State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
Help save water!

To: COCO BRISENO
Deputy Director
Planning and Modal Programs

Date: June 2, 2016

File: P1580-0015

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **INCURRED COST AUDIT – SACRAMENTO COUNCIL OF GOVERNMENTS**

We audited the costs claimed by and reimbursed to the Sacramento Council of Governments (SACOG) totaling $6,937,832 for work performed under three agreements with the Caltrans. The audit was performed to determine whether costs claimed 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 SACOG's response, is attached.

Based on our audit, we determined that reimbursed costs totaling $2,052,530 did not comply with Caltrans agreement provisions, and state and federal regulations. Specifically, we found deficiencies in consultant procurements, contract management, monitoring of pass-through funds, and agency-wide policies and procedures.

We would also like to acknowledge SACOG's reference to the length of the audit in their response to the audit findings. We agree that due to delays on both sides the audit took longer than expected. We have revised our processes and procedures to ensure timely audits. We did continue to keep SACOG informed of our findings and issues throughout the audit.

Please provide our office with a corrective action plan addressing the recommendations in the report, including estimated timelines, by September 2, 2016.

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

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

Attachment

c: Mike McKeever, Chief Executive Officer, SACOG
Kirk Trost, Chief Operating Officer/General Counsel, SACOG
Janice Richard, Director of Financial Services, Federal Highway Administration
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AUDIT REPORT

Sacramento Area Council of Governments

Incurred Cost Audit

P1580-0015

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

The California Department of Transportation (Caltrans), Audits and Investigations (A&I) audited reimbursed costs totaling $6,937,832 to the Sacramento Area Council of Governments (SACOG) and found costs totaling $2,052,530 were not in compliance with Caltrans 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 costs claimed by and reimbursed to SACOG were allowable, adequately supported, and in compliance with the Caltrans agreement provisions, and state and federal regulations.

The audit included costs incurred on two agreements with Caltrans from July 1, 2011 through June 30, 2012, and one agreement with the Placer County Transportation Planning Agency for costs claimed from July 1, 2011, through June 30, 2012. It also included testing of five consultant contracts procured prior to July 1, 2011, with costs incurred through April 30, 2014. See

Attachment I for the list of audited agreements.

SCOPE

The scope of the audit was limited to financial and compliance activities related to the above-referenced agreements. Our audit of SACOG's claimed costs included interviews of SACOG staff necessary for obtaining an understanding of SACOG's financial management system and a review of SACOG's financial statements for fiscal years 2010 and 2011. The audit consisted of transaction testing of claimed costs to evaluate compliance with Title 2 of the Code of Federal Regulations (CFR) Part 225; 48 CFR Chapter 1, Part 31; 49 CFR Part 18; 23 CFR Part 172; Caltrans' Local Assistance Procedures Manual; and requirements stipulated in the agreements. Field work was completed on October 15, 2014, and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not pertain to costs or credits arising after this date.

SACOG is responsible for the claimed costs, compliance with applicable agreement provisions, and state and federal regulations, and the adequacy of their 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 in 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 and procedures may deteriorate.

METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was less in scope than an audit performed for the purpose of expressing an opinion on the financial statements of SACOG. Therefore, we did not audit and are not expressing an opinion on SACOG'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 auditee, as well as evaluating the overall presentation.

CONCLUSION

Based on our audit, we determined that reimbursed costs totaling $4,885,302 were adequately supported and in compliance with agreement provisions, and state and federal regulations. Reimbursed costs totaling $2,052,530, however, were not supported and were not in compliance with respective agreement provisions, and state and federal regulations. Specifically, we found deficiencies in consultant procurements, contract management, monitoring of pass-through funds, and agency-wide policies and procedures.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations take into consideration SACOG's response dated May 17, 2016, to our April 28, 2016, draft report. Our findings and recommendations, SACOG's response, and our analysis of the response are set forth in the Findings and Recommendations of this report. A copy of SACOG's full response is included as Attachment IV.

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

If you have any questions, please contact Carvin Seals Jr., Auditor, at (916) 323-7965, or Teresa Greisen, Audit Manager, at (916) 323-7910.

MarSue Morrill

MARSUE MORRILL, CPA
Chief, External Audits – Local Governments
Caltrans
Audits and Investigations
June 2, 2016

FINDING 1 – Improper Procurement Practices

Sacramento Area Council of Government's (SACOG) procurement practices did not support that fair and open competition was performed, or that proper procurement procedures were followed, as required by state and federal regulations, and the California Department of Transportation (Caltrans) agreement provisions in the procurements audited. SACOG did not have adequate policies and procedures to ensure proper procurement procedures were followed. Five consultant procurements were tested and SACOG was unable to provide documentation supporting that four of five consultants were competitively selected. SACOG billed Caltrans a total of $1,289,888 on the four consultant contracts as of April 30, 2014. Three of the five contracts were still on-going as of April 30, 2014. All costs related to the four improperly procured contracts were federally funded and are questioned. Additionally, the Federal Highway Administration (FHWA) reported inadequate procurement procedures in a 2011 certification review as did SACOG's independent auditor in a management letter issued with the fiscal year (FY) 2011/12 financial statement audit. Title 49 Code of Federal Regulations (CFR) Part 18 requires recipients of federal funds to have adequately documented policies and procedures. SACOG stated that they were in the process of updating the procurement policies and procedures.

In addition, on the procurement of the consultant LTK Engineering, SACOG issued a Request for Proposal (RFP) for "Engineering Services" using price as an evaluation factor. The scope of work of the RFP included a task to "prepare performance-based technical and engineering specifications" which required engineering judgment. Additionally, the nature of the project related to integrating systems of the various transit agencies involved within the Sacramento region for the transit card system which required engineering analysis to perform the "system integration." Both engineering judgment and engineering analysis are tasks defined as architecture and engineering services in the federal and state regulations. Title 23 CFR Part 172 does not allow price to be considered as an evaluation factor when procuring engineering services.

Specifically, we found the following consultant procurement deficiencies charged to the work elements (WE) identified below in Table 1:

	Table 1 *Division of Transportation Planning*				*Division of Local Assistance*	
Requirement	***Fehr & Peers WE 12-002-09***	***DKS Assoc. WE 12-002-13***	***TMD WE 12-003-04***	***ICF Jones & Stokes, Inc. WE 12-006-03***	***LTK Engineering WE 12-004-06***	
Lacked documentation to support the selection of the consultants.	N/A	X	X	X		
Price was inappropriately used as an evaluation factor for an A&E Contract.	N/A	N/A	N/A	N/A	X	
Score sheet evaluation criteria did not match the RFP/RFQ.	N/A	X	X	X	X	
RFP/RFQ evaluation criteria did not identify weights or values.	N/A	X	X	X	X	
No independent cost estimate.	X	X	X	X	X	
No advertisement in local newspaper.	N/A	X	X	X	X	
Sole source without documented costs analysis.	X					***Total***
Questioned Costs	***N/A***	***$332,358***	***$219,963***	***$72,150***	***$665,417***	***$1,289,888***

X = Deficiency
N/A = Not Applicable

Without proper procurement practices and procurement documentation SACOG cannot support that fair and open competition occurred, and that the most qualified consultant was selected at a fair and reasonable price.

We also noted that SACOG's policies and procedures did not require board approval for the release of each RFP for consultant services if the scope of work was included in the Overall Work Program however, the staff recommendation reports prepared for the board requested board authorization for each RFP issued. Additionally, as part of SACOG's procurement process the board approved awarding four of the consultant contracts, however, the approvals did not identify the consultants by name. SACOG was unable to provide board approval for the fifth consultant contract tested. Best practices recommend board approval be required prior to the release of RFPs which will result in consultant procurements above agency established thresholds for each RFP, and that board approvals identify selected consultants.

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG revise their Purchasing Policies and Procedures, and train staff accordingly, to ensure:

- Compliance with 2 CFR Part 200 (formerly 49 CFR Part 18), 23 CFR Part 172, and Caltrans Local Assistance Procedures Manual.
- Documentation is maintained to support that proper procurement procedures are followed in accordance with state and federal regulations.
- Board approvals for the release of each RFP is acquired and maintained and board approvals of consultant selections identify consultants by name.

We recommend Caltrans, Division of Transportation Planning (Planning) and Division of Local Assistance (DLA) work with the Federal Highway Administration (FHWA) to determine if the $1,289,888 in questioned costs identified above are to be reimbursed.

SACOG Response

SACOG partially agrees with the finding and stated in part, that some of their practices did not technically comply with all state and federal agreements and regulations. SACOG stated that since being put on notice of the procurement issues SACOG has taken action to improve or modify policies, procedures, oversight and training in an effort to ensure compliance with state and federal requirements. SACOG also stated that they performed additional analyses to ensure that fair and reasonable compensation was paid for products and services received.

SACOG disagrees with the recommendation to reimburse Caltrans $1,289,888 for the disallowed consultant procurement costs. SACOG also disagrees that the LTK Engineering contract was an A&E procurement under the Brooks Act. Finally, SACOG expressed concern over the requirement for board approval for the release of RFPs. See Attachment IV for SACOG's full response.

