AUDIT REPORT

County of Lake
Department of Public Works
Procurement Audit
P1397-0012
June 2016

Prepared By:

Audits and Investigations

California Department of Transportation

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

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EXECUTIVE SUMMARY, BACKGROUND, SCOPE, METHODOLOGY, AND CONCLUSION

EXECUTIVE SUMMARY

California State Department of Transportation (Caltrans) Audits and Investigations (A&I) audited the County of Lake (County) procurement process for two architectural and engineering agreements with Quincy Engineering, Inc. (Consultant) and determined:

- The County lacked proper policies and procedures for their procurement of consultant services and awarding of the agreements.
- There was no supporting documentation to justify the sole source procurement of the Consultant for the agreement entered in 2006 (2006 Agreement).
- The Request for Proposal (RFP) issued in 2006 was not advertised. Instead, the County sent the RFP only to firms on the County consultant list which did not comply with fair and open competition rules.
- The County did not perform the required cost analysis of the 2006 Agreement and Amendments 1 through 4 to determine if it was a fair and reasonable price.
- The County did not perform the required pre-award audits required for Amendments 3 and 4 of the 2006 Agreement.

We found the contract costs of $1,638,857 reimbursed to the Consultant for the 2006 Agreement and for Amendments 1 through 5 were not in compliance with the Caltrans agreement provisions and state and federal rules and regulations.

BACKGROUND

A&I conducted a procurement audit of the County to determine whether the County complied with Title 40 United States Code (USC) §§1101-1104 (Chapter 11), also known as the Brooks Act, Title 23 Code of Federal Regulations (CFR) Chapter 1, and Title 49 CFR Part 18. The Brooks Act requires the County to procure architectural and engineering services on the basis of demonstrated competence and qualifications for the professional services at a fair and reasonable price. The County executed the 2006 Agreement with the Consultant on November 7, 2006, to provide engineering and design services. The 2006 Agreement was executed for $69,458.48 and subsequently amended five times, increasing the agreement to $1,944,504, an increase to the original contract amount of 2,800 percent. The following is a summary of the contract amendments:

Summary of Contract Amendments		
Contract/Amendment No.	Contract/Amendment Amount	Execution Date
2006 Agreement	$69,458	11/7/2006
Amendment 1	$15,822	3/27/2007
Amendment 2	$519,216	7/10/2007
Amendment 3	$319,330	10/14/2008
Amendment 4	1,020,677	6/9/2009
Amendment 5	$0.00	5/26/2010
Total	**$1,944,504**	

Subsequently, a 6th amendment was proposed. A&I issued a non-conformance letter for the Amendment 6 due to contract term issues. As a result of the non-conformance letter, the Caltrans District 1 issued a corrective action plan. In response to the corrective action plan, the County issued a new RFP in 2014 to procure the engineering and designing services originally proposed in the Amendment 6. This time, the County properly selected Quincy Engineering, Inc. through a sole source procurement and executed an agreement in 2015.

SCOPE

The audit was limited to compliance activities related to the above referenced agreement. Our audit consisted of a review of the 2006 Agreement's fiscal provisions, amendments and modifications, and interviews of County staff to obtain an understanding of the County's procurement process. We performed transaction testing of procurement activities for compliance with Title 40 USC §§1101-1104 (Chapter 11), Title 23 CFR Chapter 1, and Title 49 CFR Part 18, Caltrans' Local Assistance Procedures Manual (LAPM), and requirements stipulated in the County's agreement with Caltrans. Our field work was completed on March 6, 2015, and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not pertain to changes arising after this date.

The County is responsible for the fair presentation of the proposed costs, compliance with agreement provisions and state and federal rules and regulations, and compliance with the procurement process. Our responsibility, based on our audit, is to conclude on the allowability of contract costs for compliance with the agreement provisions and state and federal rules and regulations. Due to inherent limitations in any financial management system, misstatements caused by error or fraud may occur and not be detected.

METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the

audit objectives. 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 to express an opinion on the financial statements of the County. Therefore, we did not audit and are not expressing an opinion on the County's financial statements.

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 by the county, and evaluating the overall presentation.

CONCLUSION

Based on our audit, we determined that the County's 2006 Agreement and subsequent Amendments 1 through 5 billed to Caltrans' projects RPSTPLE-5914 (042) and RPSTPLE-5914(043) were improperly procured under the agreement provisions, state and federal rules and regulations, and the LAPM. Therefore, of the $1,707,030 reimbursed to the County by Caltrans, $1,638,857 was paid to Quincy Engineering, Inc. for the 2006 Agreement and Amendments 1 through 5. We are questioning the $1,638,857 in reimbursed costs. See Attachment A for details. The findings and recommendations are detailed in the attached Findings and Recommendations section of this report.

The report is intended for the information of the County, Caltrans management, and the Federal Highway Administration. The report is a matter of public record and its distribution is not limited. Our findings and recommendations take into consideration the County's response. In accordance with A&I's disclosure policy, the report will be posted on the Caltrans website.

If you have questions, please contact Kyungsun Gardiner, Auditor, at (916) 323-7916, or Nancy Shaul, Audit Manager, at (916) 323-7940.

Alice Lee

for **WILLIAM E. LEWIS, CPA**
Assistant Director
Audits and Investigations
June 23, 2016

FINDING 1 - Improper Procurement of the Consultant

The County of Lake (County) improperly procured a consultant services contract and related amendments with Quincy Engineering, Inc. (Consultant). In 2006, the County sent a Request for Proposal (RFP) to firms on a list of consultants preselected by the County and executed a contract with only the Consultant that submitted a proposal. As a result, the County entered in a noncompetitive (sole-source) procurement with Quincy Engineering Inc., in November 2006. The 2006 Agreement was subsequently amended five times. The County's procurement was not adequately supported, reasonable in nature, in compliance with the provisions of the Master Agreement between California Department of Transportation (Caltrans) and the County, state and federal rules and regulations, and Local Assistance Procedures Manual (LAPM). Without documentation to support compliance with required procurement regulations, the County cannot demonstrate that full and open competition was achieved and the County risks entering into a contract that may not be fair and reasonable in costs and/or quality.

Specifically, we found these exceptions:

- The 2006 RFP was not advertised and only sent to firms on the County's consultant list.
- Quincy Engineering, Inc. was the only firm to submit a proposal and was procured on a sole-source method. There was no documentation to indicate the required sole-source procurement process, including Public Interest Finding, was followed.
- There was no documentation that indicates the County performed the required cost analysis verifying the proposed cost data, the projections of the data, and evaluating the specific elements of costs and profits.
- There was no documentation that indicates the County negotiated the contract terms and profit for the 2006 Agreement and Amendments 1 through 4 to ensure that services were obtained at a fair and reasonable price.
- There was no documentation supporting the County's determination that Quincy Engineering, Inc.'s financial management system was capable of accumulating and segregating costs as required by state and federal rules and regulations before awarding the 2006 Agreement.
- The County did not perform the required pre-award audits in connection with Amendments 3 and 4 or submit a request to Caltrans Audits and Investigations to perform the pre-award audits.

The County did not meet the required procurement process because its policies and procedures were not adequate and did not include proper guidelines as noted below:

- Title 23 Code of Federal Regulations (CFR) Part 172.5(a)(1) provides that the proposal solicitation process shall be by public announcement, advertisement, or any other method

that assures qualified in-state and out-of-state consultants are given a fair opportunity to be considered for award of the contract.

