State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
Help Save Water!

To: BILL FIGGE, AICP
Acting Deputy Director
Planning and Modal Programs

Date: April 15, 2015

File: P1575-0032

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **INCURRED COST AUDIT – COUNTY OF RIVERSIDE**

We have audited the costs claimed by and reimbursed to the County of Riverside totaling $29,054,554 for work performed under five agreements with the California Department of Transportation (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 audit report, including the County's response and our analysis of the County's response, is attached.

Based on our audit, we determined that reimbursed costs totaling $28,814,597 were supported and in compliance with Agreement provisions, and state and federal regulations. However, reimbursed costs totaling $239,957 were not adequately supported and were not in compliance with Agreement provisions, and state and federal regulations.

In accordance with Deputy Directive 100, please provide our office an action plan related to the audit recommendations within 90 days of this memorandum. We thank you and your staff for their assistance provided during this audit. If you have questions or need additional information, please contact me at (916) 323-7122 or Zilan Chen, External Audit Chief, at (916) 323-7877.

Attachments

c: Juan C. Perez, Director of Transportation, County of Riverside
Patricia Romo, Deputy Director Transportation, County of Riverside
Michael Tritz, Deputy Secretary for Audits and Performance Improvement, Business, Transportation and Housing Agency
Leslie T. Rogers, Regional Administrator for Region 9, Federal Transportation Administration
Janice Richard, Director of Financial Services, Federal Highway Administration
Will Kempton, Executive Director, California Transportation Commission
Malcolm Dougherty, Director, Department of Transportation
Kome Ajise, Chief Deputy Director, Department of Transportation
Basem Muallem, District Director, District 8, Department of Transportation
Ray Zhang, Chief, Division of Local Assistance, Department of Transportation
Katie Benouar, Chief, Division of Transportation Planning, Department of Transportation
Bruce Roberts, Acting Chief, Division of Rail, Department of Transportation
Clark Paulsen, Chief, Division of Accounting, Department of Transportation

P1575-0032
Incurred Cost Audit County of Riverside Department of Transportation
March 2015

Zilan Chen, Chief
External Audits – Local Governments
Audits and Investigations
California Department of Transportation

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Summary

The California Department of Transportation (Caltrans) Audits and Investigations (A&I) audited the costs claimed by the County of Riverside Department of Transportation (County) totaling $29,054,554 from July 1, 2010 through June 30, 2012 (see Attachment I for a list of Agreements included in the audit). Based on our audit, we determined that reimbursed costs totaling $28,814,597 were supported and in compliance with Agreement provisions, and state and federal regulations. However, reimbursed costs totaling $239,957 were not in compliance with Agreement provisions, and state and federal regulations, and/or not adequately supported. In addition, we determined that the County did not comply with Agreement provisions, and state and federal regulations for consultant procurement, contract management, and grant management. Furthermore, the County did not reconcile fringe benefit costs billed to actual cost and needs to update and improve its procurement procedures.

Objectives

The audit was performed to determine whether costs claimed and reimbursed were adequately supported, reasonable in nature, and in compliance with the respective Agreement provisions, and state and federal regulations. The audit was performed as a management service to Caltrans to assist in fulfilling its fiduciary responsibility.

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.

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 for the purpose of expressing 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, as well as evaluating the overall presentation.

Scope

The scope of the audit was limited to financial and compliance activities. Our audit of the County's financial management system included interviews of the County staff necessary to obtain an understanding of the County's accounting and internal controls. The audit consisted of an evaluation of compliance with Title 2 Code of Federal Regulations (CFR) Part 225,

Scope (continued)

Title 23 CFR, Title 48 CFR Part 31, Title 49 CFR Part 18, 40 United States Code 1101 et seq. (Brooks Act), Caltrans Local Assistance Procedures Manual, the California Government Code, and the California Public Contract Code. Our field work was completed on April 17, 2014, and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not pertain to costs or credits arising after this date. We believe that our audit provides a reasonable basis for our conclusion.

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.

Our findings and recommendations take into consideration the County's response dated March 2, 2015 to our January 14, 2015 draft report. Our findings and recommendations, the County's response, and our analysis of the response are set forth in the Findings and Recommendations of this report. Portions of the findings and recommendations were revised based on new evidence provided in the County's response, and to provide further clarification. A copy of the County's full written response is included as Attachment IV. Exhibits submitted with the response may be reviewed at the A&I office upon request.

Background

Caltrans has a legal and fiduciary responsibility to ensure that all state and federal funds are expended in compliance with state and federal laws, regulations, and agreements. Title 23 CFR Part 1.9 requires that federal aid funds be expended in compliance with state and federal laws. Additionally, Title 23 CFR Part 1.36 states that payment of funds to a state can be withheld if the state has violated or failed to comply with federal laws or with the regulations of Title 23 CFR Part 1.36. Caltrans performs audits to ensure it is meeting its legal and fiduciary responsibilities and that state and federal funds are properly expended by local government agencies.

Conclusion

Based on our audit, we determined that reimbursed costs totaling $28,814,597 were supported and in compliance with Agreement provisions, and state and federal regulations. However, reimbursed costs totaling $239,957 were not in compliance with Agreement provisions, and state and federal regulations, and/or not adequately supported. In addition, we determined that the County did not comply with Agreement provisions, and state and federal regulations for consultant procurement, contract management, and grant management. Furthermore, the County did not reconcile fringe benefit costs billed to actual cost and needs to update and improve its procurement procedures.

Conclusion (Continued)

This report is intended for the information of the County, Caltrans Management, the California Transportation Commission, and the Federal Highway Administration. This report is a matter of public record and its distribution is not limited. In addition, this report will be placed on Caltrans' website.

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

Zilan Chen, Chief
External Audits – Local Governments
Audits and Investigations

March 6, 2015

FINDINGS AND RECOMMENDATIONS

Finding 1 - Procurement Practices Need Improvement

The County of Riverside Department of Transportation (County) did not procure Architectural and Engineering (A&E) services as required by state and federal regulations, the Master Agreements between the County and the California Department of Transportation (Caltrans), or the County's own procedures.

The audit included testing the County's procurement of one construction contract that used an Invitation for Bid (IFB) procurement process and three A&E consultant contracts that used a Request for Proposal (RFP) procurement process. While the procurement of the construction contract and one of the three A&E consultant contracts appeared to be adequate, we identified significant issues with the procurement of the other two consultant contracts. For detailed criteria, see Attachment II, Finding 1, 1a-1s. Specifically, the audit found the following:

Clay Street Project - Engineering & Environmental Services

The County was unable to provide evidence that the selection process of this A&E contract met either state or federal requirements. A review of the four evaluation panel members' score sheets found that the score sheets for two panel members did not follow the evaluation criteria stated in the RFP. The RFP listed the maximum scores for each of the four criteria to be used to evaluate each proposal. The audit found one of the panel members did not record scores for three of four evaluation criteria for each proposal. The panel member claimed to have "graded and ranked" all firms equally in these three categories. However, no evidence was provided to support this statement. The other panel member recorded notes and assigned an overall rank to each of the firms evaluated, however, the audit found no correlation between the scores and the four evaluation criteria.