Auditor's Analysis of SACOG Response

SACOG did not provide additional documentation to dispute the finding or support statements made regarding the additional analyses SACOG indicated was performed.

SACOG stated that the Brooks Act does not apply to the procurement of the LTK Engineering contract. We disagree, as noted above in the finding, the scope of work of the RFP included a task to "prepare performance-based technical and engineering specifications" which required engineering judgment. Additionally, the nature of the project related to integrating systems of the various transit agencies. Both engineering judgment and engineering analysis are tasks defined as architecture and engineering services in the federal and state regulations.

SACOG's response includes a statement regarding the issue of appropriate value received for the funds expended which is an issue that is outside the scope of the audit and does not relate to the state and federal compliance requirements considered in the audit.

With respect to SACOG's concerns over board approval for the release of RFPs, we modified the finding to recommend this as a best practice.

As noted above, SACOG indicated they have and are continuing to implement corrective actions to address any deficiencies, however, A&I has not reviewed or audited any newly developed processes, policies or procedures identified in the SACOG response.

Based on our analysis of the response, the finding has been revised where appropriate.

FINDING 2 – Inadequate Contract Management

SACOG did not maintain a contract administration system to ensure consultant billings to Caltrans were in compliance with federal regulations and Caltrans agreement provisions. SACOG lacked contract management policies and procedures detailing proper processes to manage consultant contracts, to review and approve invoices, and to close-out contracts. SACOG billed and was reimbursed $1,508,105 in disallowed consultant costs on contracts that were not in compliance with federal regulations and Caltrans agreement provisions. Note: $828,895 of these disallowed costs are also identified in finding 1, Improper Procurement Practices.

Specifically, we tested seven (7) consultant contracts and eighteen (18) consultant invoices and found the following deficiencies:

- Two of seven consultant contracts contained fixed fees applied to other direct costs.
- Six of seven consultant contracts did not identify the components of the loaded labor rates (such as hourly rate, fringe benefit rate and over-head rate), the individuals or classifications of staff proposed, and the amount of profit.
- All the consultant contracts were missing some required contract language as required by Caltrans. (See Table II on Page 11)
- Five of seven consultant contracts contained amendments to expired contracts.
- All the consultant contracts lacked contract numbers or unique contract identifiers to properly track contracts.
- All the consultant contracts lacked signature dates to determine actual execution date of contracts. (In order to determine the execution date we used memos attached to executed contracts that were forwarded among the consultants and SACOG's attorney).
- Ten of eighteen consultant invoices were paid with unallowable or ineligible costs.
- All eighteen consultant invoices lacked evidence of review and approval of costs for payment.

- Seven of eighteen consultant invoices billed to Caltrans included retention costs that were withheld from the consultants. We also noted SACOG did not pay the consultants until days or months after receiving reimbursement from Caltrans.

SACOG staff stated that they lacked training in contract management and were not aware of the federal requirements or Caltrans' agreement provision requirements. The lack of detailed information on consultant cost proposals makes it difficult for SACOG staff to manage contracts, verify the allowability of invoiced costs, and puts SACOG at risk for paying for unallowable costs. SACOG's lack of documented contract management policies and procedures and training resulted in unallowable costs being billed to Caltrans.

The following are specific contract management deficiencies noted by consultant contract:

Fehr & Peers (DOTP - WE 12-002-09)

The Fehr & Peers contract was awarded for $170,000 and per SACOG documents was amended three times; however, the first amendment expired on May 31, 2010, and the second amendment was not executed until August 11, 2010. The second and third amendments are invalid as the contract had expired prior to the amendments being executed. The total amount reimbursed by Caltrans through April 30, 2014, that related to costs incurred on the expired contract totals $679,210. These costs are disallowed.

Additionally, we noted amendment three changed the scope of work and increased the total contract amount by $610,000. Also, no cost analysis was performed on the increased consultant costs to ensure a fair and reasonable cost was obtained. Based on discussions with SACOG staff they were unaware that amendments increasing the contract cost by $100,000 or more required a costs analysis be performed.

Further, we noted the initial cost proposal only showed lump sum amounts per task and did not identify estimated hours of effort, by staff and classification, with hourly rate information, sub-consultant costs or the amount of profit. Per amendment three, the cost proposal identified loaded labor rates, however, it did not identify the components of the labor rates, sub-consultant costs or the amount of profit.

Our review of the consultant invoices found two invoices where the project manager approved labor rates applied to two staff that were not identified in the cost proposal. These invoices also contained a handwritten 10 percent fee applied to sub-consultant costs. Mark-ups and profit are not allowed on sub-consultant costs. The project manager could not explain who wrote the 10 percent fee on the consultant invoices or why. In addition the cost proposal did not identify sub-consultant costs. Consultant costs not identified and agreed to by contract are not allowable. These costs total $10,433 and are included in the disallowed costs noted above.

In our review of SACOG's billings to Caltrans we noted, SACOG billed $18,453 related to consultant retention costs prior to their payment to Fehr & Peers. Billing costs to Caltrans prior to incurring and paying costs is not in compliance with Caltrans agreement provisions. We did not

disallow these costs, however, as we verified SACOG paid Fehr & Peers 27 days after billing Caltrans.

DKS Associates (DOTP - WE 12-002-13)

The DKS Associates contract was awarded for $332,260 and expired on October 31, 2011. SACOG executed three amendments after the contract expired. All three amendments are invalid as the contract had already expired. The costs reimbursed by Caltrans through April 30, 2014, that related to costs incurred on the expired contract totals $192,912. These costs are disallowed and are included in finding 1.

Additionally, we noted the cost proposal did not identify the components of the labor rates per staff by task or the amount of profit as required by the Caltrans Local Assistance Procedures Manual (LAPM), Chapter 10.

Transportation Management & Design, Inc. (DOTP - WE 12-003-04)

The Transportation Management & Design Inc.'s (TMD) contract was awarded for $219,966 and expired May 16, 2012, but was not amended until July 24, 2012, which render the amendment invalid. The costs reimbursed by Caltrans through April 30, 2014, related to costs incurred on an expired contract totals $45,409. These costs are disallowed and are included in finding 1.

In addition, the cost proposal on the original contract did not identify the components of the loaded labor rates, the amount of profit, and included a 10 percent fee applied to the other direct costs of the consultant and sub-consultant. Fees on other direct costs and sub-consultant costs are unallowable per Caltrans LAPM, Chapter 10.

In our review of eight consultant invoices from TMD, we noted the project manager approved the payment of the unallowable 10 percent fee applied to the prime and sub-consultant's other direct costs for a total of $8,355. Also, one invoice included costs of an individual not listed on the cost proposal in the amount of $5,876. Costs not included in the contract cost proposal are not allowable unless they are amended into the contract. Therefore, a total of $14,231 is disallowed and is included in finding 1; $2,985 is included above in the expired contract amount leaving a balance of $11,246 of disallowed costs.

LTK Engineering Services (DLA - WE 12-004-06)

The LTK Engineering Services (LTK), contract was awarded for $180,000 and expired on September 30, 2009. The contract was amended five times and only the first amendment was executed prior to the contract expiration. Amendments two through five are invalid as the contract had already expired. Amendment three changed the scope of work and increased the contract by $550,000. Amendment five increased the contract by an additional $149,075 bringing the contract total to $879,075. The total costs reimbursed by Caltrans through April 30, 2014, that related to costs incurred on an expired contract totals $579,328. These costs are disallowed and are included in finding 1.

Additionally, we noted SACOG did not perform a cost analysis on either amendment for the increase in funds to determine whether a fair and reasonable price was obtained.

In addition, we noted that the initial cost proposal for LTK did not identify the components of the labor rates per staff by task or identify the amount of profit. The cost proposal for amendment three only identified hours of effort and lump sum amounts by task.

In our review of two invoices from LTK, the project manager approved labor rates for two individuals that were greater than the rates identified in the cost proposal. SACOG had no documentation for the increase in labor rates and stated that they did not compare the labor rates to the cost proposal. The unsupported labor costs of $1,447 are disallowed and relate to costs incurred after the contract expired and are included in finding 1.

Further, in our review of SACOG's billings to Caltrans, it was noted SACOG billed $2,330 related to consultant retention costs prior to payment to LTK. Billing costs to Caltrans prior to incurring and paying costs violates Caltrans agreement provisions. We did not disallow these costs as we verified SACOG paid LTK 150 days after billing Caltrans.

ICF Jones & Stokes, Inc. (DOTP - WE 12-006-03)

The ICF Jones & Stokes, Inc., cost proposal did not identify the components of the loaded labor rates or identify the amount of profit. In addition, the cost proposal included a clause that a 10 percent general and administrative charge would be applied to all other direct costs including subcontractor costs which is unallowable. SACOG is unable to support, and we are unable to determine the allowability of the consultant costs due to the lack of detailed information included in the cost proposal.

