

Memorandum

*Flex your power!
Be energy efficient!*

To: KATIE BENOUAR, Chief
Division of Transportation Planning

Date: January 17, 2014

File: P1580-0018



From: ZILAN CHEN, Chief
External Audits – Local Governments
Audits and Investigations

Subject: **PRE-AWARD AUDIT OF MENDOCINO COUNCIL OF GOVERNMENTS**

We performed a pre-award audit of the Mendocino Council of Governments (MCOG) to determine whether MCOG's financial management system is adequate to accumulate and segregate reasonable, allowable and allocable project costs in accordance with the California Department of Transportation's (Caltrans) Agreement provisions. The pre-award audit was also performed to determine whether the Professional Services Agreement (PSA) between MCOG and Dow and Associates (Dow) creates a conflict of interest in violation of State statutes and/or federal regulations.

MCOG's management is responsible for ensuring compliance with Caltrans' Agreement provisions and State and federal regulations and that the financial management system maintained by MCOG is adequate to accumulate and segregate reasonable, allowable and allocable costs.

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 MCOG. Therefore, we did not audit and are not expressing an opinion on MCOG's financial statements.

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.

The scope of the audit was limited to select financial and compliance activities. The audit consisted of interviews of MCOG personnel necessary for obtaining and understanding MCOG's financial management system. Our audit included tests of select transactions included on MCOG's billings to the general ledger and supporting documentation to assess the adequacy of the financial management system to accumulate and segregated reasonable, allowable, and

KATIE BENOUAR

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allocable costs. Our audit also included tests of select transactions from Dow billed to MCOG and reimbursed by Caltrans to assess allowability, allocability and reasonableness of costs billed. Our field work was completed on May 24, 2013, and financial management system changes, related to MCOG, subsequent to this date were not tested and, accordingly, our conclusion does not pertain to changes 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 and procedures may deteriorate.

Our findings and recommendations take into consideration MCOG's response dated November 27, 2013, to our October 29 2013, draft report. Our findings and recommendations, a brief summary of MCOG's response, and our analysis of the response are set forth in the Findings and Recommendations of this report. Additionally, our findings and/or recommendations were modified due to additional information provided by MCOG or to provide clarification. A copy of MCOG's response is included as Attachment II. Attachments referenced in the response are available upon request.

AUDIT RESULTS

Based on audit work performed, MCOG's financial management system is adequate to accumulate and segregate reasonable, allowable and allocable project costs. However, we found that MCOG lacked a proper procurement process and had weak internal controls. Additionally, we, in consultation with Caltrans' Legal Office, determined that the PSA between MCOG and its consultant Dow creates a conflict of interest.

Audit Findings

Finding 1 – Conflict of Interest

The PSA between MCOG and its consultant, Dow, creates a conflict of interest in violation of Government Code sections 1090 and 87100, as well as the federal requirements of 49 Code of Federal Regulations (CFR), Part 18.36. MCOG has no staff and contracts with a consultant, Dow, through the PSA to provide an Executive Director, all management, administrative and clerical staff, support services, facilities, equipment and supplies that may be needed to implement any of the full range of MCOG's responsibilities and obligations for which it is paid a yearly lump sum. Planning services are also provided and compensated through the PSA at fully weighted labor rates. The PSA was executed in 1999 and has been amended four times. Phil Dow, as the owner of Dow, serves as MCOG's Executive Director authorized to perform all

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duties and obligations on its behalf. All of MCOG's staff are Dow employees assigned by Phil Dow to perform work for MCOG. Phil Dow's activities in these dual roles create a conflict of interest in violation of both State and federal laws. Therefore, all Dow staff costs billed by MCOG to Caltrans are unallowable. The audit identified six Agreements between MCOG and Caltrans. See Attachment I for a list of the Agreements.

49 CFR, Part 18.36, Section b.(3), states in part: *"No employee, officer, or agent of the [fund recipient] shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:*

(i) The employee, officer or agent, ... or ...

(iv) An organization which employs, ... any of the above, has a financial or other interest in the firm selected for award. The [fund recipient's officers, employees, or agents will neither solicit nor accept... anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item from nominal intrinsic value."

Government Code section 1090 states: *"Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by anybody or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. As used in this article, 'district' means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or propriety functions within limited boundaries."*

Government Code section 87100 states: *"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has financial interest."*

Recommendation

MCOG should take the following actions:

- Prepare a schedule detailing the Dow staff costs billed on the six Agreements with Caltrans.
- The MCOG Board should take appropriate action to remove the conflict of interest created by the PSA between MCOG and Dow.

Caltrans Divisions of Transportation Planning and Local Assistance should prepare an action plan to collect all unallowable costs billed by MCOG related to Dow staff charges on the six Agreements or identify Caltrans rationale for not seeking repayment and address the audit recommendations.

