Contract Value	Costs Billed and Questioned (as of 12/31/2011)	Finding
BRLO-5924(175)	\$491,456	\$0	1
BRLS-5924(164)	\$799,779	\$8,667	1
BRLS-5924(155)	\$625,596	\$21,352	1, 3
Total	\$1,916,831	\$30,019	

Attachment II

Criteria

Finding 1

- 1a. Title 49 CFR 18.36(c)(3) (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- 1b. Title 49 CFR 18.36(d)(3)(i) states in part, "(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance."
- 1c. Title 49 CFR 18.36(d)(3)(iii) states, Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;
- 1d. Title 49 CFR 18.36(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:
(vii) Any arbitrary action in the procurement process.
- 1e. Title 49 CFR, 18.36(f)(1) states, "Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price."
- 1f. Article I Section 9 in the Federal Master Agreement 03-5924R states in part, "ADMINISTERING AGENCY shall conform to all State statues, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines)"
- 1g. Local Assistance Procedures Manual 10.5 states, in part, "The Contract Administrator is responsible for developing the technical criteria, and their relative weights which are used to evaluate and rank the consultant proposals. The criteria and relative weights must be included in the RFP."
- 1h. Title 49 CFR, 18.36(b)(9) states, "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

Attachment II

Finding 2

- 2a. Title 23 CFR 635.109 (a)(3)(ii) If the alterations or changes in quantities significantly change the character of the work under the contract, whether such alterations or changes are in themselves significant changes to the character of the work or by affecting other work cause such other work to become significantly different in character, an adjustment, excluding anticipated profit, will be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment will be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable.
- 2b. Title 23 CFR 635.109 (a)(3)(iv) The term “significant change” shall be construed to apply only to the following circumstances: (B) When a major item of work, as defined elsewhere in the contract, is increased in excess of 125 percent or decreased below 75 percent of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125 percent of original contract item quantity, or in case of a decrease below 75 percent, to the actual amount of work performed.
- 2c. Title 23 CFR 635.120 (b) states, “For non-major changes and non-major extra work, formal approval is necessary but such approval may be given retroactively at the discretion of the Division Administrator. The STD should establish and document with the Division Administrator’s concurrence specific parameters as to what constitutes a non-major change and non-major extra work.”
- 2d. Title 23 CFR 635.123 (a) states, “The STD shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.”
- 2e. Title 49 CFR 18.20(b)(3) states in part, “Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets...”
- 2f. Title 49 CFR 18.20 (b)(6) states, “Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.”
- 2g. Article I Section 9 in the Federal Master agreement 03-5924R states in part, “ADMINISTERING AGENCY shall conform to all State statues, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines”
- 2h. Local Assistance Procedures Manual 16.7 states, in part, “The administering agency’s Resident Engineer, Assistant Resident Engineers, and construction inspectors shall keep daily reports to record work in progress.” In addition, “The narrative portion of the report should include a description of the contractor’s operation and the location where the work was performed.”

Attachment II

- 2i. Local Assistance Procedures Manual 16.9 states, in part, No documentation if a salvage item arrived at its destination. It must contain a file of source documents supporting payments made to contractors. Source documents shall be any written record(s) prepared by the administering agency which clearly record:
- To what specified portion of work it applies;
 - The necessary measurements and/or calculations by which the quantity is Determined; and
 - The name of the individual who made the determination.

Finding 3

- 3a. Title 49 CFR 18.36 (b)(2) states, “Grantees and sub grantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”
- 3b. Title 48 CFR 31.204 (a) states, in part, “Costs are allowable to the extent they are reasonable, allocable, and determined to be allowable under 31.201(Direct Cost)”

Finding 4

- 4a. Article IV Section 7 in the Federal Master agreement 03-5924R states in part, “Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursements to actual allowable PROJECT costs already incurred and paid by ADMINISTERING AGENCY”
- 4b. Title 2 CFR 225 Appendix B (8) a in part, “General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees: (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;”

Finding 5

- 5a. Title 49 CFR Part 18.36(b)(1) states, “Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.”
- 5b. Title 49 CFR Part 18.36(b)(3) states in part, “Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged

Attachment II

in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in the selection, or in the award or administration of a contract...if a conflict of interest, real or apparent...would be involved..."