- Title 23 CFR 172.5(a)(3) and LAPM Chapter 10.3, Noncompetitive Negotiated Contracts (Sole-Source), provide that a Public Interest Finding prepared by the local agency is required and the local agency shall develop an adequate scope of work, evaluation factors, and cost estimate, ensure a fair and reasonable cost, and carefully document and retain details of the special conditions.
- Title 49 CFR Part 18.36(f)(1) requires a cost analysis on the procurement of architectural engineering services.
- Title 49 CFR Part 18.36(f)(2) requires grantees and subgrantees will negotiate profit as a separate element of the prices for each contract to establish a fair and reasonable profit.
- Title 49 CFR Part 18.36(f) (1) states, in part, that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications.
- LAPM Chapter 10.1 requires a pre-award audit during the audit period that consultant contracts over $250,000. The pre-award audit examines the consultant's accounting, estimating, administrative systems, proposed costs, financial condition, and contract language.
- LAPM Chapter 20.2 provides that consultant contracts over $250,000 awarded without pre-award audit and procured through non-competitive negotiations when a noncompetitive procurement is not warranted are an unrecoverable project deficiency. Unrecoverable project deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project.
- Master Agreement Article IV Provision 20 provides that any project costs determined by subsequent audit to be unallowable under Title 48 CFR Part 31 and Title 49 CFR Part 18 are subject to repayment by Administering Agency to State.

Without performance of the required cost analysis and pre-award audits, the County did not ensure the costs and cost items proposed on cost proposals are reasonable and fair; and therefore, the County did not comply with the LAPM requirements and state and federal rules and regulations. Also, without performing the required pre-award audits, there is no assurances that the Consultant had an adequate financial management system to properly account for contract costs.

Based on our audit, we determined that the County was reimbursed $1,707,030 of which the County paid $1,638,857 to Quincy Engineering, Inc. for the 2006 Agreement and Amendments 1 through 5. The difference of $68,173 was for the County's administrative/support services. We are questioning the $1,638,857.

RECOMMENDATIONS:

We recommend the Caltrans Division of Local Assistance (DLA) work with the County and the Federal Highway Administration on a corrective action plan to address the questioned costs of $1,638,857.

COUNTY'S RESPONSE:

The County clarified that the 2006 RFP was sent to 16 firms that had either expressed that staff had found through various searches as those with experience or expertise in the type of project the County was pursuing. Due to the remote nature of the County [location] and the general difficulty it experience trying to solicit professional service, perhaps more firms were made aware of the project through the effort contacted through a public announcement. The County stated that it did not comply with 23 CFR 172.5(a)(1).

ANALYSIS OF RESPONSE:

The County did not dispute the finding and acknowledged the noncompliance of the procurement of the Consultant. Therefore, the finding remains.

FINDING 2 - Inadequate Policies and Procedures for Procurement and Contract Management

The County's policies and procedures for procurement were inadequate. Specifically, the County's policies and procedures were deficient and did not include the following requirements:

- Sole-source procurement process
- Cost analysis
- Evaluation of financial management system
- Profit and cost negotiations
- Required information on RFP: clearly defined scope of work, protest procedures, and dispute resolution process on proposals
- Retention of procurement records
- Conformance review process
- Proper advertisement of availability of RFP
- Risk assessment and monitoring for procurement compliance

Our audit also found that the County's policies and procedures lacked guidance and a monitoring system to timely revise contract terms before contracts lapse. Amendment 1 to the 2006 Agreement expired on June 30, 2007, but the County and Quincy Engineering, Inc. did not execute Amendment 2 until July 10, 2007.

As a result of inadequate policies and procedures, there was a lack of guidance over the above areas. Therefore, the County's procurement of Quincy Engineering, Inc. did not comply with state and federal rules and regulations.

Title 49 CFR Part 18.36(b) states, in part, 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 the standard identified in this section.

RECOMMENDATIONS:

We recommend the County of Lake:

1. Establish adequate procurement policies and procedures.
2. Establish monitoring activities to ensure staff follow proper procurement procedures.
3. Ensure staff is trained to ensure adherence to proper procurement policies and procedures.

