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: May 31, 2016

File: P1575-0042

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **INCURRED COST AUDIT – ORANGE COUNTY, PUBLIC WORKS**

We audited costs claimed by and reimbursed to Orange County, Public Works (County) totaling $11,191,267 for work performed under projects RPSTPLE - 5955(074), STPL – 59255(071), and RPSTPLE – 5955(062) with Caltrans. The audit was performed to determine whether the costs were supported and in compliance with the agreement provisions and state and federal regulations. This audit was performed as a management service to assist Caltrans in fulfilling its fiduciary responsibilities to state and federal regulatory agencies. The final audit report, which includes the County's response, is attached.

Based on our audit, we determined that project costs totaling $592,406 did not comply with respective agreement provisions, and state and federal regulations. The amount above includes $28,333 in unallowable costs. In addition, the County's procurement procedures and documentations need improvement. We also found that the County's grant management procedures need improvement.

Please provide our office with a corrective action plan addressing the recommendations in the report, including estimated timelines, by July 13, 2016.

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

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

Attachment

c: Shane L Silsby, Director, Orange County Public Works
Michael Tritz, Deputy Secretary for Audits and Performance Improvement, California State Transportation Agency
Janice Williams, Director of Financial Services, Federal Highway Administration
Susan Bransen, Executive Director, California Transportation Commission
Malcolm Dougherty, Director, Caltrans
Kome Ajise, Chief Deputy Director, Caltrans
Ryan Chamberlain, District Director, District 12, Caltrans
Clark Paulsen, Chief, Division of Accounting, Caltrans
Ray Zhang, Chief, Division of Local Assistance, Caltrans
Xiaolan Zhou, Deputy District Director, Planning and Local Assistance, District 12, Caltrans
James Kaufman, District Local Assistance Engineer, District 12, Caltrans
MarSue Morrill, CPA, Chief External Audits – Local Governments, Audits and Investigations, Caltrans

AUDIT REPORT

County of Orange Public Works
Department of Transportation
Incurred Cost Audit
P1575-0042
May 2016

Prepared By:

Audits and Investigations

California Department of Transportation

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

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Executive Summary, Background Scope, Methodology, and Conclusion

EXECUTIVE SUMMARY

The California Department of Transportation (Caltrans), Audits and Investigations (A&I) audited reimbursed project costs, totaling $11,191,267 to the County of Orange, Public Works (County) and found project costs totaling $592,406 did not comply with respective agreement provisions, and state and federal regulations.

BACKGROUND

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

The audit included costs incurred on three projects, 17th Street Sidewalk Improvements RPSTPLE 5955(062); San Juan Creek Bike Trail Safety Improvements RPSTPLE 5955(074); and Antonio Parkway Road and Bridge Widening STPL 5955(071) during the period from July 1, 2011 through December 31, 2013.

SCOPE

The scope of the audit was limited to financial and compliance activities. The audit of the County's financial management system included interviews of County staff to obtain an understanding of the County's financial management system. The audit consisted of transaction testing of reimbursed project costs to evaluate compliance with Title 2 Code of Federal Regulations (CFR) Part 225; Title 48 CFR Chapter 1 Part 31; Title 49 CFR Part 18; Title 23 CFR; Caltrans's Local Assistance Procedures Manual; and requirements stipulated in the County's Agreements with Caltrans. Our field work was completed on June 23, 2015, 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.

The County is responsible for the claimed costs, compliance with applicable agreement provisions, state and federal regulations, and the adequacy of its financial management system to accumulate and segregate reasonable, allocable, and allowable costs. Because of inherent limitations in any financial management system, misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the financial management system to

future periods are subject to the risk that the financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

METHODOLOGY

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

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and the records selected. An audit also includes assessing the accounting principles used and significant estimates made, and evaluating the overall presentation.

CONCLUSION

Based on our audit, we determined:

- Reimbursed project costs totaling $592,406 (see Attachment I) did not comply with respective agreement provisions and state and federal regulations.
- The County did not follow proper procurement, contract management, and grant management practices.
- The County Policy and Procedures over procurement must be updated.
- Contract Provisions did not comply with state and federal requirements.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations consider the County's response dated April 22, 2016, our January 19, 2016 draft report. Our findings and recommendations, the County's response, and our analysis of the response are set forth in the Findings and Recommendations section of this report. A copy of the County's full written response is included as Attachment IV.

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

If you have questions, please contact Lisa Moreno, Auditor, at (916) 323-7885, or Cliff Vose, Audit Manager, at (916) 323-7917.

MarSue Morrill

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

May 27, 2016

FINDINGS AND RECOMMENDATIONS

FINDING 1 - Procurement Procedures, Practices and Policies Needs Improvement

The County of Orange, Department of Public Works (County) did not procure professional services in accordance with state and federal regulations, and their procurement policies need to be updated to comply with state and federal requirements.

The audit included testing the County's procurement of two professional service contracts, Harris & Associates and DBM Ladera LLC used on the Antonio Parkway project. Specifically we found the following deficiencies:

Construction Management Procurement

The Request for Proposal (RFP) used to award a construction management contract to Harris & Associates did not list the relative importance for each evaluation factor as required by Title 49 Code of Federal Regulations 49 (CFR) 18.36 (d) (3). Without listing the required relative importance for each factor, bidders will not know the importance to the County of each evaluation factor when preparing proposals.

The County could not provide documentation to show that an independent cost estimate was prepared prior to accepting proposals, that they negotiated cost for a fair and reasonable price, negotiated profit as a separate element of costs, performed a cost/price analysis or requested a pre-award audit as required by 49 CFR 18.36 and the Local Assistance Procedures Manual (LAPM) Chapter 10. Without independent cost estimates, cost and profit negotiations and performing a pre-award audit the County cannot support that the procurement met state and federal regulations or that the contract was executed at a fair and reasonable cost.

Also, the original proposal submitted by Harris & Associates was substantially changed after initial evaluations. Their original proposal identified that all of the required work would be performed in-house with no sub-contractor work identified. The RFP required that all subcontractors be listed in the proposal submitted, subcontractor's(s') experience in performing work of a similar nature solicited in the RFP, and a listing of key personnel proposed to perform services including major areas of subcontracted work. Although the original proposal included no subcontractors, the final contract included 11 subcontractors and added $1,189,282 to the Harris & Associates original cost proposal of $1,410,718, an increase of approximately 84 percent. The change in who performs the work and the total cost of the work calls into question the evaluations of the initial proposals and initial scope of work. We also found documents that show the County's Procurement Office expressed concerns pertaining to the addition of the subcontractors when the original proposal included none. Federal regulations require that the RFPs identify all requirements that a bidder must fulfill and other factors to be used in evaluating bids and the regulations also state that any arbitrary action in the procurement process is restricting competition.

In addition, the County did not maintain a complete record of all submitted proposals it received or when they were received. County staff accepting proposals were not adequately trained on the proposal acceptance process. Without adequate documentation of all proposals received and when they were received the County cannot verify how many proposals were received and whether proposals were submitted timely.

Based on the information above, the County could not provide documentation that the award of the contract to Harris & Associates followed required state and federal regulations, therefore, we question all costs billed under the contract. During our audit period, we found the County had been reimbursed $474,705 related to Harris & Associates after the federal reimbursement rate of 64.50 percent.

Sole Source Procurement

The County entered a sole source agreement with DMB Ladera, LLC (DMB) to provide specialized support services without following required federal regulations. The County did not provide evidence they prepared an independent costs estimate, that contract costs and that profit were negotiated as a separate elements of costs. Also, the County did not perform the required cost analysis or request the required pre-award audit. In addition, the County did not prepare or submit a public interest finding justifying the sole source procurement as required by the LAPM Chapter 10. Without independent cost estimates, cost and profit negotiations, price analysis or pre-award audit the County cannot support that the contract was obtained at a fair and reasonable cost.

In addition, work in the DMB contract duplicated some of the same scope of work required in the Harris & Associates contract resulting in the possibility of state and federal funds paying twice for the same activity. For example, both the DMB and Harris & Associates contracts included the task of ensuring compliance with regulatory permits. Federal regulation 49 CFR 18.36 (b) (4) requires that grantees and subgrantees avoid purchasing duplicative items.

Conflict of Interest

We also identified an apparent conflict of interest between DMB, the developer (Rancho Mission Viejo) and the County. Federal regulations do not allow federals funds to be used if a real or apparent conflict of interest exists. The County Board of Supervisors Staff Agenda Reports identify DMB as an associate of Rancho Mission Viejo (RMV) and that DMB has a financial interest in the Antonio Parkway project (Project), (contributing up to 15 percent of construction costs) while being paid by the County as a consultant on the Project. Other documents identify RMV as the major land owner including the land on both sides of the Project with intentions to develop the land under permit requirements and they would do their work adjacent to and during the same construction period as the Project. In addition, the same County documents identify DMB as one of five sources that was to provide funding for 15 percent of the Project construction costs. The apparent conflict calls into question the allowability and reasonableness of the costs claimed.

