

Memorandum

*Flex your power!
Be energy efficient!*

To: KOMÉ AJISE
Deputy Director
Planning and Modal Programs

Date: January 15, 2014

File: P1580-0016

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations



Subject: **INCURRED COST AUDIT – TRANSPORTATION AGENCY FOR MONTEREY COUNTY**

We have audited the costs claimed by and reimbursed to the Transportation Agency for Monterey County (TAMC) totaling \$14,480,278 for work performed under five Agreements with the Department of Transportation (Caltrans) and one Agreement with the Association of Monterey County Bay Area Governments. The audit was performed to determine whether costs claimed were supported, 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 TAMC's response and our analysis of TAMC's response, is attached. In addition, this report will be placed on Caltrans website.

Based on our audit, we determined that reimbursed costs totaling \$5,019,986 were supported and in compliance with Agreement provisions, and State and federal regulations. However, reimbursed costs totaling \$9,460,292 were not adequately supported and in compliance with respective Agreement provisions, and State and federal regulations. In addition, we determined that TAMC lacked adequate agency-wide policies and procedures, billing processes, and administrative processes over the Regional Surface Transportation Program exchange fund expenditures, and did not comply with Agreement provisions, and State and federal regulations for consultant procurements and contract administration.

Please provide our office a Caltrans 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.

Attachment

- (1) Final Incurred Cost Audit Report for the Transportation Agency for Monterey County.

- c: Debra L. Hale, Executive Director, Transportation Agency for Monterey County
- Janice Richard, Director of Financial Services, Federal Highway Administration
- Andre Boutros, Executive Director, California Transportation Commission
- Malcolm Dougherty, Director, California Department of Transportation
- Norma Ortega, Acting Chief Deputy Director, California Department of Transportation
- Tim Gubbins, District Director, District 5, California Department of Transportation
- Katie Benouar, Chief, Division of Transportation Planning, California Department of Transportation
- Clark Paulsen, Chief, Division of Accounting, California Department of Transportation
- Jane Perez, Chief, Division of Mass Transportation, California Department of Transportation
- Rihui Zhang, Acting Chief, Division of Local Assistance, California Department of Transportation

P1580-0016
Incurred Cost Audit Transportation Agency for Monterey County
January 2014

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

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Summary

The California Department of Transportation's (Caltrans) Audits and Investigations (A&I) audited the costs claimed by the Transportation Agency for Monterey County (TAMC), totaling \$5,169,434 for work performed under five Agreements with Caltrans from July 1, 2011 through December 31, 2011 and one Agreement with the Association of Monterey County Bay Area Governments (AMBAG) for costs claimed for April 1, 2011 through June 30, 2011 [see Attachment I for the list of audited Agreements]. Based on our audit, we determined that reimbursed costs totaling \$5,019,986 were supported and in compliance with Agreement provisions, and State and federal regulations. However, reimbursed costs totaling \$149,448 were not adequately supported and in compliance with respective Agreement provisions, and State and federal regulations. In addition, we determined that TAMC lacked adequate agency-wide policies and procedures, billing processes, and administrative processes over the Regional Surface Transportation Program (RSTP) exchange fund expenditures, and did not comply with Agreement provisions and State and federal regulations for consultant procurements and contract administration.

As a result of the procurement deficiencies identified on four consultant procurements tested, our audit scope was expanded to include an additional \$9,310,844 of consultant costs claimed by TAMC outside of our original audit period. All costs claimed on the four consultant procurements are questioned. Therefore, unsupported total costs increased to \$9,460,292 and total audit universe increased to \$14,480,278. See Attachment II for list of questioned costs.

Objectives

The audit was performed to determine whether costs claimed were allowable, adequately supported, 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 its fiduciary responsibility to State and federal regulatory agencies.

TAMC is responsible for the claimed costs, compliance with applicable Agreement provisions, and 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 TAMC.

**Methodology
(Continued)**

Therefore, we did not audit and are not expressing an opinion on TAMC's financial statements.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and 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 related to the above-referenced Agreements. Our audit of TAMC's claimed costs included interviews of TAMC staff necessary for obtaining an understanding of TAMC's financial management system and a review of TAMC's financial statements for fiscal years 2009 and 2010. The audit consisted of transaction testing of claimed costs to evaluate compliance with Title 2 of the Code of Federal Regulations (CFR), Part 225; Title 48 CFR, Ch. 1, Part 31; Title 49 CFR, Part 18; Title 23 of the United States Code, Section 133; Caltrans' Local Assistance Procedures Manual; and requirements stipulated in the Agreements. The audit period was July 1, 2011 through December 31, 2011, except for the inclusion of the fiscal year 2010/11 fourth quarter billing from the AMBAG which included TAMC expenditures and the four procurements tested that originated prior to July 1, 2011. Our field work was completed on May 31, 2013, 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 TAMC's response dated October 15, 2013, to our August 2013, draft report. Our findings and recommendations, TAMC's response, and our analysis of the response are set forth in the Findings and Recommendations of this report. Additionally, our findings and / or recommendations were modified due to additional information provided by TAMC or to provide clarification. A copy of TAMC's response is included as Attachment V. Attachments referenced in the response are available upon request.

Background

TAMC is an independent association of local officials who have joined together to solve transportation problems throughout the Monterey County. Officials from each of the twelve incorporated cities in Monterey County and all five County Supervisors represent the public on the Board of Directors. TAMC works to improve safety and reduce future traffic congestions, using a combination of solutions, such as roads, buses, trains, and trails. TAMC's mission is to develop and maintain a multimodal transportation system that enhances mobility, safety, access, environment quality, and economic activities in Monterey County.

The Board of Directors set policy and oversees a professional staff of 13 full-time and one part-time employee. About 96 percent of TAMC's funding comes from state and federal grants. Local funding is primarily from member agency contributions for congestion management activities.

Conclusion

Based on our audit, we determined that reimbursed costs totaling \$5,019,986 were adequately supported and in compliance with Agreement provisions, and State and federal regulations. However, reimbursed costs totaling \$9,460,292 were not adequately supported and were not in compliance with respective Agreement provisions, and State and federal regulations. In addition, we determined that TAMC lacked adequate agency-wide policies and procedures, billing processes, and administrative processes over the RSTP exchange fund expenditures and did not comply with Agreement provisions and State and federal regulations for consultant procurements and contract administration.

This report is intended for the information of TAMC, Caltrans Management, the California Transportation Commission, the Federal Highway Administration and the Federal Transit Administration. In addition, this report will be placed on Caltrans website.

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



Zilan Chen
Chief External Audits - Local Governments
Audits and Investigations

January 15, 2014

FINDINGS AND RECOMMENDATIONS

Finding 1 - Lack of Policies and Procedures

Transportation Agency for Monterey County (TAMC) lacks adequate policies and procedures agency-wide detailing appropriate processes to ensure TAMC assets are safeguarded and are in compliance with State and federal regulations. The lack of adequate policies and procedures that detail proper practices to be followed in the activities performed by staff contributed to the deficiencies and non-compliant actions noted in findings 2 through 5. (For criteria, see Attachment III, Finding 1, 1a-1b, Finding 2, 2d, 2h, Finding 3, 3c, Finding 4, 4a and Finding 5, 5a)

Specifically, we found that TAMC lacks the following:

- An approved written accounting manual that documents the policies and procedures governing TAMC's financial management system including the labor distribution process.
- Adequate procurement policies and procedures detailing proper procurement practices in compliance with State and federal regulations.
- Adequate contract management policies and procedures detailing proper processes to manage consultant contracts and a process for closing-out contracts.
- Policies and procedures to properly administer construction projects and to prepare and document Contract Change Orders (CCOs) on construction projects.
- Policies and procedures detailing a process for administering the Regional Surface Transportation Program (RSTP) exchange funds in compliance with RSTP requirements and the methods to be used to allocate the funds to the various local agencies in the region.

Without adequate written policies and procedures, there is an increased risk for errors to occur and not be detected and/or corrected.

Recommendation

TAMC should take the following actions:

- Develop a written accounting manual detailing all policies and procedures governing the financial management system that is approved by TAMC's Board of Directors (Board).
- Review and revise the procurement and contract management policies and procedures to ensure compliance with all applicable State and federal regulations.
- Develop policies and procedures over the administration of construction projects including proper CCO practices to ensure compliance with all applicable State and federal regulations.

**Recommendation
(Continued)**

- Develop written policies and procedures to properly manage and administer the RSTP exchange Funds.
- Ensure staff are trained on and comply with all revised policies and procedures.

The California Department of Transportation (Caltrans) should prepare an action plan addressing the audit recommendations for TAMC.

TAMC Response

TAMC disputes draft Finding 1 that asserts a deficiency of adequate financial, procurement, project management, construction management and Regional Surface Transportation Program policies and procedures. Such policies have been adopted and are being followed. TAMC does, however, agree that updating and reorganizing TAMC's policies and procedures to be easier to reference would be beneficial and TAMC will take such action. Furthermore, TAMC supports the knowledge and expertise of its staff, and strongly disputes the statements questioning staff understanding of accounting policies and consultant work. TAMC asks that such statements be removed from the final report. See Attachment V for TAMC's full response.

**Auditor's Analysis
to TAMC Response**

TAMC did not provide additional source documentation to support its position. Therefore, the finding remains except that we deleted the last item in the finding relating to staff understanding of consultant work and the corresponding recommendation based on discussion with TAMC staff during the formal exit conference.

**Finding 2 -
Improper
Procurement
Practices**

TAMC's procurement practices are not in compliance with Agreement provisions and State and federal regulations. Our audit found that TAMC improperly procured all four consultant contracts tested. Without proper procurement practices, TAMC cannot demonstrate full and open competition was achieved. As the procurements were for contracts executed prior to our original audit period we expanded the audited costs claimed to include all claims on the four procurements through May 31, 2013. TAMC billed Caltrans a total of \$9,460,292 on the four consultant contracts. All costs related to the four improperly procured contracts are questioned.

Specifically, we found the following (for criteria, see Attachment III, Finding 2):

Parson & Associates - Commuter Rail Project (State Funded Through Caltrans Division of Mass Transportation)

TAMC improperly procured the consultant, Parsons & Associates, for the Phase One Project Development Services for the Commuter Rail Project.

**Finding 2 -
(Continued)**

The contract was executed for \$974,900 and did not specify a termination date. TAMC prepared a project specific RFQ, but could not provide documentation that an independent cost estimate was prepared or support a fair and competitive procurement was performed. The RFQ lacked the weights or value to be placed on the evaluation criteria and TAMC lacked supporting documentation for the advertisement/publication of the RFQ, score sheets used to evaluate the proposals and the rationale for the consultant selected.

TAMC amended the contract 12 times for a current contract amount of \$8,966,120 and no termination date was ever amended into the contract. All amendments were for additional funds. In addition, the amendments were for changes to the scope of work of the original contract and / or no cost analysis was performed to determine whether a fair and reasonable price was obtained. A cost analysis is required for all contract amendments. Therefore, all 12 amendments were non-competitive procurements as the scope of work was changed and/or no cost analysis was performed.

Both the original contract and the 12 amendments were not in compliance with State and federal regulations and the reimbursed costs of \$8,810,690 are questioned.

On-Call / Prequalified Lists

TAMC's procurement process for three of the four remaining consultants tested consisted of establishing and utilizing consultant lists for Contract Management Services and Engineering and Project Management Services that were referred to as "on-call lists" but were only prequalified consultant lists. TAMC entered into contracts with consultants using these lists.

TAMC did not advertise the RFQs for the establishment of the prequalified lists. TAMC stated that the RFQs were posted on TAMC's website and mailed to potential consultants. However, TAMC was unable to provide support for these statements. The RFQs for the prequalified lists included only a general scope of work as specific projects were not yet identified. Additionally, the RFQs did not identify the weighting or value to be placed on the evaluation criteria. Further, TAMC did not have procedures established for how consultants on the prequalified lists would be selected for specific work identified. Instead, once a project was identified, TAMC's process was to judgmentally select several consultants from one of its prequalified lists. Then TAMC would perform informal interviews of the consultants invited to participate, and based on undocumented reasoning, select the consultant

**Finding 2 -
(Continued)**

to be awarded the contract. (For criteria, see Attachment III, Finding 2, 2b, 2c, 2e and 2f.) Finally, TAMC did not prepare independent cost estimates for projects, rather, the practice was to request a cost proposal from the consultant selected to determine the contract amount.