Auditee Response

MCOG agrees and has taken steps with the Mendocino County legal counsel to address the audit finding. MCOG Board of Directors is scheduled to meet with the County's legal counsel to discuss the conflict of interest issue and is determining how they will reorganize the contractual relationship for the future Professional Service Agreement (PSA). Please see Attachment II for MCOG's response.

Finding 2 – Improper Procurement Practices

MCOG's procurement practices are not in compliance with Caltrans' Agreement requirements and federal regulations. Our pre-award audit found that MCOG improperly procured two consultant contracts tested. Additionally, MCOG lacked written procurement policies and procedures governing proper procurement practices in compliance with State and federal regulations. Without proper procurement practices, MCOG cannot demonstrate full and open competition was achieved. Specifically, we found the following:

- MCOG improperly procured the PSA with Dow. MCOG lacked an independent cost estimate for the proposed contract, the request for proposal (RFP) lacked evaluation criteria and weights, and MCOG lacked documentation that a cost analysis was performed on the Dow proposal as it was the only proposal received (procurement became non-competitive with only one proposal). Lacking proper procurement documentation MCOG is unable to demonstrate a fair and competitive procurement was performed. Therefore, the Dow staff costs billed by MCOG to Caltrans are questioned. However, the same costs are disallowed due to a conflict of interest in finding 1.
- MCOG improperly procured the consultant Alta Design + Planning (Alta). The RFP lacked weights or values for the evaluation criteria. MCOG lacked scoring sheets documenting proposal evaluations were performed consistently as described in the RFP. Additionally, meeting minutes prepared by the evaluation committee state that five proposals were received, that the Alta proposal was non-responsive to the RFP, and that Alta was requested to submit a revised proposal addressing the deficiencies prior to awarding the contract to Alta. MCOG's actions with regards to the Alta proposal appear to circumvent a competitive process. Lacking proper procurement documentation MCOG is unable to demonstrate a fair and competitive procurement was performed. Therefore, \$78,472 related to the consultant contract with Alta is questioned. (\$70,625 reimbursed from Agreement 74A0578 and \$7,847 from Agreement PPM 12-6140(031).)
- MCOG did not include necessary fiscal provisions on both Dow and Alta Design + Planning contracts reviewed in accordance with Caltrans Agreements and federal regulations that require consultants to maintain an accounting system in accordance with generally accepted accounting principles (GAAP), a right to audit clause allowing the State and Federal

Highway Administration (FHWA) access to records and compliance with 48 CFR Chapter 1, Part 31 and 49 CFR, Part 18.

- MCOG's RFP's included in our review included language allowing a mark-up on subcontractor costs. Mark-ups on subcontractor costs are not allowable unless the consultant can support the mark-up is an actual incurred cost exclusive of the overhead rate.

Agreement No. 74A0758 between MCOG and Caltrans, Section III, No. 9.a, states: "*AGENCY agrees to comply with Office of Management and Budget Circular A-87, Cost Principles for State and Local, and Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*"

Agreement No. PPM12-6140(031) between MCOG and Caltrans, Section II, No. 5.A, states: "*To comply with, and require all project sponsors to comply with, Office of Management and Budget Circular A-87, Cost Principles for State and Local Government, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*"

48 CFR, Chapter 1, Part 15.404-4, Section c.(4)(i).(C), states: "*For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.*"

49 CFR, Part 18.36, Section 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.*"

49 CFR, Part 18.36, Section b.(1), states that: "*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 standards identified in this section.*"

49 CFR, Part 18.36, Section c.(1), states in part: "*All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 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.*"

49 CFR, Part 18.36, Section c.(3), states in part: "*Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: ... (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposal.*"

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49 CFR, Part 18.36, Section d.3.(i), states: *“Request for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored and to the maximum extent practical.”*

49 CFR, Part 18.36, Section f.(1), states in part: *“...Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action... A cost analysis will be necessary... for sole source procurements...”*

49 CFR, Part 18.36, Section f.(2), states in part: *“Grantees and subgrantees will negotiate profit as separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed...”*

Recommendation

MCOG should take following corrective actions:

- Develop written policies and procedures for procurements of consultants that comply with State and federal procurement regulations.
- Maintain adequate documentation to support proper procurement procedures are followed.
- Ensure consultant contracts include all fiscal provisions in compliance with Caltrans Agreements and federal requirements.
- Ensure unsupported mark-ups on subconsultant costs are not billed to Caltrans.

Caltrans Divisions of Transportation Planning and Local Assistance should determine if Caltrans should collect the questioned costs totaling \$78,472 billed by MCOG related to the questioned consultant procurement or identify Caltrans rationale for not seeking repayment and address the audit recommendations.

Auditee Response

MCOG partially agrees and partially disagrees with the finding. Please see Attachment II for MCOG's response.

