State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
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To: COCO BRISENO
Deputy Director
Planning and Modal Programs

Date: April 26, 2016

File: P1575-0043

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **INCURRED COST AUDIT – ORANGE COUNTY TRANSPORTATION AUTHORITY**

We audited costs claimed by and reimbursed to the Orange County Transportation Authority (OCTA) totaling $73,745,434 for work performed under projects CMLN-6071(071); CML-6071(051); TCIFL-6071(050); CML-6071(060); 12A0172-06-A1; STPL-6071(059); and CMLN-6071(035) with Caltrans. The audit was performed to determine whether the costs were supported and in compliance with the agreement provisions and state and federal regulations. This audit was performed as a management service to assist Caltrans in fulfilling its fiduciary responsibilities to state and federal regulatory agencies. The final audit report, which includes OCTA's response, is attached.

Based on our audit, we determined that project costs totaling $709,469 did not comply with respective agreement provisions, and state and federal regulations. In addition, OCTA approved questionable relocation costs, and its Right of Way policies could be improved. We also found that OCTA did not follow proper contract management and construction management practices.

Please provide our office with a corrective action plan addressing the recommendations in the report, including estimated timelines, by June 9, 2016.

This report is a matter of public record and will be placed on Caltrans Audits and Investigations' website.

If you have questions or need additional information, please contact MarSue Morrill, External Audits - Local Governments, at (916) 323-7105.

Attachment

c: Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority
Janet Sutter, Executive Director, Internal Audits, Orange County Transportation Authority
Michael Tritz, Deputy Secretary for Audits and Performance Improvement, California State Transportation Agency
Janice Williams, Director of Financial Services, Federal Highway Administration
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AUDIT REPORT

Orange County Transportation Authority

Incurred Cost Audit

P1575-0043

April 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

The California Department of Transportation (Caltrans) Audits and Investigations (A&I) audited reimbursed project costs, totaling $73,745,434 to the Orange County Transportation Authority (OCTA) and found project costs totaling $709,469 did not comply with respective agreement provisions, and state and federal regulations.

BACKGROUND

Caltrans A&I performs incurred cost audits to ensure Caltrans is meeting its legal and fiduciary responsibilities, and that state and federal funds are properly expended by local government agencies. This audit was performed to determine whether project costs claimed by and reimbursed to OCTA were allowable, adequately supported, and in compliance with the respective agreement provisions, and state and federal regulations.

The audit included costs incurred on projects I5 HOV, CMLN-6071(071); Kraemer Avenue grade separation, CML-6071(051) and TCIFL-6071(050); Orangethorpe grade separation, CML-6071(060); Sand Canyon grade separation, 12A0172-06-A1 and STPL-6071(059); and State Route 22, CMLN-6071(035) during the period from July 1, 2011, through December 31, 2013.

SCOPE

The scope of the audit was limited to reviewing financial and compliance activities. The audit of OCTA's financial management system included interviews of OCTA staff to obtain an understanding of OCTA's financial management system. The audit consisted of transaction testing of claimed costs to evaluate compliance with Title 2 Code of Federal Regulations (CFR) Part 225; Title 48 CFR Chapter 1 Part 31; Title 49 CFR Part 18; Title 23 CFR; Caltrans's Local Assistance Procedures Manual; and requirements stipulated in OCTA's agreements with Caltrans. Field work was completed on July 29, 2015. Transactions occurring subsequent to this date were not tested and accordingly, our conclusion does not pertain to costs or credits arising after this date.

OCTA is responsible for the claimed costs, compliance with applicable agreement provisions, state and federal regulations; and the adequacy of its financial management system to accumulate

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

METHODOLOGY

We conducted this performance audit under 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 to express an opinion on the financial statements of OCTA. Therefore, we did not audit and are not expressing an opinion on OCTA'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, and evaluating the overall presentation.

CONCLUSION

Based on our audit, we determined:

- Reimbursed project costs totaling $709,469 (see Attachment I) did not comply with respective agreement provisions, and state and federal regulations.
- OCTA approved questionable relocation costs, and its Right of Way policies could be improved.
- OCTA did not follow proper contract management and construction management practices.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations consider OCTA's response dated February 19, 2016, to our January 21, 2016, draft report. Our findings and recommendations, OCTA's response, and our analysis of the response are set forth in the Findings and Recommendations section of this report. A copy of OCTA's full written response is included as Attachment III.

This report is intended as information for Caltrans management, the California Transportation Commission, the Federal Highway Administration, and OCTA. This report is a matter of public record and will be placed on Caltrans A&I's website.

If you have any questions, please contact Barbara Nolan, Auditor, at (916) 323-7880, or Cliff Vose, Audit Manager, at (916) 323-7917.

Marsue Morrill

MARSUE MORRILL, CPA
Chief, External Audits – Local Governments
Audits and Investigations

April, 22, 2016

FINDINGS and RECOMMENDATIONS

Finding 1 – Questioned and Unallowable Right of Way Costs

The Orange County Transportation Authority (OCTA) improperly paid for construction costs to relocate and/or to replace improvements pertaining to realty, in violation of the California Department of Transportation (Caltrans) Right of Way Manual (ROWM) Section 10.05.12.00 and Title 49 Code of Federal Regulations (49 CFR) Part 24. The tenant-owned improvements were identified as realty on OCTA's Full Acquisition Offset Statements (which were signed by the business tenants) and as improvements pertaining to realty in the appraisals. Improvements pertaining to real estate are considered personal property eligible for relocation reimbursement only when severed from the real estate per ROWM 8.06.01.00. Personal property, not real property, is eligible for relocation reimbursement. OCTA paid for construction related improvements such as electrical, plumbing, and other utility work for three businesses affected by the Orangethorpe grade separation project. Per 49 CFR 24.105 (c), just compensation for tenant-owned improvements is limited to the greater of the amount which the improvement contributes to the fair market value (FMV) of the whole property or salvage value. Therefore, we question the costs above the appraised FMV of the improvements we tested as follows:

Business	Total Costs Paid (A)	Appraised FMV of Improvements (B)	Total Questioned Relocation Costs (A-B)
Hirschl School of Dance Arts	$243,309	$54,765	$188,544
Lakeside Donuts	$97,978	$43,130	$54,848
Niz Enterprizes	$44,650	$25,010	$19,640
			$263,032

During our testing we also found excessive payment for reestablishment costs and unreasonable construction costs as follows:

Iglesia La Senda Antigua (Church) – Gates Development

The Church had moved and was reestablished by September 1, 2011. In July and November 2012, claims for relocation assistance show OCTA paid $177,048 for "repairs and improvements required by law." According to 49 CFR 24.304 (a) and ROWM 10.05.13.00 "repairs and improvements required by law" are reestablishment costs, and payments for reestablishment costs are limited to $10,000. The construction work included electrical, phone and computer systems, plumbing, heating and ventilation repairs. OCTA's relocation agent acknowledged that these types of costs generally qualify as reestablishment expenses, but stated OCTA had authority to provide greater benefits to the displacee in hardship cases. OCTA cited its right of way manual, section 8-1.5, which states, "In case of conflicts between Federal, State Regulations, and the provisions of this manual, the regulation and policies that provide greater benefits to the displacee will be followed by OCTA." OCTA made other payments to the

Church for reestablishment, therefore we are disallowing the total $177,048 as excessive reestablishment costs.