Based on the information above the County could not provide documentation that the award of the contract to DMB followed required state and federal regulations, therefore we question all costs billed under the contract. During our audit period, we found the County had been reimbursed $117,701 related to DMB in federal funds.

See Attachment III for a summarization of the issues found.

County Procurement Policy:

The County's Contract Policy Manual needs to be updated. We noted the following deficiencies:

The Contract Policy Manual for Architect-Engineer Service Contracts, §3.5-107 (2) states that for Architect-Engineering (A&E) projects with an estimated cost of $200,000 or less that a RFP process is optional. Current federal regulation 23 CFR 172.7 and Chapter 10 of the Local Assistance Procedures Manual (LAPM) require any A&E contract above $150,000 must comply with the qualifications-based selection procurement procedures, i.e. RFP/RFQ process. Also, for A&E services using only state funds the California Government Code §4529 does not identify a minimum threshold, which means by default, all A&E contracted services to follow a competitive process.

The Contract Policy Manual for Public Works Contracts, §3.6-105 (3) sets the threshold for the use of informal procurements at $175,000. Federal regulation, 49 CFR 18.36 established the use of an informal procurement threshold at $150,000 when using federal funds and 23 CFR 635.104 Method of construction states, "**(a)** Actual construction work shall be performed by contract awarded by competitive bidding;"

In addition, the Contract Policy Manual §4.2-107 (2) & (3) allows for the acceptance of late proposals in violation of 49 CFR 18.36 (c) (1) (vii) and the LAPM Chapter 10.5, and Contract Policy Manual §4.2-113 (1) allows for the submission of revisions to proposals in violation of LAPM Chapter 10.5.

The County's policies are for countywide use and provide little if any information to the user as to how the procurement process changes when state and/or federal grants are involved. Without policies and procedures that clearly identify the requirements of state and federal laws and regulations, the County has a risk of not procuring contracts in compliance with state and federal regulations which could result in questioned costs and/or invalid procurements. According to County employees they are in the process of updating the County's policies and procedures.

See Attachment II for detailed criteria.

RECOMMENDATION

We recommend the County implement procurement practices, and train staff accordingly, to ensure compliance with state and federal laws and regulations, and maintain records sufficient to detail the significant history of the procurement process as required by 23 CFR 172 (which superseded 49 CFR 18.36), and the LAPM, Chapter 10.

In addition we recommend Caltrans, Division of Local Assistance (DLA) consult with Federal Highway Administration (FHWA) to determine if the $592,406 in questioned costs reimbursed during our audit period associated with the two procurements should be reimbursed.

We also recommend that DLA review the circumstances that lead to the use of federal funding on the project to determine if federal funds should have been used for the compliance monitoring of the permits for The Ranch Plan as described in the County's response to the draft audit report.

COUNTY RESPONSE

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

Construction Management Procurement

1. The County followed the County's Contract Policy Manual and evaluation criteria was listed but not the weighted values because weighted values were not required by the Manual. The new Design and Construction Policy Manual has revised the template to include weighted values.
2. The County stated staff is confident negotiations were done even though notes could not be found. The item did go to the Board of Supervisors for approval to begin negotiations, and it wasn't County policy to keep negotiation notes in the contract file, however, this will be considered when updating the Design and Construction Policy Manual.
3. The County's policy allows for addition of sub-consultants and the addition of the sub-consultants and increase to the total contract value was within the scope that had been advertised. Also, the County contends there is no federal regulations against it.
4. County does not agree that they did not keep complete records of proposals being received and there is no specific regulation relevant to proposal acceptance. County claims that all proposals are in the contract file, that bid receipts are time stamped and taped to the outside of proposals. County also provided copies of bid requirement check sheets. The County will include a requirement for date stamps in the coming update to the Design and Construction Policy Manual.

Sole Source

1. County states that original intent was to have RMV construct the widening project, however, due to funding issues caused by the recession, Rancho Mission Viejo and the County agreed to have the County take the lead on the construction portion of the project. This was also done so the project could avail itself of federal funding. Board of

Supervisors made a finding there would be a substantial benefit to sole sourcing limited support work to RMV since it was the only entity that could perform the work by virtue of designing the project and holding the permits so the requirement of public interest finding was met.

2. Mini Brooks Act, Government Code Section 4525, allows for sole source.
3. Similar scopes do not indicate state and federal funds were paid twice for the same activity. What appears to be duplicated scope items were necessary to facilitate this complicated project due to its National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) mitigation requirements for The Ranch Plan.

Conflict of Interest

1. RMV and DMB have no financial interest in the project, only funding and construction obligations to the project by virtue of the development's environmental impact. County Counsel independently examined this relationship and concluded that no conflict existed between RMV and the County and that Government Code section 1090 governs conflicts of interest under California law.

County Procurement Policy

1. The County Policy Manual has protest process identified which the County follows.
2. The County does not agree that their contracting thresholds are wrong and asks for further clarification of the intent of the finding.
3. The County will be updating the Design and Construction Policy Manual and intends to seek further training.
4. The County does not concur with the questioned costs of $592,406 since reimbursement of Construction Engineering is allowable up to 15percent of total participating construction costs. Also, the $592,406 was only 26 percent of the $2,279,939 in total expended for the two questioned procurements and that the work performed exceeds 26 percent of the total cost paid by the County.

For the County's full response see Attachment IV

AUDITOR'S ANALYSIS OF THE COUNTY RESPONSE

Construction Management Procurement

1. The County agreed that weighted values were not included in the RFP and the County has taken steps to improve their policy to ensure that weighted values are included in future procurements. We commend that County for taking steps to update their CDPM.
2. Without proof of actual negotiations the audit cannot determine whether negotiations occurred and/or the extent of the negotiations. Also, according to County Contract Policy Manual §3.5-111, the minutes from contract negotiations shall be documented and made part of the permanent contract file. We recommend that the County take the necessary steps to update the Design and Construction Policy Manual to mandate that all documentation related to contract negotiations be included in the procurement file.

3. Minor additions would be acceptable with proper approvals, however, the County increased the contract by almost double from $1.4 million to $2.6 million and the original proposal went from no subcontractors to a list of 11 subcontractors. The significance of the additions calls into question if the original proposal was complete. The RFP required that proposals include subcontractor experience, major areas of subcontracted work and a list of all subcontractors proposed to be used and their project function. By adding 11 subcontractors after the proposals were reviewed violated the requirements of the RFQ. The major changes made calls into question whether the original evaluation and negotiation process was fair and open. Federal regulations 49 CFR 18.36 states that any arbitrary action in the procurement process is considered to be restrictive of competition. In addition, the County's own staff questioned the validity of the contract and the addition of the subs for fairness at the time the procurement process was taking place.
4. There was no documentation such as bid receipts provided that showed when proposals were received. The County should ensure that all procurement documentation, including dated bid receipt documents for example, are maintain in the procurement file and that this requirement is documented in the Design and Construction Policy Manual.

The findings remain.

Sole Source

1. We agree that sole sourcing is allowable in certain circumstances, however, the County did not provide any new documentation that would result in a change in the audit finding. The County's response does call into question if federal funds should have been used at all on the DMB contract. The County's response appears to show that when the permits were taken out RMV was solely responsible for the project and only after RMV had financial issues did the County step in with federal funding. If RMV was solely responsible for compliance with NEPA and CEQA prior to the use of federal funds, the use of the federal funds should not have changed who was responsible for NEPA and CEQA compliance and compliance to other permits. The finding remains and we added a recommendation for the Division of Local Assistance to look into whether federal funds should have been used for any activities related to the permits.
2. The mini-Brooks Act does not apply in this case because federal funds were used requiring compliance to the federal Brooks Act.
3. We agree that similar is not always the same, and it does appear that they may have been performing different work, however, it is not clear whether federal funds should have been used to pay for RMV's cost to coordinate constructions activities related to the NEPA and CEQA mitigation requirements. All permits reference The Ranch Plan and not the project, therefore it appears that the work performed to ensure compliance was performed for The Ranch Plan which included more than just the highway construction project.

The finding remains.

Conflict of Interest

1. Federal regulations only require that there appear to be a conflict of interest to be an issue. In this case there is an appearance of a conflict. The County's response stated that RMV and DMB have no financial interest in the project. The information contained in the County's response appears to contradict this statement. RMV and DMB own and are developing the land on either side of the project and RMV was originally responsible to design and construct the widening project but due to lack of funds came to the County for financial support. Based on this information it appears that RMV and DMB do have a financial interest in the project and the activities in and around the widening project creating at a minimum an appearance of a conflict of interest.

County Procurement Policy

1. We concur with the County that the County's Contract Policy Manual does have a protest process identified for all but Public Works procurements which are excluded from the policy. A further review of the Contract Policy Manual identified that Public Works procurements follow Public Contract Code Section 22000 which also has protest procedures. This finding has been removed from the final report.
2. The County requested further clarification on the issue of thresholds for A&E services. The finding was modified to include more information, however, the finding remains.
3. Questioned construction engineering costs are not because of allowability but because the procurement of the consultant was not done within federal regulations therefore calling into question the contract in total.