Analysis of Response

We reviewed the MCOG response and deleted the portion of the finding related to a lack of documentation for publicizing of the RFP and modified the recommendation for clarity. However, the finding remains as MCOG did not provide source documentation to support competitive procurements were performed.

In the response, MCOG provided copies of two of six score sheets to support the evaluation of the five consultant proposals and a summary sheet of the evaluation scores that was prepared in November 2013 from shorthand notes. Our analysis determined that the two score sheets were inconsistent from one another and did not agree to the RFP criteria. Additionally, the shorthand notes were not provided to support the summary sheet recently prepared and did not agree to the

two score sheets provided. Notwithstanding the inconsistencies, all six score sheets are necessary to establish and support the actual evaluation of the proposals and the rankings given. MCOG lacks supporting documentation that Alta was the highest ranked consultant.

We found that the response did not provide source documentation to support MCOG's statements that the deviations in Alta's original proposal were immaterial. The RFP specifically defined requirements of the proposal and the total funding available and one of the evaluation criteria were proposal contents/methodology. Therefore, the request for a revised proposal and budget to address the concerns of the evaluators documented in the minute meetings remains an issue.

The portion of the finding related to missing fiscal provisions in MCOG's consultant contracts remains as the current method of attaching Caltrans Agreements with MCOG to the consultant contracts creates confusion and does not clearly specify which provisions the consultant must comply.

Finding 3 – Internal Control Weaknesses

MCOG has weak internal controls over consultant invoices and lacked adequate documentation to support time charges on several work elements. Additionally, the consultant, Dow, lacked internal controls for a proper timekeeping system. Proper internal controls are necessary to maintain proper accountability over State and federal funds. Specifically, we found the following:

- MCOG did not require invoices to be prepared and submitted by Dow for the reimbursement of the monthly administrative fees and staff planning services charges. Without an invoice from Dow specifying the time period of performance, the costs being billed, signed and dated by a Dow representative, MCOG lacks proper support documentation for expenditures posted to its financial management system. The lack of an integral control imposed by MCOG with regards to Dow billings further supports the conflict of interest finding above given the dual roles of the Executive Director and the owner of Dow.
- MCOG billed Caltrans for planning services performed on specific work elements that are not properly supported by source documents. The audit noted that hours in the total column for work element charges on two out of five timesheets had been changed to reflect additions and deletions of hours between work elements. The specific charges per day were not changed, and there were no initials documenting the employee made the change or initials of an approving supervisor. Additionally, there were no documented reasons or justifications for the changes of hours between Work Elements. MCOG risks a loss of reimbursement if source documents do not properly support billed costs and proper documentation is not maintained.

- Dow lacked evidence of proper internal controls over timekeeping records. In order to verify the labor hours and labor rates billed for planning services paid by MCOG we performed tests of Dow's timekeeping procedures and source documents. We found the following deficiencies in Dow's timekeeping processes:
 - Dow timesheets were not signed and dated by staff or approved by a supervisor, including the owner's timesheets.
 - Hours recorded on timesheets did not match to hours recorded on paystubs and payroll summaries.
 - Dow staff did not use a standard timesheet format.
 - Leave hours taken were not recorded on timesheets.

49 CFR, Part 18.20, Section a.(2), states in part: *"Standards for Financial Management Systems... must be sufficient to permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibition of applicable statutes."*

49 CFR, Part 18.20, Section b.(1), states in part: *"Financial Reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant."*

49 CFR, Part 18.20, Section b.(3), states in part: *"Internal Control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes."*

49 CFR, Part 18.40, Section a, states in part: *"Monitoring by Grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity."*

Master Fund Transfer Agreement 74A0125 Article 1, Section K, states in part: *"RTPA further agrees to ensure that amendments to a previously approved OWP and annual OWPA are...approved by STATE, prior to initiating any work identified in those amendments. Changes requiring amendments generally include adding, deleting, or revising a work element; adding funds to, deleting funds from, and/or moving funds between work elements; or revising a scope of work...amendments must be submitted to STATE and be fully executed no later than April 1 of each year."*

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Recommendation

MCOG should take the following corrective actions:

- Require Dow to prepare and provide an invoice for costs incurred and paid, on Dow letterhead, specifying the period costs were incurred, stating the costs being billed, signed and dated by a Dow representative with supporting documentation attached.
- Ensure any movement of hours from one Work Element to another is properly documented and only performed due to an error in charging and/or an allowable reason, and all source documents are properly initialed and approved with the change.

Dow should take the following corrective action:

- Ensure staff sign and date timesheets and that proper review and approval of timesheets is performed and documented.
- A standard timesheet format for all staff should be used which requires all hours worked and leave hours taken be recorded on the timesheet.

Auditee Response

MCOG partially agrees and partially disagrees with the finding. Please see Attachment II for MCOG's response.