St. Theresa's Home Health Care – Brown and White Construction
OCTA paid $84,606 for general building contractor services such as electrical, heating ventilation, air conditioning (HVAC), design and planning, permits and administration. OCTA stated that the services were for moving related costs. Actual and reasonable costs of a move performed by a commercial mover or contractor are allowable under ROWM 10.05.07.00. OCTA provided a relocation bid from a company named Pack & Ship with a $1,750 quote, which was to move unattached personal property. OCTA obtained separate bids, including from Brown and White Construction, to move fixtures, equipment and improvements, however, based on the certified inventory provided by OCTA, the personal property did not appear to include items or improvements requiring any general building contractor services, such as electrical, HVAC, design and planning, or administration, to relocate. Therefore, we find the $84,606 in general building contractor costs to be unreasonable and not appropriate to be reimbursed as relocation expenses and question the costs.

In addition, OCTA overpaid $4,642 in reestablishment costs on behalf of St. Theresa's Home Health Care. The construction bid for the $84,606 in general building contractor services noted above included $8,642 of construction costs for reestablishment. In addition, OCTA separately paid $6,000 directly to the business owner for reestablishment expenses, including a $4,000 advance. Per ROWM 10.05.13.00, reestablishment expenses are limited to $10,000 and cannot be advanced. Therefore, since it appears that OCTA reimbursed the business $14,642 in reestablishment costs, that are limited to $10,000, the difference of $4,642 ($8,642 + $6,000 - $10,000) is disallowed. This amount is included in the $84,606 questioned above.

We also found that OCTA paid Southern California Gas Company $28,607 for work OCTA stated was to relocate a gas meter for the State Route 22 project, however, there was no independent documentation to support this. The work order authorization provided as support for the payment does not describe the work performed, a location, or meter number, and was not signed by either the Gas Company or OCTA. Although the need to relocate a gas meter was identified in the construction permit, the owner of the gas meter, location or meter number were not identified. Therefore, there is no tie between the construction permit, the work order or the invoice paid. We question the $28,607.

See Attachment II for detailed criteria.

Recommendation

We recommend OCTA:

- Repay Caltrans $181,690 of ineligible reestablishment costs identified above.
- Review applicable criteria and train its staff and consultants accordingly to ensure regulations related to the relocation assistance program are followed.

- Provide a full detailed accounting of all ROW payments made related to the Orangethorpe project and any ROW payments made for future projects.
- Take steps to ensure that requests for reimbursements for ROW costs meet all state and federal laws and regulations.

We recommend Caltrans Division of Local Assistance (DLA):

- Consult with the Federal Highway Administration (FHWA) to determine if the $371,603 in questioned construction related costs identified above should be repaid to Caltrans.
- Review the detailed accounting of ROW costs provided by OCTA for the Orangethorpe project and all future projects to ensure that all payments made to the projects meet the requirements of state and federal laws and regulations.
- Perform a detailed review of requests for ROW reimbursements for compliance with state and federal laws and regulations until DLA is satisfied that OCTA is complying with federal and state laws and regulations.

OCTA Response

In general, OCTA disagrees with the finding and does not agree that costs should be repaid. OCTA's response is summarized below.

For Hirschl School of Dance Arts, Lakeside Donuts, and Niz Enterprizes, OCTA claimed:

- The improvements were not identified as realty on the offset statements.
- Improvements were personal property eligible for relocation.
- 49 CFR 24.301 (h) does not identify improvements as an ineligible relocation expense.

For the Church, OCTA claimed the costs were for modifications to personal property, an eligible relocation expense.

For St. Theresa's Home Health Care, OCTA stated two bids are required when determining relocation costs. OCTA also stated that the Pack & Ship bid was incomplete, including a cost estimate to move only unattached personal property. Separate bids were obtained, which included the cost to move all property including furniture, fixtures, equipment and improvements pertaining to realty, as well as the cost for design, planning, permits and administration. OCTA acknowledged the $4,642 in overpaid reestablishment expense.

For Southern California Gas Company, OCTA acknowledged a completed work authorization could not be produced and it is understandable to question the cost, however, OCTA still indicated the costs were eligible.

Analysis of Response

OCTA stated they forwarded the audit finding to Caltrans District 12 (D12) office and that the D12 office was not concerned with how OCTA implemented the relocation assistance program for the project so long as there was no duplicate payment. A&I does not suggest OCTA made duplicate payments, but it should be noted that improvements are compensated under acquisition, unless severed from real property. The distinction between relocation and acquisition is an important one because acquisition payments are subject to taxation and capital gains. The right of way issues were discussed during the audit field work with Caltrans Headquarters and D12 staff and the findings discussed specifically on December 29, 2015. Neither Headquarters nor D12 expressed disagreement.

Hirschl School of Dance Arts, Lakeside Donuts, and Niz Enterprizes

- Each business owner signed an offset statement which identified the improvements as realty.
- Improvements are defined as real property per California Civil Code Sections 658.2 and 660.
- 49 CFR 24.301 (h) (1) specifically identifies real property improvements as an ineligible moving and related expense

Church

Per ROWM 10.05.05.05, to be reimbursable, modifications to personal property must be necessary, unavoidable, and reasonable. They must be clearly and directly associated with the reinstallation of personal property. Since the Church had moved and was reestablished six months prior to the construction work, there is no clear and direct association with the reinstallation of personal property.

St. Theresa's Home Health Care

The certified inventory of personal property did not support the need for general construction activities OCTA claimed as moving and related expenses for personal property. With the exception of a few wall mounted fixtures such as pictures, mirrors, bulletin boards and a cabinet, the certified inventory only identifies unattached personal property that the Pack & Ship bid of $1,750 would have covered, as stated in OCTA response. The $1,750 is significantly less than the $84,606 claimed by OCTA to move all personal property. In addition, the type of general construction activities claimed by OCTA (HVAC; water/sewer/gas pluming; saw cutting, removal, trenching and re-pouring concrete; and electrical work) is not consistent with the list of personal property provided by OCTA.

Southern California Gas Company

OCTA did not provide any new information or documentation to support the costs.

The finding remains, but has been clarified to provide additional detail. Additional criteria, including portions of the California Civil Code and 49 CFR 24, have also been added to Attachment II to define real and personal property.

Finding 2 – Right of Way Policy and Procedure Exceptions

OCTA's ROW policies and procedures could be improved. Specifically we found these exceptions:

- OCTA's policy did not allow for negotiation in instances where property owned by an employee or Board member would be obtained for right of way, in violation of California Government Code 7267.1 (a), which requires acquisition of real property by negotiation. Instead, if the offer of just compensation was rejected, no further negotiations would be conducted and the matter would have been immediately referred to OCTA's Legal Counsel for condemnation, which could be potentially coercive and in violation of 49 CFR 24.102 (h) on coercive action. OCTA remains responsible for acquiring property in conformance with the Uniform Act, which provides protections and assistance for people affected by federally funded projects. Subsequent to our audit report, OCTA is revising its policy to address this issue.