The finding was modified to remove the finding on protest procedures, the rest of the finding remains.

FINDING 2 – Contract and Grant Management Need Improvement

The County billed for unallowable consultant costs, and did not submit a Request for Reimbursement (Invoice) to Caltrans at least once every six months, as required by agreements and the LAPM Chapter 5.5, and is billing outdated equipment rates.

The County billed and was reimbursed for unallowable markup fees charged by consultants on other direct costs. The County hired a consultant to review third party billings and that review resulted in the disallowance of markup fees on other direct costs billed by consultants. We also found during our testing similar mark-up costs totaling $48,235 not previously identified and disallowed by the County. Of the total $48,235 of unallowable costs, $28,333 was reimbursed by Caltrans.

The County did not submit Invoices every six months as required by the agreement between the County and Caltrans. The time between Invoices #1 and #2 for the 17th Street project was greater than 15 months. If Invoices are not submitted within six months of each other the project may be considered inactive and may lose allocated funds. In addition, submitting Invoices over

six months apart could be a breach of contract which could result in the suspension of payments on the overdue Invoice and the project. Finally, by not submitting Invoices timely the County impacts the timeliness of Caltrans oversight and increases the risk of billing for unallowable or unreasonable costs.

We determined the County was using fiscal year 2006 equipment inventory data for its equipment rates and lacks a formal policy and procedure for billing equipment usage. The County stated they lacked the resource to update the rates. The County's use of outdated information for developing equipment rates reduces the accuracy of the costs billed. The lack of equipment charging policy and procedures can cause inconsistent and incorrect recording of equipment usage.

See Attachment II for detailed criteria.

RECOMMENDATION

We recommend the County take the following actions:

- Reimburse Caltrans the disallowed mark-up costs of $28,333.
- Implement policies and procedures to ensure Invoices are submitted at a minimum every six months as required and train staff accordingly.
- Update equipment rates and develop equipment usage policies and train staff accordingly.

We also recommend that Caltrans DLA ensure that the County addresses the recommendations above, to include the repayment of the $28,333 in disallowed costs.

COUNTY RESPONSE

County agrees with the finding and stated they are instituting policy and procedures to address the finding. The County has also updated their equipment rates.

AUDITOR'S ANALYSIS OF THE COUNTY RESPONSE

The County is addressing the findings.

FINDING 3 - Labor Practices Need Improvement

The County's labor burden rates for fiscal years 2012/13 and 2013/14 are reimbursed using budgeted rates instead of actual rates for Budget Controls 034 (Orange County Watershed), 115 (Orange County Road), and 400 (Orange County Flood). Using budgeted rates in lieu of actual rates are allowable if you adjust the budgeted rates to actual costs. Although the County reconciles their budgeted labor rates to actual labor costs they include no over/under reconciled

amounts in future labor rate calculations. By not including any over/under reconciled amounts in future labor rate calculations the County cannot claim that actual costs are billed to Caltrans.

In addition, the County has employees submit time sheets a few days before the end of the work period (every two weeks), and some supervisors approve time sheets a day or two before the end of the work period. Both practices violates 2 CFR 225 Appendix B (8) (h) (5) requirement that activity reports or equivalent documentation must reflect after-the-fact distribution of actual activity. Having employees submit time sheets days before the end of the pay period as a practice and having supervisors approving time sheets prior to the end of the pay period increases the risk that labor costs may not be accurately charged to projects.

See Attachment II for detailed criteria.

RECOMMENDATION

We recommend that the County carry forward the reconciled difference between its budgeted labor costs and actual labor costs when developing future budgeted labor burden rates. In addition, we recommend that the County ensure employees submit time sheets after work is performed and supervisors approved time after time sheets are submitted for work performed

COUNTY RESPONSE

The County partially concurs with the recommendations. The County agrees that budgeted labor rates should be reconciled with actual labor burden and proposes to do it quarterly with adjustments reflected on the claims during that quarter.

The County disagrees that it is in violation of 2 CFR 225 or that employees submit time sheets a few days before the end of the pay period. Employees are required to submit time sheets on the last day of the pay period.

AUDITOR'S ANALYSIS OF THE COUNTY RESPONSE

The County's proposal to do quarterly reconciliations with a final reconciliation at year end appears to be reasonable. The County should memorialize the process in County's written policy and procedures and ensure that staff is trained on the process and take steps to ensure it occurs.

The County should remind employees and supervisors of the time sheet requirements to submit time sheets on the non-payday Thursday and ensure that it happens. The audit found that employees were submitting time sheets prior to the end of their work week and in some cases supervisors were approving time sheets prior to the end of the employees work week. The finding and recommendation remains.

FINDING 4 – Third Party Contract Provisions Need Improvement

We reviewed four County third party contracts and found they did not include provisions required by state and federal regulations, LAPM, and the Master Agreement. Without the required state and federal contract provisions, the County risks not being able to enforce contract requirements and risks billing for costs not in compliance with state and federal regulations. It appears that County staff had no working knowledge of state and federal regulations and the Master Agreements.

Some of the missing required contract provisions included compliance with federal regulations such as 48 CFR Ch. 1, part 31 and 49 CFR Part 18, record retention language, and requirements to have an accounting system that accumulates and segregates costs and complies with generally accepted accounting principles. (See Attachment III for detail list of provisions missing by contract):

See Attachment II for detailed criteria.

RECOMMENDATION

We recommend the County update its contracting procedures, and train staff accordingly, to ensure all third party contracts comply with all current state and federal regulations, master agreement, and the LAPM as they pertain to third party contract provisions. We also recommend the County ensure that staff assigned as contract managers are trained and knowledgeable of the requirements of state and federal regulations, master agreement, and LAPM contract provision requirements.

COUNTY RESPONSE

The County agrees with the finding and is taking steps to revise the Design and Construction Policy Manual. The County will also take steps to ensure staff are trained on state and federal procurement requirements. .

AUDITOR'S ANALYSIS OF THE COUNTY RESPONSE

The County is addressing the finding.

AUDIT TEAM

MarSue Morrill, Chief, External Audits – Local Governments
Cliff Vose, Audit Manager
Lisa Moreno, Auditor
Gerald Lee, Auditor
Ngoc Bui, Auditor

ATTACHMENT I

Audit Universe and Disallowed & Questioned Cost

	Antonio Parkway	Antonio Parkway	San Juan	San Juan	17th Street	Total Cost Audited
Federal Project Number	STPL-5955(071)	STPL-5955(071)	RPSTPLE-5955(074)	RPSTPLE-5955(074)	RPSTPLE-5955(062)	
Invoice Selected for Testing:	1	4	1	2	2	
Total State Funds Billed						
Total Federal Funds Billed	$3,042,544	$1,953,868	$34,514	$300,898	$368,609	$5,700,433
Total Funds Billed	**$3,042,544**	**$1,953,868**	**$34,514**	**$300,898**	**$368,609**	**$5,700,433**

Questioned Cost		**Harris & Associates**	**DMB Ladera LLC**				**Total Questioned Cost**
Finding 1 - Procurement Practices Need Improvement	-	$474,705	$117,701	-	-	-	**$592,406**
Disallowed Cost							**Total Disallowed Costs**
Finding 2 – Grant Management Needs Improvement	-	$28,333 ^		-	-	-	**28,333^**
Grand Total							**$592,406**

Comments:

^ This amount is included in the total for Finding 1.

Attachment II

Audit Findings Criteria

Finding 1

Federal Master Agreement No. 12-5955R, Article I (9) in part, states, "ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "Local Assistance Procedures") relating to the federal-aid program, all Title 23 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda…".

Title 49 Code of Federal Regulations (49 CFR) 18.36 (c) (3) (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

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

49 CFR 18.36 (c) (1) (vii) Some situations considered to be restrictive of competition include but are not limited to: Any arbitrary action in the procurement process.

Local Assistance Procedures Manual (LAPM) Chapter 10 Consultant Selection, 10.1, "SUBCONTRACTED SERVICES, The consultant is responsible for performing the work required under the agreement in a manner acceptable to the local agency. The consultant's organization and all associated consultants and subcontractors must be identified at the time of the proposal."

49 CFR 18.42 (b) states in part, "records must be retained for three years from the starting date specified in paragraph (c) of this section."

49 CFR 18.20 (b) (6) states, "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."

49 CFR 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 for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

49 CFR, Part 18.36 (f) (1) states, "Grantees and sub grantees 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 must be performed when the offeror is required to submit the

elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price."

49 CFR Part 18 Section 18.36 (f) (2) states, "Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed."

LAPM Chapter 10, Page 10-8, under 'Estimated Cost of Consultant Work' include the following Context, "Items typically negotiated include:

- Work plan;
- Schedule and deadlines (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments, and fees. "

LAPM 10.3 states, in part, a noncompetitive, negotiated contract may be developed when special conditions arise. FHWA considers these types of agreement as "Sole Source" agreements. A Public Interest Finding prepared by the local agency is required. Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work.
- An emergency exists of such magnitude that cannot permit delay.
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation.
- Develop an adequate scope of work, evaluation factors, and cost estimate.
- Conduct negotiations to ensure a fair and reasonable cost.