Analysis of Response

Based on MCOG's response we deleted one sentence that was unclear and inserted the number of transactions audited for clarify.

This report is intended solely for the information of MCOG, Caltrans' Management, the California Transportation Commission and the Federal Highway 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 Dadang Prihadi, Auditor, at (916) 323-7886 or Teresa Greisen, Audit Manager, at (916) 323-7910.

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- c: Phil Dow, Executive Director, Mendocino Council of Governments
Michael Tritz, Deputy Secretary for Audits and Performance Improvements, California State Transportation Agency
Janice Richard, Director of Financial Services, Federal Highway Administration
Rodney Whitfield, Financial Manager, Federal Highway Administration
Jermaine Hannon, Director, Planning and Air Quality, Federal Highway Administration
Kara Magdaleno, Administrative Program Assistant Planning & Finance, Federal Highway Administration
Malcolm Dougherty, Director, California Department of Transportation
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Charlie Fielder, District 1 Director, California Department of Transportation
Ray Zhang, Acting Chief, Division of Local Assistance, California Department of Transportation
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David Saia, LAPM/LAPG Coordinator, Caltrans Division of Local Assistance, California Department of Transportation
Erin Thompson, Associate Transportation Planner, Regional and Interagency Planning, Division of Transportation Planning, California Department of Transportation

ATTACHMENT I
Summary of MCOG Fundings for FY 11/12

No.	Agreement Number	Funds Type	Caltrans Division	Funds Source/Agreement Type	Agreement Period	Agreement Amount	Finding
1	X12-6140(034)	State	Local Assistance	RSTP Exchange	07/01/11 - 06/30/12	\$645,642	1
2	PPM10-6140(028)	State	Local Assistance	Planning, Programming, and Monitoring (PPM)	10/23/09 - 06/30/12	\$450,000	1
3	PPM12-6140(031)	State	Local Assistance	Planning, Programming, and Monitoring (PPM)	11/03/11 - 06/30/14	\$200,000	1,2
4	74A0125 OWP-011-A1	State	Planning	Master Funds Transfer Agreement (MFTA) OWPA (relates to MFTA) includes: RPA 11/12 - State Highway Account RPA 10/11 - Carryover FHWA - SP & R Part. Planning FTA Sect. 5304 Rural Blueprint	01/01/05 - 12/31/14 10/05/11 - 06/30/12	\$275,000 \$13,015 \$0 \$59,831 \$176,000	1
a.		State					
b.		State					
c.		State					
d.		Federal					
e.		Federal					
5	74A0617	State	Planning	Funds Transfer Agreements (FTA) - Environmental Justice Grant. Project name: "Round Valley Non-Motorized Needs Technical Study".	02/13/12 - 02/28/14	\$135,000	1
6	74A0578	State	Planning	Funds Transfer Agreements (FTA) - Community Based Transportation Planning (CBTP) Grant. Project Name: "Rails with Trails Corridor Plan".	03/09/11 - 02/25/13	\$90,000	1,2

ATTACHMENT II



MENDOCINO COUNCIL OF GOVERNMENTS

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PHILLIP J. DOW, EXECUTIVE DIRECTOR

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November 27, 2013

Zilan Chen, Chief
External Audits – Local Governments
Audits and Investigations MS-2
California Department of Transportation
1304 O Street, Suite 200
Sacramento, CA 95814

RE: File P1580-0018

Dear Ms. Chen:

Enclosed you will find Mendocino Council of Governments' response to the draft pre-award audit report that we received on October 29, 2013. As we agreed in the meeting with you on October 30, our response is due by December 2.

The enclosed Auditee Response with its attachments also are available in electronic format, which will be sent to you by email.

Please note that included in the attachments are some confidential employee records that should not be made available for public view, i.e. on your website.

Thank you for this opportunity to comment on the audit findings. If you have further questions, please direct them as usual to Mr. Phil Dow, Executive Director.

Sincerely,

/s/

Janet Orth
Deputy Director for Administration

Enclosure

By FedEx

cc: (by email only)

Teresa Greisen, Audit Manager

Dan Gjerde, MCOG Chair

Thomas Parker, County Counsel

PRE-AWARD AUDIT OF MENDOCINO COUNCIL OF GOVERNMENTS

File: P1580-0018

Auditee Response

November 26, 2013

Introduction

Mendocino Council of Governments (MCOG) staff prepared the following Auditee Response to the draft pre-award audit. It was reviewed by the Mendocino Council of Governments Chair on November 26, 2013 and will likely be reviewed with the Executive Committee at a later date.

MCOG staff recognizes the serious nature of **Finding 1- Conflict of Interest** and has taken steps with legal counsel to address the audit finding. A closed session of the MCOG Board of Directors is scheduled within the regular meeting of December 2, 2013 so that legal counsel can discuss the issue with the Board and present remediation alternatives.