UC Davis (DOTP - WE 12-002-09 and WE 12-008-06)

The UC Davis contract (WE 12-002-09) was executed for $65,500 on October 30, 2009. SACOG amended the contract four times and each amendment was executed between 24 and 169 days after the original contract or prior amendment expired. Therefore, SACOG was not executing amendments on a timely basis. In addition, the original cost proposal included only lump sum amounts per task and did not identify estimated hours of effort, by staff and classification, with hourly rate information. The fourth amendment added additional funds of $43,500 and the cost proposal did identify the level of effort and labor rates by classification, however, the labor rates did not identify the components of the rates.

Both UC Davis contracts included incorrect and outdated references to the federal cost principles required for universities and sub-consultants. Universities are required to comply with the cost principles in 2 CFR Part 220 and sub-consultants must comply with 48 CFR Chapter 1 Part 31. SACOG risks incurring unallowable costs and having no recourse for reimbursement from their consultants when inaccurate fiscal provisions are included in the contracts.

The UC Davis invoices tested were approved for payment without supporting documentation as required by SACOG's pass-through agreements with UC Davis. The agreements required

sub-recipients to include supporting documentation and detailed cost information on invoices for SACOG to ensure cost eligibility. SACOG, however, did not enforce the terms of the agreement by requiring supporting documentation.

Without proper contract management, SACOG is at risk for billing unallowable costs to Caltrans.

Missing Consultant Contract Provisions, unique contract identifiers and signature dates
In addition to the deficiencies noted above, we found the following missing contract provisions and deficiencies with the seven consultant contracts reviewed:

Table II

Required Provision	*Fehr & Peers WE 12-002-09*	*DKS Assoc. WE 12-002-13*	*TMD WE 12-003-04*	*LTK Engineering Services WE 12-004-06*	*ICF Jones & Stokes, Inc. WE 12-006-03*	*UC Davis WE 12-002-09*	*UC Davis WE 12-008-06*
Access to records / Audit by FHWA and Caltrans.	No	No	No	No	No	No	No
Travel reimbursement limited to state DPA rates.	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Method of Payment stated (ex. Actual costs plus fixed fee).	No	No	No	No	No	No	No
Maintain accounting system conforming to GAAP.	**No**	**No**	**No**	**No**	**No**	**No**	**No**
Incorrect fiscal provisions included in contracts.	N/A	N/A	N/A	N/A	N/A	Yes	Yes
Contract numbers included on initial contract.	**Yes**	**Yes**	**Yes**	**No**	**No**	**Yes**	**No**
Contract numbers included on amendments.	No	No	No	No	N/A	No	No
Contracts and amendments dated by all parties.	**No**	**No**	**No**	**No**	**No**	**No**	**No**

No = Provision missing / Deficiency on contract / Amendments
Yes = Contract contained provision / No deficiency
N/A = Not Applicable

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG reimburse Caltrans $679,210 for the unallowable costs billed and reimbursed on the expired Fehr & Peers contract. We also recommend SACOG reimburse Caltrans the additional $828,895 disallowed costs identified above if not reimbursed as a result of finding 1.

In addition, we recommend SACOG develop written policies and procedures, and train staff accordingly to:

- Ensure billings to Caltrans only include costs that have been incurred and paid.
- Ensure compliance with all state and federal regulations over the administration of consultant contracts.
- Ensure all consultant contracts reimbursed with state and/or federal funds contain language as required in the Caltrans' agreements.
- Ensure consultants provide adequate invoice detail to support costs claimed in compliance with 2 CFR Part 200 (formerly 49 CFR Part 18 and 2 CFR Part 225).
- Establish procedures to verify proposed consultant costs data and elements of the estimated costs before entering into contracts in accordance with 2 CFR Part 200 (formerly 49 CFR Part 18).

SACOG Response
SACOG agrees with the finding and recommendations except for reimbursing Caltrans for the unallowable costs. SACOG acknowledges that in some cases contract end dates were not being tracked and in other cases their amendment process was delayed, but believes that the reimbursement recommendation is out of proportion with the error SACOG made. SACOG stated that they made a series of improvements after A&I informed them of the contract management issues and have made contract management a focus area for continued improvements. See Attachment IV for SACOG's full response.

Auditor's Analysis of SACOG Response
As noted above, expired contracts are no longer valid and cannot be amended. Therefore, any costs associated with these attempted amendments are also not valid.

Also noted above, SACOG indicated they have and are continuing to implement corrective actions to correct any deficiencies, however, A&I has not reviewed or audited any newly developed processes, policies or procedures identified in the SACOG response.

Based on the analysis of the response, the finding remains unchanged.

FINDING 3 – Lack of Monitoring of Sub-Recipient Pass-Through Funds

SACOG did not properly monitor the funds passed through to five sub-recipients tested. We found SACOG did not have contractual agreements with three sub-recipients, documentation to support invoiced costs, and billed unsupported costs. Additionally, SACOG lacked policies and procedures to administer pass-through funds in compliance with 49 CFR Part 18.20 (b) (3), effective control and accountability requirements.

SACOG was reimbursed by Caltrans on a UC Davis project (WE 12-008-02) on an expired contract and on two Yolo County Transportation District (YCTD) projects (WE 12-008-01 and WE 12-008-04) with no contracts. SACOG's agreement(s) with Caltrans required SACOG to enter into contracts with sub-recipients detailing roles and responsibilities and the state and federal fiscal provisions. The reimbursed amounts totaled $54,212 and are disallowed as there were no contractual agreements in place.

SACOG approved payment of invoices to UC Davis and YCTD with no supporting documentation to determine the reasonableness, allowability, and eligibility of the costs billed. In addition, two invoices tested included only a total invoice amount with no detailed billing information, such as the level of staff effort, rates of pay, other direct costs, or sub-consultant costs billed.

We also found that SACOG reimbursed the Sacramento Regional Transit District (SacRT) (WE 12-008-08) $499 in unallowable meal charges not related to travel. These cost are not deemed reasonable and necessary for the project delivery. Further, we noted SACOG billed SacRT for administrative fees totaling $29,070 that were not supported by any actual costs incurred. SacRT then included the same SACOG administrative fees, less the required local match of $2,978, on their invoices to SACOG. SACOG then billed Caltrans for the administrative fees. The unsupported administrative fees of $26,092 ($29,070 - $2,978) billed to Caltrans and meal charges for $499 are disallowed. SACOG's Master Fund Transfer Agreement, Article II, Section 1.A. requires reimbursement of costs be based on actual costs incurred and supported by SACOG's accounting system.

We noted that SACOG included language requiring sub-recipients to pay a five percent administrative fee on the total amount of pass-through funds in four of the pass-through agreements we reviewed. In our sample, we only found the administrative fee billed to and paid by SacRT. The administrative fee was not based on actual costs incurred by SACOG.

SACOG staff were unfamiliar with state and federal requirements for administering pass-through funds and ensuring reasonableness, allowability and eligibility of costs billed.

SACOG's lack of sub-recipient agreements puts SACOG at risk for incurring ineligible and or unallowable costs. Lacking agreements, sub-recipients have no defined instructions detailing the scope of work, eligibility of costs and state and federal requirements related to the pass-through funds. Further, having no agreement limits SACOG's recourse against the sub-recipients. Finally, having no policies and procedures over the contract management and invoice approval processes increases the risk of unallowable costs being billed to Caltrans.

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG reimburse Caltrans $80,803 for the total disallowed costs identified above. We also recommend SACOG reimburse SacRT $2,978 for the local match portion of the disallowed administrative fees.

In addition we recommend SACOG develop written policies and procedures, and train staff accordingly, to ensure:

- Procedures for the administration of pass through funds are in compliance with 2 CFR Part 200 (formerly 49 CFR Part 18 and 2 CFR Part 225) and Caltrans LAPM.
- Sub-recipient agreements are executed between SACOG and all sub-recipients of funds passed through from Caltrans. The agreements should include the required fiscal provisions as stated in Caltrans' agreements with SACOG.

SACOG Response

SACOG partially agrees with the finding. SACOG agrees with the recommendation to reimburse the unallowable charges related to SacRT and disagrees with the disallowance of the other costs deemed unallowable. Additionally, SACOG stated that they are finalizing a policies and procedures manual for the administration of sub-recipient agreements and are implementing other improvements and oversight to ensure compliance with state and federal regulations. See Attachment IV for SACOG's full response.

Auditor's Analysis of SACOG Response

The disallowed costs SACOG is disputing are a result of costs incurred on an expired contract and costs incurred where no contract was in place with a sub-recipient, also noted in finding 2. SACOG did not provide any additional documentation to support that these costs were valid.

As noted above, SACOG indicated they have and are continuing to implement corrective action to correct any deficiencies, however, A&I has not reviewed or audited any newly developed processes, policies or procedures identified in the SACOG response.

Based on the analysis of the response, the finding remains unchanged.

FINDING 4 – Appearance of Conflict of Interest

During the audit, A&I became aware of an employee with an appearance of a conflict of interest. One of SACOG's employees appears to have been employed by UC Davis (Urban Land Use and Transportation Center) while acting as the SACOG project manager on two contracts between SACOG and UC Davis (WE 12-002-09 and WE 12-008-06), which both relate to urban land use.