- OCTA's real property manual stated that the disposal or sale of excess property would be done so under Government Code Sections 54220-54232, which appears to give precedence to low and moderate income housing or park and recreation purposes, instead of for transportation purposes as required by 23 CFR 710.403 (d). It further allowed for the sale or lease of land at less than fair market value to facilitate the creation of affordable housing near transit. If property is purchased with federal funds, federal law takes precedence over state law and this should be stated in OCTA's real property manual.

- Of the four personal property inventories reviewed, only two were signed by the property owner. To ensure an accurate and true representation of all personal property to be relocated, the property owner should certify the inventory by signing it.

- OCTA's relocation assistance program diaries were not signed, in violation of ROWM 10.01.14.05. In two of the three parcel diaries reviewed, the relocation agent initialed, but did not sign the diary entries and the third diary reviewed was not initialed or signed.

See Attachment II for detailed criteria.

Recommendation

We recommend OCTA implement policies and procedures, and train staff accordingly to ensure the following:

- Property required for right of way is obtained through negotiation and in conformance with the Uniform Act. In the event required property is owned by OCTA staff or Board members, OCTA may consider having a third party perform the negotiations to avoid the appearance of favoritism or conflict of interest.
- Proceeds from the sale of excess property purchased with federal funds are used for transportation purposes.
- Personal property inventories are signed by property owners so the property inventory is certified as a true and complete representation of all property to be relocated.
- Parcel diaries are signed, rather than simply initialed.

OCTA Response

In general OCTA disagrees with the finding.

- OCTA claimed its policy allows for negotiation with employees or Board members and described how this could be done. OCTA's legal counsel advised that its policy is not coercive.
- OCTA agreed that federal law takes precedence if property is purchased with federal funds.
- OCTA claimed that its policy, approved by the Board in June 2013, requires signatures on certified inventories of personal property and on diaries.

Analysis of Response

OCTA's Real Property Policies and Procedures Manual does not include the negotiation steps described in OCTA's response, is not explicit on how federal law should be applied when disposing of excess property, and does not mention inventories or diaries or the need to have them signed. The finding remains, but was modified to identify specific language from the Manual.

Finding 3 – Contract Management Practices Need Improvement

OCTA did not properly manage two of its professional services contracts to ensure that consultants were providing services and billing under the terms, conditions, and specifications of the contracts. In addition, OCTA third party contracts did not contain contract provisions as required by federal and state requirements. Specifically, we found these exceptions:

<u>Parsons Transportation Group (Parsons) Contract C-9-0809 – Sand Canyon Grade Separation</u>
OCTA allocated the costs for project management services provided by Parsons to six projects, including Sand Canyon, beginning in August 2010. Although the contract stated that additional projects may be added, the contract did not identify Sand Canyon as one of the projects Parsons managed until the contract was amended in July 2014. Without a clear contractual agreement

that identifies the projects a consultant is responsible for managing, OCTA increases the risk that projects are being over or under charged. Since there was no clear contractual authority, we question $95,179, which is the state participating total billed and reimbursed for the three Parsons invoices tested.

We also noted that project management costs were not properly allocated by OCTA to the six projects Parsons managed. Project management costs for the period ended August 2010 were charged 100 percent to the Sand Canyon project. After bringing this to OCTA's attention, an adjustment was made to a subsequent invoice to correct the error.

Overland Pacific Cutler (OPC) Contract C-8-0822 – State Route 22 Connector project

OCTA twice amended the OPC contract after the contract expired. The original end date for the contract was August 31, 2010, and although there was a memorandum indicating the need for an extension, the contract was not amended until September 21, 2010. The contract was amended a second time on October 5, 2011, however, the first amendment had an end date of August 31, 2011. For an amended contract to be valid in accordance with state and federal regulations, the amendment must be executed prior to the contract expiration date. Since the original amendment did not occur prior to the contract expiration date, the $44,959 in tested costs are disallowed.

We also noted that in October 2010 OPC incurred equipment rental costs that were not included in the contract's listing of allowable other direct costs during the time the costs were incurred. Further, the OPC contract required tasks to be identified in each invoice. Two of two OPC invoices reviewed did not include task numbers. By not ensuring that contractors/consultants follow the terms of their contracts, OCTA risks paying for unallowable or unsupported costs. It appeared OCTA staff were not familiar with the terms of the contract they were managing.

Missing Contract Provisions

We tested four third-party contracts for required contract provisions and found they were missing required provisions. The missing provisions and the contracts are as follows.

- Language that obligates contractors and subcontracts to use 48 CFR 31 to determine the allowability of costs (HDR C-0-1518)
- Language that contractors and subcontractors shall comply with 49 CFR Part 18 (Arcadis C-0-1519; Parsons C-0-1864; HDR C-0-1518 and CC Myers C-0-1662)
- Requirement that travel and subsistence expenses shall not exceed rates authorized to be paid to rank and file state employees under current State Department of Personnel Administration rules. (Arcadis C-0-1519; Parsons C-0-1864; HDR C-0-1518 and CC Myers C-0-1662)
- Language that requires contractors and subcontractors maintain an accounting system that accumulates and segregates project costs and matching funds by line item (Arcadis C-0-1519; Parsons C-0-1864; HDR C-0-1518 and CC Myers C-0-1662)

See Attachment II for detailed criteria.

Recommendation

We recommend OCTA repay Caltrans $44,959 of disallowed costs that are were not incurred under a valid contract. In addition, we recommend OCTA implement policies and procedures, and train staff accordingly, to ensure:

- Contracts are amended timely and reflect all services being provided.
- Services provided and costs billed by third party consultants agree to contract provisions and terms.
- Third party consultant contracts contain the required provisions.

In addition, we recommend DLA determine if the $95,179 in questioned costs identified above should be reimbursed to Caltrans.

OCTA Response

OCTA agrees with several parts of the finding and disagrees with other parts of the finding.

- OCTA concurred that the OPC contract was amended twice after contract expiration, but claimed that re-procuring services was not a cost effective option. OCTA is taking steps to manage future contracts.
- OCTA acknowledged that contract provisions were missing from three of the four contracts, and will update contract templates.
- OCTA disagrees with the questioned costs on the Parsons contract.
- OCTA claimed the CC Myers contract is a construction contract, and was not subject to requirements of Caltrans' Local Assistance Procedures Manual (LAPM) Chapter 10.

Analysis of Response

OCTA did not provide any new information related to the Parsons contract The requirement to include certain provisions in contracts comes from the Master Agreements between Caltrans and OCTA, not LAPM Chapter 10, and construction contracts are not excluded from the requirement. The finding remains.

Finding 4 – Construction Management Practices Need Improvement

OCTA approved unsupported extra work construction costs, charged extra work to the incorrect contract change orders (CCO), did not enforce certain construction contract provisions, and was not consistent in following its policy regarding construction quantity sheets, which resulted in questioned costs. Specifically, we found the following exceptions on two projects tested:

Kraemer Avenue Grade Separation

Two of four CCOs on the Kraemer Avenue grade separation project tested had inconsistencies between invoiced extra work costs and the supporting documents. OCTA billed $6,004 under CCO 1 for extra work performed on three separate occasions and we found that the dates, names, labor hours and materials billed did not agree with construction support records. Our review of the construction support records determined that only $3,460 of the costs were supported, therefore we question $2,544 ($6,004 - $3,460).