If the improperly evaluated/documented scores were discounted, the results of the two remaining proper evaluations would have resulted in a different firm being ranked with the highest score. Therefore it appears that the County did not award the contract based on a fair and equitable process in accordance with Title 23 Code of Federal Regulations (CFR) Part 172.1. Based on audit testing, we identified $105,402 of questionable costs were billed by the firm during our audit period. For other detailed criteria see Attachment II, Finding 1, 1a, 1h, 1i, 1n to 1q.

River Road Project - Construction Management Services

The County amended this A&E contract to add additional services totaling $52,000 that were not competitively bid. Specifically, during the course of the contract, the County instructed the consultant to hire a specific public relations firm. Title 49 CFR Part 18.36 requires the County to obtain these services using a competitive process. Furthermore, Caltrans Local Assistance Procedures Manual (LAPM), Chapter 20 identified that *"Consultant contract*

Finding 1 - (Continued)

awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted" as one of the Unrecoverable Project Deficiencies requiring sanctions to be imposed. For other detailed criteria see Attachment II, Finding 1, 1a to 1f.

Moreover, the audit also identified the following procurement issues of the original contract. Specifically the County did not:

- Perform the required pre-award audit on the firm that was ultimately awarded the contract, totaling $4,420,000. Caltrans LAPM, Chapter 20 identified *"No pre-award audit for consultant contracts over $250,000"* as one of the Unrecoverable Project Deficiencies that requires sanctions to be imposed. For detailed criteria see Attachment II, Finding 1, 1r and 1s.
- Advertise the RFP in a newspaper or trade journal in accordance with the Master Agreement, LAPM and the County's procedures. The County stated that staff posted the RFP to its website and mailed it to a list of known consultants, however the County did not maintain documentation of either action. For other detailed criteria see Attachment II, Finding 1, 1j, 1l and 1m.
- Keep records to show when proposals were received, such as time and date stamped envelopes or a receipt log. Therefore, the timely receipt of the proposals cannot be verified. State and federal regulations requires records be retrained. For detailed criteria see Attachment II, Finding 1, 1g and 1i.

The audit identified the following as causes for the improper procurement:

- The County has a decentralized procurement process which led to inconsistent application of regulations and procedures.
- County staff were not aware of state and federal regulations or County requirements.
- The evaluation panel members did not agree with the scoring sheets created for the RFP so they created their own during the evaluation process.
- County procurement procedures use words such as "should generally" instead of clearly defining when an action is required.

Based on the audit testing, a total of $134,301 of questioned costs were billed to and reimbursed by Caltrans, including a total of $6,411 in questioned costs from the sub-consultant noncompetitive amendment to the contract.

Recommendation The County should take the following corrective actions:

- Ensure compliance with state and federal regulations when procuring A&E contracts such as the California Government Code, Federal Brooks Act, the Master Agreements between the County and Caltrans, and the County's own selection procedures.
- Maintain adequate documentation to demonstrate proper procurement procedures were used in the selection of consultant(s). Such documentation includes proof of selection based on advertised criteria, advertisement and solicitation from consultants, proof of timely receipt of proposals, etc.
- Ensure staff who engage in procurement practices are adequately trained.
- Consider centralizing the procurement function to ensure compliance with state and federal regulations and County's own procedures.

Caltrans Division of Local Assistance (DLA) should take the following corrective actions:

- Consult with the Federal Highway Administration (FHWA) to determine the appropriate actions associated with the questioned costs incurred for the Clay Street Engineering and Environmental Services contract and the River Road Construction Management Service contract.
- Determine sanctions to be imposed relating to the River Road Construction Management Service contract, including the noncompetitive amendment per LAPM Chapter 20.
- Prepare a Caltrans action plan to ensure that the County is addressing the audit recommendations.

County Response The County's response is summarized below. See Attachment IV for County's full written response.

- The County agreed that staff did not use the score sheets as developed for the Clay Street project, and has included guidance on use of standardized score sheets in the County Procurement Procedures Manual.
- The County agreed that it instructed the River Road project consultant to hire a specific public relations firm and to add specialized training, but disagreed that these services were outside the scope of the original RFP. The County stated that a competitive bid process was not required, as the possible need for these types of services was identified in the RFP.
- The County acknowledged it did not perform a pre-award audit on the River Road consultant.
- The County stated the River Road RFP was advertised in the newspaper.

County Response (continued)

- The County could not locate the time log for receipt of proposals, and will revise its procurement manual to include the need to maintain a log. The County also stated that neither 49 CFR 18.42(b) nor 23 CFR 172.1 specify that receipt logs be maintained.

Auditor's Analysis of County Response

We agree with the County's response except for the following:

- Despite any potential need for additional services identified in the RFP, the County instructed the consultant to hire a specific firm, thereby limiting any competition. The County did not provide any support for its claim that the requirement for competitive procurement is waived if the potential need for services is mentioned in an RFP.
- The County did not provide new evidence of advertising, such as the legal notice of publication or tear-sheet. Rather, the County provided a type-written page stating the RFP may be obtained from the County's website.
- While 49 CFR Part 18.42 (b) or the 23 CFR 172.1 does not specify that receipt logs are required to be maintained, 49 CFR 18.36(b)(9) requires grantees to maintain records to detail the history of a procurement. A receipt log is required to document proposals were received by the date and time identified in an RFP. We commend the County for making changes to its procurement manual.

The observation related to specialized testing was eliminated based on the County's response, however, the other part of the finding remains.

Finding 2 - Contract Management Needs Improvement

The County did not maintain an adequate contract administration system to ensure that consultants are providing services in accordance with the terms, conditions and specifications of its contracts as required by state and federal regulations. As a result, the County risks over or under billing Caltrans or other funding sources.

The construction management contract for the River Road project uses a cost plus percentage of cost method of compensation. Such compensation method is not allowed per Title 23 CFR Part 172.5(c). Specifically, Article VI, Section B of the contract states in part, *"Reimbursement is to be made at actual cost plus fixed percentage fee of 10% for the following contractors..."* Further, the fee was inconsistently identified within the contract. In Section B of the contract, the amount is calculated as $226,000, but in the Cost of Services worksheet the fee is identified as $280,251. For detailed criteria, see Attachment II, Finding 2, 2i, 2l to 2n.