The project manager reviewed and approved UC Davis invoices for the urban land use contracts that were directly related to the subject and area of the individual's UC Davis employment. The dual roles violate 49 CFR Part 18.36 (b) (3) and SACOG's Personnel Policy on conflict of interest. In addition, the project manager approved the UC Davis invoices with no documentation to support the allowability of the costs billed which violates the terms of the contract.

SACOG management was aware of the project manager's assignments and association with UC Davis but did not believe it was an issue. With respect to the lack of supporting documentation the project manager stated that since Caltrans was aware of the contract with UC Davis, SACOG did not believe it was required to request supporting documentation.

When conflicts of interest exist, and invoices are paid without supporting documentation, there is an increased risk of billing unallowable costs to Caltrans.

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG enforce their Conflict of Interest Policy to ensure no employee is assigned job duties that create a conflict of interest and require invoices include supporting documentation for costs billed.

SACOG Response

SACOG disagrees with the finding and provided an analysis of their position. SACOG states that the individual in question was not employed by UC Davis, but rather was on temporary assignment to UC Davis Urban Land Use & Transportation Center performing SACOG work and he remained employed solely by SACOG. Furthermore, SACOG states there is no basis that exists for the finding that the employee had a conflict of interest. See Attachment IV for SACOG's full response.

Auditor's Analysis of SACOG Response

We disagree with SACOG's position as the audit found that there is an appearance of a conflict of interest. The SACOG employee in question, who acted as the project manager over two UC Davis projects, told the audit team that he was also employed by UC Davis and taught a class during the contract period within our audit. He was also included on the UC Davis website as an employee. As stated in the audit report, the dual roles (which included managing the UC Davis contracts and approving invoices) violate 49 CFR Part 18.36 (b) (3).

Based on the analysis of the response, the finding has been revised for clarity.

FINDING 5 – Unallowable Costs Billed

SACOG billed and was reimbursed $2,629 for food purchases for SACOG staff, and travel expenses for lobbying activities both in violation of 2 CFR Part 225, Appendix B, addressing goods or services for personal use and lobbying activities. We noted SACOG purchased food for standard business meetings, which is not reasonable and necessary for project delivery, and charged the costs to three work elements (WE) 12-006-04 [funded by the Division of Transportation Planning (DOTP) ($1,040) and WE 11-004-06 funded by the Division of Local Assistance ($185)].

The lobbying activity reimbursed on WE 12-005-05 funded by DOTP related to reimbursement of employee travel expenses to Washington D.C. in the amount of $1,404. The travel reimbursement form showed the costs were initially charged to WE 12-023-01 (Board of Directors and Advocacy – SACOG's unallowable work element), however, the coding was crossed out and replaced with a work element funded by the Division of Transportation Planning. When asked, SACOG staff were unable to explain who changed the work element charge coding and why.

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG reimburse Caltrans $2,629 for the disallowed costs identified above.

SACOG Response

SACOG partially agrees with the finding and agrees to reimburse Caltrans $1,225 in unallowable food purchases. SACOG disagrees with the disallowance of the travel expenses to Washington D.C. in the amount of $1,404 and stated that the costs were not for lobbying. See Attachment IV for SACOG's full response.

Auditor's Analysis of SACOG Response

SACOG provided no additional documentation to support the purpose of the meeting or the allowability of the costs in their response. The audit found that the Travel/Career Development Request Form (purpose of the meeting) obtained from SACOG stated, "RUCS briefing with La Hood" United States Secretary of Transportation at the time, for "Advocacy." SACOG was unable to provide an agenda that outlined the topics or purpose of the meeting or other documentation to support that the trip was not for advocacy/lobbying purposes.

As noted above, SACOG indicated they have and are continuing to implement corrective actions to address any deficiencies, however, A&I has not reviewed or audited any newly developed processes, policies or procedures identified in the SACOG response.

Based on the analysis of the response, the finding remains unchanged.

FINDING 6 – Inadequate Policies and Procedures

Overall, SACOG's policies and procedures over consultant procurements, contract management and monitoring of pass-through funds did not ensure compliance with Caltrans' agreements and state and federal regulations. In addition, SACOG's policies and procedures did not fully ensure project costs were supported and properly reported in compliance with federal regulation 49 CFR Part 18.20 (b) internal control, source documentation, and financial reporting requirements. Specifically, we found the following exceptions with no policies and procedures in place to prevent:

- Project managers approved billings without documentation to support costs billed.
- Project managers did not require sub-recipients to provide documentation to support that costs meet the local match requirements.
- There was no clear process to ensure invoices were reviewed and approved by individuals who could verify the costs included in the invoices.
- There were no requirements for when time sheets should be submitted and approved, and therefore, labor was not always uploaded into SACOG's project control system timely. This resulted in delays in preparation of the monthly job costing reports, billings, and financial reports.
- There were no policies and procedures over the use and reimbursement of personal cell phone costs used for business purposes.

Without proper internal controls over the review and approval of project costs and accounting functions, SACOG risks billing Caltrans for unallowable costs.

See Attachment III for detailed criteria.

RECOMMENDATION

We recommend SACOG develop and implement written policies and procedures, and train staff to ensure the following:

- Supporting documentation is obtained and maintained to support all incurred and billed costs and local match.
- Invoices are reviewed and approved by individuals who can verify invoice costs.
- Time sheets are submitted and approved timely.
- Only business use of personal cell phone costs is reimbursed.

SACOG Response

SACOG agrees with the finding and recommendations in the response, and indicated they are taking steps to correct any deficiencies.

Audit Team	MarSue Morrill, Chief, External Audits – Local Governments Teresa Greisen, Audit Manager Carvin Seals Jr., Auditor Riyad Hamdan, Auditor

ATTACHMENT I
INCURRED COST AUDIT OF SACRAMENTO AREA COUNCIL OF GOVERNMENTS
LIST OF AUDITED AGREEMENTS

Federal/State Project Number	Agreement Number	Project Name/Description	Agreement Amount	Invoice Number	Invoice Amount	Federal/ State Reimbursement Rate	Paid by Caltrans within Original Audit Period	Paid by Caltrans Outside Original Audit Period *	Total Paid by Caltrans
CML-6085(037)	03-6085R	Universal Transit Fare Card Project	$ 8,190,444	12 - 15	$ 801,216	82.43%	$ 660,362	$ 520,369	$ 1,180,731
OWP (12)	74A0135	Federal Overall Work Program	$ 6,893,858	01 - 06	$ 5,881,281	88.53% / 80.00% / 100.00%	$ 5,253,384	$ 229,343	$ 5,482,727
		SACOG's Billings to Placer	$ 274,374	01 - 02	$ 274,374	100.00%	$ 274,374	$ -	$ 274,374
			Total Federal & State		$ 6,956,871		$ 6,188,120	$ 749,712	$ 6,937,832

Note:
*** Relates to actual payments for the LTK Engineering procurement.**

ATTACHMENT II
INCURRED COST AUDIT OF SACRAMENTO AREA COUNCIL OF GOVERNMENTS
QUESTIONED AND DISALLOWED COSTS BY AGREEMENTS THROUGH 4/30/14

Federal/State Project Number	Agreement Number	Project Name/Description	Consultant / Subrecipient Contracts	Consultant / Subrecipient Contract Amount	Period Costs Incurred	Questioned Costs Within Audit Period	Questioned Costs Outside Audit Period	Disallowed Costs Within Audit Period	Disallowed Costs Outside Audit Period	Net Total Questioned and Disallowed Costs Paid by Caltrans	Note
CML-6085(037)	03-6085R	Universal Transit Fare Card Project	LTK Engineering Services	$ 879,075	9/1/08- 4/30/14	$ 145,233	$ 520,184	$ 580,775 *	$ -	$ 665,417	1
CML-6085(037)	03-6085R	Universal Transit Fare Card Project	N/A	N/A	05/25/11	$ -	$ -	$ -	$ 185	$ 185	4
OWP (12)	74A0135	Federal Overall Work Program	Fehr & Peers	$ 780,000	8/24/09 - 4/30/14	$ -	$ -	$ 504,693	$ 174,517	$ 679,210	2
		" "	DKS Associates, Inc.	$ 335,000	9/9/10 - 4/30/14	$ 277,532	$ 54,826	$ 192,912 *		$ 332,358	1
		" "	Transportation Mgmt. Design, Inc.	$ 219,963	8/18/11 - 4/30/14	$ 219,963	$ -	$ 56,655 *	$ -	$ 219,963	1
		" "	ICF Jones & Stokes, Inc.	$ 72,167	8/8/11 - 4/30/14	$ 72,150	$ -		$ -	$ 72,150	1
		" "	UC Davis	$ 56,478	3/30/09 - 4/30/14	$ -	$ -	$ 27,831	$ -	$ 27,831	3
		" "	SACRT	$ 607,908	11/1/10 - 4/30/14	$ -	$ -	$ 26,591	$ -	$ 26,591	3
		2 Billings No Contracts	YCTD	$ -	11/25/08 - 5/31/12	$ -	$ -	$ 26,381	$ -	$ 26,381	3
		" "	N/A	N/A	9/18/11	$ -	$ -	$ 2,444	$ -	$ 2,444	4
		Total Consultant / Subrecipient Co		$ 2,950,591		$ 714,878	$ 575,010	$ 1,418,282	$ 174,702		
					Total Disallowed Costs					$ 2,052,530	

*** Also Included in Questioned Costs**

Note:
1 - Relates to finding 1 and 2.
2 - Relates to finding 2.
3 - Relates to finding 3.
4 - Relates to finding 5.