The procurement process used by TAMC on the following three consultant contracts does not demonstrate that fair and open competition was achieved and is not in compliance with Agreement requirements and State and federal procurement regulations.

Harris & Associates - Carmel Hill Project (Federally Funded Through Caltrans Division of Local Assistance)

TAMC improperly procured the consultant, Harris & Associates, for the Carmel Hill project. TAMC used its prequalified list for construction management services to select the consultant for this project. TAMC did not prepare a project specific RFQ and did not advertise / publicize the project. Additionally, TAMC lacked documentation that an independent cost estimate was prepared, the rationale for the selection of two consultants to interview for the project from its prequalified list, the criteria used to evaluate the two consultants, and documented support for the consultant selected. Furthermore, TAMC paid the contractor in excess of the contract amount. The reimbursed costs of \$252,005, which includes \$14,989 that were in excess of the contract amount, are questioned.

Harris & Associates - Beach Range Project (Federally Funded Through Caltrans Division of Local Assistance)

TAMC improperly procured the consultant, Harris & Associates, for the Beach Range project. TAMC amended the contract for the Carmel Hill project to add contract management services for the Beach Range project, a completely separate project, creating a non-competitive procurement. Additionally, TAMC amended the contract for additional funds and time, two months after the contract had expired. The reimbursed costs of \$14,797 are questioned.

Harris & Associates - Commuter Rail Project (State Funded Through Caltrans Division of Mass Transportation)

TAMC improperly procured the consultant, Harris & Associates, for the Commuter Rail project. TAMC used its prequalified list for Engineering and Project Management Services to select a consultant for Value Engineer Services for \$97,000. TAMC did not prepare a project specific RFQ, and did not publicize / advertise the project. Additionally, TAMC lacked documentation that an independent cost estimate was prepared, the rationale for selecting the four consultants to interview for the project from its prequalified list, the criteria used to evaluate the four consultants and the documented support for the consultant selected.

**Finding 2 -
(Continued)**

Two months after execution the contract was amended to add a task to prepare a draft scope of work for Project Management Services. Subsequently, TAMC executed a second amendment to add the Project Management Services to the contract for an additional \$415,000, creating a non-competitive procurement. The fact that the consultant wrote the scope of work for the Project Management Services then was awarded the work through an amendment appears to be a conflict of interest in violation of 49 CFR Part 18.36 (see Attachment III, Finding 2, 2h for detail criteria). Furthermore, TAMC lacked documentation that a cost analysis was performed to determine whether a fair and reasonable price was obtained when it amended the contract for additional work and funds. Both the original contract and the amendments were not in compliance with State and federal regulations and the reimbursed costs of \$382,799 are questioned.

See Attachment IV for a listing of deficiencies on the four procurements.

Recommendation

TAMC should take the following actions:

- Ensure compliance with all State and federal regulations over consultant procurements.
- Maintain adequate documentation to support that proper procurement procedures are followed in accordance with Title 49 CFR, Part 18 and Caltrans's Local Assistance Procedures Manual.
- Ensure management and staff receive training in proper procurement procedures.

Caltrans should take the following actions:

- The Division of Local Assistance consult with the Federal Highway Administration regarding the questioned costs totaling \$266,803 and prepare an action plan addressing the questioned costs and audit recommendations.
- The Division of Mass Transportation prepare an action plan to collect all questioned costs totaling \$9,193,489 or identify Caltrans rationale for not seeking repayment and address the audit recommendations.

TAMC Response

TAMC disputes the proposed Finding 2 concerning procurement of the four consultant contracts identified. TAMC has worked in good faith with Caltrans, including its Local Assistance office, in carrying out its important mission and protecting public dollars. TAMC submits that the funds expended on these contracts have been critical to the delivery or development of the projects in question, and that no return of funds to the Federal Highway Administration or the Caltrans Division of Mass Transportation is warranted. However, TAMC does agree that it has not

**TAMC Response
(Continued)**

always maintained the best documentation of its efforts to comply with State and Federal regulations and is actively taking steps to rectify this. As noted earlier, TAMC is also working to consolidate, update and clarify its procedures and anticipates further action in that area in the first part of 2014. TAMC is also working to provide more systematic training of all staff. See Attachment V for TAMC's full response.

**Auditor's Analysis
to TAMC Response**

TAMC made numerous statements regarding the history of the procurements but did not provide additional source documentation to support statements made nor to support actions taken by TAMC in the procurements of the four consultants. In addition, Caltrans staff working with TAMC did not relieve TAMC's responsibility to comply with State and federal regulations. Therefore, the finding remains. However, we modified the wording of the finding by incorporating the information provided in Attachment IV (list of deficiencies) for clarity.

Parsons Transportation Group

TAMC included in its response a copy of a letter from Caltrans Audits and Investigations that waived the pre-award audit of the consultant based on a risk assessment (a pre-award audit of the consultant was not performed). The waiver served to satisfy the pre-award requirement for this consultant. However, in a pre-award audit of a consultant, the audit scope would not include the audit of TAMC's consultant procurement process. Therefore, the inclusion of the letter in the response mischaracterizes the intent of the letter.

On Call / Pre-Qualified Lists

The Caltrans' Agreements with TAMC require procurements to be fair and competitive in compliance with 49 CFR Part 18.36. TAMC's procurement process of utilizing the pre-qualified lists does not meet the competitive requirements of the regulation. Please see the finding above for the specific deficiencies identified in the audit.

**Finding 3 -
Inadequate
Contract
Administration**

TAMC lacked an adequate contract administration process in compliance with Caltrans' Agreement provisions and State and federal regulations. TAMC risks incurring unallowable or ineligible costs due to weak and / or non-compliant processes over the construction contract management and consultant contract administration for projects funded by Caltrans. Specifically, the audit found the following:

Construction Contract Management

TAMC lacked policies and procedures over the contract management of construction projects, including review and approvals of contract change orders (CCOs). TAMC placed reliance on a consultant to manage the construction project while lacking documented internal controls to

**Finding 3 -
(Continued)**

oversee and administer the consultant. A lack of internal controls over the CCOs and the project management functions increases the risk of TAMC incurring unallowable or ineligible costs due to noncompliant practices or undiscovered errors. (For criteria, see Attachment III, Finding 1, 1a-1b, and Finding 3, 3c.)

We judgmentally selected one of three CCOs to review and found an independent cost estimate was not prepared prior to the CCO being executed nor was a cost proposal obtained. The CCO reviewed included two lump sum payments. Without an independent cost estimate or a cost proposal, TAMC could not demonstrate that a cost analysis of the CCO was adequately performed as required. (For criteria, see Attachment III, Finding 3, 3a.) TAMC staff acknowledged that the documentation maintained did not support how the CCO amount was derived and stated they would require the consultant to properly execute CCOs in the future. Per 23 CFR, Part 635.120(e), "A costs analysis must be performed for each negotiated contract change or negotiated extra work order."

Consultant Contract Administration

The four consultant contracts reviewed had the following deficiencies (see Attachment IV.1):

- Three out of four lacked language allowing access to records for audits by the Federal Highway Administration and Caltrans. (For criteria, see Attachment III, Finding 3, 3b and 3d.)
- One out of four lacked language requiring compliance with Title 48 CFR, Chapter 1, Part 31. (For criteria, see Attachment III, Finding 3, 3b.)
- One out of four lacked language requiring compliance with Title 49 CFR, Part 18. (For criteria, see Attachment III, Finding 3, 3b.)
- One out of four lacked language for reimbursement for travel costs to be limited to State Department of Personnel Administration rates. (For criteria, see Attachment III, Finding 3, 3b.)
- Three out of four lacked a clear statement for the method of payment. (For criteria, see Attachment III, Finding 3, 3c.)
- One out of four allowed for unallowable mark-ups on the sub-consultant costs. (For criteria, see Attachment III, Finding 3, 3g and 3h.)
- Two out of four allowed for contingencies that maybe unallowable. (For criteria, see Attachment III, Finding 3, 3e-3f.)

Recommendation TAMC should take the following actions:

- Ensure compliance with all State and federal regulations over the administration of construction projects, consultant contracts and CCOs.
- Ensure staff receive proper training to perform the work assigned.
- Ensure all consultant contracts reimbursed with State and/or federal funds contain language as required in the Caltrans' Agreements.
- Ensure consultant contracts do not include unallowable contingencies.

Caltrans should prepare an action plan addressing the audit recommendations.

TAMC Response TAMC disputes draft Finding 3 and believes that it has adequate contract administration procedures. That said, TAMC acknowledges that systems and procedures can always be improved upon and will revise certain contractual language to clarify its compliance with required provisions and procedures and will continue to provide training to staff with respect to contractual matters. See Attachment V for TAMC's full response.

Auditor's Analysis to TAMC Response Based on our analysis of the response we deleted several sentences in the original finding and recommendation to provide clarification. However, the other issues identified in the finding remain.

During our field work, we were advised who the Project Manager was for the project selected for audit and performed interviews with that individual. The Project Manager TAMC identified in the response, is a different individual. Additionally, TAMC provided no documentation to support its position that an independent cost estimate was prepared or reviewed by the consultant or the Resident Engineer identified in its response.

The issues and recommendations related to the language deficiencies in TAMC's contracts are for the benefit of TAMC to ensure appropriate recourse with its consultants. Additionally, the Caltrans' Agreements with TAMC require compliance with federal regulations for State funded projects. TAMC's Master Agreement - State Funded Transit Projects, Section 2.a. Cost Principles, states in part, "*recipient agrees and will assure that its contractors and subcontractors comply with 48 CFR and 49 CFR...*" Furthermore, two of the cost proposals attached to consultant contracts included a cost line item titled "mark-up" and / or "contingences". As cost proposals are made a part of the contract, the categories of costs listed on the cost proposal become a part of the agreed to costs and can be billed by the consultant. The contractor did not identify

**Auditor's Analysis
(Continued)**

the contingency cost line item as being set aside for presently known and existing conditions. The finding served to alert TAMC that such costs cannot be billed to Caltrans.

**Finding 4 -
Inadequate
Administration of
RSTP Exchange
Funds**

TAMC did not adequately administer and comply with Agreement requirements for the use of RSTP exchange funds. As noted in Finding 1, TAMC did not have documented processes to administer and allocate RSTP exchange funds to its member agencies. Additionally, TAMC inappropriately loaned RSTP funds, lacked contracts with its member agencies that request reimbursement of RSTP funds, lacked a timely use of funds process and used the interest earned on RSTP fund balances for expenditures that may not be allowable project uses.

Specifically, we found the following:

During our audit period, TAMC loaned \$1,000,000 of RSTP exchange funds to a member agency to cover cash flow problems. The funds were loaned and then repaid to TAMC. The loan of the funds to an agency experiencing cash flow difficulties is not in compliance with the RSTP Agreement and places TAMC at risk of a loss of funds if the member agency is unable to repay the loan. Through review of TAMC Board and staff documents, we noted on the Board minutes that the Board had approved loans of RSTP funds two other times in the past. (For criteria, see Attachment III, Finding 4, 4a-4b.)

TAMC did not enter into contracts with its member agencies for the reimbursements of RSTP funds. The lack of contractual documents between TAMC and its member agencies detailing the RSTP requirements and other fiscal provisions necessary for compliance with State and federal regulations places TAMC at risk for incurring ineligible costs. (For criteria, see Attachment III, Finding 1, 1a.)

TAMC deposits its yearly apportionment of RSTP exchange funds in an interest bearing account held at the County of Monterey. TAMC maintains a large balance of unused RSTP funds on a yearly basis and risks a reduction in future allocations if a timely use of funds process is not implemented.

TAMC uses the interest earned on the principle balance of RSTP funds for activities that may not be RSTP allowable uses. We noted that the interest was used to fund activities such as legislative advocacy, annual reports for area households, public outreach meetings, traffic counts throughout the county, and a study for a regional development impact fee. RSTP funds and any interest accrued are to be used for allowable RSTP projects within TAMC's region. Additionally, legislative advocacy is often unallowable for reimbursement from any State or

**Finding 4 –
(Continued)**

federal funds if the activity is related to lobbying. (For criteria, see Attachment III, Finding 4, 4a-4c.)