MCOG has no evidence to challenge the allegation that MCOG improperly procured the Personal Services Agreement (PSA) with Dow & Associates as stated in **Finding 2- Improper Procurement Practices**. The procurement was conducted independent of MCOG 15 years ago and records regarding the process are not available.

MCOG challenges statements under **Finding 2- Improper Procurement Practices** regarding audited procurement involving the consulting firm Alta Planning & Design. Although staff was unable to produce evidence satisfactory to the Audit team to indicate that the procurement was fair and competitive at the time of the on-site visit, this response provides substantial evidence to the contrary.

Regarding Finding 3 – Internal Control Weaknesses, several of the preliminary recommendations made at the Audit Team’s on-site visit were implemented earlier this year. Evidence of current compliance with audit recommendations is included in this response. In at least one instance support for this overall finding was based on a statement that records do not exist, when in fact they do, but the Audit Team did not ask for them. In other instances, bold statements in the draft audit provide no indication of scale of the alleged irregularity, and appear to disregard previously supplied responses. In summary, there are aspects of Finding 3 that are contested in this response and other aspects that are accepted.

Finding 1- Conflict of Interest

Recommendation: MCOG should take the following actions:

- Prepare a schedule detailing the Dow staff costs billed on six agreements with Caltrans.
- The MCOG Board should take appropriate action to remove the conflict of interest created by the PSA between MCOG and Dow.

Auditee Response to Bullet # 1

The audit team provided MCOG with a chart (Attachment 1) identifying the six agreements, the fund type, the responsible Caltrans Division, funds source, agreement period, and agreement amount referred to in Bullet #1. MCOG staff has calculated funding claimed by Dow & Associates staff (through MCOG contract) under each of the six agreements in effect in the year audited. MCOG staff has constructed a chart, similar to the one provided, with amounts claimed under each agreement and fund source so that the requested information can readily be identified. This is provided as Auditee Response Attachment 1-A.

Auditee Response to Bullet # 2

MCOG staffing in the early 1980's was provided by the County of Mendocino. The County Administrator acted as the Executive Secretary for MCOG but delegated the ongoing duties to County administrative staff. Transportation planning was provided by Mendocino County Public Works Department (DPW) staff. The County Traffic Engineer (Phil Dow) was assigned MCOG transportation planning duties. When the Traffic Engineer left county employment and the Department of Public Works found no suitable replacement, DPW contracted with Phil Dow. Mr. Dow was then providing similar services to the Lake County/City Area Planning Council under a sole proprietorship business known as Phillip J. Dow, P.E. After several years acting as a subcontractor to DPW, MCOG offered a one-year contract directly to Phillip J. Dow, P.E. to provide transportation planning staffing. Mr. Dow continued to provide MCOG transportation planning staffing through a series of one-year contracts through the 1998/1999 fiscal year.

County administrative staff and Mendocino County Department of Planning and Building Services staff provided administrative support for MCOG until approximately 1987. After that the Executive Secretary contracted with Mary (Spangler) Hiatt to provide administrative support for MCOG. At that point the conversion from county staffing to private contractors was complete. Ms. Hiatt continued as Executive Secretary until resigning in 1999. Considering the staffing options available, the MCOG Board then

decided to combine administrative duties with planning service in a single contract. One of the member entities of MCOG, the City of Willits, offered to prepare the Request for Proposals (RFP) on behalf of MCOG. The Willits City Manager (who had previously served as deputy Executive Secretary as a County Administrative Analyst) was assigned responsibility for developing the RFP, distribution of the RFP, and establishing a selection process.

Mr. Dow responded with a proposal that was accepted by MCOG to provide comprehensive (administrative and planning) staff services to MCOG under the sole proprietorship business known as Dow & Associates. Dow & Associates was created in order to responsibly respond to the MCOG RFP. Dow & Associates was selected and the first three-year contract went into effect on July 1, 1999. MCOG extended the contract on four occasions, each for three-year terms. Dow & Associates informed the Board of staffing options many months prior to contract expiration during each contract period. Staff reports identifying staffing options were previously provided to the audit team. The current agreement for services expires June 30, 2014.

MCOG Executive Director Dow informed the MCOG Executive Committee of the preliminary findings of the audit team regarding conflict of interest in spring, 2013. The MCOG Chair was apprised of the audit schedule and its effect on RFP development. The audit team met with MCOG staff for the audit review on October 30, 2013. Later that day, Executive Director Dow met with Mendocino County Counsel (who acts also as MCOG counsel) to discuss the Conflict of Interest finding and solicit staffing options to be incorporated into the RFP to address the issue. The MCOG Board of Directors entered into the current agreement with Dow & Associates with the full understanding that a new RFP for staffing services would be constructed and bids sought for services that are to begin with the 2014/2015 fiscal year. Mendocino County Executive Office has taken on the task of leading the procurement process on behalf of MCOG.

