FEDERAL HIGHWAY ADMINISTRATION, CALIFORNIA DIVISION
CALIFORNIA DEPARTMENT OF TRANSPORTATION

PROGRAM REVIEW

Consultant Selection and Consultant Contract Administration
(Caltrans #07-01, FHWA S50693)

Final Report
Phase I: The Programmatic Perspective

July 2007

Prepared By:

Eugene Shy, Caltrans Division of Local Assistance, Team Leader
Tom Sanborn, Caltrans Division of Procurement and Contracts, Contracting Officer
Germaine Belanger, Caltrans Division of Local Assistance, Environmental Planner
Carol Hanson, Caltrans Division of Right-of-Way
Linda Laubinger, Caltrans Division of Audits and Investigations
David Cohen, FHWA California Division, Team Leader
Cindy Vigue, FHWA California Division, Special Assistant
Karen Bobo, FHWA California Division, Field Operations Engineer
Sarah Skeen, FHWA California Division, Engineering Services Program Engineer
Ada Lehner, FHWA California Division, Financial Manager
Scott McHenry, FHWA California Division, Field Operations Engineer
Abraham Geevarghese, FHWA California Division, Right-of-Way Specialist
Wes Rutland-Brown, FHWA, California Division, Data Analyst

Approved:

Maiser Khaled, Director of
Project Development and Environment
FHWA, California Division

Date: 8/31/07

Terry Abbott, Chief
Caltrans, Division of Local Assistance

Date: 8/31/07

I. EXECUTIVE SUMMARY and SUMMARY OF RECOMMENDATIONS

This program review was undertaken based on the identified risks associated with federal-aid consultant contracts and consultant performance in the national review of local assistance projects in Fiscal Year (FY) 2005. This review is also based on the results of the Federal Highway Administration (FHWA) California Division's FY 2006 risk assessments. The FY 2006 risk assessments identified the consultant selection and contract administration process as a high risk area for waste, fraud, and abuse for local assistance projects. These projects are primarily administered by the cities and counties in California. The primary reason that the area of local assistance consultant contract administration was identified as "high risk" was because the FHWA California Division had very limited information, knowledge, experience, or involvement in this area upon which to make a well-informed decision to determine the level of risk.

An interdisciplinary and interagency team was formed to identify the applicable federal-aid requirements for consultant contracts for architectural and engineering services (A&E contracts), and to verify the compliance of Caltrans' published manuals and guidance documents with these requirements. Consultant contracts associated with the following phases of project development were reviewed in this interdisciplinary effort: environmental analysis, right of way, design, and construction engineering. The consultant contracts associated with transportation planning activities were excluded from the scope of this program review, because those contracts are administered by Caltrans and metropolitan planning organizations through the Consolidated Planning Grant program, which is under the Federal Transit Administration's oversight and stewardship responsibilities.

Although Caltrans-administered federal-aid consultant contracts were not identified in the FY 2005 national review or in the FHWA California Division's FY 2006 risk assessments as a high risk area, they were added to the scope of this program review, because the program review team determined that the same issues regarding the FHWA California Division's information, knowledge, experience, and involvement applies to these contracts, as well. In addition, Caltrans Division of Procurement and Contracts (DPAC) rescinded their primary guidance document, "Architectural & Engineering Handbook" in January 2006. Consequently, the program review team concluded that the risk associated with Caltrans administered A&E contracts may have significantly increased. The program review team also observed that the FHWA California Division does not have any record of issuing programmatic approvals of Caltrans' procedures for consultant selection and A&E contract administration, pursuant to 23 CFR 172.9(a).

The program review of Caltrans' manuals and guidance documents was initiated following the joint approval of the work plan on January 9, 2007, by the Caltrans and FHWA California Division leadership teams. In collaboration with the FHWA Washington and Ohio Divisions, who had already undertaken similar efforts in recent

years, and with Caltrans DPAC, numerous federal requirements were identified as the minimum regulatory standards for consultant selection and contract administration for A&E contracts. The following federal standards were adopted and used for the program review in verifying Caltrans' and local agency' compliance with the federal-aid program requirements:

- Title 23 United States Code, Section 112 (23 U.S.C. 112): "Letting of Contracts."
- Title 23 Code of Federal Regulations, Part 172 (23 CFR 172): "Administration of Engineering and Design Related Service Contracts."
- Title 49 Code of Federal Regulations, Part 18 (49 CFR 18): "Uniform Administration Requirements for Grants and Cooperative Agreements to State and Local Governments."
- Title 48 United States Code, Part 36, Subpart 36.6: Architect-Engineering Services.
- Title 40 United States Code, Chapter 10, Subchapter IV, Paragraphs 541-544: "Brooks Act."