Recommendation

TAMC should take the following actions:

- Discontinue the practice of loaning RSTP funds to other member agencies.
- Execute contracts with member agencies that have been apportioned RSTP funds. Ensure all appropriate RSTP requirements and fiscal provisions are included in the contracts.
- Work with the Division of Local Assistance to ensure timely and appropriate use of RSTP funds including any interest earned.

Caltrans Division of Local Assistance should prepare an action plan addressing the audit recommendations.

TAMC Response

TAMC disputes Finding 4 of the draft audit regarding administration of the Regional Surface Transportation Program. The Agency maintains detailed records on the RSTP program, was saving funds to pay for a major construction project that is currently underway, and secured its RSTP loan to Monterey-Salinas Transit with Local Transportation Funds that it passes through the Monterey-Salinas Transit on a quarterly basis. However, as part of TAMC's continuous efforts to refine and improve procedures, TAMC will update TAMC's RSTP policies, enter into contracts with RSTP grant recipients and cease making loans to member agencies. See Attachment V for TAMC's full response.

**Auditor's Analysis
to TAMC Response**

We deleted the portion of the finding and recommendation related to implementing a better tracking system as TAMC provided in its response the RSTP project tracking spreadsheet that was in use during the audit period. While the RSTP Agreement is silent in regard to the appropriateness of loaning funds, the Agreement requires TAMC to allocate funds only for those projects authorized under Article XIX of the California State Constitution, which does not include the loaning of funds. Therefore, the other issues identified in the finding remain.

**Finding 5 -
Improper Billing
Processes**

We identified weaknesses with TAMC's billing processes. TAMC's billings to Caltrans and the Agency for Monterey Bay Area of Governments (AMBAG) were improperly prepared, did not include adequate information and support for costs billed and were not in compliance with Caltrans Agreements. TAMC risks delayed reimbursements and/or unreimbursed costs when billings are not properly prepared and supported. Specifically, we found the following:

**Finding 5 –
(Continued)**

Billings to Caltrans

TAMC's labor and related fringe benefits included on the billings to Caltrans did not tie to the financial management system for the period reported on the billings. The billings to Caltrans state that the costs billed are for specific periods of work performed and expenses incurred. However, we found that the source documents (timesheets and payroll register) supporting the costs for the period identified on the billings did not agree with the costs billed. The labor costs captured for the development of the billings were based on hours associated to pay dates versus the actual hours worked in the month represented on the billings. TAMC does not use a monthly cut-off when preparing the billings to Caltrans and consistently indicated the wrong period when the costs were incurred. The misstated billings result in the labor costs and associated fringe benefits being overstated for some billings and understated for other billings (For criteria, see Attachment III, Finding 1, 1a and Finding 5, 5a-5d.)

Billings to AMBAG

We noted TAMC's billings to the AMBAG that are subsequently reimbursed by Caltrans are prepared based on budgeted costs rather than based on actual costs incurred. TAMC billed federal planning expenditures to AMBAG (federal reimbursement), by dividing the approved TAMC budget amounts for specific Work Elements included in AMBAG's Overall Work Plan by four. At the end of each quarter TAMC billed AMBAG the sum of one-fourth of the approved Work Elements budgets rather than preparing the billing based on the actual expenditures incurred per Work Element for the quarter. The 2003 Memorandum of Understanding between TAMC, AMBAG, Santa Cruz County Regional Transportation Agency and Caltrans requires that reimbursements be based on actual costs incurred. Therefore, TAMC was required to prepare the billings based on actual costs instead of based on a percentage of the budget. We performed tests on a selected sample to determine whether TAMC could support the expenditures of planning funds billed to AMBAG and found that TAMC had support for actual costs incurred that equaled or exceeded the billings to AMBAG. Additionally, we found that costs incurred in excess of the costs billed to AMBAG were billed directly to Caltrans through the TAMC State Overall Work Plan funded with Rural Planning Assistance funds. (For criteria, see Attachment III, Finding 1, 1a, Finding 5, 5a, and 5c-5d.)

Inadequate Information on Billing

TAMC's billings, in general, did not provide a description of the activities performed or a breakdown of the expenditures incurred that would provide AMBAG or Caltrans adequate information to determine the allowability of costs billed. It is TAMC's responsibility to ensure

**Finding 5 –
(Continued)**

only allowable costs are included on the billings however, providing proper descriptions and breakdowns of expenditures allows funding agencies to appropriately perform their review and approval of billed costs. (For criteria, see Attachment III, Finding 1, 1a, and Finding 5, 5d.)

Recommendation

TAMC should take the following actions:

- Prepare the billings to Caltrans based on actual labor hours worked in a specific month and ensure costs tie to the financial management system between the costs included on the billings and the source documentation supporting the same costs.
- Implement new procedures for the AMBAG billings to be prepared based on actual costs incurred and ensure the billings and source documentation provide for an adequate audit trail.
- Ensure billings to AMBAG and Caltrans include only allowable costs for allowable activities in accordance with the terms of the Agreements.
- Ensure billings to AMBAG and Caltrans include descriptions of activities performed and a breakdown of the costs incurred.

Caltrans should prepare an action plan addressing the audit recommendations.

TAMC Response

TAMC disputes all of the assertions in draft Finding 5 and believes that the recommended actions are not necessary. TAMC has always worked and continues to work closely with both Caltrans and the Association of Monterey Bay Area Governments to provide any information requested in order to be in compliance with Agreements and to obtain reimbursements on a timely basis. That said, substantially more back up information is now provided to AMBAG since the period audited, evidence of which is available upon request. With regards to Compensated Time Off, TAMC requests that Caltrans review its 2005 audit findings and decide whether or not to recommend a new method for CTO calculations, which TAMC will utilize. See Attachment V for the full TAMC response.

**Auditor's Analysis
of TAMC Response**

Based on our analysis of the response we deleted the portion of the finding and recommendation related to the CTO as TAMC's methodology is acceptable. The other issues identified in the finding remain.

We disagree with TAMC's position that the current methodology for billings to Caltrans followed the same methodology explained during the Caltrans audit of TAMC's Indirect Cost Allocation Plan (ICAP FY 2004-05) on March 28, 2005. The subject matter identified in the FY 2004-05 ICAP audit is not the same issue that was identified during the current engagement. The issue in the FY 2004-05 ICAP audit was related to the fluctuation of the hourly rates billed to Caltrans which is different from the current issue of billings and paycheck cut-off mismatching.

**Auditor's Analysis
(Continued)**

Additionally, the TAMC response states that TAMC has implemented new procedures for billings and processes for providing supporting documentation to Caltrans and AMBAG after the period covered by the audit. However, the new procedures were not audited as the procedures were implemented for costs incurred after the audit period.

Audit Team

Zilan Chen, Chief, External Audits – Local Governments
Teresa Greisen, Audit Manager
Carvin Seals Jr., Auditor
Riyad Hamdan, Auditor

ATTACHMENT I
 INCURRED COST AUDIT OF TRANSPORTATION AGENCY FOR MONTEREY COUNTY
 LIST OF AUDITED AGREEMENTS

Federal/State Project Number	Agreement Number	Project Name/Description	Agreement Amount	Invoice Number	Invoice Amount	Federal/ State Reimbursement Rate	Paid by Caltrans within Original Audit Period	Paid by Caltrans Outside Original Audit Period *	Total Paid by Caltrans
050078-01 & A1, 050078-03 & A1-A4, 050078-05 & A1-A6	64A0078 A01	Commuter Rail Extension to Monterey County	\$ 12,695,000	02	\$ 152,490	100.00%	\$ 152,490	\$ 9,044,042	\$ 9,196,532
OWP MMON (11)	74A0131	State Overall Work Program	\$ 395,000	11	\$ 131,883	100.00%	\$ 131,883	\$ -	\$ 131,883
DEMO9L-6143(045)	05-6143R	Beach Range Road	\$ 281,700	03 - 06	\$ 94,240	100.00%	\$ 94,240	\$ 14,798	\$ 109,038
CML-6143(032)	05-6143R	Carmel Hill Project	\$ 737,604	N/A	\$ -	88.53%	\$ -	\$ 252,005	\$ 252,005
X11-6143(048)	X11-6143(048)	RSTP Exchange	\$ 4,721,239	Yearly Advancement	\$ 4,721,239	100.00%	\$ 4,721,239	\$ -	\$ 4,721,239
		TAMC's Billings to AMBAG	\$ 278,329	22	\$ 69,582	100.00%	\$ 69,582	\$ -	\$ 69,582
Total Federal & State					<u>\$ 5,169,434</u>		<u>\$ 5,169,434</u>	<u>\$ 9,310,844</u>	<u>\$ 14,480,278</u>

Note:

* Relates to actual payments for the four procurements.

**ATTACHMENT II
 INCURRED COST AUDIT OF TRANSPORTATION AGENCY FOR MONTEREY COUNTY
 QUESTIONED COSTS BY AGREEMENTS THROUGH 5/31/13**

Federal/State Project Number	Agreement Number	Project Name/Description	Consultant Contracts	Consultant Contract Amount	Period Costs Incurred	Questioned Costs Within Audit Period	Questioned Costs Outside Audit Period	Total Questioned Costs Paid by Caltrans	Note
050078-01 & A1, 050078-03 & A1-A4, 050078-05 & A1-A6	64A0078 A01	Commuter Rail Extension to Monterey County	Parsons	\$ 8,966,120	3/28/02 - 05/31/13	\$ 121,681	\$ 8,689,009	\$ 8,810,690	1
			Harris & Associates	\$ 512,000	10/11/10 - 5/31/13	\$ 27,767	\$ 355,032	\$ 382,799	1
DEMO9L-6143(045)	05-6143R	Beach Range Road	Harris & Associates	\$ 14,805	12/8/10 - 1/6/12	\$ -	\$ 14,798	\$ 14,798	1
CML-6143(032)	05-6143R	Carmel Hill Project	Harris & Associates	\$ 237,016	2/22/10 - 1/6/12	\$ -	\$ 252,005	\$ 252,005	1
Total Consultant Contracts				<u>\$ 9,729,941</u>		<u>\$ 149,448</u>	<u>\$ 9,310,844</u>		
Total Questioned Costs								<u>\$ 9,460,292</u>	

Note:
1 - Questioned costs relate to finding 2.

ATTACHMENT III AUDIT CRITERIA

Finding 1

- 1a. 49 CFR, Part 18.20(b)(3) states, *“Internal Control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.”*
- 1b. 2 CFR 225, Appendix A Section A.2.a, states, (1) *“governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices, and (2) ...assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.”*

Finding 2

- 2a. The Federal Master Agreement 05-6143R, State Master Agreement 64A0078 A01, and Master Fund Transfer Agreement 74A0131 states, in general, that *Administering Agency agrees to comply with Federal procedures in accordance with Office of Management and Budget Circular A-87, Cost Principles for State, Local and Tribal Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.*
- 2b. 49 CFR Part 18.36(b)(9) states, *“Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following rationale: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.”*
- 2c. 49 CFR Part 18.36 (c)(1) states, in part, *“All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36...”*
- 2d. 49 CFR Part 18.36 (c)(3) states, in part, *“Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations: (i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured...and (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”*
- 2e. 49 CFR Part 18.36(c)(4) states, *“Grantees and subgrantees will ensure that all prequalified list of persons, firms, or products which are used in acquiring goods and service are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.”*
- 2f. 49 CFR Part 18.36(d)(3)(i) states, in part, *“Requests for proposals will be publicized and identify all evaluation factors and their relative importance...”*

ATTACHMENT III AUDIT CRITERIA

- 2g. 49 CFR Part 18.36(f) states, in part, *“Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals... A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders...”*
- 2h. 49 CFR Part 18.36 (b)(3) states, in part, *“Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award...”*
- 2i. Caltrans Local Assistance Procedures Manual, Chapter 10, Section 10.2 states, in part *“... An independent cost estimate is needed to ensure that consultant services are obtained at a fair and reasonable price. ... The estimate must include a break-down of (1) Direct labor costs, (2) Indirect costs, (3) General and administrative cost, (4) Other direct costs, (5) Sub-consultant costs and (6) Net fee ...”*