- 5c. Title 49 CFR 18.36 (b)(9) states, "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."
- 5d. Title 49 CFR Part 18.36(b)(12) states in part, "Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee."
- 5e. Title 49 CFR Part 18.36(D)(1) states, "Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources."
- 5f. Title 49 CFR Part 18.36 (d)(4)(i) states, "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate."
- 5g. Title 49 CFR 18.42(b) states in part, "records must be retained for three years from the starting date specified in paragraph (c) of this section."
- 5h. Article I Section 9 in the Federal Master Agreement 03-5924R states in part, "ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines"
- 5i. Local Assistance Procedures Manual 10.3 states, in part, the procurement of consultant services by Small Purchase Procedures is in accordance with 23 CFR 172.5(a)(2) modified by FHWA Memorandum dated June 26, 1996, and 49 CFR 18.36(d). Local agencies should be fully aware that consultant services costing in aggregate no more than \$100,000 per

Attachment II

contract, may be obtained through a relatively simply and informal method of procurement. This informal method must be sound and appropriate for the consulting services procured and provide justification for the selection. It shall be documented and supported. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible. Price or rate quotation may be considered in the selection. Qualified small business firms shall be considered for selection on federal-aid and state reimbursed contracts. Additionally, on federal-aid contracts, qualified DBE firms shall be considered for selection, and the appropriate federal contract language be included.

- 5j. Local Assistance Procedures Manual 10.3 states, in part, a noncompetitive, negotiated contract may be developed when special conditions arise. FHWA considers these types of agreement as "Sole Source" agreements. A Public Interest Finding prepared by the local agency is required. Conditions under which noncompetitive negotiated contracts may be acceptable include:
- Only one organization is qualified to do the work.
 - An emergency exists of such magnitude that cannot permit delay.
 - Competition is determined to be inadequate after solicitation of a number of sources.
- The local agency shall:
- Follow its defined process for noncompetitive negotiation.
 - Develop an adequate scope of work, evaluation factors, and cost estimate.
 - Conduct negotiations to ensure a fair and reasonable cost.
- 5k. Local Assistance Procedures Manual 16.9 states, in part, No documentation if a salvage item arrived at its destination. It must contain a file of source documents supporting payments made to contractors. Source documents shall be any written record(s) prepared by the administering agency which clearly record:
- To what specified portion of work it applies;
 - The necessary measurements and/or calculations by which the quantity is Determined;
and
 - The name of the individual who made the determination.

Incurred Cost Audit
County of Sacramento Audit
Attachment III

Project Name:	Michigan Bar over Cosumnes River Bridge	Twin Cities Bridge Replacement	Franklin Blvd at Lost Slough
Project Code:	BRLO-5924(175)	BRLS-5924(164)	BRLS-5924(155)
Master Agreement:	Federal Master agreement 03-5924R		
Contract Amount (Total)	\$625,595.55	\$799,778.85	\$491,456
Federal Participation Amount:	\$625,595.55	\$708,044.21	Not specifically listed
Winning Contractor	Drake Haglan and Associates	Dokken Engineering	Quincy Engineering
Contract Number:	81299	81283	81287
Federal Reimbursement Rate:		88.53%	88.53%
Questioned Cost through Dec 2011:	0	\$8,666.79	\$21,351.76
Finding 1			
The County did not list the relative importance of each evaluation factor in all three RFPs (For criteria see Attachment II, Finding 1, 1a, 1b, 1f, and 1g.)	✓	✓	✓
The County could not locate the interview evaluation sheets for two of the three RFPs. (For criteria see Attachment II, Finding 1, 1c, and 1f.)		✓	✓
A County employee who participated in two of the three procurements failed to use the evaluation factors established for the panels. (For criteria see Attachment II, Finding 1, 1c, 1d, and 1f.)		✓	✓
The County did not prepare an independent cost estimate in all three procurements. (For criteria see Attachment II, Finding 1, 1e, and 1f.)	✓	✓	✓
Finding 3			
Consultants charging more hours to specific tasks than originally proposed without justification. The Consultant project engineer approves his/her own hours.			✓
A subcontractor charging a 15% fee on other direct costs, such as a permit provided by California Department of Fish & Game, and services provided by the County's own Construction Management Inspection Division.			✓