49 CFR Part 18.36 (d) (4) (i) states, "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate."

Federal Master agreement No. 12-5955R, Article V-Audits, third Party Contracting, Records Retention and Reports, Section 6 states:" Administering agency shall not award a contraction contract over $10,000 or other contracts over $25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code section 45259(b), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this agreement without prior written approval of State."

23 CFR 172.7 (a) Procurement methods, (2) "*Small purchases.* The contracting agency may use the State's small purchase procedures that reflect applicable State laws and regulations for the procurement of engineering and design related services provided the total contract costs do not exceed the Federal simplified acquisition threshold (as defined in 48 CFR 2.101). When a lower threshold for use of small purchase procedures is established in State law, regulation, or policy, the lower threshold shall apply to the use of FAHP funds."

LAPM Chapter10, Page 10-7, under 'Estimated Costs of Consultant Work' includes the following context, "An independent estimate for cost or price analysis is needed for all consultant contracts (49 CFR 18.36(f)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency's negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant's cost proposal. The estimate, which is specifically for the use of the local agency's negotiating team, is to be kept confidential. "

LAPM Chapter10, Page 10-24 , under 'Negotiate Contract with Top-Ranked Consultant' includes the following context, "The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant."

23 CFR Part 172 Section 172.6 (a) & (a) (1) states "(a) Written procedures. The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize. These written procedures and all revisions shall be approved by the FHWA for recipients of federal funds. Recipients shall approve the written procedures and all revisions for their subrecipients. These procedures shall, as appropriate to the particular method of procurement, cover the following steps: (1) in preparing a scope of work, evaluation factors and cost estimate for selecting a consultant;"

Public Contract Code (PCC) 10340 (b) state "Three competitive bids or proposals are not required in any of the following cases: (1)… emergency… (2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals. (3) The contract is with another state agency, a local governmental entity...(4)... meets conditions... of Section 10348..."

49 CFR 18.36 (b) (4) (i) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items.

2 CFR Part 225 C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria…

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.

b. The restraints or requirements imposed by such factors as: Sound business practices; arm's-length bargaining

49 CFR Part 18.36 (d) (4) (i) states, "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies: (A) The item is available only from a single source; (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (C) The awarding agency authorizes noncompetitive proposals; or (D) After solicitation of a number of sources, competition is determined inadequate."

49 CFR Part 18 Section 18.36 (f) (2) states, "Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work."

LAPM 10.5 states, in part, "Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected."

LAPM effective June 2008, Chapter 10, Section 10.7 , Subtitle "Review and Approval of Agreement", second paragraph states, " The "Consultant Agreement Reviewers Checklist" (Exhibit 10-C) and "Consultant Agreement Outline" (Exhibit 10-D) in this chapter shall be used to ensure that required documentation has been provided. A "Cost Proposal" (Exhibit 10-H in this chapter), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations."

LAPM effective July 31, 2009 states, in part, "Consultant contracts in excess of $250,000 require a pre-award audit. The pre-award audit examines the consultant's accounting, estimating, administrative systems, proposed costs, financial condition, and the proposed contract language."

LAPM 20-3 states, in part, An Unrecoverable Project Deficiency is defined as "a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the USC (or other applicable federal codes) will be accomplished by the project," (quote from "PS&E Certification") and the project has proceeded to the point that the deficiency cannot be corrected. This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project. Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are: ... "No pre-award audit for consultant contracts over $250,000."

49 CFR 18.36 (b) (3) " No employees, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract support 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.

California Government Code 4529.12, "All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities."

Finding 2

48 CFR 31.204 (a) states, in part, "Costs are allowable to the extent they are reasonable, allocable, and determined to be allowable under 31.201(Direct Cost)"

2 CFR 225, Appendix A, Section C.1.a, j states in part, "To be reasonable under Federal awards, costs must ... Be necessary and reasonable ... Be adequately documented"

Federal Master Agreement No. 12-5955R, Article IV Section 7 in part, states, "Payments to ADMINISTRERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT cost already incurred and paid for by ADMINISTERING AGENCY."

2 CFR 225, Appendix B (8) (h) Personnel activity reports or equivalent documentation must meet the following standards: (5) They must reflect after-the-fact distribution of the actual activity of each employee,

LAPM 5.5 states, in part, "The local agency may submit invoices once a month for reimbursement, but must submit an invoice at minimum every six months to avoid inactivity on a project"

Federal Master Agreement 12-5955, 5955 (R), Article IV 4. "ADMINISTERING AGENCY agrees, as a minimum to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by the STATE."

Finding 3

2 CFR 225 Appendix B (8) (a) in part, "General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this and other appendices under 2 CFR Part 225, and that the total compensation for individual employees: (1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;"

Finding 4

Federal Master Agreement No. 12-5955R, Article V (7) states, "Any subcontract entered into by the Administering agency as a result of this agreement shall contain all of the provisions of Article IV, Fiscal Provisions, and this Article V, Audits, Third-Party Contracting Records Retention and Reports, shall mandate that travel and per-diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as project costs only after those costs are incurred and paid for by the contractors".

Federal Master Agreement (No. 12-5955. 5955(R):

- Article IV, Paragraphs 7 "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."
- Article IV, Paragraphs 17 "Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match shall not exceed rates authorized to be paid to rank and file State employees under current State Department of Personnel Administration (DPA) rules…"
- Article IV Paragraphs 18 "ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."
- Article IV Paragraphs 19 "ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments…"
- Article V Paragraph 2, "ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of ADMINISTERING AGENCY, its contractors and all subcontracts shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE."

LAPM Chapter 19.2 states, in part, "As stated in the Master Agreement, project records are to be retained by local agencies for a period of three years from STATE payment of the final voucher, or a four-year period from the date of the final payment under the contract, whichever is longer."

LAPM Chapter 10.2 states, in part, "The method of payment of contract must be specified."

49 CFR 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".

2 CFR 225, Appendix A, Section A.2 states in part "governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices. …and assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award."

ATTACHMENT III

List of Procurement and Contract Provision Exceptions

Project	San Juan	17th street	Antonio Parkway	
Federal #	RPSTPLE-5955(074)	RPSTPLE-5955(062)	STPL-5955(071)	
Contract Type	Construction	Construction	Consultant/Engineering	Consultant/Engineering
Amount	$540,405.35	$853,381.73	$2,600,000.00	$400,000
Contractor/Consultant	Patriot Contracting & Engineering	Hillcrest Contracting	Harris & Associates	DMB Ladera
Orange County Contract Number	D13-015	D08-097	CT-080-11010700	D11-015

Finding 1- Procurement Practice Needs Improvement

Missing relative importance of evaluation factors			X	Sole-Source
Evidence of timely receipt of proposals			X	Sole-Source
Independent cost estimate prepared			X	X
Evidence of price negotiations			X	X
Evidence of profit negotiations			X	X
No pre-award audit requested/performed			X	X
Sole-source justification			N/A	X
Public Interest Finding			N/A	X
Increased the number of sub-consultants			X	
Cost price Analysis			X	X

Finding 4- Contract Provisions Need Improvement

Comply with 48 CFR, Ch. 1, Part 31	X	X	X	X
Comply with 49 CFR, Part 18	X	X	X	X
3 Years from when the administrating agency is paid	X		X	X
Travel & subsistence in accordance with State DPA regulations	X	X	X	X
Maintain an accounting system that accumulates and segregates project costs.	N/A	N/A	X	X
Accounting system must conform to Generally Accepted Accounting Principles	N/A	N/A	X	X
Method of Payment clearly stated	N/A	N/A	X	X
Invoices on letterhead that include address	N/A	N/A		X
Payments can only be made on costs incurred and paid by the consultant	N/A	N/A		X

X = Exceptions noted
N/A = Not Applicable for type of contract
Sole-Source = Orange County did not conduct a Request For Proposal, therefore these events did not occur

Incurred Cost Audit P1575-0042
Responses to Findings and Recommendations
California Department of Transportation
External Audits – Local Governments, Audits & Investigations
April 22, 2016

Summary Response Statement

On January 19, 2016, the California Department of Transportation, External Audits – Local Governments, Audits & Investigations sent a draft report to the County of Orange/OC Public Works of its findings and recommendations of the Incurred Cost Audit P1575-0042. The statement below is OC Public Works' response to the findings and recommendations contained in the draft report.

Findings, Recommendations and Responses

Finding 1 – Procurement Procedures, Practices and Policies Needs Improvement

Recommendation

We recommend the County implement procurement practices, and train staff accordingly, comply with state and federal laws and regulations, and maintain records sufficient to detail the significant history of the procurement process as required by 23 CRF 172 (which superseded 49 CFR 18.36) and the LAPM, Chapter 10.

In addition, we recommend Caltrans, Division of Local Assistance (DLA) consult with the Federal Highway Administration (FHWA) to determine if the $592,406 in questionable costs reimbursed during our audit period associated with the two procurements should be reimbursed.