During our testing of CCO 8.1 on this project we found the following exceptions:

- Work performed on March 10-11, 2012, was billed to CCO 8.1, but CCO 8 was not approved until August 24, 2012. Further, the field work order dated March 10, 2012, indicated the work should have been charged to CCO 1. (The March 11, 2012, field work order CCO line was blank.)
- Work performed on May 15-16 and 20, 2013, agreed to the daily report, but showed the work was for CCO 7.
- Work performed on May 17, 2013, was listed for CCO 8 on the field work document, but did not agree with the daily report, and the field work document was not signed.
- Work performed on May 23, 2013, was listed as CCO 7 on the field work document, but the daily inspection report did not list any work on CCOs or list the employee identified on the field work document.
- A full month's rental rate was charged for trenching and shoring materials, but the materials were needed for only 20 days between July and August 2013. The invoices provided by OCTA to support the rental rate charged were for prior months.

Costs identified during our testing of CCO 8.1 totaled $13,259 and are questioned.

Sand Canyon Grade Separation

Extra work for equipment charged to CCO 23.01 exceeded the amount allowed by the construction contract. Specifically, extra work order documentation showed that a backhoe was used for eight minutes yet a full day's rental rate of $300 was charged when the contract terms only allowed for a four hour charge. Since we do not know the hourly or half-day rental rate, we question the entire amount, plus 15 percent mark-up (total $345). We also noted that the contractor billed four hours for a laborer who had no work hours recorded. We question the labor charge of $179, plus labor surcharge and mark-up of 11 and 20 percent, respectively (total $238).

We also noted significant time gaps between the dates the extra work was performed and the dates the extra work was approved for payment on both projects. For example, work performed by the contractor in March 2012, was not approved for payment until September 2013. Without timely billing with proper support for the extra work being performed, approving authorities can find it difficult to determine whether the costs are reasonable and necessary.

In addition to the issues noted above, during our review of nine construction calculations or quantity sheets (Q-sheets) from the Kraemer Avenue grade separation project we found that four did not identify the name of the reviewer, and only two were initialed to show that the Q-sheet had been reviewed. We also noted similar exceptions on the calculation and Q-sheets reviewed on the Sand Canyon project, including five of ten Q-sheets that listed initials rather than the name of the preparer or reviewer. Without knowing the reviewer it is difficult to ensure a review of calculations was performed at all or to detect errors in a timely manner.

Recommendation

We recommend OCTA review with staff the established policies and procedures to ensure:

- Extra work is accurately recorded and supported by daily reports, field work forms, and transmittals.
- Extra work is billed to the proper CCO.
- Q-sheets properly record required information, including names and evidence that calculations have been reviewed for accuracy.

We also recommend OCTA set time limits for contractors to bill for extra work to help reduce delays between when the work is performed and when it is approved for payment.

In addition, we recommend DLA work with FHWA to determine if the total questioned costs of $16,038 ($2,544 + 13,259 + [(345 + 238)*40.34% (participation rate)]) are to be reimbursed to Caltrans.

OCTA Response

OCTA disagreed with the finding and noted that the exceptions accounted for less than .02 percent of total construction value.

OCTA acknowledged some inconsistencies in documentation, and reminded staff to have daily reports be prepared consistently; acknowledged that some work charged to CCO 8 was performed prior to the approval and execution of the CCO; acknowledged the labor exception on the Sand Canyon project, and that the Q-sheets were missing review names and initials.

OCTA stated that the auditor was provided with additional documentation and explanations to address the exceptions noted.

Analysis of Response

All OCTA provided documentation and explanations were considered during the audit and OCTA's response to the draft report did not provide any new documentation. The finding remains.

AUDIT TEAM

MarSue Morrill, Chief, External Audits – Local Governments
Cliff Vose, Audit Manager
Barbara Nolan, Auditor
Ashna Singh, Auditor

Attachment I

Audit Universe and Questioned Costs

Project Name	I5 HOV	Kraemer		Orangethorpe	Sand Canyon		State Route 22	Total
Project Number	CMLN-6071(071)	CML-6071(051)	TCIFL-6071(050)	CML-6071(060)	12A0172-06-A1	STPL-6071(059)	CMLN-6071(035)	
Federal or State Funding	Federal	Federal	State	Federal	State	Federal	Federal	
Total Funds Reimbursed	$ 2,293,397	$ 15,909,066	$ 10,868,786	$ 21,434,230	$ 12,730,073	$ 4,732,218	$ 5,777,664	$ 73,745,434
Unallowable Cost								
Finding 1				$ 181,690				$ 181,690
Finding 3							$ 44,959	$ 44,959
Participation ratio				100%			100%	
Total Unallowable Costs				$ 181,690			$ 44,959	$ 226,649
Questioned Cost								
Finding 1				$ 342,996	-		$ 28,607	$ 371,603
Finding 3				-	$ 114,687			
Participation ratio					82.99%			
				Subtotal	95,179			$ 95,179
Finding 4		$15,803			583			
Participation ratio		60.41%	39.59%	100%	40.34%		100%	
	Subtotal	9,547	6,256		235			$ 16,038
Total Questioned Costs		$ 9,547	$ 6,256	342,996	$ 95,414		$ 28,607	$ 482,820
Grand Total		$ 9,547	$ 6,256	$ 524,686	$ 95,414		$ 73,566	$ 709,469

ATTACHMENT II

AUDIT FINDINGS CRITERIA

Finding 1

Federal Master Agreement (No. 12-6071R), Article I Paragraph 9: "ADMINISTERING AGENCY shall conform to all Stale statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT."

California Department of Transportation (Caltrans) Right of Way Manual (ROWM) states:

- Section 7.07.14.00, "Structural improvements are normally classified as real property and not personal property."
- Section 8.06.01.00, "Relocation as used in this Chapter is an acquisition concept where improvements are moved from the required property to a replacement, substitute, or remainder property. Improvements pertaining to the realty which an owner has severed from the real estate prior to an acquisition agreement are converted to personal property. As such, they are to be handled under the Relocation Assistance Program."
- Section 10.05.05.05, "...To be reimbursable, costs for personal property modifications must be necessary, unavoidable, and reasonable. The modifications authorized by this section must be clearly and directly associated with the reinstallation of the personal property, and cannot be for general repairs or upgrading of equipment because of the personal choice of the displacee. Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid as a Reestablishment Expense."
- Section 10.05.07.00 on relocation payments, "Payment is based on actual reasonable cost of the move performed by a commercial mover or contractor... Either the owner or the Agent will secure at least two firm bids based on the certified inventory... Agent authorizes the displacee to employ the lowest responsible bidder to perform the move..."
- Section 10.05.12.00, "Items identified as realty (including trade fixtures) in the appraisal, even if retained by the owner at salvage value, are not eligible for moving..."
- Section 10.05.13.00, "... a small business... farm, or nonprofit organization is entitled to receive a payment, not to exceed $10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site... The $10,000 cannot be advanced to the nonresidential displacee, even if the only qualifying payment is the increased costs of operation during the first two years..."