Based on the comparison between these standards of review and Caltrans established policies, processes, procedures, and business practices: we have made the following recommendations to ensure that Caltrans' activities in consultant selection and contract administration procedures and activities comply with the federal-aid program requirements. These global recommendations apply to all four phases of project development considered in our program review:

1. We recommend that Caltrans establish a procedures manual to document the federal-aid program requirements for Caltrans administered consultant contracts and contract administration procedures. This manual may also contain the now codified State requirements, in addition to the federal-aid program requirements for A&E contracts.

Caltrans Response Caltrans has presented the FHWA with a binder with copies of the documents that are currently used to select consultants and administer consultant contracts. This information is available on Caltrans website at http://caltrans-opac.ca.gov/aeinfo.htm. We appreciate the FHWA staff's review of these documents and confirmation that they meet FHWA requirements.

2. We recommend that the FHWA California Division and Caltrans Division of Procurement and Contracts work collaboratively to establish lines of communication and a process to facilitate the FHWA programmatic approvals of Caltrans' "written procedures" for Caltrans' consultant selection and administration of A&E contracts.

Caltrans Response
Caltrans and FHWA have been working closely together, and a great deal of information has been shared in the past few months. This information has resulted in accomplishing the documentation of the "written procedures" and FHWA confirmation that this recommendation has been satisfied.

3. For federal-aid consultant contracts associated with "major projects," we recommend that the FHWA California Division establish procedures to perform on-board approval of the "significant" federal-aid A&E consultant contracts from Caltrans and other major project sponsors. Major projects are defined in 23 U.S.C 106(h).

Caltrans Response
After this recommendation was made, a new Stewardship and Oversight Agreement was executed between Caltrans and FHWA. This Agreement categorizes all "Major Projects" to be "High Profile" and subject to FHWA oversight. The level of FHWA involvement for each major project regarding consultant selection will be determined by FHWA and Caltrans early on in the project schedule and documented in a signed "High Profile Project Agreement", to be prepared for each project.

In order to meet project delivery milestones, FHWA will be involved throughout the process; but Caltrans has requested to have approval authority delegated from FHWA.

4. We recommend that the Caltrans Division of Local Assistance collaborate with FHWA California Division to establish procedures for the procurement of federal-aid A&E contracts when consultants are acting in a management capacity for a local agency.

Caltrans Response
Caltrans Division of Local Assistance has presented FHWA with the language that will implement this recommendation in Section 10.8 of the Local Assistance Procedures Manual (LAPM).

5. We recommend that the stewardship and oversight agreement memorialize the FHWA California Division's approval of alternate approval procedures for federal-aid A&E consultant contracts and contract settlements involving design services for projects that have not been delegated to the State under 23 U.S.C. 106(c) and that do not fall under the small purchase procedures in 23 CFR 172.5(a)(2).

Caltrans Response
The new Stewardship and Oversight Agreement has identified projects that are not delegated to states as "High Profile" projects. The level of FHWA involvement will be determined early on in the project schedule, project-by-project.

In order to meet project delivery milestones, FHWA will be involved throughout the process, but Caltrans has requested to have approval authority delegated from FHWA.

6. We recommend that the FHWA California Division collaborate with Caltrans Division of Audits and Investigations to ensure that Caltrans, as the cognizant agency for audit, meets the federal-aid program requirements (23 CFR 172.7 (b)) in establishing the indirect cost rates of consultant contracts.

Caltrans Response
Caltrans Division of Audits and Investigations will be meeting with FHWA to implement this recommendation in January 2008.

These findings are discussed in further detail in Section III of the report. The program review team made additional findings which are unique to the individual four phases of project development under study. Those findings are also discussed in Section III.

This program review consists of two phases. The first phase of the review is to verify the compliance of Caltrans' procedures (for both State and locally administered federal-aid A&E contracts) with the federal-aid program requirements. Within the scope of the first phase, the program review team also investigated Caltrans' stewardship and oversight roles for local agencies compliance with the federal-aid program requirements. This report is for the first phase.