The MCOG Board's involvement in the procurement process was discussed at the regular MCOG meeting on November 4, 2013. County staff led the discussion and there was no MCOG (Dow & Associates) staff involvement in the discussion.

At this point, a definitive approach to address the Conflict of Interest issue has not been identified. Mendocino County Counsel has taken the lead in identifying staffing options to the MCOG Board. It is expected that the preferred option would then be incorporated in an RFP that would be distributed within the next three months. It is further expected that a new contract or contracts will go into effect on July 1, 2014 that will be in conformance with state and federal Conflict of Interest codes.

Finding 2- Improper Procurement Practices

Recommendation: MCOG should take the following corrective actions:

- Reimburse Caltrans \$80,952 due to improperly procured Alta consultant contract.
- Develop written policies and procedures for procurements of consultants that comply with State and federal procurement regulations.
- Maintain adequate documentation to support proper procurement procedures are followed.
- Ensure consultant contracts include all fiscal provisions in compliance with Caltrans Agreements and federal requirements.
- Ensure unsupported mark-ups on sub-consultant costs are not billed to Caltrans.

Auditee Response (General)

The first bullet under Finding 2 refers to MCOG's improperly procured PSA with Dow. A corresponding recommendation on this finding has not been provided since the audit considers that the same costs are disallowed under the Conflict of Interest issues under Finding 1.

For background, refer to Auditee Response to Bullet 2 under Finding 1. The procurement process that resulted in the PSA contract with Dow & Associates was not done by MCOG staff. As far as we know there are no records of the process in MCOG files to substantiate or dispute the audit finding of improper procurement. As the process was completed 15 years ago, it is unknown if any records exist at the City of Willits. The City Manager in charge of the process has been deceased for a number of years.

Auditee Response to Bullet # 1

MCOG disputes the audit finding that MCOG improperly procured the consulting firm Alta Planning & Design during the period audited. The audit team's finding is based on the following statements:

1. MCOG lacked supporting documentation that the RFP was publicized.
2. The RFP lacked weights or values for evaluation criteria.
3. MCOG lacked scoring sheets documenting proposal evaluations.
4. Meeting notes prepared by the evaluation committee state that five proposals were received, that the Alta proposal was non-responsive to the RFP, and that Alta was requested to submit a revised proposal addressing deficiencies prior to awarding the contract to Alta.

Regarding Statement #1 above:

MCOG staff provided the audit team with a distribution list for the RFP in question (Attachment 2-A). We understand that the audit team considers the distribution list as insufficient documentation. We are now attaching copies of dated emails documenting the distribution of the notice of RFP availability to representatives of numerous consulting firms (Attachment 2-B). We also are attaching an email from a marketing firm that documents that they received the RFP notice and distributed it to hundreds of firms (Attachment 2-C). MCOG staff previously provided the audit team with a copy of email correspondence between the Deputy Director of Administration and the Assistant Director discussing details of the posting on the appropriate date (Attachment 2-D). The audit team advised that the email was insufficient to document email posting of the subject RFP. Attachment 2-D also provides a copy of the date stamp the website posting of the Rails with Trails Corridor Plan RFP that is readily and publicly available from MCOG's website.

Regarding Statement #2 above:

The RFP distributed by MCOG for the subject consultant contract identified evaluation criteria but failed to include the weighting of each criterion to be used in the evaluation process. Each time an RFP is developed by staff, a previous RFP is used as a template for the new RFP. In that manner, a deficiency from a previous RFP was likely replicated.

The evaluation criteria were included in the subject RFP but weighting of each criterion was not identified. We agree with the audit finding as identified in #2 above.

Regarding Statement #3 above:

MCOG provides scoring sheets in advance of all Consultant Selection Committee meetings to evaluate proposals. We have not been consistent in retention of the sheets once consultant selection has been completed.

MCOG contests the audit statement that we lacked scoring sheets documenting proposal evaluations. Outside members of the Consultant Selection Committee included a representative from Caltrans District 1, a representative from the County of Mendocino, representative from the City of Willits, and a representative from the City of Ukiah. The Caltrans District 1 representative has since transferred to Sacramento. Caltrans District 1 staff located the subject project file containing the original score sheet. A copy of a forwarding email, score sheet, and earlier email indicating the Caltrans representative's knowledge of the appropriateness of the

consultant selection process is provided in Attachment 2-E. The County representative is now deceased and a minimal effort to gather helpful information proved fruitless. The representative from Willits has since retired but has been retained part-time. The statement of the Willits representative is included in Attachment 2-F. The Ukiah representative produced his original scoring sheet (Attachment 2-G) as well as an email statement (Attachment 2-H) regarding the fairness and competitiveness of the MCOG selection process.