Finding 3

- 3a. 23 CFR, Part 635.120(e) states, in part, *“The State Transportation Department shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order...”* In recent review/audit reports issued by FHWA and the Office of Inspector General both cite the above criteria when cost estimates are lacking in CCO files.
- 3b. The Federal Master Agreement 05-6143R states in part, *“Any subcontract entered into by Administering Agency as a result of this Agreement shall contain all the provisions of Article IV, Fiscal Provisions, and this Article V, Audits, Third Party Contracting Records Retention and Reports, ...”*
- 3c. 49 CFR, Part 18.36(b)(2) states, *“Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”*
- 3d. 49 CFR, Part 18.36(i) states, in part, *“A grantee’s and subgrantee’s contracts must contain provisions in paragraph (i) of this section... (10) Access by the grantee ... to books, documents, papers and records...” (11) Retention of all required records for three years after grantees...make final payments and all other pending matters are closed...”*

ATTACHMENT III AUDIT CRITERIA

- 3e. 48 CFR, Part 31.205-7(a) and (b) states, in part, *“Contingency, ...means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time. Costs for contingencies are generally unallowable...”*
- 3f. 2 CFR, Part 225, Appendix B, Section 9, Contingency provision, states in part, *“Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty ... are unallowable. ...”*
- 3g. 49 CFR, Part 18.20(b)(6) states, *“Source Documentation. Accounting records must be supported by such documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.”*
- 3h. 48 CFR, Chapter 1, Part 31.204(a) states, *“Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowed under 31.202 (direct Costs).”*

Finding 4

- 4a. TAMC’s Agreement No. X11-6143(048) Section 4 states, *“RTPA agrees to allocate all of these funds only for those projects (a) implemented by cities, counties, and other agencies as are authorized under Article XIX of the California State Constitution, in accordance with requirement of Section 182.6(d)(1) of the Streets and Highways Code.”* Section 9, Cost Principles (A) states, *“RTPA agrees to comply with, and require all project sponsors to comply with, Office of Management and Budget Circular A-87, Cost Principles for State and Local government, etc...”*
- 4b. Title 23 of the United States Code, Section § 133. Surface transportation program, (b) ELIGIBLE PROJECTS, states, in general, *A State may obligate funds apportioned to it under section 104(b)(3) for the surface transportation program only for the following: (1) Construction, reconstruction, rehabilitation... (2) Capital costs for transit projects eligible... (3) Carpool projects... (4) Highway and transit safety infrastructure improvements and programs... (5) Highway and transit research and development and technology transfer programs... (6) Capital and operating costs for traffic monitoring, management, and control facilities and programs. (7) Surface transportation planning programs.*
- 4c. 2 CFR Part 225, Appendix B, Section 24(b) Executive lobbying costs, states, *“costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the Executive Branch of the Federal Government to give consideration or to act regarding a sponsored agreement or a regulatory matter are unallowable.”*

Finding 5

- 5a. TAMC’s Master Fund Transfer Agreement No. 74A0131, Article III, Section 3.B states, *“RTPA shall establish and maintain, and shall require that its subrecipients, contractors and subcontractors shall establish and maintain, an accounting system conforming to Generally*

ATTACHMENT III AUDIT CRITERIA

Accepted Accounting Principles (GAAP) to support Requests for Reimbursement which segregate and accumulate the costs of work elements by line item and produce Quarterly Reports which clearly identify reimbursable costs and other expenditures by OWP work elements.” Article II, (1) states, “Reimbursements under this MFTA will be allowed if based upon actual costs expended and supported by RTPA’s accounting system.”

5b. 2 CFR Part 225 Appendix B, (8) (d) states, in part, “...the cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job... are allowable if: they are provided under established written leave policies; the costs are equitably allocated to all related activities, including Federal awards; and, the accounting basis selected for cost each type of leave is consistently followed by the government unit.”

5c. 2 CFR, Part 225 Appendix A, B.9 states, “ ‘Cost’ means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.”

5d. 49 CFR, Part 18.20(b)(1) states, “Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.”

ATTACHMENT IV
 INCURRED COST AUDIT OF TRANSPORTATION AGENCY FOR MONTEREY COUNTY
 LIST OF EXCEPTIONS APPLICABLE TO PROCUREMENTS AND CONTRACTS IN FINDING 2 AND 3

Project Name:	Carmel Hill Project	Beach Range Project	Commuter Rail Project		
Project Code:	CML-6143(032)	DEMO9L-6143(045)	050078-01 &A1, 050078-03 &A1-A4, 050078-05 & A1-A6		
Caltrans Division Providing Funding for Project:	Division of Local Assistance	Division of Local Assistance	Division of Mass Transportation	Division of Mass Transportation	
Consultant Awarded the Contract	Harris & Associates	Harris & Associates *	Harris & Associates	Parsons & Associates	
Type of Services	Construction Management	Contract Management	Value Engineering	Phase one project development	
Fund Type	Federal	Federal	State	State	
Term of Contract	Original Contract 1st Amendment 2nd Amendment 3rd Amendment	12/14/2009 - 12/31/2010 No Amendment 1 -----> ----->	- - 9/27/2010 - 3/31/2011 5/18/2011-9/30/2011	9/27/2010 - 12/31/2010 12/3/2010-12/31/2011 12/15/2011-12/31/2012	3/28/2002 - No end date 12 Amendments added over a ten year period, all with no end date
Executed Contract Amount	\$237,016	\$0	\$97,000	\$974,900	
Dollars Added through Amendments	\$0	\$14,805	\$415,000	\$7,991,220	
Total Contract Amount	\$237,016	\$14,805	\$512,000	\$8,966,120	
Questioned Costs billed to Caltrans through May 31, 2013:	\$252,005	\$14,798	\$382,799	\$8,810,690	
Finding 2					
Prepared an independent cost estimate prior to procuring the consultants. 49 CFR 18.36 (b)(9)	No	No	No	No	
Prepared a RFQ for the Project. 49 CFR 18.36(c)(3)	No	No	No	Yes	
Advertised/publicized the RFQ. 49 CFR 18.36(d)(3)(i)	No	No	No	No	
List the relative importance of each evaluation factor in the RFQ. 49 CFR 18.36(b)(9)	No	No	No	No	
Performed and documented the evaluation of the consultant proposals to support the consultant selected. 49 CFR 18.36(b)(9)	No	No	No	No	
Amended the original executed contract. 49 CFR 18.36 (f)(l)	2 amendments	* This Project was added to the scope of work of the Carmel Hill Project as an amendment.	3 amendments	12 amendments	
Performed a cost analysis to determine that proposed costs are reasonable on Amendments. 49 CFR 18.36 (f)(1)	No	No	No	No	
Paid the contractor in excess of the contracted amount.	Yes	No	No	No	

ATTACHMENT IV.1
INCURRED COST AUDIT OF TRANSPORTATION AGENCY FOR MONTEREY COUNTY
LIST OF EXCEPTIONS APPLICABLE TO PROCUREMENTS AND CONTRACTS IN FINDING 2 AND 3

Project Name:	Carmel Hill Project	Beach Range Project	Commuter Rail Project	
Project Code:	CML-6143(032)	DEMO9L-6143(045)	050078-01 & A1, 050078-03 & A1-A4, 050078-05 & A1-A6	
Caltrans Division Providing Funding for Project:	Division of Local Assistance	Division of Local Assistance	Division of Mass Transportation	Division of Mass Transportation
Consultant Awarded the Contract	Harris & Associates	Harris & Associates *	Harris & Associates	Parsons & Associates
Type of Services	Construction Management	Contract Management	Value Engineering	Phase one project development
Fund Type	Federal	Federal	State	State
Finding 3				
<i>Contract included the following required language:</i>				
- Record Retention Clause	Yes	Yes	Yes	Yes
- Access to records / Audit by FHWA and Caltrans	No	No	No	Yes
- Fiscal Provisions (48 CFR, Ch. 1, Part 31)	Yes , 1	Yes , 1	No	Yes
- Fiscal Provisions (49 CFR, Part 18)	Yes , 1	Yes , 1	No	Yes
- Travel reimbursement limited to State DPA rates	Yes , 1	Yes , 1	No	Yes
- Method of Payment stated (ex. Actual costs plus fixed fee)	No	No	No	Yes
- Cost Proposal included Contingency	Yes	No	Yes	No
- Cost Proposal included Mark-up on Subconsultants costs	No	No	Yes	No

Notes:

1 - Does not indicate subconsultants must comply, only the consultant.



Regional Transportation Planning Agency • Congestion Management Planning
Local Transportation Commission • Monterey County Service Authority for Freeways & Expressways

October 15, 2013

Zilan Chen
Chief External Audits – Local Governments
Audits and Investigations
California Department of Transportation
P.O. Box 942874, MS – 2
Sacramento, CA 94274-001

**RE: Response to Draft *Incurred Cost Audit Report for the
Transportation Agency for Monterey County, August 2013***

Dear Ms. Chen:

Enclosed please find our detailed response to your *draft Incurred Cost Audit Report for the Transportation Agency for Monterey County* dated August 2013. We appreciate your role in assuring that we follow the state and federal requirements for the use of such funds.

We believe that we have complied with the intent of the law and oversight regulations, and have assured that taxpayer dollars were expended fairly on eligible expenses. That said, we acknowledge that we can better organize our procurement records and expand upon the documentation in our consultant selection files, and are in the process of doing so. In some cases, while we did not have specific details of compliance, we conducted ourselves in a manner that respected the state and federal requirements and sought review and guidance from Caltrans Local Assistance or Mass Transportation throughout the consultant selection and grant management process. Certain circumstances required us to take action efficiently in order to meet state and federal deadlines and project delivery requirements. In addition, there are several findings that we dispute, particularly with regards to the accounting and project management technical expertise of our staff, and we have provided additional narrative and documentation as evidence.

Moving forward, in the spirit of continuous improvement, we accept your recommendations to update our policies and procedures in several areas. We will also take this opportunity to provide additional training to our staff to assure that all contract administrators are fully educated on the details.

In conclusion, I would like to request the opportunity for our Agency to review and comment on the final report prior to its issuance. We are able to provide an electronic version of the response if needed for the final report. Thank you for your ongoing coordination with us.

Sincerely,

A handwritten signature in black ink, appearing to read "Debra L. Hale", is written over a horizontal line.

Debra L. Hale
Executive Director

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**EXECUTIVE SUMMARY:
TAMC RESPONSE TO CALTRANS INCURRED COST AUDIT**

Overview

TAMC staff has reviewed the *draft Incurred Cost Audit Report for the Transportation Agency for Monterey County* dated August 2013 and has prepared a thorough response to the findings.

The Transportation Agency for Monterey County (TAMC) takes the State and Federal requirements for the use of its funds seriously as a part of its duties to plan, fund and deliver regional transportation projects. TAMC has always worked closely with the Caltrans District Local Assistance office and Mass Transportation representatives to comply with the intent of the law and oversight regulations. Caltrans may be assured that taxpayer dollars were expended fairly, and on eligible expenses.

In the spirit of continuous improvement, wherever possible, TAMC will update its policies, procedures and contract language to respond to the draft Audit recommendations, with a new emphasis on documentation of TAMC's actions. That said, there are many findings that TAMC disputes, and TAMC asks that the final audit remove certain findings, because TAMC believes them inaccurate. Below is a summary of responses to the draft Audit.

Finding 1

TAMC disputes draft Finding 1 that asserts a deficiency of adequate financial, procurement, project management, construction management and Regional Surface Transportation Program policies and procedures. Such policies have been adopted and are being followed. TAMC does, however, agree that updating and reorganizing TAMC's policies and procedures to be easier to reference would be beneficial and TAMC will take such action. Furthermore, TAMC supports the knowledge and expertise of its staff, and strongly disputes the statements questioning staff understanding of accounting policies and consultant work. TAMC asks that such statements be removed from the final report.

Finding 2

TAMC disputes the proposed Finding 2 concerning procurement of the four consultant contracts identified. TAMC has worked in good faith with Caltrans, including its Local Assistance office, in carrying out its important mission and protecting public dollars. TAMC submits that the funds expended on these contracts have been critical to the delivery or development of the projects in question, and that no return of funds to the Federal Highway Administration or the Caltrans Division of Mass Transportation is warranted. However, TAMC does agree that it has not always maintained the best documentation of its efforts to comply with State and Federal regulations and is actively taking steps to rectify this. As noted earlier, TAMC is also working to consolidate, update and clarify its procedures and anticipates further action in that area in the first part of 2014. TAMC is also working to provide more systematic training of all staff.