The second phase of the review is to verify the actual compliance of a sample of federal-aid A&E consultant contracts with the federal-aid program requirements. Samples will be obtained to represent State procedures, and locally administered procedures. The findings, observations, and recommendations regarding this project-level analysis will be appended to this report in December 2007.

II. INTRODUCTION

A. Purpose of Review:

The purpose of the program review is to verify the compliance of Caltrans' procedures in A&E consultant selection and contract administration with the federal-aid program requirements. This purpose includes both Caltrans and locally administered federal-aid A&E consultant contracts in California.

B. Study Objectives:

Phase I:

- Compile of list of all federal-aid program requirements and federal fund administration guidance documents pertinent to consultant selection and contract administration.
- Review Caltrans' policies, procedures, manuals, and guidance documents for compliance with the identified federal-aid program requirements.
- Document Caltrans District Local Assistance Engineers' stewardship and oversight roles for locally-administered federal-aid A&E consultant contracts.
- Establish parameters of compliance and performance measures to gauge the level of actual compliance with the federal-aid requirements for a representative sample of consultant contracts.
- Compile and publish inductive findings, observations, and recommendations as to the compliance of Caltrans' procedures with the federal-aid program requirements.

Phase II:

- For a representative sample from State and from locally administered consultant contracts, determine the level of compliance with the federal-aid program requirements.
- Compile and publish deductive findings, observations, and recommendations as to the actual compliance of each representative sample of consultant contracts with the federal-aid program requirements.

C. Scope and Approach:

The program review involves the four main activities shown below, two of which are discussed in this report. The findings, observations, and recommendations associated with the latter two activities will be appended to this report in December 2007.

- Reviewing Caltrans' established and published manuals and guidance documents to make sure that these documents address federal-aid program requirements in consultant selection and contract administration (for both State and locally administered federal-aid A&E consultant contracts).

- Reviewing Caltrans' stewardship and oversight roles in local agencies' compliance with the federal-aid program requirements in locally administered federal-aid A&E contracts.

- Reviewing local agencies' actual compliance with the federal-aid program requirements for a representative sample of locally-administered federal-aid A&E contracts.

- Reviewing Caltrans' actual compliance for a representative sample of State administered federal-aid A&E contracts.

The first two activities constitute the first phase of this program review, which involves the program level identification of federal-aid program requirements and the verification of Caltrans' procedures with the identified requirements. In examining Caltrans' procedures, the program review team reviewed the manual, guidance documents, and business practices. This review was interdisciplinary in nature, and it identified the global requirements, as well as those unique to the following four phases of project development: environmental analysis, right of way, design, and construction engineering.

The latter two activities involve the establishment of compliance parameters and performance measures to gauge the actual compliance of representative samples of federal-aid A&E consultant contracts with the federal-aid program requirements. Then, these parameters and measures will be applied to the selected projects to document the actual level of compliance. The findings, observations, and recommendations with the project level analysis will be appended to this report in December 2007.

D. Questions for Review and Principal Contacts:

Questions for review for Caltrans District Local Assistance Engineers' stewardship and oversight roles, and responsibilities for local agencies' compliance with the federal-aid program requirements:

1. What is the DLAE's role in monitoring and ensuring local agencies' compliance with federal-aid requirements in consultant selection and contract administration for engineering services?

2. When and how are DLAEs invited to participate in consultant selection panels? What is your role in these panels with respect to ensuring compliance with the federal-aid requirements?

3. How does the DLAE ensure that local agencies follow the consultant selection process?

4. Does the DLAE review the local agencies' justifications for consultant contracts?

5. Does the DLAE approve the contract when the consultant serves in a management capacity (i.e., when the consultant becomes the city engineer for the project)?

6. Does the DLAE review the scope of services agreement?

7. What is the DLAE's role in the RFP/RFQ process?

8. Does the DLAE review the evaluation and ranking of the proposing consultants?

9. Does the DLAE review the top 3 prospective consultants developed from the ranked firms?

10. If the top ranked consultant is not selected, does the DLAE review the basis for the decision?

11. Does the DLAE review the protests regarding the ranking and selection? What is the DLAE's role in resolving any disputes?

12. Does the DLAE help prepare or review the cost estimate for the services prior to cost negotiations?

13. Does the DLAE need to make a determination to certify that the negotiated contract amount is reasonable compared to the local agency's cost estimate?