Additionally, MCOG staff has located shorthand notes indicating initial scoring of the five proposals received. The following is based on those shorthand notes: The committee ranked Gates & Associates at the last of the five proposals received. Lumos & Associates was fourth and Questa Engineering Corporation third. The Planning Center/DC&E was ranked second and Alta Planning & Design was ranked first. Attachment 2-I, prepared on November 19, 2013, is an accounting of the scoring based on the shorthand notes. The committee then voted to drop the bottom three firms from further consideration and concentrated on the top two ranked firms.

Regarding Statement #4 above:

The Consultant Selection Committee went on to discuss the merits of the two top proposals. After continued discussion, there was consensus to rank Alta Planning & Design #1 and the Planning Center/DC&E #2. MCOG staff was directed to follow up with Alta, as the top ranked respondent, regarding miscellaneous questions and budget items and to request attendance at a meeting with the committee. At the conclusion of the meeting there was consensus to negotiate with Alta to revise the proposal to conform to the available budget. MCOG staff was requested to lead the negotiations with Alta. MCOG was assisted by the Caltrans representative who again reviewed the proposal, and made recommendations to eliminate certain non-essential tasks so that proposal costs were within existing budget. Alta ultimately agreed with the changes and a contract was offered, accepted and executed based on the revised proposal.

The Audit Team notes that the Consultant Selection Committee Meeting #1 Summary notes that responsiveness to the RFP was discussed at the committee in regards to the two top proposals. MCOG staff noted that the Alta proposal did not number the work tasks consistent with direction in the RFP and had identified one task as "optional" that was required by the RFP. It should be noted that the RFP specifically states that immaterial deviations from the requirements of the RFP may be waived by the Mendocino Council of Governments. The task numbering deviation

was minor and immaterial. In negotiations with Alta, it was agreed that the “optional” task would be considered essential. A third reason for the use of the term non-responsive as reported by staff was that the Alta proposal was significantly above the advertised budget. Although that was the thought of the staff preparing the meeting summary, budget concerns are clearly not considered until after negotiations begin and an over-budget proposal does not in itself mean it is non-responsive. The Consultant Selection Committee clearly understood that was the case in identifying Alta as the top candidate even though the proposal fee was not within budget.

Auditee Response to Bullet # 2

It is true that MCOG does not have written procurement policies and procedures. There is however, a long history of procurement that conforms to procurement practices of our member entities. City and County and/ or Caltrans technical members are always involved in our consultant selection process. Others are also involved in the RFP review before advertising. In short, consultant selection members familiar with the conduct of fair and competitive procurement are invariably involved in the process.

MCOG would point out that components that are normally considered in a Procurement Policies and Procedures Manual are included in the standard RFPs.

MCOG has already drafted a Procurement Policy and Procedure Manual that will be brought to the MCOG Board for consideration during Fiscal Year 2013/14.

Auditee Response to Bullet # 3

The written Procurement Policies and Procedures Manual will include specific procedures to ensure documentation sufficient to meet audit standards such as:

- Documentation of advertising (Including website and mail distributions)
- Documentation of scoring and ranking process
- Documentation of negotiation process with top ranked firms
- Records retention

Auditee Response to Bullet # 4

As pertains to the 1999 PSA between MCOG and Dow & Associates, MCOG does not dispute the Audit Team’s finding that fiscal provisions to maintain an accounting system in accordance with generally accepted accounting principles (GAAP) and right to audit in accordance with Caltrans Agreements and federal regulations were not included. There are no records available that address this issue.

With regard other contracts/agreements administered by MCOG; we dispute the Audit Team's statement in regard to the project consultant agreement. All contracts prepared by MCOG staff include a section on "State Requirements." An excerpt from the audited contract reads as follows:

*"Consultant and all subcontractors shall comply with terms of State's Fund Transfer Agreement, attached hereto as **Exhibit C** dated February 1, 2011, between MCOG and State, as funding for this Project is provided through State Highway Account (SHA) funds. A list of Internet web links to Federal Regulations referenced in the Fund Transfer Agreement is attached hereto as **Exhibit D**."*

By practice, these requirements are reviewed and discussed with the contractor during a startup meeting. Exhibit D clearly lists the relevant regulations, e.g. CFR 48 and 49 (see attached), of which MCOG maintains a full copy in the office. The contract is not considered to be complete without the accompanying exhibits, so this finding is baseless.

Exhibit C and Exhibit D above referred to above are attached herein as Attachment 2-J and Attachment 2-K.

Auditee Response to Bullet # 5

In March 2012, Caltrans District 1 provided guidance to MCOG staff that unsupported markups on sub consultant costs would not be allowable and advised that we revise our contracts to prohibit mark-ups. Contract language reflecting this guidance was inserted into standard agreements/contracts subsequent to that date.