In addition, the audit noted the following issues related to the County's contract management:

Finding 2 - (Continued)

- The River Road construction management consultant included costs totaling $6,665 for two sub-consultants a year prior to the contract being amended to include the two sub-consultants for their services. ($6,411 of this amount is included in Finding 1.) Federal regulations and the County's procedures require the execution of an amendment prior to authorization of work. For detailed criteria, see Attachment II, Finding 2, 2a to 2c, 2f to 2h, 2j and 2k.
- The River Road consultant included costs for an engineer whose name was not identified in the cost proposal, and cost for a claims specialist whose position was not listed in the cost proposals. The audit is unable to determine if the cost billed were appropriate. Title 49 CFR 18.36 requires an effective administration be maintained. For detailed criteria, see Attachment II, Finding 2, 2a to 2c, 2h and 2j.

Furthermore, the audit found consultant contracts reviewed for the Clay Street and Cajalco Road projects did not include provisions required by state and federal regulations and the Master Agreement. For detailed criteria, see Attachment II, Finding 2, 2d and 2e. As a result, the County risks billing Caltrans for costs that are not in compliance with state and federal regulations. The missing provisions include requirements that:

- Consultants and sub-consultant accounting systems conform to Generally Accepted Accounting Principles.
- Consultants and sub-consultants establish and maintain an accounting system that accumulates and segregates incurred project costs.
- Conformant to Title 48 CFR Chapter 1, Part 31.

Based on the audit, it appears that County staff did not have a working knowledge of state and federal regulations, and the County's own procedures for contract modifications. In addition, staff did not understand the requirements of the Master Agreement between the County and Caltrans.

Recommendation

The County should take the following corrective actions:

- Ensure that contract payment provisions are allowable and in accordance with federal and state regulation when appropriate.
- Determine the correct amount of fee to be paid to the Clay Street Construction Management Consultant.
- Ensure services are properly amended and identified in the contract prior to incurring costs.
- Reimburse Caltrans all costs incurred prior to when the two sub-consultants were amended into the contract. Our audit sample identified questioned costs totaling $6,665.

Recommendation (Continued)

- Ensure that the additions of sub-consultants and/or new staff are correctly added to contracts or authorized prior to them working on the project.
- Ensure that professional service contracts contain all required contract provisions.
- Obtain training for management and staff in proper contract management practices, state and federal regulations and the County's own procedures.

Caltrans DLA should take the following corrective actions:

- Consult with FHWA to determine the appropriate actions associated with the costs totaling $6,665 and any additional costs prior to when the two sub-consultant were amended into the contract. This action should be taken in the event reimbursement is not sought due to Finding 1.
- Prepare a Caltrans action plan to ensure that the County is addressing the audit recommendations.

County Response

The County's response is summarized in below. See Attachment IV for County's full written response.

- The County stated that it was applying the "cost plus fixed percentage fee" appropriately and in accordance with procedures outlined in the LAPM and the training sessions provided by Caltrans Local Assistance.
- The County acknowledged the subconsultants were not included in the contract until after the work was completed, but since the subconsultants' work was part of the original contract scope, an amendment was not required. The County stated that additional subconsultants could be authorized by signing the Consultant's invoice.
- The County stated that listing all personnel in the cost proposal is not required, and that positions be paid at specified rates.
- The County stated that all appropriate provisions are included in the contract, although not verbatim, and referenced specific sections of the River Road contract with Falcon Engineering Services to support this position. See Attachment IV for County's full written response.

Auditor's Analysis of County Response

In general, A&I disagrees with the County's position as documented below. However, we will pass on the County's concerns over the training and LAPM coverage of fixed fee contracting to DLA.

Auditor's Analysis of County Response (Continued)

- The LAPM and DLA training clearly shows that a fixed fee calculation should only be applied to the prime contractor's direct labor, fringe benefits and overhead, and not to subcontractor costs, as the County had done. The County did not address the fact that the fixed fee was inconsistently identified in the contract, indicating that a fixed fee was not established for the agreement.
- A signature on an invoice does not constitute the amendment of new subconsultants into an existing contract, as services would have already been provided.
- Without identifying the names and/or positions in the cost proposal, we are unable to compare the invoices with the contract cost proposal in order to determine the costs billed are appropriate. Also, the County's suggestion that the contract was a specified hourly rate contract further supports that the fee was improperly applied to subcontractor costs (see above item number 1). Specified hourly rate contracts require the billing rates for all staff to be inclusive of the contractor's fee and any additional mark-ups are not allowed.
- The Agreements between the County and Caltrans require that specific language be included in all contracts and subcontracts. The contracts we reviewed did not include the required language. Please refer to Attachment III.

Based on the above analysis the finding remains. However, we modified the finding by identifying the project contracts reviewed and included Attachment III to clarify which contracts were missing what provisions.

Finding 3 – Grant Management Practices Need Improvement

The County did not perform adequate grant management which resulted in the County billing for and receiving reimbursement from Caltrans for ineligible and non-participating costs during the life span of the River Road project. Although the ineligible non-participating costs were eventually accounted for by the final invoice, it points to a need for the County to improve its grant management practices. For detailed criteria, see Attachment II, Finding 3, 3a-3b.

Specifically, the County billed $565,280 of costs associated with the Main Sewer Improvement on reimbursement request number 27. The Main Sewer Improvement was a Western Riverside County Regional Wastewater Authority (Authority) project and was to be paid for by the Authority. Also, the County included $30,000 in Authority related costs from Change Order 10 on reimbursement request number 29. These costs were not identified as non-participating until the Final Report of Expenditures.

Without a complete reconciliation of project costs, the audit was unable to determine if adequate billing adjustments were made to account for all ineligible or non-participating project costs.

Finding 3 (continued)

Also, another example of grant management needing improvement, the audit noted that the County billed unallowable hardship payments on the Etiwanda project. The costs were not identified as non-participating until the Final Report of Expenditures.

Recommendation

County staff explained that the improperly charged costs were caused by various staff believing that other staff would make the necessary adjustments to invoices.

The County should strengthen its controls to ensure ineligible and non-participating costs are not billed in the future.

Caltrans DLA should ensure the County does not bill for ineligible costs on invoices.

County Response

The County provided a full reconciliation of the River Road project costs. See Attachment IV for County's full written response.

Auditor's Analysis of County Response

Based on the new evidence provided, no repayment is required. The finding has been modified based on the information provided by the County.

Finding 4 – Fringe Benefit Rate Billed not Reconciled

The County billed a fringe benefit rate in fiscal year 2010/11 for the Survey Department that was significantly higher than the County's actual costs support. The fringe benefit rate used for Survey Division labor was 82.50 percent, when the rate recalculated based on actual costs was 70.26 percent. For detailed criteria, see Attachment II, Finding 4, 4a-4b. The audit noted a number of issues in the County's calculation of the fringe benefit rate used.

The County:

- Appeared to have not reconciled actual labor costs incurred with the estimated labor costs used in the calculation of the fringe benefit rate.
- Used disproportionate and arbitrary adjustments to estimated labor costs.
- Misclassified indirect labor costs, such as time for meetings and training as part of the paid time off.
- Used total hours instead of productive hours as the base for the paid time off rate.
- Applied an unsupported ten percent rate to overtime labor.