OC Public Works Response

Construction Management Procurement

The Request for Proposal was conducted in accordance with the County of Orange Contract Policy Manual (CPM) and evaluation criteria was listed; however, it did not include weighted ratings as that was not required by the CPM. With the implementation of the Design and Construction Policy Manual (DCPM) in January 2015, the RFP solicitation document/template has been revised to include a breakdown of evaluation criteria with weighted ratings to disclose the relative importance of each factor for proposers preparing responses. With this implementation, Procurement staff are the sole individuals authorized to issue solicitations on behalf of the County, which was previously not required.

Although specific negotiation notes could not be found, our staff is confident that negotiations were conducted in good faith. This item went to the Board of Supervisors on March 22, 2011 for the Board to approve negotiations of the agreement. Negotiations commenced and the item was returned to the Board of Supervisors on April 19, 2011 for the award of contract (see Attachment A). Due to the number of years that have passed, and turnover of staff that has occurred, we are not able to provide the documentation; however, staff is confident that the negotiations were conducted. It is currently not County policy that negotiation notes are kept in the contract file; however, this will be considered for the upcoming DCPM update.

The substitution and addition of subcontractors is currently within County policy. We included this in our solicitation documents as well as language that multiple awards may result from a solicitation. As such, during the solicitation/award process of this project, several unforeseen circumstances arose (such as geotechnical and traffic issues) which had not been considered, but were then included in the final contract causing an increase in dollar amount; however, the work remained within the scope that had been advertised. This contract was being awarded for Construction Manager Services, by adding the subcontractors under the Construction Manager, the work done by the subcontractors could be more

effectively managed. Furthermore, staff was not able to locate the section of the Federal Regulations that prohibits the addition of subcontractors.

The County is not in agreement with the finding that the County did not maintain a complete record of all submitted proposals it received or when they were received, and that County staff accepting proposals was not adequately trained on the proposal and acceptance process. All proposals are in the contract file (see Attachment B) and staff is adequately trained on the acceptance of bids. The following procurement procedure has been in place for years: All proposals are received by OC Public Works at the Petty Cash Window. Proposals with solicitation number clearly marked on the outside of the package are delivered to the Petty Cash Window via the mailroom (those arriving via UPS, USPS, FedEx) and have the bid receipt time stamped and taped to the outside of the package. Proposals which are delivered via courier/vendor have a bid receipt which is time stamped and taped to the outside of the package and a copy of that bid receipt is given to the courier/vendor. Proposals are not opened and are placed in locked storage until the solicitation closing date and time. Upon solicitation closing, the assigned Procurement buyer receives the proposals and opens all packages, and keeps all bid receipts with each original proposal package. Furthermore, the County did not find a specific regulation relevant to proposal acceptance. LAPM Chapter 10 "recommends" copies of date stamped envelope covers be kept, but does not require it. The County will be including a requirement for date stamps in the upcoming update to the DCPM.

Sole Source

Under the Ranch Plan Development Agreement between Rancho Mission Viejo (RMV) and the County, RMV originally had the obligation to design and construct the Antonio Parkway Widening Project. RMV designed the project. On Sept. 29, 2009, the County and RMV entered into an agreement for the County to take the lead on constructing the project, so the project could avail itself of certain federal funding. This was also during the recession, and RMV was unable to fund a project of that size at the time. On April 29, 2011, the County and DMB Ladera, an affiliate of RMV which was the actual legal entity for the project, entered into an agreement for RMV to perform certain limited services for the project. RMV designed the project and was the entity most knowledgeable about permitting, environmental and other design issues. RMV also held all the needed regulatory permits, and thus had to be involved in the project in order for the County to operate under those permits. It dedicated numerous easements and other land for the project, where many of the permits were needed. Because RMV built much of the South Orange County highways due to owning the land, it had significant experience in road development in this area. The County and RMV also needed to coordinate on construction activities since the widening was directly adjacent to its development. For all these reasons, RMV required work on the project. The Office of County Counsel independently examined all legal issues and determined there was no conflict of interest under Government Code section 1090, which prohibits a designer from also constructing a project. RMV's role activities were limited to special "soft" services related to permitting and environmental clarification. The Board of Supervisors also made a finding that there would be a substantial benefit to sole sourcing this limited support work to RMV, which sole source procurement is allowed by the mini-Brooks Act at Government Code section 4525 *et seq.*, since it was the only entity that could perform such work by virtue of designing the project and holding the permits. This factual finding is required by County policy and was validly made; therefore, the requirement of a public interest finding was met.

While it appears there are duplicated scope items included in both contracts, RMV's support to Harris' contract was necessary since they were the permittee for all four of the regulatory permits required for this project. Also, RMV is the major landowner on both sides of the project and they were performing their own development work adjacent to the project during the same construction period, which increases the necessity for coordination between RMV and the County's construction activities. What appears to be duplicated scope items were necessary to facilitate this complicated project due to its

NEPA and CEQA mitigation requirements for The Ranch Plan. In addition, similar scopes do not indicate that state or federal funds were paid twice for the same activity. Invoices were provided to the auditors from both contracts and there was no indication that the County paid twice for the same activity.

Conflict of Interest

Government Code section 1090 governs conflicts of interest under California law. County Counsel independently examined this relationship and concluded that no conflict existed between RMV and the County. As stated above, RMV is required by its development agreement to contribute $143M in funds towards projects that mitigate against its development (CEQA). The community facility district funded by County bond issuance and debt serviced by DMB Ladera pursuant to the Mello-Roos Act contributed certain funds on behalf of Ladera Ranch due to impacts to that development. CFDs are often created to fund developer and municipal obligations for public infrastructure and contribute funding toward a project. The CFD is a separate legal entity of the County managed by the Board of Supervisors. The debt service for the CFD bond funds are paid by the developer whose land is pledged as collateral until the debt is paid off. RMV's contribution to the project was paid for by CFD funds; however, RMV and DMB Ladera have no financial interest in the project, only funding and construction obligations to the project by virtue of the development's environmental impacts.

County Procurement Policy

The County Contract Policy Manual has a protest process identified that the County follows and includes in every solicitation released (see Attachment C). This language was included in the solicitations relevant to this audit. The new DCPM also includes Protest Policy language. In addition, County staff is aware that federal and state funding requirements take precedence over County policies and procedures. Staff abided by LAPM and CFR procedures as the funding source dictates, as to not jeopardize the County's funding opportunity.

The County does not agree with the finding regarding thresholds, and needs further clarification on the intent of this finding. It is unclear as to which thresholds this finding is referring. The finding states that $175K is a public works formal bidding process and our formal bidding for A-E contracts is at $25K. The County has detailed thresholds for both bidding and Board of Supervisors approvals that are adhered to and audited against. The finding also states a $5K threshold, but it is unclear what this is in reference to. The County respectfully requests a clarification to this finding.

Although the County CPM allows for late proposals to be accepted at the discretion of the procurement professional within the first 24 hours, County staff is aware that federal and state funding requirements take precedence over County policies and procedures. Staff would not accept a late proposal on a federal or state funded contract to ensure they are abiding by LAPM and CFR procedures as the funding source dictates, so as to not jeopardize the County's funding opportunity.

It would be a difficult task to create County policies and procedures for each and every funding source; however, staff is required to inform the procurement team of the funding sources prior to the development of a solicitation to ensure the funding source requirements are met. The County is using the Caltrans workbook as a resource for improvement. Furthermore, the County will be updating the DCPM and will be adding those regulations that apply to the majority of our procurements. Also, the County intends to seek further training from such funding sources that have not been made available regularly in the past.

The County does not concur that the $592,406 in questioned costs be reimbursed. The $592,406 in questioned costs was related to Construction Engineering (CE) activities, and we believe the amounts received by Orange County for CE services is reasonable. Reimbursement for CE costs are limited to 15% of total participating construction costs. It is the County's position that the amount requested ($592,406) falls within the allowable limits of what was considered reasonable by Caltrans and the

LAPM. Although the auditors state that certain procurement policies were not followed, the total costs reimbursed by federal dollars was only 26% ($592,406 of $2,279,939.17) of the total expended for the two questioned procurements. We believe it is reasonable to assume that the value of the work performed exceeds 26% of the total costs paid by the County of Orange. It is our opinion the value of the work provided along with the steps taken to strengthen our procurement practices indicate that that the amount reimbursed to the County was reasonable and the interest of the public was served. We request that the associated funds remain with the County.

Finding 2 – Contract and Grant Management Needs Improvement

Recommendation

We recommend the County take the following actions:

- Reimburse Caltrans the disallowed costs of $28,333 for the disallowed costs identified above.
- Implement policies and procedures to ensure Invoices are submitted timely and train staff accordingly.
- Update equipment rates and develop equipment usage policies and train staff accordingly.

We also recommend that Caltrans DLA ensure that the County:

- Reimburses the disallowed costs of $28,333.
- Submits Invoices within six months as required.
- Update the equipment rates and develops equipment usage polices.

OC Public Works Response

The County concurs with this recommendation. The County will reimburse Caltrans the disallowed costs of $28,333. The County will also develop and implement procedures to ensure invoices are submitted timely and train staff accordingly.