14. What is the DLAE's role in pre-award audits?

15. Does the DLAE follow up with the local agencies to ensure that pre award audit recommendations are followed?

16. What is the DLAE's role in determining the need for a post award audit? If there is a post award audit for the project, what are the DLAE's coordination roles and responsibilities with the Caltrans Office of Audits and Investigations?

17. What is the DLAE's role in deciding which of the four methods of payment will be specified in the contract?

18. Does the DLAE participate in the scoping meetings held with the selected consultant?

19. Does the DLAE require and review quarterly progress reports for the consultant's work?

20. How does the DLAE address cost overruns?

21. What is the DLAE's involvement in scope changes and contract amendments?

22. After the completion of the contract, what is the DLAE's role in the performance evaluations for the contractor's work?

23. If the consultant's errors and omissions are identified, what is the DLAE's role in seeking reimbursement for the additional costs resulting from the errors and omissions?

Principal Contacts

Caltrans District Local Assistance Engineers:

DISTRICT 01
Jan Bulinski
Public #(707) 445-6399, Calnet 8-538-6399, Fax 8-538-2048
E-Mail Address: **jan_bulinski@dot.ca.gov**
Counties: Del Norte, Humboldt, Lake, Mendocino

DISTRICT 02
John Pedersen
Public #(530) 225-3484, Calnet 8-442-3484, Fax 8-442-3020
E-Mail Address: **john_pedersen@dot.ca.gov**
Counties: Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity

DISTRICT 03
Ben J. Bramer
Public #(530) 741-5450, Calnet 8-457-5450, Fax 8-457-5466
E-Mail Address: **ben_bramer@dot.ca.gov**
Counties: Butte, Colusa, El Dorado, Glenn, Nevada, Placer, Sacramento, Sierra, Sutter, Yolo, Yuba

DISTRICT 04
John Brewster (acting)
Public #(510) 286-6485, Calnet 8-541-6485, Fax 8-541-5229
E-Mail Address:**john.brewster@dot.ca.gov**
Counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma

DISTRICT 05
Mike Giuliano
Public #(805) 542-4606, Calnet 8-629-4606, Fax 8-629-3746
E-Mail Address: **mike_giuliano@dot.ca.gov**
Counties: Santa Barbara, San Benito, San Luis Obispo, Santa Cruz, Monterey

DISTRICT 06
Jim Perrault
Public #(559) 445-5417, Calnet 8-421-5417, Fax 8-421-5425
E-Mail Address: **james_perrault@dot.ca.gov**
Counties: Fresno, Madera, Kings, Kern,Tular

DISTRICT 07
Kirk Cessna
Public #(213) 897-0784, Calnet 8-647-0784, Fax 8-647-2999
E-Mail Address: **kirk_cessna@dot.ca.gov**
Counties: Los Angeles, Ventura

DISTRICT 08
Sean Yeung
Public #(909)-383-4030, Calnet 8-670-4030, Fax 8-670-4129
E-Mail Address: **sean_yeung@dot.ca.gov**
Counties: Riverside, San Bernardino

DISTRICT 09
Tom Meyers
Public #(760) 872-0681, Calnet 8-627-0681, Fax 8-627-0744
E-Mail Address: **tom_meyers@dot.ca.gov**
Counties: Inyo, Kern/Eastern, Mono

DISTRICT 10
Pat Robledo
Public #(209) 948-3689, Calnet 8-423-3689, Fax 8-423-3820
E-Mail Address: **pat_robledo@dot.ca.gov**
Counties: Alpine, Amador, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, Tuolumne

DISTRICT 11
Erwin Gojuangco
Phone: (619) 278-3756, Fax: (619) 220-5432
E-Mail Address: **erwin.gojuangco@dot.ca.gov**
Counties: Imperial, San Diego

DISTRICT 12
Alan Williams
Public #(949) 756-7805, Calnet 8-655-7805, Fax 8-655-2592
E-Mail Address: **alan_williams@dot.ca.gov**
Counties: Orange

Other Contacts:

Dapo Okupe
Caltrans, Division of Procurement and Contracts
A&E Contract Coordinator
1727 30th Street MS 65
Sacramento, CA 95816
(916) 227-5665
dapo_okupe@dot.ca.gov

Linda F. Laubinger
Caltrans, Division of Audits and Investigations
1304 O Street, Ste. 200 MS 2
Sacramento, CA 95814
(916) 323-7957
linda_laubinger@dot.ca.gov

III. MAIN FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

These findings are based on regulatory compliance with the applicable federal laws and regulations.