ATTACHMENT III
AUDIT CRITERIA

Finding 1 (Improper Procurement Practices)

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

1b. 49 CFR Part 18.36 (c) (3) states in part, "Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured...and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."

1c. 49 CFR Part 18.36 (b) (9) states, "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following rationale: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

1d. Federal Master Agreement 03-6085R, and Master Fund Transfer Agreement 74A0135 states, in general, that Administering Agency agrees to comply with Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State, Local and Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

1e. 23 CFR Part 172.7 (a) (1) (i) states, "Competitive negotiations should be used for the selection of a consultant to provide engineering and design related services.... The contracting agency shall prepare a scope of work before issuing a RFP that reflects a clear, accurate and detailed description of the technical requirements for the services to be rendered and a list identifying the evaluation factors and relative importance."

1f. Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 states in part, "...Those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services are termed "Architectural and Engineering (A&E) Consultants." California law requires selection of A&E contract services on the basis of demonstrated competence and professional qualifications. Cost may not be included as criteria for rating such consultants. Negotiations shall begin with the most qualified consultant...."

1g. Public Contract Code Part 2, Chapter2, Article 4, Section 10344 (a) states, "Contracts subject to the provisions of this article may be awarded under a procedure that makes use of a request for proposal. State agencies that use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format that proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due and the timetable the agency will follow in reviewing and evaluating them. State agencies that use a procedure

that makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c)."

1h. SACOG's Purchasing & Policies and Procedures Dated June 2005, Solicitation Requirements, 1(f), states, "No work shall commence or goods ordered until a contract has been approved by the Board of Directors, executed by the Executive Director, and a purchase order approved."

1i. 49 CFR Part 18.36 (d) (3) (i) states in part, "Requests for proposals will be publicized and identify all evaluation factors and their relative importance."

1j. (LAPM), Chapter 10, Section 10.2 states in part "... An independent cost estimate is needed to ensure that consultant services are obtained at a fair and reasonable price. ... The estimate must include a break-down of (1) Direct labor costs, (2) Indirect costs, (3) General and administrative cost, (4) Other direct costs, (5) Sub-consultant costs and (6) Net fee ..."

1k. Public Contract Code Part 2, Chapter 2, Article 4, Section 10371 (c) states, "Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars ($5,000) or more, prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract."

1l. LAPM Chapter 10 states in part, "...Local agency advertises the availability of the RFP in a major newspaper of general circulation or technical publication of widespread circulation..."

1m. 49 CFR Part 18.36 (f) states, in part, "Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals... A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders..."

Finding 2 (Inadequate Contract Management)

2a. 49 CFR Part 18.36 (b) (2) states, "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."

2b. Public Contract Code Part 2, Chapter 2, Article 4, Section 10348.5 states, "Each state agency shall designate at least one currently existing person or position within the state agency as a contract manager. Every contract manager shall have knowledge of legal contractual arrangements."

2c. 48 CFR Chapter 1 Part 31.204 (a) states, "Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowed under 31.202 (Direct costs)."

ATTACHMENT III
AUDIT CRITERIA

2d. LAPM Chapter 10 states in part, "The type of contract must be specified. Four types are permitted depending on the scope of services to be performed, Actual Cost-Plus-Fixed Fee, Cost Per Unit of Work....."

2e. 225 CFR 2 Appendix A, Section C.1 states in part, "Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria: ... a. Be necessary and reasonable... j. Be adequately documented."

2f. LAPM Chapter 10 Consultant Selection, Exhibit 10-H Sample Cost Proposal, identifies the Fee (Profit) is only applied to labor and not non-labor expenditures.

2g. Federal Master Agreement 03-6085R states in part, "Any subcontract entered into by Administering Agency as a result of this Agreement shall contain all the provisions of Article IV, Fiscal Provisions, and this Article V, Audits, Third Party Contracting Records Retention and Reports..." ...."#17 under Article IV states in part, "Payments to administering agency for project related travel and subsistence (pier diem) expenses of administering agency forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file state employees under current State Department of Personnel Administration (DPA) rules."

2h. Master Fund Transfer Agreement 74A0135 states in part, "MPO agrees, and shall require all of its contractors, subcontractors, and subrecipents to agree, to the following: (a) the Contract Cost Principles, 48 CFR, Chapter 1, Part 31, A-87, Cost Principles for State, Local, and Indian Tribal Governments, and 49 CFR, Pat 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

2i. 49 CFR Part 18.36 (i) states in part that a grantee's contracts must contain provisions in paragraph (i) of this section... "(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms..." "(2) Termination for cause and for convenience by the grantee..." "(10) Access by the grantee ... to books, documents, papers and records..." "(11) Retention of all required records for three years after grantees... make final payments and all other pending matters are closed..."

2j. Master Fund Transfer Agreement 74A0135 states, in general, that MPO shall establish and maintain, and shall require that its subrecipents, contractors, subcontractors shall establish and maintain, an accounting system conforming to Generally Accepted Accounting Principles (GAAP) to support Request for Reimbursement which segregate and accumulate costs of work elements by line item and produce Quarterly Reports which clearly identify reimbursable costs and other expenditures by OWP work elements."

2k, 49 CFR Part 18.20 (b) (6) states, "Source Documentation. Accounting records must be supported by such documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc."

2l. 49 CFR Part 18.36 (d) (4) (ii) states, "Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required."

2m. 49 CFR Part 18.36 (f) states in part, "a cost analysis is necessary for sole source procurements and grantees will negotiate profit as a separate element in all cases where cost analysis is performed."

2n. LAPM Chapter 10 states in part, "All contract amendments must be fully executed before the ending date of the 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."

2o. Public Contract Code Part 2, Chapter 2, Article 4, Section 10335 (b) states, "All contracts subject to this article are of no effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval."

2p. Public Contract Code Part 2, Chapter 2, Article 4, Section 10371 (d) states, "Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award."

2q. Federal Master Agreement 03-6085R and Master Fund Transfer Agreement 74A0135 states in part, "Payments to Administering Agency can only be released by state as reimbursement of actual allowable project costs already incurred and paid for by administering agency."

2r. SACOG's contract with the Regents of the University of California, Section (6) (a) states, "Said billings shall indicate the number of hours worked by each of University's personnel and reimbursable costs incurred to the date of such billings since the date of the preceding billing, if any. The billings shall include documentation of reimbursable expenses and billed items sufficient for SACOG, in its opinion, to substantiate billings."

2s. 49 CFR Part 19.21 (b) (3) states, "Effective control and accountability must be maintained for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes."

Finding 3 (Lack of Monitoring of Subrecipient Pass-Through Funds)

3a. 49 CFR Part 18.36 (b) (2) states, "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."

3b. 2 CFR 225, Appendix A Section A.2.a, states, (1) "Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices, and (2) Assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award."

3c. 49 CFR Part 18.36 (i) states in part that a grantee's contracts must contain provisions in paragraph (i) of this section. "(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms..." "(2) Termination for cause and for convenience by the grantee..." "(10) Access by the grantee ... to books, documents, papers and records..." "(11) Retention of all required records for three years after grantees make final payments and all other pending matters are closed."

3d. Federal Master Agreement 03-6085R states in part, "Any subcontract entered into by Administering Agency as a result of this Agreement shall contain all the provisions of Article IV, Fiscal Provisions, and this Article V, Audits, Third Party Contracting Records Retention and Reports..."

3e. Master Fund Transfer Agreement 74A0135 states in part, "MPO agrees, and shall require all of its contractors, subcontractors, and subrecipents to agree, to the following: (a) the Contract Cost Principles, 48 CFR, Chapter 1, Part 31, A-87, Cost Principles for State, Local, and Indian Tribal Governments, and 49 CFR, Pat 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

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

3g. 49 CFR Part 19.21 (b) (3) states that, "Effective control and accountability must be maintained for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes."

3h. 49 CFR Part 18.20 (b) (5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant, and subgrant agreements will be followed in determining the reasonableness, allowability and allocability of costs."

3i. 49 CFR Part 18.20 (b) (6) states in part, "The financial management systems of other grantees and subgrantees must meet the following standards: ... 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."

3j. 49 CFR Part 18.22 (a) (2) "Grant funds may be used only for reasonable fees or profit to cost type contracts but not any fees or profit or other increment above allowable costs to the grantee and subgrantee."

3k. 2 CFR 225 Appendix A, Section C.1 states in part, "Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:... a. Be necessary and reasonable... j. Be adequately documented."

3l. SACOG's Sub-Recipient Agreement with SACRT, Section (6) (c) states, "Subrecipients invoice will include documentation of reimbursable expenses and billed items sufficient for SACOG, in its opinion, to substantiate billings. SACOG reserves the right to withhold payment of disputed items."