California Code of Civil Procedure 1263.260 "...the owner may remove such improvements and shall be compensated for their reasonable removal and relocation cost not to exceed the market value of the improvements."

California Civil Code states:

- Section 658, "Real or immovable property consists of… 2. That which is affixed to land…"
- Section 660, "A thing is deemed to be affixed to land when it is … permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws…"
- Section 663, "Every kind of property that is not real is personal."

Title 49 Code of Federal Regulations (49 CFR) 24.105 (b) states, "*Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this subpart."

49 CFR 24.105 (c) states in part, "*Appraisal and Establishment of Just Compensation for a Tenant-Owned Improvement.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property, or its salvage value, whichever is greater…"

49 CFR 24.301 (d) states in part, "*M*oves *from a business, farm or nonprofit organization.* Personal property as determined by an inventory from a business, farm or nonprofit organization may be moved by one or a combination of the following methods… (1) *Commercial move* … (2) *Self-move* …"

49 CFR 24.301 (h) states in part, "A displaced person is not entitled to payment for: (1) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership.

49 CFR 24.304 (a) states in part, "*Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They include, but are not limited to, the following: (1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance."

2 CFR 225, Appendix A, Section C.1.j, "… To be allowable under Federal awards, costs must… Be adequately documented."

OCTA Vendor Payment Policy #FA-ACCT-340.06 VENDOR, Section V.B, "…all payments must be fully documented. Documentation must identify the … justification for the payment…"

Finding 2

OCTA's Real Property Policies and Procedures Manual (effective 2013) Section I. Right of Way, subsection I. Conflict of Interest: Employee or Board of Director Owned Property states in part, "…The offer of just compensation shall be based on the higher of the two appraisals.

Should the property owner reject the offer of just compensation, the Real Property Department will not conduct further negotiations with the property owner and immediately refer the acquisition to OCTA's Legal Counsel for condemnation."

OCTA's Real Property Policies and Procedures Manual (effective 2013) Section VI. Property Management, subsection C states in part, "OCTA shall follow Government Code Sections 54220-54232 in the disposal and sale of excess or surplus properties..."

Government Code Section 54220 states in part, "(a)… there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose… (b)… there is an identifiable deficiency in the amount of land available for recreational purposes and that surplus land, prior to disposition, should be made available for park and recreation purposes or for open-space purposes… (c) … The sale or lease of surplus land at less than fair market value to facilitate the creation of affordable housing near transit is consistent with goals and objectives to achieve optimal transportation use…"

OCTA's Right of Way Policies and Procedures Manual (effective 2011) Section 7-3.5 Negotiator's Report and Contact Log (Parcel Diary) states in part, "A Negotiator's Report and Contact Log shall be completed and signed by the negotiator upon termination or completion of negotiations for each parcel…"

49 CFR 24.102(h): "Coercive action. The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property."

California Government Code (GC) section 7267.1(a): "The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation."

GC 7267.5: "In no event shall the public entity either advance the time of condemnation, or defer negotiations or condemnation and the deposit of funds in court for the use of the owner, or take any other action coercive in nature, in order to compel an agreement on the price to be paid for the property."

ROWM 10.05.06.00: The nonresidential displacee must provide the RAP Agent with a certified inventory of the personal property eligible for relocation. The inventory should be prepared by the displacee and verified by the RAP Agent, who may choose to accompany the displacee during the preparation of the list. A complex operation (e.g., warehouse or auto parts distributor) may require the use of a professional consultant to prepare the inventory.

23 CFR 710.403(d):"Acquiring agencies shall charge current fair market value or rent for the use or disposal of real property interests, including access control, if those real property interests were obtained with title 23 of the United States Code funding, except as provided in paragraphs (d) (1) through (5) of this section. Since property no longer needed for a project was acquired with public funding, the principle guiding disposal would normally be to sell the property at fair market value and use the funds for transportation purposes."

ROWM Section 10.01.14.05: "Standard Relocation Diary Form RW 10-3 shall be used to maintain a complete and legible diary that can be clearly reproduced. Each diary entry must be

entered in pen or typed. Preprinted diaries or diaries maintained in a word processing program are acceptable documents. The use of lead pencils and felt pens should be avoided. Each diary entry must be dated and signed, not initialed."

49 CFR 18.20 (b) (3) *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.

Finding 3

49 CFR Part 18.36 (b) (2), "Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

49 CFR 18.20 (b) (3), "Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets".

49 CFR 18.20(b) (6), "Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc."

Local Assistance Procedures Manual (LAPM) Chapter 10 page 10-32, "Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs."

LAPM Chapter 10 page 10-33, "A consultant contract may be amended at any time prior to the expiration date of the original contract... and... All contract amendments must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment".

Article 7 of the Parsons contract, "....all notices and communications regarding terms of agreement, or changes to shall be effected by delivery of said notices in person or by depositing said notices in U.S. mail, registered or certified mail..."

Article 11 of Parsons contract, "By written notice of order, authority may, from time to time, order work/suspension and/or make changes in general scope of agreement..."

Federal (No. 12-6071R) & State (No.00267S) Master Agreements states:

- Article V Paragraph 7, "Any subcontract entered into by the ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of ARTICLE IV, FISCAL PROVISIONS and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS, and shall mandate that travel and per-diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the contractors."

- Article IV, Paragraphs 17 (Federal) and 16 (State), "Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match shall not exceed rates authorized to be paid to rank and file State employees under current State Department of Personnel Administration (DPA) rules…"
- Article IV Paragraphs 18 (Federal) and 17 (State), "ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- Article IV Paragraphs 19 (Federal) and 18 (State), "ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments…"
- Article V Paragraph 2, "ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT."

OCTA's Payment Authorization Policy (EO-ACCT-340.09PAYAUTH) Section V.B, "Individuals authorizing payments are responsible for ensuring that: … 3. If the payment is pursuant to a contract or purchase order that the payment complies with all applicable terms, including but not limited to, hourly and unit rates, scope, period of performance, available contract balance and budget, retention and receipt of goods/services"

LAPM Chapter 10, Exhibit 10-D Consultant Contract Outline, Section B (5), "The contract must state that the Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq., are the governing factors regarding allowable elements of cost. Also, the contract must include the administrative requirements set forth in 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

Finding 4

2 CFR 225, Appendix A Section C. *Basic Guidelines* 1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria: …j. Be adequately documented.

49 CFR 18.20(b) (6): "Accounting records must be supported by such source documentation as... paid bills"

LAPM, Chapter 16, Section 16.13 Contract Change Orders, states "All change orders are to be approved by the administering agency in advance of any work being done on the change."