Finding 3- Internal Control Weaknesses

Recommendation: MCOG should take the following corrective actions:

- Require Dow to prepare and provide an invoice for costs incurred and paid, on Dow letterhead, specifying the period the costs were incurred, stating the costs being billed, signed and dated by a Dow representative with supporting documentation attached.
- Ensure any movement of hours from one Work Element to another is properly documented and only performed due to an error in charging and/or an allowable reason, and all source documents are properly initialed and approved with the change.

Auditee Response to Bullet # 1

While it is true that MCOG did not require a monthly invoice for the administration fee, staff considered this a routine payable that traced back to the adopted budget resolution. Resolution #M2011-07, Exhibit C, states the flat fee to be paid monthly. MCOG submitted monthly claims to the County Auditor-Controller that referenced this resolution and exhibit, which was provided before the fiscal year began, along with allocation instructions. To require an invoice from Dow & Associates appeared to be unnecessary, when MCOG could have instructed the Auditor to release the funds automatically, as the allocation schedule had been pre-approved by the Council. Administration services are retained and paid in advance, in contrast to planning services, which are reimbursed on a time and materials basis.

The Dow & Associates agreement with MCOG is to provide comprehensive administrative and planning services for the agency. Dow's approach to billing for reimbursable work was to enter costs incurred for the specified period (usually monthly) with supporting documentation directly on a claim form and submit to the County Auditor for payment.

Informed by the Audit Team that Dow & Associates should add a step to invoice in the same manner that MCOG staff expects of other claimants, Dow and Associates developed an invoice and implemented this recommendation for reimbursable planning services within weeks after the Audit Team visited in January, 2013.

MCOG has already implemented the recommended corrective action for reimbursable planning services. A sample of the Dow & Associates invoice is provided (Attachment 3-A)

Auditee Response to Bullet # 2

MCOG recognizes that hours were changed on two time cards that were reviewed by the Audit Team and there was insufficient documentation of the reason and authorization for the changes. MCOG disputes the Audit Team's inference that, given lack of documentation, these hours were not changed for allowable reasons. MCOG further disagrees that a particular statement within Bullet 2 of Finding 3 is an accurate portrayal of the MCOG response. This Audit Team statement reads "Furthermore, when asked MCOG stated that the changes were due to exhaustion of funds on one Work Element to another with available funds". MCOG staff recalls stating that within certain work activities there are charges that can reasonably be attributed to more than one work element. That being the case, as budgets become constrained or exhausted, other options for the charging of time are sometimes investigated. This is not common practice, but sometimes occurs on a limited basis. The previously provided written statements regarding this issue are attached. See Dow statement (Attachment 3-B) and Ellard statement (Attachment 3-C Q1).

To further demonstrate that movement of hours between work elements was limited and acted upon only when appropriate, Attachment 3-D is provided. This attachment identifies Dow & Associates charges that were not billed (due to zero balances in the appropriate work elements) as well as the total unexpended funds (and therefore carried over) for fiscal years 2010/11, 2011/12 (audited year), and 2012/13 for both agencies contracting with Dow & Associates. For the audit period, the Audit Team questioned the legitimacy of movement of a few hours. However, over \$124,000 remained unclaimed in various work elements of MCOG's 2011/12 Work Program and available for reprogramming in the 2012/13 fiscal year. Dow & Associates | 2011/12 fiscal year end summary of claims indicates that \$1,212.45 of reimbursable planning work was done but was not reimbursed because funding in appropriate work elements had been exhausted. There were unbilled hours identified in FY 2010/11 as well as previous years. Subsequent to the audit year, over \$4,000 was not billed FY 2012/13 although a balance of \$121,000 was carried over to FY 2013/14. Although the Audit Team's comments regarding documentation of the movement of hours is justified, Attachment 3-D demonstrates that significant Dow & Associates charges were not billed in the audit period and in the fiscal years before and after the audit period. There was no widespread practice of movement of hours between work elements to maximize the Dow & Associates claim.

MCOG will ensure that future movement of hours after time cards are submitted are fully documented, properly initialed and approved.

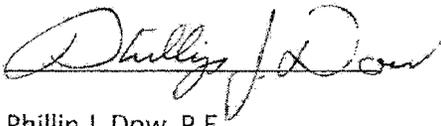
Recommendation: Dow should take the following corrective action:

- Ensure staff sign and date timesheets and that proper review and approval of timesheets is performed and documented.
- A standard timesheet format for all staff should be used which requires all hours worked and leave hours taken be recorded on the timesheet.
- Implement a process to formally track staff leave hours earned and taken by employee with a running balance.

Auditee Response:

Dow & Associates has prepared a response to the recommended corrective actions as identified above. This response is attached as Attachment 3-E.

Submitted by:



Phillip J. Dow, P.E.

Executive Director

Date: November 26, 2013