1. The Need for FHWA California Division's Approval of Caltrans' Written Procedures for Caltrans Administered Federal-Aid A&E Contracts.

Regulatory Basis: 23 CFR 172.9(a)

23 CFR 172.9(a) requires that contracting agencies prepare written procedures for each method of procurement they propose to utilize. These written procedures must reflect all applicable federal-aid program requirements and the State Department of Transportation's processes that implement them. These written procedures must be approved by the FHWA for recipients of federal-aid highway program funds. We observed that the FHWA California Division has no record of issuing these programmatic approvals to Caltrans DPAC; however for local agency administered federal-aid projects, detailed written procedures for the selection of A&E consultants are contained in the Local Assistance Procedures Manual.

Recommendation:

We recommend that the FHWA California Division and Caltrans DPAC work collaboratively to establish lines of communication and procedures to facilitate programmatic approvals of "written procedures" for Caltrans-administered consultant contracts.

This recommendation involves process improvements for both Caltrans DPAC and the FHWA California Division.

Caltrans Response

Caltrans and FHWA staff have worked collaboratively to establish lines of communication and procedures to facilitate programmatic approvals of "written procedures" for Caltrans administered consultant contracts. On October 26, 2007, Caltrans provided FHWA with the initial package of documents for A&E Contracts on the Caltrans website. Since that date, in several discussions between Division of Procurement and Contracts (DPAC) and FHWA staff including David Cohen, the procedures for such contracts and their compliance with FHWA requirements have been discussed.

Most recently, on December 6, 2007, Caltrans DPAC presented the A&E Consultant Information, updated November 30, 2007, to FHWA staff. As part of that presentation, a binder of Caltrans written procedures was presented to FHWA staff. We appreciate the review of the contents of this binder by David Cohen, Team Leader, and his opinion that these procedures meet the specifications of 23 USC 172.9.

2. **Caltrans' Use of California Code of Regulations (21 CCR 1520 and 1521) as "Written Procedures" for State Administered Contracts.**

Regulatory Basis: 23 CFR 172.9(a)

Caltrans currently uses 21 CCR 1520 and 1521 as "written procedures" for State administered consultant contracts. While these sections of the CCR appear to include provisions equivalent to the federal-aid program requirements in consultant selection and contract administration, we observed that the requirements in the CCRs are not identical to the federal-aid program requirements. Given that the FY 2006 Appropriations Act cancelled the regulatory flexibility for State Departments of Transportation to use "equivalent procedures," we found that Caltrans currently has no "written procedures" to reflect the federal-aid program requirements for Caltrans-administered, federal-aid A&E consultant contracts.

Recommendation:

We recommend that the FHWA Chief Counsel's Office, the FHWA California Division (Finance Office), Caltrans Legal Division, and Caltrans DPAC work collaboratively to determine if Caltrans' procedures in place addressing State requirements for consultant contracts are identical to the federal-aid program requirements. If so, this determination should be memorialized and approved by the FHWA California Division in the "written procedures." If not, then we recommend that Caltrans revive the "A&E Handbook" to discuss federal-aid program requirements in consultant selection and contract administration, in addition to the State requirements codified in 21 CCR 1520 and 1521.

This recommendation involves process improvements for Caltrans DPAC, and it requires coordination among Caltrans DPAC, the FHWA California Division, and the FHWA Chief Counsel's Office.

Caltrans Response
Based on FHWA staff's recent review of the DPAC binder of written procedures, Team Leader David Cohen, on December 10, 2007, has communicated acceptance of these procedures to Fardad Falakfarsa, Chief, Federal Resources Office.

3. **The Need for the FHWA California Division's Involvement in Federal-Aid A&E Consultant Contracts for Design Services in Major Projects (as defined by 23 U.S.C. 106(h)).**

Regulatory Basis: 23 CFR 172.9(c)
23 CFR 172.9(c) requires that any contract, revision of a contract, or settlement of a contract for design services for a project that is expected to fall under 23 U.S.C 106(h) be submitted to the FHWA for approval.