The County has updated the equipment rates since the conclusion of the audit from those based on FY 2006 data to rates based on FY 2013 data and will continue to monitor and update rates going forward. Auditor-Controller will work with the OCPW/Centralized Quality Assurance Division to develop instructions for completing equipment cards and training staff accordingly.

Finding 3 – Labor Practices Need Improvement

Recommendation

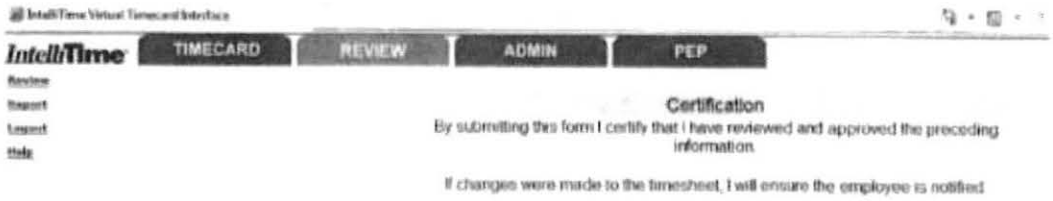
We recommend that the County carry forward the reconciled difference between its budgeted labor costs and actual labor costs when developing future budgeted labor burden rates. In addition, we recommend that the County should ensure employees submit time sheets after work is performed and supervisors approved time after time sheets are submitted and work performed.

OC Public Works Response

The County partially concurs with this recommendation. The County would like to reconcile budgeted labor burden to the actual labor burden in the current fiscal year rather than carrying forward the difference to the next fiscal year. We believe this is a more accurate way of showing costs for a given fiscal year and ensures the changes will be applied to the appropriate time period. The process would involve a comparison between budgeted and actual charges for the fiscal year, and a year-end adjustment to true-up costs before the books close. Those adjustments will then be reflected on the claims during that quarter.

Regarding timesheet submission, the County does not agree with the premise that it is violating 2 CFR 225 Appendix B (8) (h) (5). We also do not agree with the statement that the "County has employees submit timesheets a few days before the end of the work period."

The Auditor-Controller (OCPW Accounting) requires that timesheets are submitted on non-payday Thursdays, which is the end of the pay period. This allows the Auditor's Office enough time to audit the timesheet information and make payments by the following Friday. We do have an adjustment mechanism that, if necessary, allows for timesheets to be modified after submission with supervisor approval, so accuracy of the timesheets is still maintained. In addition, the supervisor certifies that if the timesheet is adjusted (e.g. if changes needed to be made on the last day of the PP), the employee will be notified (please see EXAMPLE below). Therefore, if timesheets are submitted before the last day of the pay period, they are still reviewed to ensure the accuracy of the data. The end result is that our final activity reports do reflect after-the-fact distribution of actual activity, while still reimbursing employees in a timely manner and allowing for supervisory review.



Finding 4 – Third Party Contract Provisions Need Improvement

Recommendation

We recommend that the County update its contracting procedures, and train staff accordingly, to ensure all third party contracts comply with all current state and federal regulations, master agreements, and the LAPM as they pertain to third party contract provisions. We also recommend the County ensure that staff assigned as contract managers are trained and knowledgeable of the requirements of state and federal regulations, master agreements, and LAPM contract provision requirements.

OC Public Works Response

The County concurs and is currently revising the new Design and Construction Policy Manual (DCPM). The revised manual will include policies and procedures reflecting state and federal laws and regulations. In addition, County staff will attend training on procurement of contracts requiring adherence to state and federal regulations, as soon as such training is available. County staff is aware federal and state funding requirements take precedence over County policies and procedures. Staff abides by LAPM and CFR procedures as the funding dictates, as to not jeopardize the County's funding opportunity.

Agenda Item

AGENDA STAFF REPORT

ASR Control 11-000201

MEETING DATE:	03/22/11
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	5
SUBMITTING AGENCY/DEPARTMENT:	OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S):	Rick Le Feuvre 714-955-0124
	Harry Persaud 714-834-2694

SUBJECT: Antonio Parkway Widening Project/Resident Engineer

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Concur	Approval Not Required	Discussion 3 Votes Board Majority

Budgeted: N/A **Current Year Cost:** N/A **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: N/A

Funding Source: Road Fund Reimbursement: 15%; CFD 2002-1: 47.6%; CFD 2003-1: 30.6%; CFD 2004-1: 6.8%

Prior Board Action: November 8, 2004; September 29, 2009; December 8, 2009; September 21, 2010; January 11, 2011

RECOMMENDED ACTION(S):

1. Select Harris and Associates, Inc. as the primary Architect-Engineer (A-E) firm and TCM Group as the alternate A-E firm for Resident Engineer and Construction Support Services for Antonio Parkway Widening Project.

2. Authorize the County Purchasing Agent or his authorized Deputy to negotiate an Agreement with the primary A-E firm for Resident Engineer and Construction Support Services and return to your Board for approval of the Agreement.

3. In the event an Agreement cannot be negotiated with the primary A-E firm, authorize the County Purchasing Agent or his authorized Deputy to negotiate an Agreement with the alternate A-E firm for Resident Engineer and Construction Support Services and return to your Board for approval of the Agreement.

SUMMARY:

Selection of Harris and Associates, Inc. as the primary firm and TCM Group as the alternate firm and authorizing the County's Purchasing Agent or his authorized Deputy to negotiate an agreement for

Resident Engineer and Construction Support Services will support constructing traffic condition improvements for Antonio Parkway in the south Orange County unincorporated area near Ladera Ranch and Rancho Mission Viejo.

BACKGROUND INFORMATION:

On November 8, 2004, your Board executed the Rancho Mission Viejo (RMV) Development Agreement with RMV to widen one lane in each direction on Antonio Parkway beginning south of the Ladera Ranch Planned Community to 900-feet south of the Ortega Highway/La Pata Avenue intersection. On September 29, 2009, your Board approved Agreement D09-049 with RMV to authorize the County to take the lead on widening Antonio Parkway. On December 8, 2009, your Board approved Agreement C-9-0608 with the Orange County Transportation Authority to define project roles and responsibilities relating to project funding. On September 21, 2010, your Board accepted a right-of-way dedication from RMV and its subsidiaries to allow for the widening of Antonio Parkway. On January 11, 2011, your Board authorized the Clerk of the Board to advertise the Antonio Parkway Widening Project for bids.

On January 11, 2011, OC Public Works issued a Request for Proposal (RFP) for Architect-Engineer (A-E) Construction Support Services for Antonio Parkway Widening Project through the County's online bidding system, BidSync. Over 5,609 vendors were notified and approximately 96 vendors viewed the RFP with seven proposals received. An evaluation panel consisting of five members: three members representing OC Public Works and two members representing the City of San Clemente and the City of San Juan Capistrano, reviewed the proposals and interviewed all seven firms on February 1, 2011. Based on the criteria set forth in the RFP, the evaluation panel recommends Harris and Associates, Inc. and TCM Group to be selected as the top two qualified firms (Exhibits A-H).

In addition to the Construction Support Services, OC Public Works will need to secure contract support for environmental, regulatory, and other ancillary services. RMV is the permittee for all four of the regulatory permits required for this Project and responsible for NEPA and CEQA mitigation requirements for the The Ranch Plan, which includes this Project. Utilizing RMV to support regulatory permits, environmental compliance, and other services for this Project will result in project schedule efficiencies and cost savings as well as protect the County against any liability issues associated with environmental and regulatory issues. Therefore, OC Public Works will be negotiating a sole source contract with RMV and return to your Board for approval of the Contract.

The services of an A-E Firm for Construction Support Services and RMV for environmental, regulatory, and other ancillary services will complement OC Public Works staff efforts in performing overall project management, materials testing, survey, and inspection services to complete the Project on-time and on-budget.

Compliance with CEQA and NEPA: The decision maker has considered Final EIR 589, previously certified on November 8, 2004; FEIR 555 previously certified on December 3, 1996; and Addendum 589-1 previously certified on July 26, 2006, prior to project approval and the Environmental Assessment EA 12-9320732, certified by Caltrans on July 30, 2010, in accordance with the National Environmental Protection Act (NEPA). These documents are approved for the proposed project based on the following findings:

1. Together, the documents are adequate to satisfy the requirements of CEQA by the decision maker.

2. Together, the documents are adequate to satisfy the requirements of NEPA by the decision maker.

FINANCIAL IMPACT:

The OC Road Fund will be reimbursed from Orange County Transportation Authority Regional Surface Transportation Program funds; and from various utilities including Santa Margarita Water District; San Diego Gas & Electric; DMB Ladera, LLC; and Cox Communications, Inc. These entities will pay 15% of their share of the construction costs. The remaining support costs will be distributed to the impacted Community Facility Districts.