A recalculation of the fringe benefit rates using actual costs resulted in a significantly lower rate than the County used in its billings. The audit was unable to determine the amount of potential overpayment based on the reports provided by the County.

Recommendation

The County should take the following corrective actions:

- Recalculate fringe benefit costs billed to state and federal projects using the lower fringe benefit rated based on actual costs and reimburse any overbillings, or provide evidence that the costs are immaterial.
- Review and revise the procedures used to calculate fringe benefit rates to ensure costs are reasonable, allowable and supported.
- Apply calculated fringe benefit rates in the same manner they are calculated.

Caltrans DLA should take the following corrective actions:

- Based on the results of the recalculation performed by the County, assess if reconciliation of fringe benefit rates used in prior fiscal years is warranted.
- Seek repayment of over reimbursed fringe benefit costs, if any.
- Prepare a Caltrans action plan to ensure that the County is addressing the audit recommendations.

County Response

The County acknowledged that it did not request an ICAP for the Survey Department until FY 2011/12, and stated that actual labor costs were used in all billings. The County disagrees that indirect costs "misclassified" as paid time off, and suggests that the difference is related to the accounting method needed for the County Road Fund. The County stated that it used historical averages of actual payroll as the basis for establishing the PTO rate. The County stated that the 10 percent rate used on overtime labor is calculated, but did not provide the basis for the calculation. The County disagrees with the term "significant" as it relates to the fringe benefit rate, and suggests that the cost of time for the survey staff is not materially different. See Attachment IV for County's full written response.

Auditor's Analysis of County Response

Whether the County billed for actual salary costs is not the basis for our finding. Rather, we established that the fringe benefit rate of 82.50 percent billed to the salary costs was not properly calculated for the reasons identified in the finding. The County provided no information to support its conclusion that the cost for the survey staff is not materially overstated. Without providing the basis for calculation of the 10 percent overtime rate, A&I cannot determine whether the rate is reasonable. Therefore, the finding remains. However, the first recommendation above was modified to provide an additional option for the County.

Finding 5 – Procurement Procedures Need Updating

The County's Consulting Services Manual (Manual) is not in compliance with state and federal regulations, and has not been updated since June 1999. For detailed criteria, see Attachment IV, Finding 5, 5a-5c.

We reviewed the "Selection and Contract Administration" sections of the Manual and noted the following:

- Protest procedures are not identified.
- The need to advertise contracting opportunities is not specifically required.
- Guidance on contract compensation method is not sufficient as identified in Finding 2, the cost plus percentage of cost method of compensation was not identified as unallowable.
- No clear guidance on the requirement to maintain sufficient documentation, such as evidence of advertisement and timely submission of proposals, or score sheets.

Recommendation

The County should take the following corrective actions:

- Revise its Manual to provide more detailed guidance for procurement practices to ensure compliance with state and federal regulations.
- Ensure that all staff are familiar with, trained on, and follow the Manual.

Caltrans DLA should prepare a Caltrans action plan to ensure that the County is addressing the audit recommendations.

County Response

The County is in the process of updating the County Procurement Procedures Manual and plans to provide training for on proper procurement practices by September 30, 2015. The County also stated that the audit finding and recommendations are in conflict with training provided by Caltrans and requested a meeting to receive guidance on contract compensation methods.

Auditor's Analysis of County Response

As stated above in the analysis to the County's response to Finding 2, A&I does not agree that the audit finding or recommendation is in conflict with the Caltrans training because the County applied a mark-up to the consultants' costs rather than calculating a fixed fee for the life of the contract. The County should contact Caltrans DLA directly to request further clarification on the subject. Therefore, the finding remains.

Audit Team

Zilan Chen, Chief, External Audits – Local Governments
Clifford R. Vose, Audit Manager
Barbara Nolan, Auditor
Gerald Lee, Auditor
Chantha Da, Auditor

ATTACHMENT I
Audit Universe and Questioned Cost

	Projects Audited (July 2010 – June 2012)					
	Etiwanda	**River Road**	**Clay St**	**Cajalco**	**Van Buren**	**Total Cost Audited**
Federal Project Number	STPL-596(173)	BRLS-5956(078)	PNRSTCIL-5956(178)	STPLN-5956(195)	BRLSZD-5956(124)	
Billing Selected for Testing:	#03	#27	#12	#04	#27	
Total State Funds Billed		$1,318,685			$717,707	**$2,036,392**
Total Federal Funds Billed	$2,920,808	$11,207,320	$1,361,684	$1,860,332	$9,668,021	**$27,018,165**
Total Funds Billed	**$2,920,808**	**$12,526,005**	**$1,361,684**	**$1,860,332**	**$10,385,728**	**$29,054,554**
Questioned Cost						
Finding 1 - Procurement Practices Need Improvement		$134,301	$105,402	-		**$239,703**
Finding 2 - Contract Management Needs Improvement.		$6,665 ^	-	-		**$6,665 ^**
Grand Total						**$239,957**

Comments:

^ $6,411 of the $6,665 was included in the total for Finding 1.

ATTACHMENT II

Criteria

Finding 1

1a. Title 49 Code of Federal Regulations (CFR) 18.30(d)(1) states, "Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval)."

1b. Title 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."

1c. California Public Contract Code (PCC) 10340(a) states in part, *"...state agencies shall secure at least three competitive bids or proposals for each contract...*

1d. PCC 10335.5(c) states in part, *"The following consulting services contracts are exempt from the advertising and bidding requirements of this article: ... (5) Contracts in an amount of less than five thousand dollars ($5,000)."*

1e. Caltrans Local Assistance Procedures Manual (LAPM) Chapter 10 states in part, *"The addition of work to the original scope by amendment should be avoided whenever possible."*

1f. County's Consulting Services Manual, Contract Administration Section, page 42 states in part, *"A modification should be prepared, processed and executed by all parties to the contract prior to authorizing work."*

1g. Title 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."

1h. Title 23 CFR 172.1 states, "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost."

1i. Title 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."

ATTACHMENT II

Criteria

1j. Article II, Paragraph 4 of the Master Agreement (1977) states, "Unless otherwise designated in the approved program supplement, improvements will be constructed by contract in accordance with Certification Acceptance procedures approved by the FHWA. Such procedures require the use of Specifications described in the State's Certification; STATE approval of plans, special provisions and estimated costs prior to advertisements; and advertising for a minimum of 3 weeks prior to bid opening.

1k. Article II, Paragraph 3 of the Master Agreement (1977) states, "In processing IMPROVEMENTS or RESTORATIONS, LOCAL AGENCY will conform to all STATE statutes, regulations and procedures (including those set forth in the STATE's Local Programs Manual) relating to the Federal-aid program and to all applicable Federal laws, regulations, and policy and procedural or instructional memoranda.