COUNTY'S RESPONSE:

The County did not dispute the finding with the exception that the County and Quincy Engineering, Inc. did not execute Amendment 2 until July 10, 2007. Amendment 1 revised the scope of work to include unforeseen but necessary environmental work and it provided additional working days to perform said work. However, the County inadvertently omitted the revision of the original contract expiration date to reflect the additional working days in Amendment 1. The County significantly changed the policies and procedures for the procurement of contracts in response to the draft report and a corrective action plan developed with Caltrans DLA, which resulted in the proper procurement of Quincy Engineering, Inc. for amendment 6 to the original contract. Since the proper procurement of Quincy for Amendment 6 in 2014, the County procured eight different consultant contracts following the federal regulations and LAPM.

ANALYSIS OF RESPONSE:

The County did not dispute the finding and acknowledged the County's inadequate policies and procedures for procurement and contract management. Therefore, the finding remains.

Audit Team

Laurine Bohamera, Chief, External Audits - Contracts

Nancy Shaul, Audit Manager

Kyungsun Gardiner, Auditor

Vincent Miranda, Auditor

Lin Zhang, Auditor

ATTACHMENT A

County of Lake Invoices for Services Provided by Quincy Engineering, Inc. through Amendment #5

Caltrans Invoice No.	County Invoice No.	Invoice Date	Caltrans Reimbursement to County	County Reimbursement to Quincy Engineering, Inc (per County)
Project RPSTPLE-5914(042) DPW Project # 3095				
Invoice #1	STIP-1	6/27/2008	153,642.39	146,145.92
Invoice #2	STIP-2	2/25/2009	90,949.16	87,533.05
Invoice #3	TE-1	2/25/2009	25,182.79	14,135.01
Invoice #4	STIP-3	6/10/2009	40,408.45	38,497.09
Invoice #5	TE-2	6/10/2009	3,817.21	14,464.51
Invoice #6	6	7/23/2010	331,177.74	322,843.02
Invoice #7	7	2/8/2011	86,345.00	84,875.30
Invoice #8	8	9/13/2011	14,111.00	12,088.15
Invoice #9	9	3/29/2012	10,725.00	9,066.02
Invoice #10	10	3/28/2013	2,070.43	230.75
Invoice #11	11	9/16/2013	710.18	0.00
Invoice #12	12	12/2/2013	58,912.55	56,788.61
Invoice #13	13	5/30/214	736.49	0.00
Invoice #14	14	11/17/2014	1,018.25	0.00
Invoice #15	15	4/27/2015	848.57	0.00
Invoice #16	16	10/22/2015	n/a	n/a
	Totals - Project 5914 (042)		820,655.21	786,667.43

Project RPSTPLE-5914(043) DPW Project # 3096				
Invoice #1	STIP-1	6/27/2008	167,885.86	162,070.31
Invoice #2	STIP-2	8/5/2008	6,458.64	6,240.46
Invoice #3	STIP-3	2/23/2009	81,745.20	78,673.38
Invoice #4	TE-1	2/24/2009	25,922.61	22,433.22
Invoice #5	STIP-4	6/10/2009	6,910.30	5,181.10
Invoice #6	TE-1	6/10/2009	77.39	68.51
Invoice #7	7	7/31/2010	475,824.52	467,437.46
Invoice #8	8	2/8/2011	69,224.00	67,675.08
Invoice #9	9	9/12/2011	12,798.00	12,859.81
Invoice #10	10	4/20/2012	12,440.00	10,666.78
Invoice #11	11	3/28/2013	2,237.73	271.49
Invoice #12	12	10/9/2013	996.23	0.00
Invoice #13	13	12/2/2013	21,259.08	18,611.84
Invoice #14	14	5/30/2014	728.60	0.00
Invoice #15	15	11/17/2014	1,018.25	0.00
Invoice #16	16	4/27/2015	848.57	0.00
Invoice #17	17	10/22/2015	n/a	n/a
	Totals - Project 5914 (043)		886,374.98	852,189.44
	Combined Project Totals		1,707,030.19	1,638,856.87