STAFFING IMPACT:

N/A

EXHIBIT(S):

Exhibits A-E - Evaluator Written Proposal Scoresheets
Exhibits F-J - Evaluator Oral Presentation Scoresheets
Exhibit K - Memorandum of Recommendations
Exhibit L - Location Map

Agenda Item

AGENDA STAFF REPORT

ASR Control 11-000208

MEETING DATE:	04/19/11
LEGAL ENTITY TAKING ACTION:	Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S):	5
SUBMITTING AGENCY/DEPARTMENT:	OC Public Works (Approved)
DEPARTMENT CONTACT PERSON(S):	Rick LeFeuvre (714) 955-0124 Harry Persaud (714) 834-2694

SUBJECT: Antonio Parkway Widening - Award Contract/Resident Engineer

CEO CONCUR	COUNTY COUNSEL REVIEW	CLERK OF THE BOARD
Concur	Approved Agreement to Form	Discussion 3 Votes Board Majority

Budgeted: Yes **Current Year Cost:** $3,000,000 **Annual Cost:** N/A

Staffing Impact: No **# of Positions:** **Sole Source:** Yes

Current Fiscal Year Revenue: N/A

Funding Source: CFD 2002-1: 47.6%; CFD 2003-1: 30.6%; CFD 2004-1: 6.8%; and Road Fund 115: 15%

Prior Board Action: March 22, 2011; January 11, 2011; September 21, 2010; September 29, 2009; December 8, 2009; November 8, 2004

RECOMMENDED ACTION(S):

1. Approve Agreement CT-080-11010700 with Harris and Associates, Inc. for Architect-Engineer (A-E) Construction Support Services for the Antonio Parkway Widening Project commencing April 19, 2011 through April 18, 2014, in an amount not to exceed $2.6 Million.

2. Find that the hiring of DMB Ladera, LLC to provide specialized consultant services relating to regulatory permits, environmental compliance, and other ancillary project needs will provide a substantial benefit to the County for the Antonio Parkway Widening project.

3. Approve Agreement D11-015 with DMB Ladera, LLC in an amount not to exceed $400,000 for a three-year period commencing upon your Board's approval through April 19, 2014.

4. Authorize the County Purchasing Agent or his authorized Deputy to execute Agreement CT-080-11010700 and Agreement D11-015.

SUMMARY:

Approving Agreement CT-080-11010700 with Harris and Associates, Inc. for A-E Construction Support Services and Agreement D11-015 with DMB Ladera, LLC for specialized consultant services relating to regulatory permits, environmental compliance, and other ancillary project needs will support constructing traffic condition improvements for Antonio Parkway in the south Orange County unincorporated area near Ladera Ranch and Rancho Mission Viejo.

BACKGROUND INFORMATION:

On November 8, 2004, your Board executed the Rancho Mission Viejo (RMV) Development Agreement (Ranch Plan) with RMV to widen one lane in each direction on Antonio Parkway beginning south of the Ladera Ranch Planned Community to 900-feet south of the Ortega Highway/La Pata Avenue intersection. On September 29, 2009, your Board approved Agreement D09-049 with RMV authorizing the County to take the lead on widening Antonio Parkway. On December 8, 2009, your Board approved Agreement C-9-0608 with the Orange County Transportation Authority to define project roles and responsibility relating to project funding. On September 21, 2010, your Board accepted right-of-way dedication from RMV and its subsidiaries to allow for the widening of Antonio Parkway.

On January 11, 2011, OC Public Works issued a Request for Proposal (RFP) for Architect-Engineer (A-E) Construction Support Services for Antonio Parkway Widening Project. On March 22, 2011, your Board selected Harris and Associates, Inc. as the primary Architect-Engineer firm and authorized the County Purchasing Agent or his authorized Deputy to negotiate an Agreement to provide Resident Engineer and Construction Support Services for the Antonio Parkway widening. The recommended Agreement with Harris and Associates, Inc. includes utilizing various firms for construction support and design clarification services who previously performed certain specialized work on the design of Antonio Parkway. This inclusion will benefit the County in terms of design interpretation, schedule efficiency, and change order cost avoidance.

As indicated in the March 22, 2011 Agenda Staff Report, OC Public Works needs to secure contract support services for regulatory permits, environmental compliance, and other ancillary project needs. Current County policy requires that the Request for Proposal process be used for professional service contracts exceeding $200,000 and states that any professional consultant or architect-engineer representing a private sector client with an interest in a County project may not also represent the County on the same project; however, exceptions to these policies may be made if your Board determines that sole sourcing this work will bring a substantial benefit to the project.

RMV is the permittee for all four of the regulatory permits required for this Project and responsible for NEPA and CEQA mitigation requirements for The Ranch Plan, which includes this Project. Utilizing RMV to support for this Project will result in project schedule efficiencies and cost savings as well as protect the County against any liability issues associated with environmental and regulatory issues. RMV is the major landowner on both sides of the Project and they will be performing their own development work adjacent to the Project and during the same construction period, which increases the necessity for coordination between RMV and the County's construction activities. Therefore, OC Public Works is recommending a finding of substantial benefit and approval of the negotiated sole source Agreement with RMV's associate DMB Ladera, LLC.

The Agreement is for an amount not to exceed $400,000 and provides for various consulting firms, who have previously performed work on the design of Antonio Parkway and development of the Ranch Plan,

to be utilized by DMB Ladera, LLC. In compliance with State design-bid-build laws, DMB Ladera, LLC and its consultants will only be providing regulatory permitting and environmental clarification and associated ancillary professional consulting services and will not be performing construction.

Compliance with CEQA and NEPA:
The decision maker has considered Final EIR 589, previously certified on November 8, 2004, FEIR 555 previously certified on December 3, 1996, and Addendum 589-1 previously certified on July 26, 2006, and Addendum IP-08-130 approved December 29. 2008 in accordance with the California Environmental Quality Act prior to Project approval and the Environmental Assessment EA 12-9320732, certified by Caltrans on July 30, 2010, in accordance with the National Environmental Protection Act (NEPA). These documents are approved for the proposed Project based on the following findings:

1. Together, the documents are adequate to satisfy the requirements of CEQA by the decision maker.

2. Together, the documents are adequate to satisfy the requirements of NEPA by the decision maker.

FINANCIAL IMPACT:

The OC Road fund will be reimbursed from Orange County Transportation Authority Regional Surface Transportation funds and from various utilities including Santa Margarita Water District, San Diego Gas & Electric, DMB Ladera, LLC, and Cox Communications, Inc. These entities will share in 15 percent of the construction costs. The remaining support costs will be funded by the impacted Community Facilities Districts. The cost for both of the recommended Agreements is budgeted in FY 2010-2011 and will be encumbered accordingly, however, contract payments will be made through the term of the contract in accordance with the completion of the scope of work.

STAFFING IMPACT:

N/A

EXHIBIT(S):

Exhibit A - Location Map
Exhibit B - Sole Source/Proprietory Request

ATTACHMENT(S):

Attachment A - Agreement No. CT-080-11010700 with Harris and Associates, Inc.
Attachment B - Agreement No. D11-015 with DMB Ladera LLC

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Incurred Cost Audit P1575-0042 Attachment B

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: Civil Source

	COMPLIED	COMMENTS:
Part 1		
1. Cover Letter/Cover Page (signed appropriately)	Yes	No
2. Validity of Proposal	Yes	No
3. Certification of Understanding	Yes	No
4. Minimum Qualifications/Requirements Statement	Yes	No
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No * Resident Engineer 15 yrs. exp
5. Certificate of Insurance	Yes	No
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No
7. Conflict of Interest	Yes	No
8. Statement of Compliance	Yes	No
8.2 Exceptions Submitted	Yes	No
Part 2		
Company/Individual Profile	Yes	No
Part 3		
Respondent's Proposal	Yes	No

Original w/ **FIVE** Additional Copies	Yes	No
One Soft Copy on Compact Disk	Yes	No
Proposals Marked Confidential or Proprietary	Yes	No

Comments: * Firm in business - 6 yrs.

(#2

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: WEC (TETRA TECH)

	COMPLIED		COMMENTS:
Part 1			
1. Cover Letter/Cover Page (signed appropriately)	Yes	No	
2. Validity of Proposal	Yes	No	
3. Certification of Understanding	Yes	No	
4. Minimum Qualifications/Requirements Statement	Yes	No	
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No	* PRINCIPAL ENGINEER / CORPORATION MGR. 20 YRS. EXP.
5. Certificate of Insurance	Yes	No	
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No	
7. Conflict of Interest	Yes	No	
8. Statement of Compliance	Yes	No	
8.2 Exceptions Submitted	Yes	No	
Part 2			
Company/Individual Profile	Yes	No	
Part 3			
Respondent's Proposal	Yes	No	

Original w/ **FIVE** Additional Copies	Yes	No
One Soft Copy on Compact Disk	Yes	No
Proposals Marked Confidential or Proprietary	Yes	No

Comments: * FIRM IN BUSINESS - 11 YRS.