Finding 3

TAMC disputes draft Finding 3 and believes that it has adequate contract administration procedures. That said, TAMC acknowledges that systems and procedures can always be improved upon and will revise certain contractual language to clarify its compliance with required provisions and procedures and will continue to provide training to staff with respect to contractual matters.

Finding 4

TAMC disputes draft Finding 4 of the draft Audit regarding administration of the Regional Surface Transportation Program (RSTP). The Agency maintains detailed records on the RSTP program, was saving funds to pay for a major construction project that is currently underway, and secured its RSTP loan to Monterey-Salinas Transit with Local Transportation Funds that it passes through to MST on a quarterly basis. However, as part of TAMC's continuous efforts to refine and improve procedures, TAMC will update TAMC's RSTP policies, enter into contracts with RSTP grant recipients and cease making loans to member agencies.

Finding 5

TAMC disputes all of the assertions in draft Finding 5 and believes that the recommended actions are not necessary. TAMC has always worked and continues to work closely with both Caltrans and the Association of Monterey Bay Area Governments to provide any information requested in order to be in compliance with Agreements and to obtain reimbursements on a timely basis. That said, substantially more back up information is now provided to AMBAG since the period audited, evidence of which is available upon request. With regards to Compensated Time Off, TAMC requests that Caltrans review its 2005 audit findings and decide whether or not to recommend a new method for CTO calculations, which TAMC will utilize.

Conclusion

In conclusion, TAMC believes that TAMC has complied with the intent of the law and oversight regulations, and has assured that taxpayer dollars were expended fairly on eligible expenses. Moving forward, TAMC is, however, in the process of updating policies and procedures in light of the draft Audit recommendations to assure that TAMC is being as diligent as possible. TAMC looks forward to working with Caltrans as TAMC implements these improvements.

ATTACHMENTS

Finding 1 – Attachment 1 –Administrative Services Manual, Purchasing of Services policies

Finding 2 – Attachment 1 – Request for Qualifications, Commuter Rail Service

Finding 2 – Attachment 2 – Letter from M. Twomey, Caltrans Audit Manager

Finding 2 – Attachment 3 – Notice to Proceed from W. Allen to Parsons

Finding 4 – Attachment 1 – RSTP Programmed Projects tracking sheet

Finding 5 – Attachment 1 – TAMC response to 2005 audit

FINDING 1 – LACK OF POLICIES AND PROCEDURES

Overview

The draft Audit contends that TAMC “lacks adequate policies and procedures” on an agency-wide basis “to ensure TAMC assets are safeguarded and are in compliance with State and federal regulations.” TAMC believes that it carefully reviews and safeguards its assets, but acknowledges that it does not maintain a centralized repository of such policies and procedures.

1. With respect to the first bullet point, TAMC has access to, and uses, a number of materials that govern financial management, including materials that are located on the internet, as well as policy documents generally available to appropriate staff. TAMC does acknowledge, however, that it has not compiled all this material into one document, although TAMC is unaware of any legal or other requirement to do so.
2. With respect to the second bullet point, concerning procurement policies and procedures, TAMC has, and has used, among other materials, on-line versions of Caltrans’ Local Assistance Procedures Manual. Nevertheless, TAMC recognizes that a better practice could be to prepare and adopt a comprehensive manual.
3. The third, fourth and fifth bullet points all point to a similar “lack” of a specific document encompassing various policies and procedures, notwithstanding the fact that TAMC staff has utilized information provided by Caltrans, among others, in administering its consultant and construction contracts, as well as RSTP funds.

Response to Findings

TAMC’s responses to the draft Audit’s proposed recommendations with respect to Finding 1 are as follows:

1. The draft Audit recommends that TAMC develop a written accounting manual detailing all policies and procedures governing the financial management system that is approved by TAMC’s Board of Directors (Board). TAMC does have and follow standard accounting operating procedures and policies, such as Governmental Accounting Standards Board (GASB) standards. However, since these procedures may not be documented in one place, TAMC accepts the recommendation and will review and develop a written accounting manual and have it approved by the Board.
2. The draft Audit recommends that TAMC review and revise the procurement and contract management policies and procedures to ensure compliance with all applicable State and Federal regulations. TAMC does currently have procurement and contract management policies and procedures (Finding 1, Attachment 1). Prior to the draft Audit, TAMC started working with the Association of Monterey Bay Area Governments and Rural Counties Task Force in an effort to update and improve the existing policies. However, TAMC accepts the recommendation and will review and revise the existing procurement and contract management policies and procedures to ensure compliance with applicable State and Federal regulations and have it approved by the Board.

3. The draft Audit recommends that TAMC develop policies and procedures over the administration of construction projects including proper Contract Change Order (CCO) practices to ensure compliance with all applicable State and Federal regulations. TAMC does currently have policies and procedures over the administration of construction projects. Also, the Agency has worked very closely with the appropriate Caltrans representatives in the administration of construction projects, including the review and approval of CCOs. However, TAMC accepts the recommendation and will review and revise the existing policies and procedures of the administration of construction projects including proper CCO practices to ensure compliance with applicable State and Federal regulations and have it approved by the Board.
4. The draft Audit recommends that TAMC develop written policies and procedures to properly manage and administer the RSTP Exchange Funds. TAMC's policies and procedures to manage and administer the RSTP Exchange Funds are currently documented through a collection of staff reports, grant application procedures, copies of Federal and State regulations, and communications with grantee agencies that date back to the inception of the RSTP Exchange program. TAMC accepts the draft Audit recommendation and will develop a written manual coordinating all policies and procedures to manage and administer the RSTP Exchange Funds.
5. The draft Audit recommends that TAMC ensure that staff are trained on and comply with all revised policies and procedures. TAMC accepts this recommendation and will continue to train staff on all revised policies and procedures as they are updated to better ensure compliance therewith.
6. The draft Audit posits that TAMC accounting staff does not fully understand the work performed by consultants, including evaluating whether methodologies used are reasonable and acceptable for tracking labor costs to be billed to Caltrans. TAMC disputes this finding. Accounting staff does understand the work performed by consultants, including evaluating whether methodologies used are reasonable and acceptable for tracking labor costs to be billed to Caltrans. TAMC staff gives direction to and regularly oversees the consultants' work to ensure compliance with various agreements.

TAMC requests that this finding and recommendation be deleted from the final report.

Finding 1 – Conclusions

In conclusion, TAMC disputes draft Finding 1 that asserts a deficiency of adequate financial, procurement, project management, construction management and Regional Surface Transportation Program policies and procedures. Such policies have been adopted and are being followed. TAMC does, however, agree that updating and reorganizing policies and procedures to be easier to reference would be beneficial and TAMC will take such action. Furthermore, TAMC supports the knowledge and expertise of its staff, and strongly disputes the statements questioning staff understanding of accounting policies and consultant work. TAMC asks that such statements be removed from the final report.

FINDING 2 – IMPROPER PROCUREMENT PRACTICES

Overview

TAMC disputes Finding 2 of the draft Audit, asserting improper Procurement Practices. TAMC particularly disputes the questioning of any funds expended for the four consultant contracts identified in the draft Audit. However, as part of its continuous efforts to refine and improve procedures, TAMC can accept many of the recommendations towards improving procedures.

Parsons Transportation Group – Commuter Rail Project

1. TAMC disputes the contention that it improperly procured the Parsons Transportation Group (“Parsons”) for the Commuter Rail Project. TAMC used an open and competitive qualifications-based selection process to solicit and eventually contract with Parsons. It should be noted that Caltrans District 5 has representatives on both TAMC’s Rail Policy Committee and the TAMC Board, and the Request for Qualifications (RFQ), contract, and all amendments were reviewed and approved in open, public meetings of those bodies. In addition, staff from Caltrans District 5 Regional Planning and Caltrans Division of Mass Transportation reviewed and approved the related funding agreements, program supplements and invoices for this project.

For the original solicitation of consultants, the RFQ referred to “project approvals, environmental review and preliminary design.” A copy of the RFQ is attached (Finding 2, Attachment 1). As such, the scope of the contract includes environmental assessment, under both Federal and State law, which was made much more complicated by negotiations with the Federal Transit Administration, and which contributed to the length and expense of the contract. Records held by TAMC, including TAMC minutes, staff reports and staff notes, document that the RFQ was approved in June 2001, that a Pre-Statement of Qualifications Conference was held in August, and 15 potential respondents attended. This strong showing should be considered evidence of the effectiveness of the advertisement and circulation of the RFQ. A review team made up of representatives from TAMC, Caltrans, Monterey County Redevelopment Agency, Salinas Redevelopment Agency and the City of Watsonville held interviews of the top four proposers. The proposers were ranked and negotiations were initiated with the top respondent, Parsons.

2. The draft audit suggests that there were deficiencies in the Parsons contract. Note that prior to any work being performed under the Parsons contract, it was subjected to a Caltrans Pre-Award Audit. (See February 23, 2002 letter from Maura F. Twomey, Audit Manager, Department of Transportation, to David Delfino, Finance Officer, TAMC, Finding 2, Attachment 2) The Audit response did find one deficiency, which was corrected to Caltrans’ satisfaction. (See March 20, 2002 Notice to Proceed (NTP) memo from Walt Allen, Senior Transportation Planner, TAMC, to Bob Scales, PTG, Finding 2, Attachment 3). The Scope of Services for the original contract included an Environmental Impact Report for the overall project, and contemplated additional work, including “preliminary engineering, PS&E and bidding phase assistance.”

3. The draft audit claims that “all 12 amendments were non-competitive procurements as the scope of work was changed.” TAMC disputes this contention. TAMC considers all amendments to fall generally within the course and scope of the original contract and/or were natural outgrowths. No services were purchased outside of the project – all services rendered were with the purpose of furthering the approved project goals. New sources of funding became potentially available and specific tasks needed to be modified to be able to compete to obtain such funds; the applications for State funds were successful to a great degree, although the application for a Federal Small Starts grant has not yet been successful. When amendments were processed that appeared to expand the original scope of work, “sole source justifications” were identified and accepted by the TAMC Board. Some of these justifications were based on then-recent TAMC experience with a lack of competitive bidders when an RFQ was issued for another rail project, the Monterey Branch Line. In that instance, despite a complete RFQ process, including advertising and outreach to potential proposers, only one entity submitted a bid – Parsons.

The base contract was the product of a formal process that met the standards of public contracting and amending the contract for incremental additional work was not about avoiding a new solicitation, but rather to meet a demanding project schedule, as desired by the primary funding agency, Caltrans. TAMC staff found, after consideration, that it would be in the overriding public interest to continue progress using an existing competitively selected consultant. The original contract and 12 amendments indeed met the standards of public contracting and the essence of State and Federal requirements, as described. Contract amendments were all done in good faith with the goal to save funds and steward scarce tax dollars by continuing work with a reliable and responsible contractor. The amendments parsed out design funds in order not to lose funding and in order not to lose the ability to match potential future Federal grants.

4. The draft audit states that “no cost analysis was performed to determine whether a fair and reasonable price was obtained”; TAMC disputes this contention. TAMC staff diligently reviewed the cost estimates and scopes of work for the contract and all amendments. TAMC is organized with a relatively small professional staff that relies on contracted expert services as needed, including cost estimating for complex projects.

In addition to staff diligence, the Agency also hired external consultants to confirm cost estimates. In 2002-03, TAMC utilized an independent consultant who provided cost analyses for the Commuter Rail Project. Mike Chan, of S&C Engineers, Inc., did an independent cost estimate for the project contracted engineering services. According to an invoice dated December 3, 2002, for example, one of the tasks accomplished was to “Review and comment on Parsons’ plans and estimates for Caltrain Service Extension to Salinas Service”. In 2010, TAMC staff hired a consultant, Harris & Associates, to assist staff in the project management of the project, including reviewing and verifying cost estimates. Each contract amendment was carefully and diligently analyzed and negotiated by professional staff, mindful of the previous estimates and cost experiences on other projects. There is no indication that the contracted compensation is anything but appropriate and fair. That said, TAMC acknowledges that documentation of these

independent cost estimates and staff reviews of cost proposals should be documented in the consultant contract file in the future.