3m. SACOG's Sub-Recipient Agreement with Regents of the University of California, Section (6) (b) states, "Subreciepnet will submit a detailed and properly documented invoice for reimbursement not more often than quarterly, which invoice will include the following: (i) a description of the work performed, (ii) a detailed accounting of costs incurred, and (iii) evidence that Subrecipient has already incurred costs for the Project using eligible non-federal funds in the amount of the local match."

Finding 4 (Conflict of Interest)

4a. SACOG's Personnel Policy dated September 2007, Section 10(a) Conflict of Interest Activities states, "An employee shall not engage in any employment, activity, or enterprise for compensation which is inconsistent, incompatible, in conflict with, or inimical to their duties as an employee or with the duties, functions, or responsibilities of SACOG.

4b. 49 CFR Part 18.36 (b) (3) states in part, "Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award..."

4c. 49 CFR Part 18.20 (b) (6) states, "Source Documentation. Accounting records must be supported by such documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc."

Finding 5 (Unallowable Costs)

5a. 2 CFR Part 225, Appendix B, #24 "lobbying" states, "The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable costs."

5b. 2 CFR Part 225, Appendix B, #20 "goods or services for personal use" states, "Costs of goods or services for personal use of the governmental unit's employees are unallowable regardless of whether the cost is reported as taxable income to the employee."

ATTACHMENT III
AUDIT CRITERIA

Finding 6 (Inadequate Policies and Procedures)

6a. 49 CFR Part 18.20 (b) (3) states, "Internal Control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes."

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

6c. 49 CFR Part 18.20 (b) (1) states, "Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant."

6d. 2 CFR 225, Appendix A, Section C.1 states in part, "To be allowable under Federal awards, costs must meet the following general criteria... e. Be consistent with policies, regulations, and procedures that apply uniformly to both federal awards and other activities of the governmental unit."

6e. Public Contract Code Part 2, Chapter 2, Article 4, Section 10351 (a) states, "The department shall exempt from its approval contracts under one hundred fifty thousand dollars ($150,000) that any state agency awards if the state agency does all of the following: (1) Designates an agency officer as responsible and directly accountable for the agency's contracting program…(2) Establishes written policies and procedures and a management system that will ensure the state agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system...(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management."

Sacramento Area Council of Governments

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ATTACHMENT IV

May 17, 2016

William Lewis
Caltrans Audits & Investigations
Mail Station 2, P.O. Box 942874
Sacramento, CA 94274-0001

Dear Mr. Lewis:

Enclosed please find our detailed response to the draft Sacramento Area Council of Governments Incurred Cost Audit dated April 2016.

SACOG appreciates the important oversight role of Caltrans Audits and Investigations in ensuring that state and federal funds are used properly, and that state and federal regulations are followed. From the first arrival of the audit team at SACOG nearly five years ago (first for the ICAP audit and subsequently this incurred cost audit), we expressed our commitment to work with the audit team to ensure the proper use of state and federal funds, to comply with state and federal regulations, and to improve our policies, procedures, and oversight. We asked the audit team to communicate with us immediately whenever it identified areas for improvements. However, as we have discussed with you, the audit has stretched out over four years and the communication has been less than ideal.

For example, the draft audit report proposes to disallow substantial costs incurred on contracts by SACOG after alleged defects were identified, but no effort was made to work with SACOG staff to immediately correct the alleged problems and thereby minimize the funds at risk. The recommendation to reimburse funds comes for the first time in 2016, over four years after the audit started, and a year and a half after the audit field work ended. It is hard to reconcile a good faith belief that taxpayer dollars were being misspent with this course of action.

In other cases, information presented by SACOG was simply disregarded and the audit report is incorrect. The draft audit report concludes that Gordon Garry had an impermissible conflict of interest in overseeing contracts with UC Davis, but there is no evidence that Mr. Garry ever received compensation from UC Davis. And a major conclusion of the draft audit report is that an engineering contract was improperly procured, when the contract, although to an engineering firm, was not for engineering,

Auburn
Citrus Heights
Colfax
Davis
El Dorado County
Elk Grove
Folsom
Galt
Isleton
Lincoln
Live Oak
Loomis
Marysville
Placer County
Placerville
Rancho Cordova
Rocklin
Roseville
Sacramento
Sacramento County
Sutter County
West Sacramento
Wheatland
Winters
Woodland
Yolo County
Yuba City
Yuba County

and outside legal counsel determined that these non-engineering consultant services are not subject to the Brooks Act. As indicated by the other areas of dispute identified in the enclosed detailed response, the broad-brush implications of systemic issues in the draft report, based on a sampling of procurements, is misleading and inaccurate.

We believe that we complied with the intent of the law and oversight regulations; we assured that taxpayer dollars were expended fairly and that taxpayers received good value for the dollars expended. Having said that, we have acknowledged that we can and must improve our processes—*and we have.*

As we promised at the start of the audit, SACOG management examined all issues identified by Audits and Investigations during the audit and acted as promptly as we could to improve or modify policies, procedures, oversight, and training. For example, in 2013 SACOG fully revised its Purchasing Policies and Procedures. In 2015, we updated our template documents to ensure that we incorporated all federal requirements into our contracts and RFPs. The Purchasing Policies and Procedures are currently being revised for another update this summer. Many additional actions are outlined in the enclosure.

We are now aware that the findings below are not unique to SACOG. MPOs and RTPAs around the state have received similar findings, and a recent Caltrans study of 29 local agencies found significant non-compliance across the agencies. As you can see from the enclosed materials, we have made an organizational commitment to fully address all of the issues identified and we hope to partner with Caltrans to conduct future trainings and to continually improve our practices, for our benefit and for the benefit of our entire industry. Our organizational values include professional excellence and innovation, and we want to both comply with Caltrans requirements and be a leader in delivering excellent value for the state and federal taxpayers who fund our work.

In conclusion, we would like the opportunity to review and respond to any changes in the draft report prior to issuance, and we would like to thank you for your ongoing coordination and support of our efforts.

Sincerely,

Mike McKeever
Chief Executive Officer

Sacramento Area Council of Governments

Response to California Department of Transportation Audits and Investigations Draft Incurred Cost Audit Report (P1580-0015), April 2016

Background

In 2011, SACOG identified the need to improve and strengthen its internal operations and controls. The result was the establishment of a new position and the hiring of a new Chief Operating Officer/General Counsel in April 2011. Not long after that, Audits and Investigations commenced its ICAP and, subsequently, incurred cost audits. Particularly because of the organizational changes and its desire to improve internal operations and controls, SACOG management met with the audit team and expressed SACOG's commitment to work with the audit team to improve our policies, procedures, and oversight. We specifically asked the audit team to communicate with us immediately when they identified areas for improvements.

In the subsequent years, both on its own and in response to issues raised by Audits and Investigations, SACOG undertook a series of actions designed to improve our policies, procedures, oversight, and training. The following is an outline of some of these actions.

- In late December 2012, SACOG implemented a new organizational teaming plan, a principal component of which was strengthening the role of the project managers in the organization. As a result, a series of training sessions and regular meetings with project managers focused on improving project management and oversight skills.
- In December 2012, when notified of the omission, SACOG commenced publishing all procurements in a local newspaper.
- In July 2013, SACOG updated its Purchasing Policies and Procedures to provide staff direction and tools to conduct proper procurements. The update included, among other things, requirements for cost/price analysis, documentation of the history of each procurement, documentation of telephone quotes, guidelines for interview criteria, and Board approval of RFPs.
- In July 2013, SACOG added scoring weights and values to its RFP templates.
- In January 2014, SACOG created a position of Manager of Policy and Administration, whose responsibilities include development, evaluation, and implementation of policies and procedures.

- In April 2014, SACOG conducted a mandatory, all-staff contracts training.

- In August 2014, SACOG replaced its legacy accounting system with a new web-based accounting system, Ajera, which provides detailed information and reports to project managers to assist them in managing their projects.

- In August 2014, SACOG hired an accountant with extensive state and federal grants experience to replace the incumbent, who retired.

- In November 2014, SACOG introduced a new Travel Policy and Procedures that fully complies with state and federal requirements. SACOG also joined the Statewide Travel Program, offered through the Department of General Services, which provides detailed expenditure tracking and assists with adhering to state travel requirements. SACOG also identified a staff person to be the travel coordinator to assist with policy compliance. SACOG staff also received training, and new staff receive training when hired.

- In June 2015, continuing its focus on improving project management and oversight, SACOG created a Project Management Office and assigned a management employee to assist project managers with training and resources to more effectively manage projects. This included a toolkit of uniform tools and reports that allowed project managers to provide status reports to management and identify clear roles and responsibilities for projects and tasks within projects. SACOG also began holding monthly team/project manager meetings to provide training and assistance to team/project managers, and to communicate about policies and procedures related to project management.

- In September 2015, SACOG took additional steps to improve its procurement processes. SACOG hired new staff specifically dedicated to procurement, contract, and grant administration. SACOG also hired an experienced accountant who was working for Caltrans to join the Finance Team. SACOG revised its contract templates to include requirements specified in the Local Assistance Program Manual, the Master Fund Transfer Agreement, and 2 CFR, Part 200. The format and example of a cost proposal was added to the RFP template at that time.