Bid Item #	Description	Bid Qty.	Qty Questioned	The County lacks documentation to reflect the quantity reimbursed.	The County's construction daily diaries lacked documentation to identify the location of the work.	The County billed and was reimbursed for bid items that included significant increase in quantities without justifying the changes through the change order process.	The County was unable to locate the construction daily diaries documenting that work occurred for a construction line item and if the item had been properly salvaged.	Project Cost Questioned
93	Fractured Rib Texture	1703	807	✓				\$ 32,280.00
8	Temporary Parking Bumper	600	7	✓				\$ 350.00
25	Roadway Excavation	3533	556	✓	✓			\$ 25,020.00
122	Install LRT Track (Direct Fixation)	1078	539	✓				\$ 88,935.00
171	Remove / Salvage 1-Aspect Signals (F795)	1	1	✓	✓		✓	\$ 2,500.00
39	Type 2 Curb & Gutter	1063	385	✓	✓			\$ 13,475.00
34	Asphalt Concrete	2018	183.25	✓		Total Qty: 9237.95 ✓		\$ 649,796.00
36	Minor Pavement Reconstruction	700	349.78	✓		Total Qty: 3666.1 ✓		\$ 593,220.00
66	Detail 9 - Thermoplastic Striping	8860	9709	✓	✓			\$ 9,709.00
104	Prepare / Stain Concrete (Abutments/Columns/Bent Caps)	3340	821.33	✓				\$ 4,927.98

Project Cost Questioned: **\$ 1,420,212.98**
 Federal Reimbursement Rate @ 83.49% 83.49%
Total Questioned Cost: \$ 1,185,735.82

Department of Transportation
Michael J. Penrose, Director



Divisions
Administration
Maintenance & Operations
Engineering & Design

County of Sacramento

July 22, 2013

Zilan Chen, Chief
External Audits – Local Governments
Caltrans Audits & Investigations
1304 O Street, Suite 200
Sacramento, CA 95814

**Subject: Response to County of Sacramento Incurred Cost Audit Draft Report
P1575-0022**

Dear Ms. Chen:

On June 13, 2013, the County of Sacramento, Department of Transportation (SacDOT) and the California Department of Transportation (Caltrans) Audits and Investigations (A&I) conducted a formal exit conference to discuss the County of Sacramento's Incurred Cost Audit draft Report findings and recommendations.

Attached is the SacDOT's response to the Incurred Cost Audit Draft Report. The attached document provides responses to each of the following five findings discussed in the draft Report:

1. Request for Proposal Procurement Practices Need Significant Improvement
2. Construction Contract Administration Need Improvement
3. Professional Service Contract Administration Needs Enhancement
4. Average Labor Rates Used not Reconciled
5. Policy and Procedures Can be Improved

We understand that the attached SacDOT response will be incorporated into the final Audit Report. If you have any questions or need additional information, please contact Dan Shoeman or Refugio Razo at (916) 874-6291.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Penrose".

Michael J. Penrose, Director
Department of Transportation

MJP/rr

Attachments: County of Sacramento Response to Incurred Cost Audit Findings"

Cc: William Burke, Sacramento County Counsel
Michael Guiver, SacDOT
Maggie Stewart, Municipal Accounting Services
Thor Lude, Chief, Construction Inspection, Sacramento County

County of Sacramento Response to Incurred Cost Audit Findings

P1575-0022

June 2013

Finding 1 – Request for Proposal Procurement Practices Need Significant Improvement

We have reviewed the Audit Report findings, the consultant contracts and requests-for-proposals (RFP's) reviewed and tested with the audit, and the contract procurement provisions outlined in 49 CFR, Part 18.36, the County-State Federal Aid Master Agreement, and the Caltrans Local Assistance Procedure Manual. Based on our review, we agree that certain items specified in State and Federal guidelines were not included in the RFP's for the three contracts reviewed. To ensure full compliance with State and Federal procurement requirements, the County Department of Transportation (County) has taken immediate steps to correct these issues on all future State and Federally funded contract procurements, including the following:

- The RFP will identify all evaluation criteria and factors to be used in the selection process including the relative weight/importance for each factor. All RFP's will include a sample copy of the evaluation forms indicating the criteria that will be utilized by the selection panel and their relative weight/importance.
- The County's procurement procedures will include improved oversight of the consultant evaluation/selection processes to ensure that the process for each procurement is consistent with the RFP, including the application of the evaluation factors and their relative importance by the selection panel; and that the evaluation/selection processes are properly documented and all documentation is maintained in accordance with State and Federal provisions.
- The County will perform a cost analysis for each contract procurement, including the preparation of an independent cost estimate prior to receiving proposals.
- The County will develop, adopt and implement comprehensive policies and procedures, in accordance with 49 CFR Part 18.36, the County-State Federal Aid Master Agreement, and the Caltrans Local Assistance Procedure Manual, for the procurement of contracts utilizing State and Federal funds (see response to Audit Finding 5). In conjunction with this effort the County will also assess the need for management and staff training in procurement procedures and explore training opportunities, including participation in available Caltrans training programs and the implementation of an internal training program for project management and administrative staff.
- The County will maintain adequate documentation to support procurement procedures in accordance with required State and Federal regulations.

The issues identified in the Audit Report related to the three reviewed contract procurements are due to the need to enhance the County's procurement practices in order to ensure full compliance with all State and Federal provisions, and by no means affected or altered the outcome of the consultant selection processes. While we agree that specific improvements are needed to the County's procurement procedures, we believe that our process ensures fair and open competition, consistent and non-biased evaluation of all proposals received, and results in fair and reasonable contracts. Furthermore, no protests were filed by any of the proposing firms who participated in these procurements, nor did any other disputes arise as a result of the procurement and selection processes.

It is the County's position that these contracts were entered under fair and reasonable conditions that all billings to date are appropriate and eligible for Federal reimbursement. It is also the County's position that all other RFP procurements on State and Federally funded projects are consistent with State and Federal regulations and that all billings and reimbursements related to these procurements are appropriate and eligible. Finally, we request that the County's commitment to immediately implement the corrective measures outlined above be considered as the reasonable and appropriate outcome of these audit findings.

Finding 2 – Construction Contract Administration Need Improvement

Following are the County's responses to the specific findings concerning the contract bid items listed in Attachment IV of the Audit Report.

- **The County did not process change orders for bid items that had significantly changed in quantities.**

Response: Based on the Contract Special Provisions, it is the County's position that Bid Items 34 (Asphalt Concrete) and 36 (Minor Pavement Reconstruction) do not involve significant changes to the character of work and quantities that require processing of change orders. Attached is a copy of Section 10-1.27, "MINOR PAVEMENT RECONSTRUCTION", from the Contract Special Provisions (EXHIBIT A) which specifies that the removal areas and depth of failed pavement are not shown on the plans and shall be determined by the Engineer in the field. Furthermore, the Special Provisions specify that the quantities for minor pavement reconstruction are estimates and are for bidding purposes only. Actual quantities may vary without limit, with no change in the unit bid price; therefore, no change order was required or processed.

- **The project files lacked documentation to reflect the quantity reimbursed.**
- **The project files lacked documentation to identify the location of the work.**

Response: Attached are documents (EXHIBITS B1, B2, B3, C1, C2, and C3) which provide clarification regarding the quantities for Bid Items No. 93 (FRACTURED RIB

TEXTURE), and No. 122 (CONSTRUCT DIRECT FIXATION LRT TRACK), as follows:

Bid Item No. 93 – EXHIBIT B1 has been submitted to the audit team and identifies the quantity of fractured rib texture installed for each month, the Pay Estimate under which the quantity was paid, and the location of the work in the Comments/Remarks column. EXHIBITS B2 and B3 show the location of the questioned quantity (807 square feet) of fractured rib texture on Bent 2 through Bent 5 columns.

Bit Item No. 122 – EXHIBIT C1 has been submitted to the audit team and identifies the quantity of this material installed for each month and the Pay Estimate under which the quantity was paid. EXHIBIT C2 is Section 10-6.11, “CONSTRUCT DIRECT FIXATION LRT TRACK”, from the Contract Special Provisions. This exhibit specifies that the track will be installed on the proposed bridge. EXHIBIT C3 is Contract Plan Sheet 83R of 488. This plan sheet shows that the questioned quantity of 539 feet is on the bridge for Track “EG2” and “E52” for a total of 1,078 Track Feet.