5. The draft audit notes that the Parsons contract did not “specify a termination date.” TAMC acknowledges that the Parsons contract did not have a specified calendar date for termination. It should be noted, however, that the contract did have a “Term of Agreement” provision, which stated that the contract would end “when the specified Scope of Work is completed” and also contained a “termination for convenience clause,” which allowed TAMC to terminate the contract at any time with 30 days’ notice. Caltrans audits approved this language in the original contract in 2002. Finally, TAMC wishes to have acknowledged that the particular language for the term of the Parsons contract was an isolated instance, brought about by the uncertain nature of Federal and State funding issues, and that, independent of the audit, TAMC recognized that this was not a best practice and took action to terminate the Parsons contract by novation before the draft audit was released, approving Contract Amendment #13 and Novation to terminate the contract on August 28, 2013.

TAMC believes that, despite any technical shortcomings with the Parsons contract, it has received fair value for funds expended, as witnessed by the fact that today the Commuter Rail Project is now poised to move forward with the extension of rail service from San Jose through the Capitol Corridors Joint Powers Authority.

On Call/Pre-Qualified Lists

TAMC administers Federal aid programs that use Federal Highway Administration (FHWA) funds. TAMC is responsible for programming these Federal funds to local projects and monitoring project delivery. Due to limited staff resources, the TAMC member agencies requested that TAMC assist them in selecting one or more on-call/pre-qualified consultants that they may use to help them with the delivery of their Federal aid and State Transportation Improvement Program (STIP) projects. In addition, the TAMC member agencies sometimes use the pre-qualified/on-call consultant(s) to perform transportation –related work on other Federal, State and locally funded projects.

1. TAMC disputes the draft Audit’s contention that the four consultant contracts audited were improperly procured. The consultant lists utilized for the consultants identified in the Audit were developed utilizing the extensive procurement process described below.

In order to assist its member agencies, and provide a resource to use itself, TAMC currently utilizes a RFQ procurement process for establishing and utilizing consultant lists for Construction Management Services and for Engineering and Project Management services. This process was developed in close coordination with Caltrans District Local Assistance to assure that the process and contracts comply with State and Federal requirements.

The specific requirements for the program are clearly outlined in each RFQ which identifies:

- the Scope of Services required,
- Submittal requirements,
- Evaluation procedures,
- Selection process,
- sample Contract Agreement language that includes Federal and State requirements; and,
- Attachments that contain applicable State and Federal requirements.

The process is repeated every two years, and results in a list of pre-qualified consultants that is available to member agencies for their use in selecting consultants on an as-needed or what has been termed an “on-call” basis. This approach saves both time and money and maximizes member agency resources while still going through a considered procurement process. Although this process is somewhat different than the Caltrans Headquarters on-call program, this process is commonly used in cities and counties throughout California, and as noted above, was developed with the oversight of the Caltrans District Local Assistance department.

Prior to releasing the RFQ, TAMC submits it to Caltrans Local Assistance for review and approval of all elements of the RFQ and compliance with all applicable State and Federal requirements. This includes compliance with the applicable requirements of the then-current Local Assistance Program Manual. (Subsequent revisions have been made to the manual, including a total revision to Chapter 10, Consultant Selection). Once fully vetted by Caltrans Local Assistance, the RFQ is released.

A committee of representatives from the TAMC Technical Advisory Committee evaluates and ranks the Statements of Qualifications (SOQ) received from prospective consultants. The committee establishes a list of the top ranked consultants which is then recommended to the TAMC Board of directors for approval. Once the consultant list is adopted, member agencies are notified by letter of the available consultants.

2. There is no obligation or commitment by a member agency to assign any work to a consultant on the list and member agencies are not restricted to making a consultant selection through this process, as opposed to a project-specific RFQ or Request for Proposals (RFP). The RFQ identifies the required consultant services. At the point where a project may be identified, TAMC utilizes the process already performed to identify qualified consultants and then engage in a further selection process through written proposals, interviews and rankings, described in detail for each separate contract below.

Harris and Associates – Carmel Hill Project and Beach Range Road Project.

The Audit report claims that TAMC “improperly procured the consultant, Harris & Associates, for the Carmel Hill Project.” With respect to the specific bullet points identified on Attachment IV, TAMC responds as follows:

1. The first bullet claims that “no independent cost estimate was prepared prior to procuring the consultant”. TAMC disputes this contention. TAMC did perform its own analysis of costs for construction management for the Carmel Hill project: TAMC staff compared the actual construction management costs experienced in the construction of the two most recent TAMC projects in the area to the expected costs for the proposed Carmel Hill project. Both those projects had utilized an on-call consultant for construction management services and as such, TAMC staff had information relevant and comparable to the Carmel Hill project. The staff analysis included a comparison of the relative scope of services, type of staffing requirements (resident engineer/number of inspectors), number of man-hours per month, size of project (total construction cost) and duration of project (number of months requiring services), levels of pre-construction, construction and post construction services, required sub-consultants for project (i.e., geotechnical services, material testing, biological mitigation services, and public relations).

All this information allowed TAMC to develop independently, and with reasonable confidence, the appropriate level of services required for the similarly-sized Carmel Hill project and to negotiate an appropriate contract. TAMC also performed an order of magnitude comparison check of similarly-sized projects based on industry standard percentages and Caltrans guidelines. Industry standards indicated that construction management costs typically range from 8-15% for a project of this size. Caltrans typically limits construction management to 15%. Only then did TAMC staff discuss and negotiate a final contract price with the consultant.

Notwithstanding the steps taken by staff to perform an independent cost analysis for the contract, TAMC recognizes that the level of formal documentation of this analysis was limited and did not provide an easy audit trail. Accordingly, TAMC will develop improved procedures for documenting independent cost estimates for future projects.

2. The second bullet claims that no RFQ was prepared for the project. Again, TAMC disputes this contention, as construction management services for projects such as the project was part of the 2009 TAMC On-Call Consultant List for Construction Management Services. As noted elsewhere, TAMC has utilized this process for many years, with the approval of Caltrans Local Assistance. The availability of a pre-qualified/on-call list of consultants saves time and money, in that a separate RFQ is not required for each project as long as it falls into the scope of services and requirements for utilization of the consultant list. Since the Carmel Hill project did meet the requirements for use of the pre-qualified list, the consultant was selected from that list, based on qualifications. Additionally, as discussed below, the consultant selected for the Carmel Hill project was one of two consultants invited to provide written proposals, then

interviewed by a TAMC-led selection team; so that there was a competitive process used within the confines of the Pre-Qualified List.

3. The third bullet claims that the RFQ was not advertised/ publicized. Again, TAMC takes issue with this statement, as an RFQ for TAMC On-Call Consultant List for Construction Management Services was issued in 2009. TAMC follows a regular process when releasing an RFQ or RFP, depending upon the nature of the services sought. In either case, however, TAMC obtains Board approval to release an RFQ or RFP document.

TAMC advertises in the newspaper solicitations for materials or services that are procured on the basis of price to assure adequate competition. However, according to State law, engineering services are procured on the basis of qualifications, rather than price. For such services, TAMC utilizes a different, qualifications-based process, as allowed by the Local Assistance Procedures Manual. TAMC maintains a comprehensive database of engineering consultants that provide a wide range of engineering and planning services. Each consultant firm in the database includes contact information and is categorized according to the specific services that they provide. When TAMC releases an RFP/RFQ for such services, it utilizes this database to publicize the release of an RFP/RFQ to ensure that a wide range of qualified consultants are informed of the release of the RFP/RFQ. Additionally, there are independent marketing services also included in the database that publish the release of the RFP/RFQ to their members and constituents. The result is that a wider net is cast for qualified consultants than from a local newspaper ad that would only reach a limited number of firms.

TAMC also publicizes the release of the RFP/RFQ through notifications to its Technical Advisory Committee members, the American Public Works Association Monterey Bay Chapter newsletter, and electronically on the TAMC webpage. It should be noted that at the time of this particular contract, Caltrans did not require TAMC to advertise the RFQ in the newspaper. This process of publication of RFP/RFQs occurs for all solicitations, regardless of whether or not the various mailing lists were printed and documented in the individual contract file.

4. The fourth bullet claims that the RFQ did not “list the relative importance of each evaluation factor”. TAMC disputes this contention. The RFQ for consultant services includes a detailed section on the criteria to be utilized for the selection of the consultants for the pre-qualified list. The criteria list utilized in the RFQ was developed following the model list identified in the Caltrans Local Procedure Manual and was tailored to meet TAMC specific needs. At that time, Caltrans did not require that the TAMC indicate the relative values of the evaluation criteria, but only that the evaluation criteria be provided in the RFQ. TAMC did provide the review panel scoring sheets with the relative importance of each criterion, to assure that those individuals ranking the proposers acted consistently, and this information was tallied for the final ranking. Notwithstanding the technical nature of this criticism, TAMC will develop procedures to include the ranking values for the criteria in future RFQs.

5. The fifth bullet claims that evaluation of consultant proposals were not performed and documented. TAMC disputes this assertion. TAMC did perform an evaluation of the consultants for the Carmel Hill project before making a selection. TAMC reviewed the list of pre-qualified/on-call consultants to determine which firms qualifications best met the needs for this particular project. Two firms that had recent relevant experience with the key aspects of the Carmel Hill project which included bike path construction experience, underground tunnel experience, environmental sensitivity and public outreach experience were invited to submit written proposals. TAMC held interviews with both firms to fully discuss the details for the required services. Each firm was requested to provide a proposed draft scope of services, including proposed staffing, appropriate level of staffing, man-hours anticipated, method of operation, and sub-consultants to be utilized. Key factors considered in the evaluation were the familiarity of the firm with this type of work and the availability of staff within close proximity to the project. Each consultant provided a written proposal detailing their proposed services.

TAMC staff reviewed each submittal and interviewed both firms. At the conclusion of the interviews it was apparent that one firm proposed a high level of staff time to the project but had no available staff within close proximity. The other firm had a more appropriate level of staffing and had a nearby project with available staff time. TAMC selected this firm since it had the necessary experience and it was more cost effective to use the firm with nearby staffing. While staff has notes and emails documenting this effort, TAMC will develop procedures to better document the evaluation in the consultant files in the future.

6. The sixth bullet claims that no cost analysis was performed “to determine that proposed costs are reasonable on the amendments”. TAMC disputes this contention. TAMC reviewed all proposed project-related increases in costs before authorizing any amendments. As the length of the construction project extended due to increases to the project schedule, the length of required construction management services also increased. The agreed-upon compensation was based upon time and materials. TAMC staff evaluated the need to increase staffing due to the expected increase in project length, and negotiated what its engineering judgment found to be a reasonable cost increase based on the increased time and materials. However, TAMC acknowledges that better documentation of this cost analysis for contract amendments is appropriate and will document it in contract files in the future.
7. The seventh bullet claims that TAMC paid the contractor “in excess of the contracted amount.” As discussed below, TAMC amended the Harris contract for Carmel Hill work in order to quickly obtain construction management services for a similar nearby project. TAMC acknowledges that the work on this portion of the contract exceeded original estimates, albeit for legitimate reasons. TAMC staff did obtain Board approval for a \$15,000 cost increase to cover increased construction management costs for that portion of the project, but apparently failed to formally amend the contract. In retrospect, TAMC acknowledges that a formal contract amendment should have been processed, and TAMC is taking corrective action to ensure this does not happen again. It should be noted,

however, that the TAMC Board was aware of the increase in cost and did approve it, based on the recommendation of staff that had evaluated the proposed increase.

8. The draft Audit questions the validity of amendments to the original contract. TAMC disputes this contention. TAMC executed an original contract for consultant services for the Carmel Hill project which was amended twice. Amendment 1 was executed to waive insurance requirements for the public outreach sub-consultant. Amendment 2 was executed to add a minor amount of similar services for a small nearby bike trail project (Beach Range Road). Since the amount of similar services at that time was estimated to be less than \$10,000, and within the TAMC Executive Director's threshold of approval for direct procurement (without a new RFQ/RFP), and since TAMC staff had recently reviewed the construction management capabilities of the two qualified firms, it was determined to be more cost effective to include the work with the current contract that was already in place. Additionally, the second project had a construction deadline that had to be met to comply with certain grant funding requirements.