- In January 2016, SACOG adopted a new Cellphone Policy.

- In February 2016, SACOG migrated its RFP/RFQ notification system to Public Purchase, a national platform for vendor management used by over 10,000 government agencies. Public Purchase provides a larger pool of potential bidders with notice of bid opportunities with SACOG. It also provides SACOG with more detailed reports on bids.

- In March 2016, upon receipt of the draft audit report, SACOG hired Diane Eidam as a retired annuitant to lead a further internal compliance review. Ms. Eidam has extensive experience as the former Chief of Audits and Investigations at Caltrans, former Executive Director of the California Transportation Commission, and has served in several executive roles at other regional transportation agencies in California.

- In April 2016, SACOG held a mandatory training for all staff on procurement and contracts led by Jack Pelligrino, a statewide expert on procurement and the Director of Procurement for San Diego County. Mr. Pelligrino teaches procurement and contracts for San Diego State University and for the California State Association of Counties Institute.

- Continuing its commitment to ensuring that its procurement processes and procedures are compliant with state and federal regulations, SACOG staff have prepared another revision to its contract policies and procedures, including subrecipient agreements, which will be brought to the SACOG Board for approval in August 2016. The policies and procedures will include appendices that will ensure that procurements are performed and documented correctly.

- A team of SACOG staff is conducting a process improvement mapping exercise for all contracting and procurements to provide better tools and training for all staff, and to identify potential organizational changes to ensure compliance. Going forward, SACOG staff will receive an annual refresher on policies and procedures, and new project managers will receive one-on-one assistance.

- In addition to the trainings mentioned above, SACOG has the following ongoing training programs planned for 2016:
    - Contracts management for all team managers, which includes a review of state and federal requirements related to contracts and grant funds (Summer 2016);
    - Subrecipient requirements and monitoring (Summer 2016);
    - New purchasing policies and procedures, as soon as they are approved by the SACOG Board (Summer 2016);
    - Project status reporting, including budget reporting (Summer 2016);
    - Accounting for project time and management of staff time budgets (Fall 2016); and
    - Supervisor training (Summer/Fall 2016).

FINDING 1 – Improper Procurement Practices

Recommendation

We recommend SACOG reimburse Caltrans $1,289,888 in disallowed costs identified above.

In addition, we recommend SACOG revise its Purchasing Policies and Procedures, and train staff accordingly, to ensure:

- Compliance with 2 CFR Part 200 (formerly 49 CFR Part 18), 23 CFR Part 172, and Caltrans Local Assistance Procedures Manual.
- Documentation is maintained to support that proper procurement procedures are followed in accordance with state and federal regulations.
- Board approvals for the release of each RFP is acquired and maintained and board approvals of consultant selections identify consultants by name.

SACOG Response:

Most importantly, SACOG has implemented, and continues to implement, Caltrans' bulleted recommendations. As you can see from the actions in the Background section above, SACOG is making a concerted agency-wide effort to improve, track, and oversee our procurement processes.

We are now aware that some of our prior practices did not technically comply with all state and federal agreements and regulations. In particular, although we were providing notice of our RFPs/RFQs to a list of over 2,000 individuals and entities, we were not advertising them in a local paper; our staff were not documenting and maintaining cost estimates or analyses; our staff sometimes modified the weighting criteria from the even weighting assumed in our RFPs; and not all of our managers were properly maintaining project files. As you will see from our actions above, we started the process of remedying these issues back in 2012.

Notwithstanding these issues, however, the recommendation that SACOG reimburse Caltrans for the entire amount of the questioned contracts is not fair and reasonable under the circumstances and is overly burdensome, particularly in light of the fact that SACOG's, and state and federal interests, were well served by the products obtained through those procurements. We do not believe that there is a nexus between the technical errors identified in the audit and the issue of whether appropriate value was received for the funds expended. We have also performed additional analyses to ensure that fair and reasonable compensation was paid for the products and services received, and that the terms of the contract were fulfilled.

SACOG also disagrees that price was inappropriately used as an evaluation factor in the procurement of LTK Engineering. The federal Brooks Act mandates that price not be used in the procurement of architectural and engineering services contracts. The Act supports the federal policy that architectural and engineering services for the construction of public facilities should be let on the basis of qualifications and competency to ensure the public safety; they should not be let simply to the lowest bidder. In this case, neither the letter nor the spirit of the Brooks Act applies. LTK was retained because of their consulting experience with universal fare card projects to provide consulting assistance to staff in the Connect Card Project. The vendor, INIT, was awarded a contract to do the design engineering and building of the technology system for the Connect Card. That was not the job of LTK. Further, SACOG obtained outside legal advice at the time of the procurement, which advice supported the procurement. It can also be noted in retrospect that LTK received the highest score of all proposers even when the price criterion is disregarded.

Finally, with respect to the concerns expressed regarding RFP issuance and Board approval, we have not been able to determine the nature or cause for concern. We will be happy to work with Audits and Investigations to make required modifications to our processes. However, for four of the five contracts identified in the draft audit report, the Board actions named the consultant selected. In the case of the ICF/Jones & Stokes, no consultant was named because the Board expressly delegated to the SACOG CEO the authority, after consultation with certain Board leadership, to negotiate and execute the final contract.

FINDING 2 – Inadequate Contract Management

Recommendation

We recommend SACOG reimburse Caltrans $679,210 for the unallowable costs billed and reimbursed on the expired Fehr & Peers contract. We also recommend SACOG reimburse Caltrans the additional $828,895 disallowed costs identified above if not reimbursed as a result of finding 1.

In addition, we recommend SACOG develop written policies and procedures, and train staff accordingly to:

- Ensure billings to Caltrans only include costs that have been incurred and paid.
- Ensure compliance with all state and federal regulations over the administration of consultant contracts.

- Ensure all consultant contracts reimbursed with state and/or federal funds contain language as required in the Caltrans' agreements.
- Ensure consultants provide adequate invoice detail to support costs claimed in compliance with 2 CFR Part 200 (formerly 49 CFR Part 18 and 2 CFR Part 225).
- Establish procedures to verify proposed consultant costs data and elements of the estimated costs before entering into contracts in accordance with 2 CFR Part 200 (formerly 49 CFR Part 18).

SACOG Response:

SACOG appreciates the critical look at our contract management systems over a number of years. We have made a series of improvements starting when we learned of these issues and we have made this a focused area of improvement in the Agency.

In addition to the actions listed in the Background section above, SACOG has taken a number of steps to address the draft audit recommendations. Our all-staff training included a component on contract management and we have modified our contract templates since the audit commenced to ensure complete compliance with state and federal requirements and Caltrans' agreements. As described in more detail in the Background section, we have additional trainings scheduled that will provide even more detailed training to project managers. Additionally, SACOG implemented a practice of requiring project managers to document their review and approval of invoices for the following items, when applicable:

- Signed contract/amendment;
- Invoice consistent with the scope of work and staff named in the contract;
- PO issued and verified in Ajera (accounting software);
- Budget available per Ajera/OWP;
- Compliance with contractual/federal/state requirements; and
- Travel consistent with state rates and supported by detailed receipts.

Project managers have been trained on the invoice review described above. Again, we are committed to a standard of excellence in our contract management systems and will continue to improve our processes.

Notwithstanding the foregoing, we disagree with the recommendation to reimburse Caltrans approximately $1.5 million. This recommendation appears to be based on the fact that the subject contracts were amended after the initial contract dates had expired. In this regard, we acknowledge that in some cases contract end dates were not being tracked and in other cases our amendment processing was delayed. In all cases, however, we were advised by counsel that we could amend the expired contracts, if both parties agreed, and establish new effective dates for the contracts. We are now aware of the sentence in the Caltrans Local Assistance Program Manual that does not allow this. Again, however, we believe that the reimbursement recommendation is out of proportion to the error SACOG made. We entered into legally binding and otherwise permissible amendments, we received full and fair value for those contracts, and SACOG was able to deliver critical projects for the SACOG region by implementation of the contract amendment work.

FINDING 3 – Lack of Monitoring of Sub-recipient Pass-Through Funds

Recommendation

We recommend SACOG reimburse Caltrans $80,803 for the total disallowed costs identified above. We also recommend SACOG reimburse SacRT $2,978 for the local match portion of the disallowed administrative fees.

In addition we recommend SACOG develop written policies and procedures, and train staff accordingly, to ensure:

- Procedures for the administration of pass through funds are in compliance with 2 CFR 200 (formerly 49 CFR Part 18 and 2 CFR 225) and Caltrans LAPM.
- Sub-recipient agreements are executed between SACOG and all sub-recipients of funds passed through from Caltrans. The agreements should include the required fiscal provisions as stated in Caltrans' agreements with SACOG.

SACOG Response:

We agree that our management team was not adequately overseeing the monitoring of subrecipient agreements by our project managers. We were not able to identify two subrecipient agreements for projects managed by a prior employee and one contract was allowed to expire before the completion of the project. We also agree that we can improve the consistent level of detail we require for subrecipient invoices. Nevertheless, SACOG can demonstrate that work was performed consistent with the intended purpose, and SACOG

provided quarterly reports to Caltrans on this work as part of its regular OWP reporting. For these reasons, we believe that the recommendation to reimburse all funds under these projects is inappropriate.