Caltrans Response
As required under 23 U.S.C. 106(c)(3) a new "Joint Stewardship and Oversight Agreement" ("Agreement") was signed by FHWA and Caltrans on September 4, 2007. According to the terms of this Agreement, the FHWA and Caltrans will also sign a project specific agreement to include a "Project Responsibilities List" which will detail FHWA and Caltrans involvement for each "High Profile" Project. This agreement will include the level of FHWA involvement in the consultant selection process for any "High Profile" project. By definition, any "Major Project" as defined under 23 U.S.C. 106(h) will be considered to be a "High Profile" project. Therefore, FHWA can decide what level of involvement it will have for each "Major Project". At the December 6, 2007, meeting it was requested that California Division coordinate with the FHWA Chief Counsel Office to clarify to what extent this responsibility can be delegated to Caltrans through the stewardship and oversight agreements. Caltrans requests that David Cohen pursue this contact to confirm the extent of the delegation to Caltrans.

(This response also applies to Recommendation No. 5, on pages 17-18 of this document.)

We found that, while Caltrans' Project Development Procedures Manual (PDPM) has a section dedicated to the administration of consultant contracts for design services (Chapter 2, Section 8), this requirement is not mentioned in the PDPM. In effect, we found that the FHWA California Division is not reviewing or approving the consultant contracts for major projects.

Recommendation:

We recommend that the FHWA California Division and Caltrans collaborate to establish procedures for FHWA's on-board approval of "significant" consultant contracts associated with "major projects," as defined by 23 U.S.C 106(h).

The section dedicated to the use of consultants in Caltrans' "Project Development Procedures Manual" should be revised to reflect this federal role and responsibility.

Caltrans Response
As a part of the implementation phase of the new Stewardship Agreement, FHWA and Caltrans have formed teams: one of which is currently looking into revising all Project Development Manuals, including the PDPM, to be in accord with the new Agreement.

The FHWA Project Oversight Managers' duties should also include this responsibility.

Caltrans Response
FHWA should include this duty in the agreement that will be prepared and signed for each one of the "High Profile" Projects.

In this context, the FHWA California Division is conceptually agreeable to Caltrans' recommendation that the FHWA's involvement may be limited to "significant" consultant contracts, which are major project federal–aid A&E consultant contracts exceeding $25,000,000. Similarly for non-NHS local agency administered federal-aid major projects, Caltrans Division of Local Assistance should revise the "Local Assistance Procedures Manual" [LAPM] to reflect their role and responsibility to perform on- board approval of "significant" consultant contracts associated with local agency administered federal-aid "major" projects.

Caltrans Response
As a part of the implementation phase of the new StewardshipAgreement, FHWA and Caltrans have formed teams: one of which is currently looking into revising all relevant Manuals, including the LAPM, to be in accord with the new Agreement.

This recommendation involves process improvements for the FHWA California Division, and its implementation will require project level coordination between major project sponsors (Caltrans or regional / local agencies) and the FHWA California Division Major Project Oversight Managers.

4. **The Need for the FHWA California Division to Review and Approve Consultant Contracts for Consultant Services in Management Roles.**

Regulatory Basis: 23 CFR 172.9(d)

When federal-aid highway funds participate in a consultant contract in which the consultant is in a management role (i.e., the consultant as the city/county engineer or Public Works Director), 23 CFR 172.9(d) requires that the FHWA's approval of these contracts. We found that there are no such approval processes in place between the FHWA California Division and the project sponsors. We also observed that Caltrans District Local Assistance Engineers do not have any established roles or responsibilities in approving these contracts for locally sponsored projects, either.

Recommendation:

We recommend that the FHWA California Division collaborate with both the Division of Procurement and Contracts and the Division of Local Assistance, to develop procedures for consultant contracts in which the consultants are in management roles.

Caltrans Response
Caltrans does not have internal consultant contracts in which the consultant serves in a management role.

At the December 6, 2007, meeting with FHWA, Caltrans staff, Eugene Shy provided a copy of the proposed revision to the LAPM, Section 10.8, for review and consideration. FHWA Team Leader David Cohen agreed to review this proposed revision and provide comments and/or approval.

We also recommend that the FHWA California Division coordinate with the FHWA Chief Counsel Office to clarify the extent this responsibility can be delegated to Caltrans through the stewardship and oversight agreement.

Caltrans Response
This was discussed at the December 6, 2007, meeting; and FHWA will coordinate the review with the FHWA Chief Counsel Office and notify Caltrans of the outcome.