Since the construction work could not start without construction management services, the most expeditious solution was to include it with the Carmel Hill contract services. This action was reviewed and acknowledged by TAMC counsel. Subsequently, the scope of the small project was increased due to complications (regarding installation of interpretive signs and some additional road repair). This additional cost for the smaller project was added to the consultant scope. TAMC later went back to the Board to obtain approval for a \$15,000 cost increase related to the Carmel Hill project, although no formal amendment was executed. TAMC believes that its actions did not put TAMC at a competitive disadvantage for this contract, but it will assure contracts are amended to reflect additional compensation in the future. It is worth noting that the costs of the Beach Range Road work fell well below the allowable small purchases procurement limits for Federal funding of \$150,000, which allow for more expedited procurement practices.

Harris and Associates – Commuter Rail Project

1. The Audit Report contends that the contract with Harris & Associates for the Commuter Rail Project was also “improperly procured.” TAMC disputes this contention. The draft Audit Report acknowledges that TAMC used its pre-qualified list for Engineering and Project Management Services to select Harris & Associates. The report fails to acknowledge, however, that the scope of the RFQ was expressly for both engineering and project management, as is clear from a reading of the RFQ. The RFQ was issued in May 2010, and eight consultants were approved as qualified in August.

Also in August 2010, TAMC staff reviewed the pre-qualified consultant list to identify possible consultants for a contract related to the Commuter Rail Project. Both phone and in-person interviews were held with those consultants that were qualified to provide both engineering and project management services for rail projects. The interviews and discussions with possible consultants contemplated the provision of both types of services. Emails, interview notes and discussions with staff involved in the selection

process verify that the possible use of the consultant for project management services in addition to value engineering services was part of the original selection process. As such, and in keeping with an effort to conserve public dollars, while the original contract with Harris & Associates was limited to value engineering until such time as staff saw that project management services would be required, all potential consultants, as well as the interview panel and, ultimately the TAMC Board, understood that a single consultant would be performing both services.

2. The draft Audit Report also criticizes TAMC for allowing Harris & Associates to draft the scope of work for the project management services. In actuality, TAMC described for Harris the scope parameters needed, based on the Federal Transit Administration Project Management Plan requirements for Federal grant recipients, and Harris was tasked with putting the scope in writing consistent with that vision. After Harris prepared the written draft, it was the subject of extensive discussion, editing and final modification by TAMC staff before it was brought forward for consideration by the TAMC Board. In the future, TAMC will take care to generate an independent draft of the scope of work prior to discussions with consultants, and document the scope of work preparation process more thoroughly in the contract files.

Finding 2 – Conclusions

TAMC disputes the proposed Finding 2 concerning procurement of the four consultant contracts identified. TAMC has worked in good faith with Caltrans, including its Local Assistance office, in carrying out its important mission and protecting public dollars. TAMC submits that the funds expended on these contracts have been critical to the delivery or development of the projects in question, and that no return to the Federal Highway Administration or the Division of Mass Transportation is warranted. However, TAMC does agree that it has not always maintained the best documentation of its efforts to comply with State and Federal regulations and is actively taking steps to rectify this. As noted earlier, TAMC is also working to consolidate, update and clarify its procedures and anticipates further action in that area in the first part of 2014. TAMC is also working to provide more systematic training of all staff.

FINDING 3 – INADEQUATE CONTRACT ADMINISTRATION

Overall Findings

Overall, TAMC disputes Finding 3 of the draft Audit, asserting inadequate contract administration, but as part of its continuous efforts to refine and improve procedures, can accept many of the recommendations.

1. The draft Audit report claims that TAMC's project manager did not have prior experience managing construction projects and that this was the first construction project that TAMC had administered. TAMC takes exception to these two claims. TAMC provided construction contract administration at many different levels. While Todd Muck was project manager for the administration of the project, TAMC engineers were also heavily involved in the design development, environmental approval and construction management oversight of the project.

During the construction phase, the local agency engineer in charge of the construction was Hank Myers. As project engineer, Mr. Myers is a registered Civil Engineer with over forty years of experience in the field of construction and construction engineering. His experience covers a wide range of public works projects from simple bike path projects like Carmel Hill to larger projects such as bridge seismic retrofits. He has served as resident engineer himself on many projects and has managed projects utilizing consultants as resident engineer and inspector. He has extensive experience with the review and approvals of contract change orders.

On the Carmel Hill project, the consultant firm of Harris & Associates was contracted to provide construction management services. Their firm provided the resident engineer, inspectors, geotechnical and material testing services. They were responsible for contract compliance for the project. All contract change orders for the Carmel Hill were reviewed and approved by the Harris Resident Engineer (Van Horn), the TAMC Project Engineer (Myers), and the then TAMC Deputy Director (Don Bachman, a registered engineer with over 35 years of project oversight experience). The change orders were overseen by Mr. Myers.

2. The draft Audit findings claim "a lack of controls over the CCOs" (contract change orders). TAMC disagrees with this finding. Change orders come in three types. Many of the change orders were paid as "time and materials" in accordance with Caltrans Standard Specifications. Others were paid as "unit price" change orders for items for which the cost increased over the specified unit price in the contract. The rest of the construction change orders were price change orders, for which the estimated costs were reviewed by Harris prior to a recommendation for approval by TAMC, as part of the consultant duties assigned to the contracted resident engineer. Contrary to the draft Audit findings, the contract change orders were not subject to non-compliant practices, and did not involve unallowable or ineligible costs. Additionally, the project change orders were included in the final report of expenditures sent to Caltrans District Local Assistance for its review and were approved without issue.

Contract “Deficiencies”

The draft Audit claims that “three of the four consultant contracts reviewed had at least three of” a series of eight “deficiencies” identified; however, the Attachment IV matrix with respect to Finding 3 does not support such a sweeping statement. TAMC disputes these findings as follows:

1. The first bullet point “deficiency” identified is a claimed lack of a “record retention clause”. However, each of the contracts reviewed does contain such a clause. See paragraph 9 of each of the identified contracts. Furthermore, the draft Audit’s own matrix indicates “yes” for each contract in the row marked “Record Retention Clause.”
2. The second bullet point claims that the contracts “lacked language allowing access to records for audits by the Federal Highway Administration and Caltrans.” TAMC disagrees with this statement as misleading. The inference from the proposed finding is that those two entities could not audit these contracts, which TAMC disputes. While the contracts in question do not specifically name the Federal Highway Administration or Caltrans in each contract’s respective paragraph 10 (“Right to Audit at Any Time”), those provisions expressly state that TAMC officials have the right at any time to examine, monitor and audit all work performed. Should either the Federal Highway Administration or Caltrans seek to audit any part of those contracts, it could do so through TAMC. Further, paragraph 10 also refers to Government Code §8547.7, which allows the State Auditor General to audit any expenditure in excess of \$10,000. While TAMC is willing to amend its standard contractual language to clearly identify these entities, TAMC contends that those entities could have performed audits under the existing language.
3. The third bullet point claims that the contracts “lacked language requiring compliance with Title 48 CFR, Chapter I, Part 31.” Again TAMC considers this draft finding to be misleading and erroneous. The draft Audit’s own Attachment IV matrix indicates that all contracts except one Harris contract (dated September 2010) in fact had provisions requiring compliance, but claimed that compliance for two other Harris contracts was only required for the consultant and not the subcontractor. TAMC disagrees. Specific provisions requiring such compliance can be found in paragraph 4(e) (“Consultant agrees to comply with Federal procedures in accordance with 49 CFR, Part 18...””) and paragraph 18 (“Delegation of Duties; Subcontracting: Any work performed by a subcontractor shall be done in conformance with this Agreement...””).

Furthermore, all contracts, including the September 2010 Harris contract, contained the following provision: “If any part of this Agreement has been or will be funded pursuant to a grant from the Federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant’s work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.” TAMC considers an integral part of a consultant’s work under a grant to be the proper invoicing and cost accounting and, accordingly, the consultant and

(through the paragraph dealing with subcontractors) subcontractors are bound to comply with all applicable Federal and State procedures.

It should also be noted, however, that the September 2010 Harris contract for Value Engineering did not use any Federal funding. As such, TAMC disputes that 48 CFR Part 31 applied to the contract or was a required provision. Notwithstanding these disagreements with the proposed finding, TAMC is willing to amend its standard contractual language to clarify the issue.

4. The fourth bullet point claimed that the contracts “lacked language requiring compliance with Title 49 CFR, Part 18.” Again, TAMC considers this draft finding to be misleading and erroneous for the same reasons as discussed above. The draft Audit’s Attachment IV matrix again indicates that all contracts, except one Harris contract (dated September 2010), in fact had provisions requiring compliance, but claimed that compliance for two other Harris contracts was only required for the consultant and not the subcontractor. TAMC disagrees. Specific provisions requiring such compliance can be found in each contract, paragraph 4(d): “Consultant agrees that the Contract Cost Principles and Procedures, (48 CFR, Part 31) shall be used to determine the allowability of individual items of cost”, and paragraph 18: “Delegation of Duties; Subcontracting: “Any work performed by a subcontractor shall be done in conformance with this Agreement...”.

Furthermore, all contracts, including the September 2010 Harris contract, contained the following provision: “If any part of this Agreement has been or will be funded pursuant to a grant from the Federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant’s work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.” TAMC considers an integral part of a consultant’s work under a grant to be the proper invoicing and cost accounting and, accordingly, the consultant and (through the paragraph dealing with subcontractors) subcontractors are bound to comply with all applicable Federal and State procedures.

It should also be noted, however, that the September 2010 Harris contract for Value Engineering did not use any Federal funding, as conceded in the Attachment IV matrix. As such, TAMC disputes that 49 CFR Part 18 applies to the contract or was a required provision. Nevertheless, TAMC is willing to amend its standard contractual language to clarify the issue.

5. The fifth bullet point asserts that the contracts “lacked language for reimbursement of travel costs to be limited to State Department of Personnel Administration rates”, although the Attachment IV again appears to concede that this “lack” of language was (in the auditor’s opinion) largely limited to subcontractors. TAMC disputes this finding. Paragraph 4(c) of all of the Harris contracts (including the September 2010 contract) expressly stated that travel expenses were “not to exceed the State of California approved travel reimbursement rates”. The same provision is in the Parsons contract at paragraph 4(d).

6. The sixth bullet point states that the contracts “lacked a clear statement for the method of payment”. This proposed finding is subjective on its terms; TAMC believes the method(s) of payment are clear. For example, for the Harris contract relating to Carmel Hill and Beach Range, the method of payment was clearly stated as monthly invoices based upon hourly rates (see paragraph 4, “Monthly Invoices by Consultant”). Thus, costs were based upon time and materials. The same is true for the Harris contract described as “Value Engineering” and dated December 2010. As these contracts are for construction management, inspection services, and preparing a value engineering study, hourly rates and delineated costs (e.g., mileage) appears both clear and appropriate. TAMC notes that Attachment IV of the Audit did not list this as a deficiency of the Parsons contract.
7. The seventh bullet point claims that the contracts “allowed for unallowable mark-ups on sub-consultant costs.” However, reference to the matrix on Attachment IV states that the so-called “unallowable costs” were related to “cost proposals.” Whether or not any proposal for any contract did attempt to provide for sub-consultant “mark-ups,” all of the contracts reviewed contained language that clearly stated that TAMC would not pay for such mark-ups. See, e.g., September 2010 Harris Value Engineering contract at paragraph 17: “Delegation of Duties; Subcontracting: Any work performed by a subcontractor shall be done in conformance with this Agreement, and TAMC shall pay Consultant for the work but not for any markup, including subcontract management, supervision, administrative and other expenses, or reimbursable costs.” The same language is found in the Harris Beach Range contract in paragraph 18 and the Parsons contract in paragraph 16 (Amendment 9).
8. The eighth and final bullet point asserts that the contracts “allowed for unallowable contingencies.” The draft Audit Attachment IV questions only the Harris Beach Range Project contract and the Harris Value Engineering contract. TAMC again disputes this proposed finding. TAMC has found nothing in any of the contracts in question that contains language authorizing unallowable costs, including “unallowable contingencies”.

As noted above, the TAMC contracts identified in this finding each contain language stating: “If any part of this Agreement has been or will be funded pursuant to a grant from the Federal or State government in which TAMC is the grantee, Consultant shall comply with all provisions of such grant applicable to Consultant’s work hereunder, and said provisions shall be deemed a part of this Agreement as though fully set forth herein.” To the extent that any particular contingency cost is disallowed under Federal regulations, the language from the TAMC contract(s) provides a sufficient basis to disallow such cost.