1l. LAPM, Chapter 10, Section 10-23 states, in part, "The local agency advertises the availability of the RFP in a major newspaper of general circulation or technical publication of widespread circulation."

1m. Riverside County Transportation Department, County's Consulting Services Manual, Selection Process Section, page 20 states in part, "The availability of an RFQ or RFP should generally be advertised in a major newspaper of general circulation."

1n. Title 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.

1o. Title 49 CFR 18.36(d)(3)(iii) states, Grantees and sub grantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

1p. Title 49 CFR 18.36(c)(1) states, "all procurement transactions will be conducted in a manner providing full and open competition…Some of the situations considered to be restrictive of competition included but are not limited to… (vii) Any arbitrary action in the procurement process."

1q. Riverside County Transportation Department, Consulting Services Manual Revision 1, Selection Process, Page 11 states: "The Contract Administrator is responsible for developing the technical criteria, and their relative weight, which will be used to evaluate and rank the consultant proposals.

1r. LAPM Chapter 10, page 10-3 states in part, "Consultant contracts in excess of $250,000 require a pre-award audit."

1s. 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

ATTACHMENT II

Criteria

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." "Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted."

Finding 2

2a. Title 49 CFR 18.20 (b)(3) states, "Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets".

2b. Title 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".

2c. Title 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."

2d. Federal Master Agreement No. 08-5956R, 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…".

2e. Article V (7) of the Federal Master Agreement 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".

2f. Title 49 CFR 18.30(d) states, "Grantees or subgrantees must obtain the prior approval of the awarding agency when ever any of the following actions is anticipated: (1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval)."

2g. LAPM Chapter 10 states in part, "The addition of work to the original scope by amendment should be avoided whenever possible."

ATTACHMENT II

Criteria

2h. County's Consulting Services Manual, Contract Administration Section, page 42 states in part, "A modification should be prepared, processed and executed by all parties to the contract prior to authorizing work." (I5p4ac)

2i. Title 48 CFR, Chapter 1, Part 16.102 states in part, "The cost-plus-a-percentage-of-cost system of contracting shall not be used..."

2j. Title 49 CFR 18.20 (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."

2k. Article IV, Section C of Contract 08-07-004 states in part, "No portion of the services pertinent to this contract shall be subcontracted without the written authorization by the COUNTY PROJECT MANAGER, except that which is expressly identified in this contract."

2l. Article VI, Section B of Contract 08-07-004 states in part, "PROJECT services... shall be compensated for as defined in Appendix B..."

2m. Title 23 CFR Part 172.5(c) states, "The cost plus a percentage of cost and percentage of construction cost methods of compensation shall not be used."

2n. Title 49 CFR 18.36(f)(4) states in part, "The cost plus a percentage of cost... [method] of contracting shall not be used."

Finding 3

3a. Title 49 CFR 18.20 (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."

3b. Title 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)"

Finding 4

4a. Title 2 CFR 225, Appendix A, Section C.1.a states in part, "To be reasonable under Federal awards, costs must … Be necessary and reasonable …"

4b. Title 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"

ATTACHMENT II

Criteria

Finding 5

5a. Title 49 CFR 18.36(b)(1) states, "Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."

5b. Title 49 CFR Part 18.36(b)(12) states in part, "Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to: (i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and (ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

5c. Title 23 Code of Federal Regulations (CFR) Part 172.9(a) state in part, "The contracting agency shall prepare written procedures for each method of procurement it proposes to utilize… These procedures shall…cover the following steps:

(1) In preparing a scope of work, evaluation factors and cost estimate for selecting a consultant;
(2) In soliciting proposals from prospective consultants;
(3) In the evaluation of proposals and the ranking/selection of a consultant;
(4) In negotiation of the reimbursement to be paid to the selected consultant…
(5) In monitoring the consultant's work and in preparing a consultants performance evaluation when completed.

ATTACHMENT III
Contract Management

Missing Contract Provisions from Finding 2	**Clay St**	**Cajalco**
Contract Number	**09-02-001**	**10-11-014**
Criteria	**A&E Contract with URS Corporation**	**A&E Contract with ICF Jones and Stokes**
Contracts did not state that the contractor conform to General Accepted Accounting Principles.	N	N
Contracts did not state travel and subsistence in accordance with Department Personnel Administration regulations	N	N
Contracts did not require the contractor to maintain an accounting system that accumulates and segregates project costs.	N	N
Contracts did not reference the 48 CFR, Ch. 1, Part 31		N

N = Non-Compliance

COUNTY OF RIVERSIDE

TRANSPORTATION AND
LAND MANAGEMENT AGENCY

Juan C. Perez, P.E., T.E.
Director of Transportation and Land Management

Patricia Romo, P.E.
Assistant Director of Transportation

Transportation Department

March 2, 2015

Zilen Chen, Audit Chief
External Audits – Local Governments
Audits and Investigations
California Department of Transportation MS-2
PO Box 942874
Sacramento, CA 94274-0001

RE: Draft Incurred Cost Audit County of Riverside Department of Transportation

Dear Ms. Chen:

Thank you for meeting with us on January 14, 2015, to review the outcome of the audit conducted by your staff in 2014. We appreciate the opportunity to discuss the audit findings with you. The County of Riverside Transportation Department (County) would like to recognize, clarify, and submit additional supporting documentation for the Draft Incurred Cost Audit (P1575-0032), dated January 14, 2015. As noted in the audit report, the objective of the audit was to determine whether costs claimed and reimbursed were adequately supported, reasonable in nature, and in compliance with the respective agreement provisions and state and federal regulations.

The purpose of this letter is to respond to certain findings and recommendations identified within the audit report that the County believes require clarification. These responses generally provide additional detail, background, and reference to supporting documentation related to the findings found within the audit report. The structure of the following sections provides two parts to each point made within the audit report:

1. The draft audit findings section is *italicized*, with the section heading in **bold**;

2. The County's response is in plain text, with the generic header "County Response:" in **bold**.

Finding 1 – Procurement Practices Need Improvement

Clay Street Project – Engineering & Environmental Services

The County was unable to provide evidence that the selection process of this A&E contract met either state or federal requirements. A review of the four evaluation panel members' score sheets found that the score sheets for two panel members did not follow the evaluation criteria stated in the RFP. The RFP listed the maximum scores for each of the four criteria to be used to evaluate each proposal. The audit found one of the panel members did not record scores for three of four evaluation criteria for each proposal. The panel member claimed to have "graded and ranked" all firms equally in these three categories. However, no evidence was provided to support this statement. The other panel member recorded notes and assigned an overall rank to each of the firms evaluated, however, the audit found no correlation between the scores and the four evaluation criteria.

If the improperly evaluated/documented scores were discounted, the results of the two remaining proper evaluations would have resulted in a different firm being ranked with the highest score. Therefore it appears that the County did not award the contract based on a fair and equitable process in accordance with Title 23 Code of Federal Regulations (CFR) Part 172.1. Based on audit testing we identified $105,402 of questionable costs were billed by the firm during our audit period. For other detailed criteria see Attachment II, Finding 1, 1a, 1h, 1i, 1n to 1q.