Atkinson Contract C-0-1448, General Condition 60.10 Actual Cost Records: "CONTRACTOR shall keep accurate daily records of the actual cost to CONTRACTOR for all work performed pursuant to the force account work provisions of Subsection GC-60 and shall make them available to AUTHORITY upon reasonable notice and request…"

OCTA Construction Management Procedures Manual, Section 12.2 Quantity Calculation Sheets: The CM team must determine, by measurement and calculation, the quantities of the various contract line items actually performed by the Contractor on a daily basis. Such measurements must be noted in the Daily Inspection Report and included on quantity calculation sheet. ... All quantity calculation sheets, regardless of the form used, is to contain the following information:

- The Contract Number and Name.
- The name and date of the person preparing the quantity sheet
- The name and date of the person checking the quantity sheet. The person checking must verify all entries including: method of payment, backup information, all calculations, previous payments, and total amount paid to date. Any corrections are to be made in red.

OCTA's Construction Management Procedures Manual, Section 11.3 DIR Requirements (DIR = Daily Inspection Report): At a minimum, the following information shall be included in the DIR:

- Any authorized extra work, force account work, etc., being performed by the Contractor…
- A summary of the Contractor's staff, providing a total number of people under each work or trade classification on the job during the day. Information as to the number of people working can be secured daily from the Contractor in an informal memorandum form or from the Contractor's Daily Report, but the report author is expected to perform a check of the reasonableness of the manpower counts based on their own observations. Any discrepancies between the Contractor's counts and those of the CM's inspector shall be noted in the DIR. …
- Records of extra work performed or work that may result in a claim for extras.

ATTACHMENT III

OCTA

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CHIEF EXECUTIVE OFFICE

Darrell Johnson
Chief Executive Officer

February 19, 2016

Marsue Morrill, Chief
External Audits - Local Governments
Caltrans Audits & Investigations
1304 O Street, Suite 200
Sacramento, CA 95814

Subject: Response to Orange County Transportation Authority Incurred Cost Audit Draft Report P1575-0043

Dear Ms. Morrill:

On January 21, 2016, the California Department of Transportation (Caltrans) Audits and Investigations (A&I) conducted a formal exit conference to discuss the Incurred Cost Audit Draft Report findings and recommendations.

Enclosed is the Orange County Transportation Authority's (OCTA) response to the Incurred Cost Audit Draft Report. The enclosed document provides responses to each of the following four findings discussed in the draft report:

1. Questioned and Unallowable Right of Way Costs
2. Right of Way Policy and Procedure Exceptions
3. Contract Management Practices Need Improvement
4. Construction Management Practices Need Improvement

I understand that OCTA's response will be incorporated into the final audit report. If you have any questions or need additional information, please contact Janet Sutter at (714) 560-5591 or jsutter@octa.net.

Sincerely,

Darrell Johnson
Chief Executive Officer

DJ:js
Enclosure

c: Cliff Vose, Audit Manager, Caltrans
Barbara Nolan, Auditor, Caltrans

Response to California Department of Transportation Incurred Cost Audit P1575-0043 - Findings 1, 2, 3, and 4

Response to Finding 1 – Questioned and Unallowable Right of Way (ROW) Costs

OCTA properly paid for modification costs to relocate and/or to replace Improvements Pertaining to Realty (IPR-Improvements) and was not in violation of 49 Code of Federal Regulations (49 CFR 24). The term construction costs used by the auditor is incorrect. The IPR-Improvements were not identified as realty on OCTA's offset statements. The appraisal used to acquire the real estate in fee, which included the building, parking lot, and landscaping clearly indicated improvements were not included in the valuation of the property. The appraisal states "*This appraisal reflects the value of the real estate only. Personal furniture fixtures and equipment (FF&E) and business goodwill as installed and utilized by the current tenants/occupants are not considered part of this appraisal.*" A copy of this appraisal report and the section highlighting the basis of valuation for the real estate was provided to the auditor.

IPR-Improvements are generally considered FF&E and are personal property of its owner. The owner of the building and the tenants agreed all improvements, including all IPR-Improvements, were personal property owned by the tenants for this building. It is most common in the industry for commercial retail space similar to this building, that tenants install and own the improvements (IPR-Improvements and/or FF&E). This was the case for this acquisition. Therefore, IPR-Improvements are considered personal property, per 49 CFR 24 23.301 (g) the costs to relocate, disassemble, and make modifications to a replacement site are eligible claims for reimbursement. The federal regulations also have a provision for what items specifically would not qualify as an eligible relocation expense. 49 CFR 23.301 (h) *Ineligible and Related Expenses,* clearly states what is not eligible for reimbursement and does not indicate IPR-Improvements are ineligible expenses under the relocation assistance program. If OCTA did not pay for actual and reasonable expenses for the IPR-Improvements it would violate 49 CFR 24 23.301 (g).

OCTA's correct interpretation of 49 CFR 24 23.301 as described throughout this audit response has been confirmed by OCTA's three separate Caltrans qualified relocation assistance consulting firms, OCTA's staff consisting of former Caltrans ROW agents, OCTA's Real Property Department Manager, and OCTA's legal counsel. OCTA has also forwarded the audit findings to the local Caltrans District 12 (District) Office of Right of Way and Land Surveys. The District had no issues or concerns on how OCTA implemented the relocation assistance program for this project. The District focus was to make sure OCTA did not pay for any FF&E or IPR-Improvements as part of the acquisition and also pay to relocate these items, which would be considered a duplicate payment. OCTA submitted documentation to the District indicating that no FF&E, IPR-Improvements, or any personal property was acquired by OCTA as part of this project.

Caltrans Right of Way Manual (ROWM) section 8.06.01.00 states IPR-Improvements must be severed from the real estate to be an eligible relocation reimbursement. This section of the ROWM provides guidelines when IPR-Improvements are being acquired as part of the acquisition process, not for the relocation assistance program. Once an agency has acquired a building and land (real estate), the owner of the IPR-Improvements has a choice to also sell the improvement to the acquiring agency or elect to move the IPR-Improvement from the construction area. The owner of the IPR-Improvement can seek a relocation reimbursement payment to remove the item from the area needed for construction, provided the item was not acquired as part of the real estate. ROWM section 8.06.01.00 does not pertain to the relocation assistance program when determining what claims for reimbursement a business, in the process of relocating to a displacement site, is eligible to receive. The auditor sites 49 CFR 24.105 (2) regarding salvage value when acquiring an IPR-Improvement. OCTA did not acquire any IPR-Improvement or any other personal property as part of this project, therefore 49-CFR 24.105 (2) is not applicable in this project.

The calculations for questioning the appraised fair market value in comparison to the total costs paid for the Hirschel School of Dance Arts, Lakeside Donuts, and Niz Enterprizes is an inaccurate application of two separate provisions within 49 CFR 24. The $263,032 questioned by the auditor are eligible relocation expenses.

Iglesia La Senda Antigua (Church) – Gates Development

OCTA does not agree with the statement that OCTA paid for "*repairs and improvements it thought was required by law*". OCTA did not acknowledge that electrical, phone and computer systems, plumbing, and heating and ventilation repairs generally qualify as reestablishment expenses. OCTA stated that electrical, phone and computer systems, plumbing, and heating and ventilation modifications qualify under 49 CFR 24.301 (g) 3 which states "*Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms, or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property.* Modifications to personal property or to the replacement site are eligible expenses paid for the Church's relocation claims.