This recommendation involves Caltrans Division of Procurement and Contracts, Caltrans Division of Local Assistance, the FHWA California Division. Its implementation will also involve the FHWA Chief Counsel's Office.

5. **The Need for FHWA California Division to Approve Consultant Contracts and Contract Settlements for Projects that have not been Delegated, unless an Alternate Procedure is in Effect**

Regulatory Basis: 23 CFR 172.9(b)

23 CFR 172.9(b) requires that the contracts and contracts settlements involving design services for projects that have not been delegated to the States under 23 U.S.C. 106(c), and that do not fall under the small purchase procedures in 23 CFR 172.5(a)(2), be subject to prior approval by FHWA, unless an alternate approval procedure has been approved by FHWA.

Recommendation:

We recommend that the stewardship and oversight agreement memorialize the extent to which an alternate approval procedure is accepted to facilitate Caltrans' approval of these contracts for design services, and for both State and locally administered procedures. In doing so, the roles and responsibilities among local project sponsors, Caltrans, and the FHWA California Division should be clarified. For locally administered contracts for design services of projects that have not been delegated to the States under 23 U.S.C. 106(c) , the Local Assistance Procedures Manual, Chapter 10 should be revised to reflect these new responsibilities which may be assumed by either Caltrans or by the FHWA California Division.

Caltrans Response
The response to this finding and recommendation is the same as for Recommendation No. 3 on page 14, above. Under the new Stewardship Agreement signed on September 4, 2007, by Caltrans and FHWA, "Major Projects" are a subcategory of "High Profile" Projects.

Also, each "High Profile" Project agreement, as it is prepared, will further detail the responsibilities of FHWA, Caltrans, and local agencies.

As a part of the implementation phase of the new Agreement, FHWA and Caltrans have formed teams who are currently looking into revising all relevant Manuals, including the Local Assistance Procedures Manual (LAPM) to be in accord with the new Agreement.

6. The Need to Use Cognizant Rates for A&E Consultants' Indirect Costs.

Regulatory Basis: 23 CFR 172.7(b)

23 CFR 172.7(b) requires that for federal-aid A&E consultant contracts, contracting agencies use indirect cost rates established by a cognizant agency audit, in accordance with the cost principles contained in 48 CFR 31, for the consultant indirect costs, if such rates are not under dispute. The program review team learned that, while the process for cognizant agency audits is not currently in place, Caltrans is taking steps to implement the procedures for cognizant agency audits in California.

Recommendation:

We recommend that the FHWA California Division Finance Office work collaboratively with Caltrans Division of Audits and Investigations to verify that Caltrans' new procedures for cognizant agency audits (expected to go into effect on July 1, 2008) meet the federal requirements in 23 CFR 172.7.

This recommendation involves Caltrans Division of Audits and Investigations and the FHWA California Division. Its implementation may also involve the FHWA Chief Counsel's Office.

Caltrans Response
Caltrans Division of Audits & Investigations will initiate discussions with FHWA Team Leader and FHWA Director of Financial Services, in January 2008, to discuss policies as well as best practices of existing cognizant State Departments of Transportation.
Subsequent meetings will be held for more detailed discussions of processes and procedures and resource requirements with Caltrans programs, including the Division of Procurement and Contracts, Legal, Budget, and other impacted parties.

IV. OTHER FINDINGS, OBSERVATIONS, AND RECOMMENDATIONS

1. We observed that Caltrans Division of Local Assistance, Office of Procedures Development led a process review between 2000 and 2002 in consultant selection for local assistance projects. Mr. James Lee from the FHWA California Division participated in that review, which is published on-line at http://www.dot.ca.gov/hq/LocalPrograms/procrev/pr00-01.pdf. We request that Caltrans provide a summary of how the recommendations identified in that process review were implemented.

Caltrans response
There were nine recommendations that were made in the process review report, and all of the recommendations have been implemented by revising the Local Assistance Procedures Manual and follow-up actions with the local agencies. The revisions are easily identified by reviewing the published version of the Local Assistance Procedures Manual, Chapter 10, entitled "Consultant Selection". This manual is on line at:
http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consult.pdf

2. We observed that, for environmental planning activities associated with local assistance projects, there were inconsistencies between what was identified in the Preliminary Environmental Studies (PES) form by the project development team (PDT), and what local government representatives negotiated with environmental consultants as needed environmental services for the federal-aid local assistance projects. We recommend that the Chapter 6 in Caltrans Local Assistance Procedures Manual be amended to recommend to local governments that the scope of services agreement negotiated with an environmental consultant be consistent with what is agreed to by the PDT in the PES form, or that a written explanation justifying the differences be provided.