County Response:

The interview panel consisted of four members that reviewed RFP submittals and shortlisted five firms that were deemed to have the required experience and expertise to perform the work as defined in the scope of services. Title 49 CFR 18.36(c) states that "all procurement transactions will be conducted in a manner providing full and open competition." The County performed the interviews by providing an equal opportunity for each consultant to demonstrate competence. The same questions were asked of each of the consultant teams interviewed, and the same amount of time was allocated to each team. Two panel members rated the teams using the score sheets with the four evaluation criteria. One panel member rated each of the consultants equally qualified in three of the four criteria, and his score sheet consisted of a comparison rating of the firms showing the ranking in order of highest to lowest qualified. The fourth panel member took notes from each of the consultant interviews and ranked the consultants based on demonstrated experience, see **Exhibit A**. The contract administrator developed scoring sheets with technical criteria and relative weight for consultant selection, however, two panel members documented the scoring on sheets other than the developed scoring sheets. The County recognizes this "technical" deficiency and has included guidance on the requirement that ALL panel members use the "standardized" scoring sheets when conducting consultant interviews in the County Procurement Procedures Manual. Using standardized scoring sheets is common practice and the County has and continues to use them regularly; the panel had used these sheets in the past and

had a working knowledge of the criteria and weight of the various categories. Although not documented, the panel was able to be fair and impartial and the most qualified firm was selected.

River Road Project – Construction Management Services

The County amended this A&E contract to add additional services totaling $69,200 that were outside the scope of the original RFP. Specifically, during the course of the contract, the County instructed the consultant to hire a specific public relations firm and added specialized testing services not included in the original scope of the RFP. Title 49 CFR Part 18.36 requires the County to obtain these services using a competitive process. Furthermore, Caltrans Local Assistance Procedures Manual (LAPM), Chapter 20 identified that "Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted" as one of the Unrecoverable Project Deficiencies requiring sanctions to be imposed. For other detailed criteria see Attachment II, Finding 1, 1a to 1f.

County Response:

The County instructed the consultant to add specialized testing services and to hire a specific public relations firm as included in the original scope of the RFP, see **Exhibit B**. Specialized testing *was* included *and outlined* in the RFP scope section, specifically:

- Section 3.4.3.5 - Determine that the Contractor's work is being performed in accordance with project requirements and in accordance with the requirements of the contract documents. Endeavor to guard the COUNTY against defects and deficiencies in the work. As appropriate, **require special inspection or testing**, or make recommendations to the COUNTY regarding special inspection or testing of work not in accordance with the provisions of the contract documents whether or not such work is fabricated, installed or completed. Subject to review by COUNTY, reject work, which does not conform to the requirements of the COUNTY or the contract documents.

AND

- 3.4.5.1 - Select and retain the professional services of special consultants and testing laboratories certified by Caltrans. Monitor and coordinate their services.

The public relations was included and described as "facilitation" and can be found in the RFP scope

- 3.4.1.15 - Facilitate cooperation with Caltrans, Cooperative Agencies, public utilities, adjacent businesses, adjacent homeowners, and the general public.

The specific public relations firm was chosen based on expertise and experience of working with the community. Since the testing and facilitation were included in the original scope, the County was not required to obtain these services under a separate competitive bid process, as the potential need for the services was already pro-actively identified in the contract, and the

consultant contract manager responsible for performing this work was selected through the RFP process. Failure to approach the project in this manner could have cost the public hundreds of thousands of dollars of "down time" by the contractor if the job had to stop for additional contracts to be procured, hence the proactive inclusion of this flexibility. It is not possible to foresee every actual physical or site condition in advance, but we can identify that there *may* be a need for such integrated services and contract for them, as needed, in advance. The audit process needs to reflect a better understanding of the physical road construction process to protect the State's best interest.

Moreover, the audit also identified the following procurement issues of the original contract. Specifically the County did not:

- *Perform the required pre-award audit on the firm that was ultimately awarded the contract, totaling $4,420,000. Caltrans LAPM, Chapter 20 identified "No pre-award audit for consultant contracts over $250,000" as one of the Unrecoverable Project Deficiencies that requires sanctions to be imposed. For detailed criteria see Attachment II, Finding 1, 1q and 1r.*

County Response:

The County did not perform a pre-award audit. This was an oversight due to confusion that pre-award audits were a requirement for State/Federal highways only. All County contract managers are now aware of the requirement, and specific guidance is now included in the County Procurement Procedures Manual.

- *Advertise the RFP in a newspaper or trade journal in accordance with the Master Agreement, LAPM and the County's procedures. The County stated that staff posted the RFP to its website and mailed it to a list of known consultants, however the County did not maintain documentation of either action. For other detailed criteria see Attachment II, Finding 1, 1j, 1l and 1m.*

County Response:

The County advertised the RFP in the local newspaper. The ad submitted to the paper is attached, **Exhibit C**. The County also maintains a database of roadway consultants that are notified of upcoming RFP's. The template for the letters that were mailed is attached, **Exhibit D**. The County recognizes that actual copies of the advertisements and letters must be kept on file and this guidance is now included in the County Procurement Procedures Manual.

- *Keep records to show when proposals were received, such as time and date stamped envelopes or a receipt log. Therefore, the timely receipt of the proposals cannot be verified. State and federal regulations requires records be retained. For detailed criteria see Attachment II, Finding 1, 1g and 1i.*

County Response:

Title 49 CFR 18.42 (b) and Title 23 CFR 172.1 (Finding 1g and 1i) does not specify that receipt logs of proposals be maintained. Current practice at the County is to record the date and time that an RFP was received by the County from a consultant. This is common practice and the River Road project was no exception, however, the time log could not be located. The County will include in the revised County Procurement Procedures Manual that a log be kept and maintained with the project file of the time and date that RFP's were received.

Finding 2 – Contract Management Needs Improvement

The County did not maintain an adequate contract administration system to ensure that consultants are providing services in accordance with the terms, conditions and specifications of its contracts as required by state and federal regulations. As a result, the County risks over or under billing Caltrans or other funding sources.

The Construction management contract for the River Road project uses a cost plus percentage of cost method of compensation. Such compensation method is not allowed per Title 23 CFR Part 172.5(c). Specifically, Article VI, Section B of the contract states in part, "Reimbursement is to be made at actual cost plus fixed percentage fee of 10 percent for the following subcontractors..." Further, the fee was inconsistently identified within the contract. In Section B of the contract, the amount is calculated as $226,000, but in the cost of Services worksheet the fee is identified as $280,251. For detailed criteria see Attachment II, Finding 2, 2j, 2m to 2o.