The County continually assesses its contract administration procedures and documentation to ensure that projects are administered consistently and are in compliance with all State and Federal regulations. The County also provides ongoing guidance to contract administration and inspection staff, and updates documentation as needed to ensure they satisfy these requirements. Attached are the following exhibits which include documentation currently used by the County for the administration of construction contracts to ensure that bid item quantities are accurately tracked and documented, that work is performed in accordance with the contract plans and specifications, and that contract payments are adequately supported:

EXHIBIT D is a screen shot from our “Daily Diary Database” which includes a “Materials Used” tab that allows for the selection of a specific time period from the inspector’s daily diaries and the creation of a “Materials Used Per Pay Item” document.

EXHIBIT E is a sample of the “Materials Used per Pay Item” document which shows all material installed for the specified time period chosen. The information in this document is extracted directly from the inspector’s daily diaries and is compared to the contractors billing for the same time period. If the two documents conflict; the conflicting Bid Items are investigated and reconciled and documented.

Exhibit F is a sample of the “Inspector’s Daily Record of Work Progress” (Daily Diary). This document shows that the inspector tracks material each day using pay items which correspond to bid items included in the contract documents.

- **The project files lacked documentation of the removal and salvage of a signal light.**

Response – The signal light in question (One aspect signal F795) is associated with the Regional Transit Light Rail and was turned over to the Regional Transit maintenance facility following its removal. The County has updated its practices and provided training to inspection staff to ensure proper documentation of locations, quantities, and dates of all items incorporated in the work and paid to the contractor, including items to be removed and salvaged.

In response to the recommendations included under this finding, the County has made recent improvements to its contract administration procedures to be consistent with State and Federal requirements, and ensure that contract work is performed in accordance with contract plans and specifications and that contract payments are properly documented and supported. As previously noted, the County continually reviews its contract administration practices to ensure that they are being carried out consistently on all projects, and makes any needed adjustments to County policies, procedures and documentation to ensure that they remain compliant with current State and Federal guidelines. The County also provides training for construction contract administration staff to ensure they are knowledgeable of current regulations and practices. County construction inspectors and contract administration staff have and will continue to participate in Caltrans sponsored training opportunities including the Resident Engineer's Academy.

With respect to the questioned costs identified in the Audit report under this finding, it is our position that sufficient documentation has been provided to the Audit team and with this response to demonstrate that all of these costs are appropriate and eligible for Federal reimbursement.

Finding 3 – Professional Service Contract Administration Needs Enhancement

The County will review its consultant contract administration procedures and invoice processing systems to determine if enhancements are needed to ensure that consultant work and invoicing complies with the terms and conditions of the contracts, with County policies and standards, and with State and Federal requirements. Based on this review, the County will develop and implement any appropriate enhancements to its consultant contract administration procedures, and assess the need for additional staff training to ensure accurate and consistent contract administration practices.

Finding 4 – Average Labor Rates Used not Reconciled

Per policy, County of Sacramento's Public Works Departments calculate direct labor rates using an average of actual pay for the employees within a job class and work unit as recommended by a study produced by KPMG Consulting. The County's ERP financial system's cost accounting module has been designed and configured to charge project costs using this calculation methodology. Public Works reconciles the actual salary and benefit costs to the amounts charged to projects on a quarterly basis to ensure the rates charged to projects are within an immaterial variance (See attached EXHIBIT G AND EXHIBIT H).

Finding 5 – Policy and Procedures Can be Improved

The County concurs with the recommendation to develop and implement a comprehensive procurement manual for State and Federally funded contracts. While we believe that our procurement policies and practices are consistent with LAPM procedures, we agree that the County would benefit from a procurement manual to ensure compliance with State and Federal regulations and consistency between all County contract procurements. The procurement manual will be developed based on Caltrans and FHWA guidelines (including the LAPM and 49 CFR 18.36) and will set forth standards for State and Federally funded procurements, including the following:

- RFP procurement process including RFP format and content, and procedures for processing and evaluating proposals.
- Maintenance and disposal of procurement records and documents.
- Sole source procurements.
- Procurements for contracts under \$100,000.
- Procurement appeal policies and procedures.

The County expects to complete the development, adoption and implementation of a procurement manual and related policy within the next six months. Concurrent with development of the manual, the County will review its conflict of interest policies to determine the need for revisions to ensure compliance with State and Federal requirements.