Caltrans response
Caltrans staff discussions with FHWA staff concluded that these projects were not local assistance projects but rather projects where local agencies are advertising, awarding, and administering projects on the state highway system. A solution will be developed by strengthening the cooperative-agreement language between the Local Agency and Caltrans to clearly outline environmental activity responsibilities. For these projects, specific language will be developed in the cooperative agreements to clarify to local agencies that they must follow the environmental procedures required in the Caltrans Standard Environmental Reference, and not the Local Assistance Procedures Manual, Please note a Preliminary Environmental Analysis Report (PEAR), and not a Preliminary Environmental Studies (PES), will be completed for all projects on the state highway system. This approach will eliminate the identified inconsistency.

3. We observed that the FHWA California Division procedures memorandum (D Memo) for consultant contracts dates back to 1993. It appears that there was a recent effort in 2006 to update the D Memo, but it still includes inaccurate and outdated information. We recommend that the program review team collaborate with the FHWA California Division Finance Office to update this important document.

Caltrans response
The Team Leader David Cohen is requested to pursue this recommendation with the FHWA Director, Financial Services, Brenda Bryant.

4. We observed the Caltrans' guidance documents for A&E consultant contract administration are published on-line at http://caltrans-opac.ca.gov/aeinfo.htm. We recommend that this web page be linked to the FHWA's Office of Program Administration page at http://www.fhwa.dot.gov/programadmin/consultant.cfm.

Caltrans response
Caltrans provided the FHWA with a binder with all the information on the website and various links. Caltrans will work closely with FHWA to make improvements and links that may be helpful.

V. IMPLEMENTATION PLAN

The implementation plan for this program review will be based on the recommendations identified in this report. Caltrans Divisions of Local Assistance, and Procurement and Contracts will determine how best to implement these recommendations. To the extent appropriate, FHWA California Division will assist Caltrans in revising the procedures, guidance documents, and processes necessary to successfully implement the identified recommendations.

This report also includes recommendations for the FHWA California Division Offices of Field Operations, Project Development & Environment (PD&E), and Finance. The Field Operations, PD&E, and Finance Directors will determine how best to implement those recommendations.

We request that Caltrans Divisions of Local Assistance, Audits and Investigations, and Procurement and Contracts collaborate with the FHWA California Division Office to respond to the identified recommendations. Based on these responses, we also request that Caltrans propose key milestones and a schedule to implement the recommended process improvements.

VI. CONCLUSIONS

For State administered procedures:
We conclude that Caltrans has been relying on equivalent State requirements to meet federal-aid program requirements in consultant selection and A&E contract administration for Caltrans-administered federal-aid projects... Since this regulatory flexibility to use equivalent procedures was cancelled in 2005, we have identified a need to review the State procedures in this area to verify if they are "identical to" the federal-aid program requirements. At the same time, we realize that Caltrans has been forced to rescind the "A&E Handbook" in 2006, and to codify the State procedures for consultant selection and contract administration in the California Code of Regulations (CCR). Since the CCRs cannot provide an appropriate forum to discuss federal-aid program requirements, we conclude that there is an institutional need for both Caltrans and FHWA California Division to revive the "A&E Handbook," and use it as a forum to reconcile both State and federal requirements in consultant selection and contract administration for A&E contracts.

Caltrans response
Caltrans has provided the FHWA with a binder with all the information on the website and various links which we believe are identical to the federal requirements. Caltrans will work closely with FHWA to make improvements and links that may be helpful.

For locally administered procedures:
Given the number and diversity of local governments in California, we conclude that there is a wide spectrum of best practices and challenges in locally administered consultant contract procedures. Caltrans District Local Assistance Engineers get involved in locally administered consultant contracts only on an "as requested and as needed" basis. With respect to Caltrans' oversight on local agencies' compliance with the federal-aid program requirements, compliance issues based on 23 CFR 172.9 need to be further investigated. These issues led us to our recommendations for process improvements for both Caltrans Division of Local Assistance and the FHWA California Division.