County Response:

The County believes it was applying the cost plus fixed percentage fee appropriately. The County has and is currently applying the cost plus fixed percentage fee in accordance with the procedures outlined in the Local Assistance Procedures Manual Chapter 10, Exhibit 10-H, and the training sessions given by Caltrans Local Assistance, see **Exhibit E attached**. County staff attended a Caltrans training session on "Procuring A&E Contracts" on January 29, 2015, given by Mr. Mohammad Maljai and Mr. Patrick Louie from Local Assistance. At this training session, the local agencies were told that it is acceptable practice to use a percentage to arrive at a fixed fee, in fact the example given used a 10 percent rate to arrive at the fixed fee. To date, Caltrans has not provided any other method to compute profit other than the cost plus percentage fee. We are looking for direction from Caltrans on how to approach this. Since the guidance is clear and we were following the guidance provided, we believe that it would be inappropriate to penalize the County for this practice.

In addition the audit noted the following issues related to the County's contract management:

- *The River Road construction management consultant included costs totaling $6,665 for two sub-consultants a year prior to the contract being amended to include the two sub-*

consultants for their services. ($6,411 of this amount is included in Finding1.) Federal regulations and the County's procedures require the execution of an amendment prior to authorization of work. For detailed criteria, see Attachment II, Finding 2, 2a to 2c, 2f to 2i, 2l and 2k.

County Response:

While the inclusion of unlisted sub-consultants was not included in an amendment until a later date, the work performed by the sub-consultants was always a part of the original scope and, as such, an amendment was not required prior to the sub-consultant performing the work. In accordance with Article IV, Section C, Subcontracts, the use of a sub-consultant to perform work only required written authorization of the COUNTY PROJECT MANAGER. A signature on the Consultant's Invoice would constitute said written authorization.

CM Agreement Pg.2 Ln 27, see **Exhibit F** attached:

"C. Subcontracts

1. ENGINEER shall perform the services contemplated with resources available within its own organization. No portion of the services pertinent to this contract shall be subcontracted without written authorization by the COUNTY PROJECT MANAGER, except that which is expressly identified in this contract.

2. In the event ENGINEER subcontracts any portion of ENGINEER's duties under this agreement, ENGINEER shall require its Subcontractors to comply with the terms of this contract in the same manner as required of ENGINEER including, but not limited to; indemnification of the COUNTY, requiring the same insurance of Subcontractors as required of ENGINEER, and having Subcontractor's insurance name the COUNTY as Additional Insured for each type of insurance where this Agreement requires ENGINEER'S insurance to name COUNTY as Additional Insured."

- *The River Road consultant included costs for an engineer whose name was not identified in the cost proposal, and cost for a claims specialist whose position was not listed in the cost proposals. The audit is unable to determine if the cost billed were appropriate. Title 49 CFR 18.36 requires an effective administration be maintained. For detailed criteria, see Attachment II, Finding 2, 2a to 2c, 2i and 2k.*

County Response:

The contract itself and the applicable laws do not require that all personnel listed in the cost proposal be utilized on the project and for the duration of the project, only that the particular position is compensated at the specified rate. The only two positions that are identified in the contract that require authorization to change are the ENGINEERING PROJECT MANAGER

and the RESIDENT ENGINEER, since they are considered "key" to the project's efficiency and or success.

CM Agreement Pg.3 Ln 8, **Exhibit F** attached:

"D. Modifications

1. This contract may be amended or modified only by mutual written agreement of the parties. No alteration or variation of the terms of this contract will be valid unless made in writing and signed by the parties hereto and no oral understanding or agreement not incorporated herein, will be binding on any of the parties hereto.

2. There shall be no change in the ENGINEERING PROJECT MANAGER, the identified RESIDENT ENGINEER or key members of the PROJECT team without prior written approval by the COUNTY PROJECT MANAGER."

Furthermore, the audit found consultant contracts reviewed did not include provisions required by state and federal regulations and the Master Agreement. For detailed criteria, see Attachment II, Finding 2, 2d and 2e. As a result, the County risks billing Caltrans costs that are not in compliance with state and federal regulations. The missing provisions include requirements that:

- *Consultants and sub-consultant accounting systems conform to Generally Accepted Accounting Principles.*
- *Consultants and sub-consultants establish and maintain an accounting system that accumulates and segregates incurred project costs.*
- *Conformant to Title 48 CFR Chapter 1, Part 31.*

Based on the audit, it appears that County staff did not have a working knowledge of state and federal regulations, and the County's own procedures for contract modifications. In addition, staff did not understand the requirements of the Master Agreement between the County and Caltrans.

County Response:

The County maintains that all appropriate and required provisions (state and federal) and the Master Agreement were included in the contract, though not necessarily verbatim.

CM Agreement Pg.2 Ln 28, see **Exhibit F** attached:

"ARTICLE IV • CONDITIONS – C. – Subcontracts

1. ENGINEER shall perform the services contemplated with resources available within its own organization. No portion of the services pertinent to this contract shall be subcontracted without written authorization by the COUNTY PROJECT MANAGER, except that which is expressly identified in this contract.

2. In the event ENGINEER subcontracts any portion of ENGINEER's duties under this agreement, ENGINEER shall require its Subcontractors to comply with the terms of this contract in the same manner as required of ENGINEER including, but not limited to, indemnification of the COUNTY, requiring the same insurance of Subcontractors as required of ENGINEER, and having Subcontractor's insurance name the COUNTY as Additional Insured for each type of insurance where this Agreement requires ENGINEER'S insurance to name COUNTY as Additional Insured."

AND

CM Agreement Pg.15 Ln 18:

"ARTICLE VI • COMPENSATION – B. - Basis of Compensation

3. For purchase of any item, service or consulting work not covered in ENGINEER's proposal and exceeding $10,000, with prior authorization by the COUNTY PROJECT MANAGER, three competitive quotations shall be submitted with the request, or the absence of bidding shall be adequately justified.

4. Any equipment purchased as a result of this contract is subjected to the following: ENGINEER shall maintain an inventory of all nonexpendable property. Nonexpendable property is defined as having a useful life of at least two years and an acquisition cost of $500 or more. If the purchased equipment needs replacement and is sold or traded in, COUNTY shall receive a proper refund or credit. At the conclusion of the contract or if the contract is terminated, ENGINEER may either keep the equipment and credit COUNTY in an amount equal to its fair market value or sell such equipment at the best price obtainable at a public or private sale in accordance with established COUNTY procedures and credit COUNTY in an amount equal to the sales price. If ENGINEER elects to keep the equipment, fair market value shall be determined, at ENGINEER's expense, on the basis of a competent independent appraisal of such equipment. Appraisals shall be obtained from an appraiser mutually agreeable by COUNTY, and ENGINEER. If it is determined to sell the equipment, the terms and conditions of such sale must be approved in advance by COUNTY and AGENCIES.