The terms "*construction work" and "repair and improvements*" do not apply to 49 CFR 24.301 (g) 3, however, they do apply to 49 CFR 24.304 re-establishment expenses – non-residential moves. OCTA does acknowledge payments were made to the Church for re-establishment expenses and the total payments did not exceed $10,000.

OCTA does acknowledge that under the OCTA Right of Way Policies and Procedures Manual that was in effect in 2011, during this relocation period, that OCTA has the

authority to provide greater benefits in cases of conflict between State and Federal regulations. This is interpreted by OCTA that it can pay the larger dollar amount if State law exceeds thresholds of Federal regulations. OCTA did not state it has authority to make payments greater than allowed by State or Federal regulations. All payments for actual and reasonable expenses and re-establishment expenses paid to the Church are in compliance with both Federal and State regulations, and payments did not exceed Federal regulations. The statement made by the auditor "Therefore, since we know that OCTA made other payments to the Church that may/may not include re-establishment costs" is inaccurate. The $177,048 questioned by the auditor are eligible relocation expenses.

St. Theresa's Home Health Care – Brown and White Construction

Per 49 CFR 24.301 (d) (1), OCTA is required to receive at least two bids when determining relocation costs, however, actual and reasonable costs are eligible for reimbursement. OCTA did receive an incomplete bid from Pack & Ship with a cost estimate of $1,750. This bid was limited and included a cost estimate to move only un-attached personal property such as television, chairs, and tables. OCTA obtained separate bids which included the costs to move all personal property including the FF&E, IPR-Improvements, design, planning, permits and administration, etc., which are eligible expenses under 49 CFR 24.301 (g) 11 & 12, and 49 CFR 24.304. The auditor's statement "we find the $84,606 in construction costs to be unreasonable and not appropriate" is inaccurate.

OCTA does acknowledge overpayment in the amount of $4,642 in re-establishment expenses paid to St. Theresa's Home Health Care. This is due to a calculation error by OCTA when combining two separate claims provided by the tenant.

Southern California Gas Company (SCG)

OCTA made a payment to SCG in the amount of $28,607. OCTA did enter into a Collectible Work Authorization (Work Authorization) with SCG to relocate a gas line for the West County Connectors Project with a cost estimate of $28,607. OCTA acknowledges the Work Authorization provided does not give a detailed description of the work performed, however the description of work performed was detailed in the payment request authorized by OCTA and was described in the "Cost to Cure Agreement" signed by OCTA and the United States Navy (Navy). OCTA acknowledges it could not produce a fully executed Work Authorization form. It is understandable for the auditor to question the payment, however, the work was performed by SCG as a condition of OCTA's agreement with the Navy. The $28,607 questioned by the auditor is an eligible utility expense.

In summary the OCTA management response to Finding 1 is as follows:

- OCTA does not agree it should repay $181,690 to Caltrans. The auditor statement that the $181,690 are "*ineligible re-establishment costs*" is incorrect. As stated earlier, the payments are authorized under 49 CFR 24 23.301 for the actual and reasonable costs to relocate personal property, to make modifications to personal

property, or to make modifications at the replacement site. The Auditor inaccurately categorizes modifications to the replacement site as construction in an effort to improve the building or real estate.

- OCTA has complied with all State and Federal regulations implementing the relocation assistance program for this project. OCTA consistently reviews applicable criteria and constantly allows staff to attend training sessions while contracting with qualified and trained consultants to perform relocation assistance services.

- OCTA has taken steps to ensure that requests for reimbursements for ROW costs meet all State and Federal laws and regulations by updating the OCTA ROW procedures manual. The OCTA Board of Directors (BOD) approved an updated Real Property Department Policies and Procedures Manual (RPDPPM) in June 2013. The RPDPPM provides internal procedures to ensure all ROW and utility agreements are recommended by the Real Property Department Manager and signed by the Executive Director of Capital Programs. The RPDPPM also describes a procedure for the Real Property Department to approve relocation assistance claims once reviewed and approved by the Senior Real Property Agent, upon recommendation by OCTA's qualified consultant performing relocation assistance. OCTA began implementing Caltrans ROW procedures in year 2011 and formally adopted using the Caltrans ROW Manual in June 2013.

Response to Finding 2 – Right of Way Policy and Procedure Exceptions

OCTA's Conflict of Interest Policy does allow for negotiations in instances where property owned by an OCTA employee or OCTA BOD member in compliance with California Government Code 7267.1. Caltrans ROWM Section 7.10.01.00 describes a path on how OCTA can negotiate with any property owner. OCTA can negotiate terms and conditions of an acquisition and even the amount of just compensation after receiving new or relevant information provided by the property owner or the property owner's appraisal. Additional information or feedback will be provided to OCTA's independent appraiser who can make the determination if an increase in the appraisal amount is justified. In this case OCTA would then be obligated to make a revised offer to the owner.

If the owner rejects the revised offer, the OCTA BOD cannot authorize an administrative or legal settlement. While OCTA has a duty to negotiate with property owners, OCTA and its employees and BOD must also abide by the conflict of interest prohibitions found in Government Code §§ 1090, et seq. (§ 1090) and the Political Reform Act, Government Code §§ 81000 et seq. (the PRA). This Section 1090 prohibits the OCTA BOD from negotiating with or approving a purchase contract or settlement agreement for property owned by an OCTA Board Member. Section 1090 also applies to some employees. OCTA's legal counsel has reviewed this section of both Government Codes and has determined and advised OCTA that its conflict of interest policy is not coercive in nature.

If property is purchased with federal funds, Federal law takes precedent over State law which is now clearly stated in the RPDPPM instructing OCTA to follow guidelines in the Caltrans ROWM. Relocation assistance described in the audit was performed utilizing OCTA's ROW Manual that was in effect in 2011, which did not require personal properties certified inventories to be signed by the owner of the personal property. The OCTA RPDPPM approved by the OCTA BOD in June 2013, now requires OCTA to obtain the signatures. Relocation assistance described in the audit was performed utilizing OCTA's ROW Manual that was in effect in 2011, which does not require diaries to be signed by the relocation agents. Initials on diaries were acceptable in 2011. In compliance with the OCTA RPDPPM and the Caltrans ROW Manual, procedures have been implemented to ensure the OCTA's consultant relocation agent signs the diaries, including review by OCTA's Senior Real Property Agents.

In summary the OCTA management response to Finding 2 is as follows:

- The auditor was provided OCTA's ROW Manual which was in effect in 2011 while the subject relocations were in progress. The auditor was also provided a copy of the RPDPPM, that was adopted by OCTA's BOD in June 2013. The RPDPPM provides that OCTA follow guidelines of the Caltrans ROW Manual and Caltrans Local Assistance Manual, if applicable. OCTA began implementing Caltrans ROW procedures in 2011, and formally adopted use of the Caltrans ROW Manual in June 2013. OCTA does provide staff training by attendance at ROW seminars hosted by the International Right of Way Association and the Federal Highway Administration. This is the same training attended by Caltrans ROW agents.