(#3)

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: HARRIS & ASSOCIATES

	COMPLIED		COMMENTS:
Part 1			
1. Cover Letter/Cover Page (signed appropriately)	Yes	No	
2. Validity of Proposal	Yes	No	
3. Certification of Understanding	Yes	No	
4. Minimum Qualifications/Requirements Statement	Yes	No	
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No	PRESIDENT ENGINEER 15 YRS. EXP.
5. Certificate of Insurance	Yes	No	
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No	
7. Conflict of Interest	Yes	No	
8. Statement of Compliance	Yes	No	
8.2 Exceptions Submitted	Yes	No	
Part 2			
Company/Individual Profile	Yes	No	
Part 3			
Respondent's Proposal	Yes	No	

Original w/ **FIVE** Additional Copies	Yes	No	
One Soft Copy on Compact Disk	Yes	No	
Proposals Marked Confidential or Proprietary	Yes	No	

Comments: * FIRM IN BUSINESS - 36 YRS.

(#4

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: DOWARD ENGINEERING

	COMPLIED	COMMENTS:
Part 1		
1. Cover Letter/Cover Page (signed appropriately)	(Yes)	No
2. Validity of Proposal	(Yes)	No
3. Certification of Understanding	(Yes)	No
4. Minimum Qualifications/Requirements Statement	(Yes)	No
4.2 Confirmed in Company Profile/Staffing Plan	(Yes)	No PRESIDENT ENG. - 15+ YRS. EXP.
5. Certificate of Insurance	(Yes)	No
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	(Yes)	No
7. Conflict of Interest	(Yes)	No
8. Statement of Compliance	(Yes)	No
8.2 Exceptions Submitted	Yes	(No)
Part 2		
Company/Individual Profile	(Yes)	No
Part 3		
Respondent's Proposal	(Yes)	No
Original w/ **FIVE** Additional Copies	(Yes)	No
One Soft Copy on Compact Disk	(Yes)	No
Proposals Marked Confidential or Proprietary	Yes	(No)

Comments: * FIRM IN BUSINESS - 6 YRS.

#5

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: ATHALYE CONSULTING ENGINEERS

	COMPLIED		COMMENTS:
Part 1			
1. Cover Letter/Cover Page (signed appropriately)	Yes	No	
2. Validity of Proposal	Yes	No	
3. Certification of Understanding	Yes	No	
4. Minimum Qualifications/Requirements Statement	Yes	No	
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No	1 PRESIDENT ENG. - 34 YRS. EXP.
5. Certificate of Insurance	Yes	No	
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No	
7. Conflict of Interest	Yes	No	
8. Statement of Compliance	Yes	No	
8.2 Exceptions Submitted	Yes	No	
Part 2			
Company/Individual Profile	Yes	No	
Part 3			
Respondent's Proposal	Yes	No	

Original w/ **FIVE** Additional Copies	Yes	No	
One Soft Copy on Compact Disk	Yes	No	
Proposals Marked Confidential or Proprietary	Yes	No	

Comments: 1 FIRM IN BUSINESS - 20 YRS.

#6

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: AECOM

	COMPLIED		COMMENTS:
Part 1			
1. Cover Letter/Cover Page (signed appropriately)	Yes	No	
2. Validity of Proposal	Yes	No	
3. Certification of Understanding	Yes	No	
4. Minimum Qualifications/Requirements Statement	Yes	No	
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No	VPRESIDENT EXP. - 24 YRS. EXP.
5. Certificate of Insurance	Yes	No	
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No	
7. Conflict of Interest	Yes	No	
8. Statement of Compliance	Yes	No	
8.2 Exceptions Submitted	Yes	No	
Part 2			
Company/Individual Profile	Yes	No	
Part 3			
Respondent's Proposal	Yes	No	

Original w/ **FIVE** Additional Copies	Yes	No	
One Soft Copy on Compact Disk	Yes	No	
Proposals Marked Confidential or Proprietary	Yes	No	

Comments: FIRM IN BUSINESS - 83 YRS.

(#7)

DATE: 01/14/11

TO: FILE FOLDER 589980 (RFP 080-589980: A/E Construction Svcs. for Antonio Pkwy)

FROM: Kathleen Kasten, OC Public Works/Procurement

SUBJECT: **RFP 080-589980 RESPONSE REQUIREMENTS**

RESPONSE REQUIREMENTS
Section II

COMPANY: TCM GROUP

	COMPLIED		COMMENTS:
Part 1			
1. Cover Letter/Cover Page (signed appropriately)	Yes	No	
2. Validity of Proposal	Yes	No	
3. Certification of Understanding	Yes	No	
4. Minimum Qualifications/Requirements Statement	Yes	No	→ NOT SIGNED?
4.2 Confirmed in Company Profile/Staffing Plan	Yes	No	* PRESIDENT EMP. - 18 YRS. EXP.
5. Certificate of Insurance	Yes	No	
6. Child Support Enforcement, EDD Independent Contractor and Form W-9 Requirements	Yes	No	
7. Conflict of Interest	Yes	No	
8. Statement of Compliance	Yes	No	
8.2 Exceptions Submitted	Yes	No	
Part 2			
Company/Individual Profile	Yes	No	
Part 3			
Respondent's Proposal	Yes	No	

Original w/ **FIVE** Additional Copies	Yes	No	
One Soft Copy on Compact Disk	Yes	No	
Proposals Marked Confidential or Proprietary	Yes	No	

Comments: * PARENT FIRM IN BUSINESS - 34 YRS.

SECTION 1.3

PROTEST

§1.3-101 Policy

(1) Any actual or prospective bidder, proposer or contractor who alleges an error or impropriety in the solicitation or award of a contract may submit a grievance or protest to the appropriate agency/department Deputy Purchasing Agent.

(2) The provisions within this section do not apply to County Public Works contracts, as defined in Section 3.6 herein.

§1.3-102 Procedure

(1) All protests shall be typed under the protester's letterhead and submitted in accordance with the provisions stated herein. All protests shall include at a minimum the following information:

a) The name, address and telephone number of the protester;

b) The signature of the protester or the protester's representative;

c) The solicitation or contract number;

d) A detailed statement of the legal and/or factual grounds for the protest; and

e) The form of relief requested.

§1.3-103 Protest of Bid/Proposal Specifications

(1) All protests related to bid or proposal specifications must be submitted to the Deputy Purchasing Agent no later than five (5) business days prior to the close of the bid or proposal. Protests received after the five (5) business day deadline will not be considered by the County.

a) In the event the protest of specifications is denied and the protester wishes to continue in the solicitation process, they must still submit a bid prior to the close of the solicitation in accordance with the bid/proposal submittal procedures provided in the bid/proposal.

§1.3-104 Protest of Award of Contract – Invitation For Bid (IFB)

(1) In accordance with 4.1 of this manual, protests related to the award of a contract based on the Invitation For Bid (IFB) or Statement of Qualification (SOQ) process, protest must be submitted no later than five (5) business days after the notice of the proposed contract award is provided by the Deputy Purchasing Agent.

a) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

§1.3-105 Protest of Award of Contract – Request For Proposals (RFP)

(1) In accordance with §4.2-110 of this manual, immediately upon completion of negotiations with the top-ranked vendor(s), but prior to the filing of an Agenda Staff Report (ASR) for award of contract, the Deputy Purchasing Agent shall send a *Notice of Intent to Award a Contract* to all participating vendors and submit a copy to the Clerk of the Board.

a) Vendors will have five (5) business days from the date of the notice in which to file a protest concerning the award of the Contract.

b) Protests relating to a proposed contract award which are received after the five (5) business day deadline will not be considered by the County.

c) During the five (5) business day period, RFP information, including the final evaluator score sheets with the names of individual evaluators redacted, are subject to public disclosure.

d) Upon expiration of the five (5) business day period or proper resolution of a protest/appeal, the department may move forward with the contract award or if necessary, filing the item for approval by the Board of Supervisors.

§1.3-106 Protest Process

(1) In the event of a timely protest, the County shall not proceed with the solicitation or award of the contract until the Deputy Purchasing Agent, the County Purchasing Agent or the Procurement Appeals Board renders a decision on the protest.

(2) Upon receipt of a timely protest, the Deputy Purchasing Agent will within ten (10) business days of the receipt of the protest, issue a decision in writing which shall state the reasons for the actions taken.

(3) The County may, after providing written justification to be included in the procurement file, make the determination that an immediate award of the contract is necessary to protect the substantial interests of the County. The award of a contract shall in no way compromise the protester's right to the protest procedures outlined herein.

(4) If the protester disagrees with the decision of the Deputy Purchasing Agent, the protestor may submit a written notice to the Office of the County Purchasing Agent requesting an appeal to the Procurement Appeals Board, in accordance with the process stated below.

§1.3-107 Appeal Process

(1) If the protester wishes to appeal the decision of the Deputy Purchasing Agent, the protester must submit, within three (3) business days from receipt of the Deputy Purchasing Agent's decision, a written appeal to the Office of the County Purchasing Agent.

(2) Within fifteen (15) business days, the County Purchasing Agent will review all materials in connection with the grievance, assess the merits of the protest and provide a written determination that shall contain his or her decision on whether the protest shall be forwarded to the Procurement Appeals Board as described in Section 1.4 of this manual.

(3) The decision of the County Purchasing Agent on whether to allow the appeal to go forward will be final and there shall be no right to any administrative appeals of this decision.