5. The consideration to be paid ENGINEER, as provided herein, shall be in compensation for all of ENGINEER's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

6. ENGINEER agrees that the Contract Cost Principles and Procedures, CFR 48, Federal Acquisition Regulations Systems, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

7. ENGINEER also agrees to comply with federal procedures in accordance with Office of Management and Budget Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments."

Finding 3 – Grant Management Practices Need Improvement

The County did not perform adequate grant management which resulted in the County billing for and receiving reimbursement from Caltrans for non-allocable costs on the River Road project. Based on testing, the audit identified at least $426,000 of non-allocable project work was reimbursed to the County. For detailed criteria, see Attachment II, Finding 3.

Specifically, the County billed $565,280 of costs associated with the Main Sewer Improvement on reimbursement request number 27. The Main Sewer Improvement was a Western Riverside County Regional Wastewater Authority (Authority) project and was to be paid for by the Authority. Also, the County included $30,000 in Authority related costs from Change Order 10 on reimbursement request number 29. In a subsequent reimbursement request the County adjusted a portion of the costs allocable to the Authority.

Without a complete reconciliation of project costs, the audit was unable to determine if adequate billing adjustments were made to account for all ineligible or non-participating project costs.

County Response:

The Notice of Completion for the River Road project, attached as **Exhibit G**, shows the final project costs. The Western Riverside County Regional Wastewater Authority paid $615,514.32 for the work to install a 30" sewer force main. In addition, Roy Null, the County Project Funds Manager, hand delivered a copy of the Federal Report of Expenditures for the River Road Bridge Replacement Project over the Santa Ana River – BR# 56C-0017 to the audit team when we met on January 14, 2015, at the County of Riverside Administrative Center. A copy of the final federal invoice was included in this documentation, dated December 30, 2013, and delivered to Caltrans Local Assistance on December 31, 2013. The document package includes a complete reconciliation of all project costs, funding sources, and amount paid from the various contributing sources for the project, including a listing of all construction contract line items and change orders and identifies them as participating or non-participating. All project costs billed for federal reimbursement are allowable costs.

Finding 4 – Fringe Benefit Rate Billed not Reconciled

The County billed a fringe benefit rate in fiscal year 2010/11 for the Survey Division that was significantly higher than the County's actual costs support. The fringe benefit rate used for Survey Division labor was 82.50 percent, when the rate recalculated based on actual costs was 70.26 percent. For detailed criteria, see Attachment II, Finding 4. The audit noted a number of issues in the County's calculation of the fringe benefit rate used.

The County:

- *Appeared to have not reconciled actual labor costs incurred with the estimated labor costs used in the calculation of the fringe benefit rate.*

County Response:

The Survey Department initiated an ICAP rate approach to projects starting in FY 2011/12. Since the ICAP rate is based on actual (not estimated) costs two years prior, the transition year just prior to the start of the initial ICAP cycle of costing, in this case FY 10/11, appears problematic to try and roll forward, or back, costs. The County would welcome additional dialogue on how the auditors would achieve this result. We would note, however, on a material basis, the scope of the audit, the difference between the estimated and actual rate does not create a significant or material dollar cost difference.

- *Used disproportionate and arbitrary adjustments to estimate labor costs.*

County Response:

For all billings the County used actual labor costs. The project summary reports reviewed simply retrieve data from actual timesheets that are entered into the County "PeopleSoft" accounting system.

- *Misclassified indirect labor costs, such as time for meetings and training as part of the paid time off.*

County Response:

The County rejects the assertion that it "misclassified" costs. There are significant differences in how the State requires us to "account" in order not to exceed a five percent variance on our annual Road Fund audits, and the particulars of how the same costs are handled on federally funded projects through ICAP. The County will be manually applying ICAP rates and requirements on federal billings in the future in order to better accommodate both, sometimes contradictory, sets of requirements.

- *Used total hours instead of productive hours as the base for the paid time off rate.*

County Response:

For paid time off, the County uses historical averages of past employee actual payroll results as the basis to establish the paid time off rate.

- *Applied an unsupported ten percent rate to overtime labor.*

County Response:

Benefit costs, with a few minor exceptions, are fully covered during regular time and the costing thereof. In reviewing the actual costs of overtime work, the department established a 10 percent factor, when applied, as most closely recapturing the incremental costs associated with unknown and unforeseen overtime work over the course of an entire fiscal year. The amount is not arbitrary, rather calculated, and the differences are not material.

A recalculation of the fringe benefit rates using actual costs resulted in the materially lower rate than the County used in its billings. The audit was unable to determine the amount of potential overpayment based on the reports provided by the County.

County Response:

If nonproductive time or indirect time for meetings and training are disallowed from the Benefits calculation, they would then be included in the Overhead calculation. It had been a long standing practice for the County to include that time in Benefits rather than Overhead. The County has since changed that practice to comply with the Auditor's request. That said, the audit is not about a materially different *"rate,"* which the audit continues to refer to, but rather materially different "costs." The amount of time spent by Survey staff billed was in and of itself a very small percentage and does not result in a material *cost* difference. The term "significant" is inaccurate.

Finding 5 – Procurement Procedures Need Updating

The County's Consulting Services Manual (Manual) is not in compliance with state and federal regulations, and has not been updated since June 1999. For detailed criteria, see Attachment IV, Finding 5.

We reviewed the "Selection and Contract Administration" sections of the Manual and noted the following:

- *Protest procedures are not identified.*
- *The need to advertise contracting opportunities is not specifically required.*
- *Guidance on contract compensation method is not sufficient as identified in Finding 2, the cost plus fixed fee method of compensation was not identified as unallowable.*
- *No clear guidance on the requirement to maintain sufficient documentation, such as evidence of advertisement and timely submission of proposal, or score sheets.*

County Response:

The County recognizes the need to update the County Procurement Procedures Manual and is in the process of doing so. The target date for completion of the revised manual is June 1, 2015.

The revised manual will include protest procedures, guidance on the procurement process including advertising contract opportunities, the selection process, documentation, and references to the local assistance procedures manual. We would like to request specific guidance, including the possibility of a three-party meeting, on contract compensation methods. **The current audit findings and recommendations are in conflict with the training and guidance material being provided by Caltrans.**

We plan to provide training to the Transportation Project Managers and Construction Managers and Inspectors on proper procurement practices by September 30, 2015.

We would also like to request a conference call to discuss the new ICAP/ICRP process. On Wednesday, February 25, 2015, the County attempted to participate by conference call on a discussion by Caltrans Audits and Investigations of the new ICAP/ICRP processes, but was unsuccessful in joining the conference, apparently the line was overburdened. The County is very interested in learning about the new ICAP/ICRP processes and would like to request information and/or participate in the next conference.

If you have any questions or need additional information, please contact me at PROMO@rctlma.org or (951) 955-6740.

Sincerely,

Patricia Romo, P.E.
Assistant Director of Transportation

cc: Clifford Vose, Audit Manager
Ed Cooper
Juan Perez
Mojahed Salama