- OCTA does have the ability to negotiate with an OCTA employee or OCTA BOD member during the acquisition process provided that the final terms regarding value are concurred with by OCTA's appraiser. OCTA contracts with third party consultants qualified by Caltrans to handle negotiations with property owners. However, as stated earlier, due to conflicting Government Codes, OCTA's BOD cannot authorize an administrative or legal settlement as part of the negotiations.

- The OCTA RPDPPM approved by the OCTA BOD in June 2013 updated and clarified procedures relating to excess land procedures, certified inventory procedures, and parcel diaries procedures.

Response to Finding 3 – Contract Management Practices Need Improvement

OCTA disagrees with the questioned costs related to the Parsons contract.

As noted in the Parsons contract for construction program management, Parsons is responsible for managing the construction of five grade separation projects on a time and material basis. The contract listed a known program of projects that would be advertised, awarded, and administered by OCTA at that time (late 2009 to early 2010), and noted that additional projects may be added during the assignment as identified by OCTA. As the Parsons contract was beginning, OCTA identified the Sand Canyon

Railroad Grade Separation Project as an additional project to include in the railroad grade separation program of projects that would be advertised, awarded, and administered by OCTA that required the same overarching construction program management program. From mid-2010 to early-2014, Parsons managed the construction program for five projects; Kraemer, Orangethorpe, Placentia, Sand Canyon, and Tustin/Rose. During that period, Parsons provided very limited pre-construction oversight and review services for the Lakeview project during the construction bid package preparation under the original time and material contract budget authority.

The Lakeview project construction phase did not begin until mid-2014. The Parsons contract required an amendment to include additional time and material budget authority for Lakeview and two additional projects being added to the program of railroad grade separation projects, Raymond and State College. The contract amendment was not specifically for the Sand Canyon project. In addition, the contract term was extended beyond May 31, 2016, to accommodate the planned construction duration of all the projects. The amendment for additional budget and term extension was presented and approved by the OCTA BOD on July 14, 2014.

As for the project management cost allocation for August 2010, OCTA acknowledged the error and made an adjustment to a subsequent invoice to correct the error.

OCTA concurs that the OPC's contract was amended twice after contract expiration. However the amendments were necessary to complete and closeout the ongoing work and re-procuring similar services to complete the remaining work was not a cost effective option. The Contract Administration and Materials Management (CAMM) Department will continue to provide the contract expiration report with a six month look ahead of all expiring contracts that will assist project managers in amending contracts prior to their expiration. CAMM will also train user department staff in use of these reports to manage future contracts.

OCTA acknowledges the finding that specific required contract provisions are missing for Arcadis C-0-1519, Parsons C-0-1864, and HDR C-0-1518. As an action item, CAMM has modified its federal highway funded contracts and incorporated all required contract provisions outlined in Chapter 10 of Caltrans' Local Assistance Procedures Manual (LAPM). CAMM will also periodically review the Chapter 10, LAPM requirements and make the necessary updates to its contract templates.

The audit also states that contract provisions were missing for CC Myers Agreement C-0-1662. This is a lump sum construction contract for the Sand Canyon Grade Separation Project and therefore, is not subject to the same contract provisions of Chapter 10 of the LAPM. Thus, OCTA does not concur with this portion of the finding.

Response to Finding 4 – Construction Management Practices Need Improvement

OCTA disagrees with the finding. Please note that the combined construction value for the Kraemer and Sand Canyon projects is approximately $70 million. The recommended Caltrans Division of Local Assistance reimbursement of $16,038 is 0.02 percent of the combined construction value. This reflects exceptional construction management by OCTA. OCTA disagrees with the finding that OCTA approved unsupported extra work construction costs, charged extra work to the incorrect contract change orders (CCO), did not enforce certain construction contract provisions, and was not consistent in following its policy regarding construction quantity sheets, which resulted in questioned costs.

Regarding two of the four CCO's on the Kraemer project, OCTA acknowledged that there are some inconsistencies typical in construction management projects of this size and complexity, but not numerous inconsistencies. During the audit, OCTA staff provided additional supporting documents to resolve inconsistencies between the contractor's and construction manager's document. Additional documents include validation of labor rates and surcharges, and corrected Time and Material sheet. In some cases, the extra work bill submitted by the contractor was incorrect and the Resident Engineer (RE) made a determination based upon a best practice assessment, which is to prepare a reconciliation sheet and make payment for work performed. OCTA staff have reminded project construction management (CM) teams that daily reports need to consistently be prepared and assessed to compare tentative work agreements with extra work performed.

Regarding CCO 8.1 for the Kraemer project, our response to the various bullet items are summarized as follows:

- During the audit, OCTA staff explained that this CCO work was directed by the RE, and the contractor did not bill the work until a significant time after it was completed. The contractor delayed his submittal of documents which delayed the final execution of CCO 8 and associated supplemental CCO's. Hence, supplemental CCO work was ongoing before CCO 8 was approved and executed. During the audit, OCTA staff explained that the work on March 11, 2012, was categorized incorrectly to CCO 1 and was corrected to CCO 8.1 as the appropriate CCO to charge.

- During the audit, OCTA staff explained that the work on May 15, 16, and 20, 2013, was categorized incorrectly to CCO 1, and was corrected to CCO 8.1, which was the appropriate CCO.

- During the audit, OCTA staff acknowledged the inconsistency of the daily report and missing signatures on the field work documented being performed on May 17, 2013. However the actual work was validated by the RE. The work was performed on the BNSF railroad ROW and deemed more appropriate to be compensated under CCO 8 rather than CCO 7. OCTA staff acknowledged that the CM could have provided better documentation for explanation.

- During the audit, OCTA staff acknowledged the inconsistency of the daily report and missing information on the field work documented being performed on May 23, 2013. However, the actual work was validated by the RE. The work was performed on the BNSF railroad right-of-way and deemed more appropriate to be compensated under CCO 8 rather than CCO 7. OCTA staff acknowledged that the CM could have provided better documentation for explanation.

- During the audit, OCTA staff shared that the contractor anticipated that the trenching and shoring work may require a full month or less to perform. Based on information provided by the contractor, the RE determined that the monthly rate charged for trenching and shoring materials would be less than the daily rate charged for 30 days, therefore the work was performed under a monthly rate for trenching and shoring materials. OCTA staff acknowledged that a new monthly rate could have been determined instead of utilizing a rate from prior months. However, since the work was time sensitive, it was determined that a prior rate will be used to avoid impact to the project schedule. The RE ultimately determined that a new calculated rate would not have been different from the prior established rates.

Regarding the Sand Canyon project, response to the two items are summarized below:

- OCTA acknowledged the finding and concurs to the amount in question, which is $238. The reimbursable amount back to Caltrans is based on the participation rate of 40.34 percent which is $96.01.

- OCTA acknowledged the finding. During the audit, OCTA staff shared that the contractor did not submit their extra work bills in a timely manner. The contractor was reminded regularly to provide their extra work bills in a timely manner.

Regarding quantity sheets (Q-sheet) with missing reviewer name and initial on the Kraemer and Sand Canyon projects, OCTA acknowledged the finding. Please note that only a few Q-sheets out of several hundred Q-sheets had the missing name and/or initial. OCTA staff and consultants have been reminded to improve their quality control review of Q-sheets