TAMC also notes, however, that the portion of the Federal regulations referenced by the draft Audit is misleading in its selective quotation. The full statement of this regulation is set forth below. The portions emphasized in this recitation support TAMC’s understanding that “contingencies” are not appropriate or allowable for “historical costing purposes,” but that contingencies for future costs are, in fact, allowable, if they are separately stated and negotiated.

48 CFR Part 31.205-7 states in full:

31.205-7 Contingencies.

- (a) “Contingency,” as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.
- (b) **Costs for contingencies are generally unallowable for historical costing purposes** because such costing deals with costs incurred and recorded on the contractor’s books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.
- (c) **In connection with estimates of future costs, contingencies fall into two categories:**
 - (1) **Those that may arise from presently known and existing conditions**, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work. **Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.**
 - (2) **Those that may arise from presently known or unknown conditions**, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation. **Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately** (including the basis upon which the contingency is computed) **to facilitate the negotiation of appropriate contractual coverage.** (See, for example, 31.205-6(g) and 31.205-19.)

(Emphasis added.)

The erroneous and misleading inference from the draft Finding would prevent allowance of any contingency, when in both practice and permissible procedure separately identified contingencies are a normal part of construction and other contracts. As such, TAMC cannot agree with the stated recommendation that TAMC should “ensure consultant contracts do not include contingencies.” TAMC can agree, however, to clearly identify any contingencies allowed by the contract and to provide an explanation as to why such contingencies are allowable.

Finding 3 - Conclusions

In conclusion, although TAMC disputes draft Finding 3 and believes that it has adequate contract administration procedures, TAMC acknowledges that systems and procedures can always be improved upon. TAMC will revise certain contractual language to clarify its compliance with required provisions and procedures and will continue to provide training to staff with respect to contractual matters.

FINDING 4: INADEQUATE ADMINISTRATION OF RSTP EXCHANGE FUNDS

Overview

TAMC disputes Finding 4 of the draft Audit, asserting TAMC did not adequately administer and comply with agreement requirements for the use of Regional Surface Transportation Program (RSTP) exchange funds, but as part of its continuous efforts to refine and improve procedures, will accept many of the recommendations.

1. The draft Audit report notes TAMC loaned \$1,000,000 of RSTP exchange funds to a member agency to cover cash flow problems. The draft Audit reports states “The loan of the funds to an agency experiencing cash flow difficulties is not in compliance with the RSTP agreement and places TAMC at risk of a loss of funds if the member agency is unable to repay the loan.” To the extent the draft finding asserts that “loans” of RSTP exchange funds per se are improper, TAMC believes this to be an overstatement.

The actual terms of TAMC’s agreement with the State for use of RSTP exchange funds is silent in regard to the appropriateness of loaning funds to member agencies. TAMC’s agreement with the State does include provisions to enter into sub-agreements to disburse funds to project sponsors prior to projects being completed. Conditions of TAMC’s agreement with the State require reimbursement if the recipient fails to meet the terms of the agreement. Such advancing of funds, coupled with provisions for reimbursement or repayment is not unlike a “loan”. To the extent the draft Finding criticizes “lending” to public entities experiencing cash flow difficulties, TAMC contends that this loan was, in fact, secured. TAMC loaned \$1,000,000 to Monterey-Salinas Transit on July 19, 2011 and was repaid on August 9, 2011, less than one month later. Both agencies entered into an agreement that secured the loan with MST’s share of Local Transportation Funds (LTF), which are transferred from the State to TAMC monthly and then distributed to Monterey-Salinas Transit. This agreement to use LTF funds as collateral eliminated any risk of loss of funds to TAMC. It is worth noting that the loans were required in order to address delays in Federal Transit Administration payments.

2. Draft Finding 4 notes TAMC maintains a large balance of unused RSTP funds. Rather than advance funds to local jurisdictions, as is permissible, TAMC policy is to reimburse incurred expenses for projects awarded RSTP exchange funds. The bulk of RSTP exchange funds maintained by TAMC are held in anticipation of paying claims from agencies implementing projects. TAMC programs RSTP exchange funds in multiyear cycles in advance of receiving funds from the State. This practice promotes timely use of funds and assists smaller jurisdictions to accumulate small apportionments into usable amounts. In February 2012, the TAMC Board committed \$17,875,000 of RSTP exchange funds and Regional Development Impact Fees to match a \$28,325,000 Trade Corridor Improvement Funds bond awarded to the US 101-San Juan Road Interchange project.

With the agreement of its member agencies, TAMC had not programmed RSTP exchange funds to other local jurisdiction projects for several years in order to accumulate RSTP exchange funds for this expensive State highway project, which is of

significant regional importance. In November 2012, TAMC made the first of 24 monthly \$744,792 RSTP payments to Caltrans honoring this commitment. These payments are rapidly drawing down TAMC's balance of RSTP exchange funds. TAMC plans to adopt a new multiyear cycle program of RSTP exchange-funded projects in March 2014.

3. The draft Audit Finding states TAMC's tracking of RSTP funds is not set up to document and track allocated apportionments to each of the member agencies, including the reimbursements made, to easily identify remaining balances apportioned per agency. TAMC staff requests that this statement and the associated recommendation bullet on page 11 should be removed from the final version of the Audit report. The Caltrans Audit team did not request information from TAMC regarding the tracking of RSTP exchange funded projects. In fact, TAMC maintains a spreadsheet tracking RSTP allocations, reimbursements and remaining balances by individual projects for each member agency since the program's inception in 1991. TAMC's RSTP project tracking spreadsheet is attached (Finding 4, Attachment 1).

Response to Specific Findings

With respect to the specific recommendations in the draft Audit, TAMC responds as follows:

1. The first bullet recommends discontinuing the practice of loaning RSTP funds to other member agencies. TAMC will suspend making loans to other member agencies pending review of eligibility with Caltrans Division of Local Assistance.
2. The second bullet recommends executing contracts with member agencies that have been apportioned RSTP funds. TAMC will add contracts with RSTP sub-recipients to its existing procedures for administering RSTP funds.
3. The third bullet recommends improved tracking of RSTP exchange funds. TAMC staff feels adequate tracking procedures are currently in place and this recommendation should be deleted from the final Audit report.
4. The fourth bullet recommends working with Division of Local Assistance to ensure timely and appropriate use of RSTP funds. TAMC has worked with member agencies and the Division of Local Assistance to ensure timely and appropriate use of RSTP funds. TAMC will review and update its procedures to ensure timely use of funds, but recognizes that large projects may require several years' allocations of funding.

Finding 4 – Conclusions

In conclusion, TAMC disputes Finding 4 of the draft Audit. The Agency maintains detailed records on the RSTP program, was saving funds to pay for a major construction project that is currently underway, and secured the RSTP loan to MST with Local Transportation Funds that it passes through to the loan recipient on a monthly basis. However, as part of TAMC's continuous efforts to refine and improve procedures, TAMC will update RSTP policies, enter into contracts with RSTP grant recipients and cease making loans to member agencies.

FINDING 5 – IMPROPER BILLING PROCESSES

Overview

The draft Audit contends that TAMC's billings to Caltrans and Association of Monterey Bay Area Governments (AMBAG) were improperly prepared, did not include adequate information and support for costs billed and were not in compliance with Caltrans Agreements. TAMC disputes this finding and believes that it has always worked and continues to work closely with both Caltrans and AMBAG to provide any information requested to be in compliance with Agreements in order to get reimbursements on a timely basis.

Response to Recommendations

TAMC's responses to the draft Audit's proposed recommendations with respect to Finding 5 are as follows:

1. The draft Audit asks TAMC to "prepare the billings to Caltrans based on actual labor hours worked in a specific month and ensure costs tie to the financial management system between the costs included on the billings and the source documentation supporting the same costs." TAMC questions this recommendation, as it is inconsistent with a previous Caltrans audit. The methodology TAMC uses for billings (that the "invoice month" consists of the paycheck periods within a calendar month) follows TAMC's Indirect Cost Allocation Plan (ICAP) rate methodology as explained to Caltrans Audits on March 28, 2005 (Finding 5, Attachment I - refer to TAMC's response to Finding 3 of the 2005 Audit.)

TAMC's understanding is that this was an acceptable method and has used this practice without objection or complaint since 2005. While, in using this method, some billings may be temporarily overstated and some temporarily understated, all costs are eventually reconciled and recovered over time, as this methodology is used consistently. Any differences in a given period due to the use of this method would be de minimis as the agency is small. Also, since the payroll calendar does not coincide with the regular calendar, the current method used allows for easier audit and reconciliation with fewer journal entries.

2. The draft Audit asks TAMC to "determine an equitable methodology for budgeting and allocating Compensated Time Off (CTO) costs to ensure all eligible costs are recovered." TAMC believes it already complies with this recommendation. TAMC has used the current methodology for allocating sick leave CTO at 80% vs. 100% based on a response given to Caltrans Audits on March 28, 2005. The 80% rate of sick time was established as the application rate, based on past history of actual usage. This rate is actually on the high side for allocation purposes, but allowed for the fact that TAMC employees may use up to 10 days of sick time per year as vacation leave, as long as they maintain a balance of 10 sick days. Historically, there are very few employees that have used up all the sick time on a regular basis and there was no reason to think this would change. TAMC's understanding was that its present method was acceptable and has used this practice since 2005, again without hearing any complaints or objections. However, if Caltrans has now

changed its recommendation since the 2005 audit, TAMC will modify its practice and compute sick leave at 100%.

3. The draft Audit asks that TAMC “implement new procedures for the AMBAG billings to be prepared based on actual costs incurred and ensure the billings and source documentation provide for an adequate audit trail.” TAMC has already implemented such procedures. Since fiscal year 2011-12, TAMC has worked diligently with AMBAG and Caltrans to implement new procedures for billing and to supply all back-up documentation requested for the audit trail. The audit finding confirmed that TAMC had support for actual costs incurred that equaled or exceeded the billings to AMBAG. However, the prior simplified practice of billing one-fourth of the approved work element’s budget per quarter was discontinued in fiscal year 2011-12. TAMC has worked with AMBAG and Caltrans since then to provide information in a revised format. The current invoice practice is based on the percentage of tasks and deliverables completed and hours expended in the quarter being billed. Descriptions of activities performed, a profit and loss statement of expenditures, and back up documentation are supplied by each work element. For example, the last invoice and back-up documentation to AMBAG for Federal Highway Planning funds was 43 pages. A copy can be supplied if requested.
4. The draft Audit asks that TAMC “ensure billings to AMBAG and Caltrans include only allowable costs for allowable activities in accordance with the terms of the Agreements.” TAMC has always complied with the “allowed activities” guidance provided by AMBAG and Caltrans. Since fiscal year 2011-12, following a Caltrans audit of AMBAG, TAMC has worked with AMBAG and Caltrans to set up new or modified procedures and processes to provide greater detail, showing that billings are only for allowable costs and that they comply with guidelines for using State and Federal planning funds. TAMC and AMBAG have entered into a Continuing Cooperative Agreement to identify the tasks and products to be completed, which are tied to the Federal planning funds TAMC receives from AMBAG. TAMC staff is also currently a member of a subcommittee of the Rural Counties Task Force created to develop further clarity on allowable activities for using State Rural Planning Assistance funds.
5. The draft Audit asks that TAMC “ensure billings to AMBAG and Caltrans include descriptions of activities performed and a breakdown of the costs incurred.” TAMC has always supplied a list of Overall Work Program activities performed each quarter along with the billings in the forms and formats required by AMBAG and Caltrans. In addition, TAMC continues to work with AMBAG and Caltrans to provide information in the revised formats they have requested since fiscal year 2011-12. Descriptions of activities performed, a profit and loss statement of expenditures, and back-up documentation are supplied by each work element. As an example, the last invoice and back-up documentation to Caltrans for Rural Planning Assistance funds was 54 pages. A copy can be supplied if requested.

Finding 5 – Conclusions

TAMC disputes all of the assertions in draft Finding 5 and concludes that the recommended actions are not necessary. TAMC has always worked and continues to work closely with both Caltrans and AMBAG to provide any information requested in order to be in compliance with Agreements and to obtain reimbursements on a timely basis. That said, substantially more back up information is now provided to AMBAG since the period audited, evidence of which is available upon request. With regard to Compensated Time Off, TAMC requests that Caltrans review its 2005 audit findings and decide whether or not to recommend a new method for CTO calculations, which TAMC will utilize.