With respect to the subrecipient agreement with the Sacramento Regional Transit District (WE 12-008-08), SACOG agrees that $26,591 in fees and charges should be reimbursed.

With regard to the assessment of administrative fees, while SACOG's practice has not been consistent in all cases, it has billed actual administrative expenses under the agreement provisions. Because the administrative fees were based on actual costs, SACOG did not always bill the allowable five percent administrative fee.

In its continuing effort to improve in these areas, in August 2016, SACOG staff will bring a comprehensive Policies and Procedures Manual for the Administration of Subrecipient Agreements to the Board for adoption. The manual is compliant with 2 CFR Part 200 and includes detailed instructions for monitoring pass-through funds, charging costs to federal awards, and accounting for local match. In addition, SACOG has hired a full-time staff person specifically dedicated to procurement, contract and grant administration, and the role of this staff includes tracking subrecipient agreements. This is in addition to several other existing staff responsible for procurement review, regulatory compliance, legal review, and accounting. SACOG also uses outside contracts counsel with expertise in federal contracting.

Training for SACOG and subrecipient staff will be provided on June 28, 2016.

FINDING 4 – Conflict of Interest

Recommendation

We recommend SACOG enforce its Conflict of Interest Policy to ensure no employee is assigned job duties that create a conflict of interest and require invoices include supporting documentation for costs billed.

SACOG Response:

We disagree with the basis of this finding, that Gordon Garry had a conflict of interest under SACOG's Code of Conduct, adopted pursuant to state and federal requirements. Based on the analysis of outside legal counsel set forth below, Mr. Garry was not employed by UC Davis but rather, was on temporary assignment to UC Davis performing SACOG work and he remained

employed solely by SACOG. Consequently, Mr. Garry's temporary assignment to UC Davis did not create an impermissible conflict of interest.

1. *Primary Test for Employment Relationship*

California utilizes the "common law" test to determine whether an employment relationship exists. Under California common law, the principal test of an employment relationship is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the result desired. (*Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522, 531; *Air Couriers Intern. v. Employment Development Dept.* (2007) 150 Cal.App.4th 923, 933.) Significantly, what matters under the common law is not how much control an alleged employer exercises, but how much control the alleged employer retains the right to exercise. (*Ayala, supra,* at p. 547.)

The strongest evidence of the right to control is whether the alleged employer can discharge the employee at will, because "[t]he power of the principal to terminate the services of the agent gives him the means of controlling the agent's activities." (*Ayala,* at p. 544, internal citations omitted.) Accordingly, whether the right of control exists may be measured by asking whether or not, if instructions are given, they have to be obeyed "on pain of at-will discharge[] for disobedience." (*Id.* at p. 533, internal citation omitted.) In addition, a written contract governing the relationship between the alleged employer and employee is "a significant factor for consideration" in assessing the alleged employer's right to control. (*Ibid.*; see also Rest.2d Agency, § 220, subd. (2)(a) [what matters is "the extent of control which, by the agreement, the master may exercise over the details of the work"].)

Mr. Garry is employed by SACOG as the Director of Research & Analysis under a written employment agreement. The employment agreement provides that SACOG may terminate Mr. Garry's employment at any time and for any reason, upon written notice. The employment agreement also states that Mr. Garry works as a member of executive management at the direction of the SACOG Executive Director (now Chief Executive Officer) and lists his job duties, which include supporting "transportation and related planning efforts of SACOG's staff and cooperating jurisdictions...." Therefore, SACOG holds the right to control the manner and means of Mr. Gordon's performance, making SACOG Mr. Garry's employer under the primary common law test.

In addition, Mr. Garry's most recent performance evaluation by SACOG lists the following as primary duties of his position:

- Liaison with other MPOs, state agencies… and academic researchers on travel behavior, land use, air quality, and climate change models and analyses.
- Technical assistance to local, regional, state, and federal agencies, university and advocacy researchers on transportation, land use, climate change, and air quality emissions topics.

Pursuant to these job duties, the Chief Executive Officer of SACOG gave Mr. Garry a temporary assignment to work with the UC Davis Urban Land Use and Transportation Center on technical matters involving transportation and land use planning, including research and providing lectures. Mr. Garry remained under the control and direction of the SACOG CEO while on this temporary assignment, which involved the execution of primary job duties with SACOG. Mr. Garry was not under the control and direction of the individuals he worked with at UC Davis. Therefore, Mr. Garry was not a UC Davis employee under the primary common law test of employment.

2. *Secondary Factors in Employment Relationship*

Besides the right to control, a number of secondary factors may be considered in evaluating whether an employee-employer relationship is established, including:

- Whether the worker is engaged in a distinct occupation or business;
- Whether, considering the kind of occupation and locality, the work is usually done under the alleged employer's direction or without supervisor;
- The skill required;
- Whether the alleged employer or worker supplies the instrumentalities, tools, and place of work;
- The length of time the services are to be performed;
- The method of payment, whether by time or by job;
- Whether the work is part of the alleged employer's regular business; and
- Whether the parties believed they are creating an employer-employee relationship.

(See, e.g., *Ayala, supra,* at p. 538; *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1434.)

Here, an evaluation of the pertinent secondary factors in connection with Mr. Garry's assignment to UC Davis confirms the conclusion that he was an employee of SACOG and not an employee of UC Davis. He was paid a salary and received full benefits from SACOG and was not paid any compensation, benefits, or even reimbursed expenses by UC Davis. He was

assigned by SACOG to UC Davis. The work he performed while on assignment is part of the regular business of SACOG in that SACOG commonly provides technical assistance to local jurisdictions and academic institutions in its core areas of transportation and land use planning. The work performed at UC Davis requires a high level of skill and does not require on-site supervision. The work was performed at UC Davis offices, but the location of the work is just one of the secondary factors.

3. *Conclusion*

SACOG's Code of Conduct provides that no SACOG employee participating in the administration of SACOG contracts "shall have, directly or indirectly, a financial or other personal interest in any contact made or influenced by him/her in his/her official capacity." Under the facts discussed above – including the fact that Mr. Garry received no payment whatsoever from UC Davis – this clause of the SACOG Code was not triggered by Mr. Garry's assignment to UC Davis while he served as project manager on two SACOG contracts with UC Davis. The SACOG Code further states that no person performing services for SACOG "shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by SACOG, in any contract or subcontract." In Mr. Garry's circumstances, his only interest in the contracts was his "employment or retention by SACOG" which included the duties of technical assistance to academic institutions such as UC Davis, and was therefore permissible under the Code of Conflict.

Therefore, no basis exists for the finding that Mr. Garry had a conflict of interest.

FINDING 5 – Unallowable Costs Billed

Recommendation

We recommend SACOG reimburse Caltrans $2,629 for the disallowed costs identified above.

SACOG Response:

SACOG acknowledges that mistakes in coding expenses has occurred in the past and it has taken actions to correct those errors. As discussed above, SACOG adopted new processes to ensure that this does not happen going forward.

SACOG agrees that $1,225 in food purchases should be reimbursed to Caltrans. The travel expense reimbursed on WE 12-005-05 funded by DOTP related to reimbursement of employee

travel expenses to Washington D.C in the amount of $1,404 was not for lobbying. This was for a brown bag lunch presentation hosted by the National Association of Development Organizations (NADO) to share the research SACOG had conducted as part of its Rural-Urban Connections Strategy.

FINDING 6 – Inadequate Policies and Procedures

Recommendation

We recommend SACOG develop and implement written policies and procedures, and train staff to ensure the following:

- Supporting documentation is obtained and maintained to support all incurred and billed costs and local match.
- Invoices are reviewed and approved by individuals who can verify invoice costs.
- Time sheets are submitted and approved timely.
- Only business use of personal cell phone costs is reimbursed.

SACOG Response:

SACOG agrees with the need to implement improvements to the documentation for all incurred and billed costs and local match. We have implemented a procedure to ensure that project managers review submitted invoices for compliance with all state and federal, as well as local match, requirements, including all supporting documentation required by the grant/contract. Once submitted to accounting for processing, the accountant again reviews the documentation to ensure compliance before processing the invoice for payment. Claims are reviewed and approved by the Finance Manager before submission for payment. If needed, the accounting team members work with project managers to ensure consultants and subrecipients clearly understand what is needed for documentation of incurred costs and match for all invoices submitted for payment.

In addition to the actions already set forth above, which address these recommendations, in August 2014, SACOG implemented a new accounting system that requires staff to submit weekly electronic timesheets. Project managers review and approve the time on at least a monthly basis. This replaced SACOG's previous paper-based, monthly system. This new process was documented in a written August 2014 policy and is covered in new employee orientations and will be reviewed annually by SACOG management.

On January 22, 2016, SACOG implemented a formal cell phone policy. Prior to that, each employee who received reimbursement for cell phone use had an individual memo on file from a supervisor or the Board of Directors authorizing reimbursement for business purposes.