COUNTY OF LAKE
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Scott De Leon
Public Works Director

June 15, 2016

Laurine Bohamera, Chief, External Audits – Contracts
California Department of Transportation
Audits and Investigations

Subject: Procurement Audit P1397-0012

Dear Ms. Bohamera:

Per the procedures related to the development of a Final Audit Report, please accept this correspondence as the County of Lake's response to findings summarized in the subject Draft Report.

In regards to Finding #1 – Improper Procurement of the Consultant – the County of Lake does not dispute the findings of the Draft Report; however I respectfully submit the following clarification on the first bulleted exception listed.

- The 2006 RFP was sent to sixteen (16) firms that had either expressed interest in receiving information about potential projects, or they were firms that staff had found through various searches as those with experience or expertise in the type of project we were pursuing. Due to the remote nature of Lake County and the general difficulty we experience trying to solicit professional services, it could be argued that more firms were made aware of the project through this effort than would have been contacted through a public announcement. As referenced in the Draft Report, Title 23 Code of Federal Regulations (CFR) Part 172.5(a)(1) allows other methods in the solicitation process, and although the consultant list used by this Department was not exclusionary – it included firms from throughout the State - it did not include the required out of State firms and therefor did not comply with the aforementioned CFR.

In regards to Finding #2 – Inadequate Policies and Procedure for Procurement and Contract Management – the County of Lake does not dispute the findings of the Draft Report, with the exception of the following paragraph on Page 6:

"*Our audit also found that the County's policies and procedures lacked guidance and a monitoring system to timely revise contract terms before contract lapse. Amendment 1 to the 2006 Agreement expired on June 30, 2007, but the County and Quincy Engineering, Inc. did not execute Amendment 2 until July 10, 2007*"

Amendment 1 revised the scope of work to include unforeseen but necessary environmental work and it provided additional working days to perform said work. What

was inadvertently omitted in Amendment 1 was the revision of the original contract expiration date to reflect the additional working days. The Lake County Counsel has previously provided an argument based on the agreed upon changes in scope and working days, along with case law recitals to support our argument that the Agreement had not expired.

With the exception of the two minor objections I've discussed above, we do not dispute the findings of the Draft Report. As a result of working with your office throughout this audit, I believe the Department of Public Works has made significant changes in the policies and procedures that we follow in the procurement of contracts. I offer the following summaries to illustrate this point:

- As recognized in the Draft Report, and in response to a corrective action plan developed with our Caltrans Local Assistance Office, the County properly selected Quincy Engineering for Amendment 6 to the original contract – following the proper procedures for RFP advertising, sole source procurement documentation, cost analysis, evaluation of financial management system, cost negotiations, and conformance review process.
- Since the proper procurement of Quincy for Amendment 6 in 2014, the County has entered into a total of 8 different consultant contracts for work associated with either the design or construction inspection/contract administration of bridge projects in Lake County. These contracts were procured following the requirements of the Code of Federal Regulations and the Local Assistance Procedures Manual, under the watchful eye of our District 1 Local Assistance Office. It is our opinion that we are performing these actions properly, and in accordance with the aforementioned requirements.

I would like to thank you and your capable staff for the time and effort spent on this investigation. Your staff was thorough and professional in all aspects of their work, and though I am neither proud nor pleased with the outcome, I do appreciate their findings and the opportunity to make corrections to our performance. Though nearly all of the deficiencies identified in this report were before my tenure as the Public Works Director, I take responsibility for them and pledge to ensure that our Department has made the necessary changes to bring our procedures into compliance with the procurement policies.

Sincerely,

Scott De Leon, Director
Lake County Department of Public Works

cc: Charles Fielder, Director
Caltrans District 1

Anita Grant, County Counsel