State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: JAY NORVELL
Chief
Division of Environmental Analysis

Date: December 14, 2012

File: P4000-0381

From: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Subject: **FINAL AUDIT REPORT – DIVISION OF ENVIRONMENTAL ANALYSIS**

Attached is Audits and Investigations' final audit report on the Division of Environmental Analysis' (DEA) contract management practices. Your response has been incorporated as part of the final report. This audit report is intended as information for you and Caltrans management.

Please provide our office with status reports on the implementation of the audit finding dispositions 60-, 180-, and 360-days subsequent to the report date. If all audit findings have not been corrected within 360-days, please continue to provide status reports every 180-days until the audit findings are fully resolved.

We thank you and your staff for the assistance provided during this audit. If you have any questions or need additional information, please call Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107, or me at (916) 323-7122.

Attachment

c: Malcolm Dougherty, Director
Rick Land, Chief Deputy Director
Karla Sutliff, Deputy Director, Project Delivery
Anmarie Medin, Chief, Cultural Studies Office, DEA
Laurine Bohamera, Chief, Internal Audits, A&I
Juanita F. Baier, Internal Audit Manager, A&I

P4000-0381
Division of Environmental Analysis Contract Management Audit
December 2012

William E. Lewis
Assistant Director
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1. Response – Division of Environmental Analysis
2. External Audit Report – US Army Corps of Engineers

Summary

Audits and Investigations (A&I) completed an audit of the Department of Transportation's (Caltrans) Division of Environmental Analysis' (DEA) contract management practices. We performed the audit to determine if DEA's contract managers complied with state and department policies and procedures for contract management. The audit scope covered agreements between DEA and its partner agencies.

Our audit disclosed that DEA is not following proper contract management practices and procedures. Additionally, performance measures and priorities are not always evaluated or monitored, and as a result, it is not clear whether DEA receives the premium level of services it has contracted for from these partner agencies. Specifically, we found the following deficiencies:

- Inadequate Process for Initiating, Monitoring and Closing-out Governmental Agreements
- Inadequate Monitoring of Expenditures
- Performance Measures are Not Always Evaluated or Monitored
- Inadequate Invoice Review
- Weaknesses with the US Army Corps of Engineers' Agreement

We only audited agreements executed by the DEA. However, during the course of our audit, we noted that districts 4, 6, and 11 execute their own agreements with some partner agencies such as the U.S. Fish and Wildlife Services and the Department of Fish and Game. We did not audit these agreements and recommend that Caltrans management determine whether all governmental agreements of this type should be executed by DEA or allow all districts to execute their own agreements.

Background

A 1999 Finance Letter allowed Caltrans to partner with regulatory agencies to accelerate project delivery through the receipt of "premium services". The "premium service" level was intended to enable Caltrans and the regulatory agencies to address environmental issues timely and more effectively to accelerate the environmental review and permit process. The Finance Letter provided funding for Caltrans to transfer to the regulatory agencies via governmental agreements. The additional funds were intended to provide the regulatory agencies with additional resources for early participation in project planning and design decisions, timely field reviews and negotiations, and processing of project and emergency permits. By entering into these agreements, the partner agencies agree to provide "premium services" in accordance with the performance measures in the agreements.

The DEA acts as Caltrans' compliance lead and assists the districts and its transportation partners in:

Background (continued)

- Complying with state and federal environmental laws;
- Encouraging the public to participate in the environmental process;
- Determining the environmental consequences of Caltrans' activities;
- Proposing prudent, feasible and cost effective strategies and alternatives to avoid or minimize adverse impacts of Caltrans' activities; and,
- Ensuring the mitigation selected is appropriate.

Further, DEA administers contracts and interagency agreements for a range of environmental, technical and professional services.

Objectives, Scope, and Methodology

We performed an audit of the following governmental agreements to determine the adequacy of internal controls over contract management:

Partner Agency:	Agreement Term:	Agreement Amount *:
U.S. Fish and Wildlife Services	12/1/07 to 1/31/12	$4,800
U.S. Army Corps of Engineers	2/15/10 to 9/30/12	$4,500
U.S. Department of Commerce, National Marine Fisheries Service	6/1/10 to 12/31/13	$4,200
Department of Parks and Recreation, Office of Historic Preservation	2/22/10 to 12/31/12	$ 922
U.S. Environmental Protection Agency	1/1/10 to 12/31/13	$1,881
Department of Fish and Game	6/1/10 to 6/30/13	$4,000
California Coastal Commission	12/1/10 to 11/30/15	$4,318
Total for the 7 agreements		**$24,621**

Amounts shown in thousands

We performed the audit in accordance with the International Standards for the Professional Practice of Internal Auditing. The objectives of our audit were to determine whether the DEA ensured that:

- Invoice charges were only for those services prescribed by the agreement.
- Services were provided and paid as required by the agreement.
- Services were provided in accordance with established priorities.
- State funds were properly segregated and monitored by the partner agencies.
- Expenditures were monitored on a continuous basis by DEA/Districts.

Objectives, Scope, and Methodology (continued)

Our audit covered the period January 1, 2010, through September 30, 2011, and focused on internal controls and procedures over contract management. The audit included tests as we considered necessary to achieve the above audit objectives. We conducted our audit from November 3, 2011, through April 10, 2012. Changes after these dates were not tested, and accordingly, our conclusion does not pertain to changes arising after April 10, 2012.

Conclusion

Our audit disclosed that DEA did not always follow required contract management responsibilities and procedures. Additionally, DEA does not always evaluate or monitor performance measures and priorities. Specifically, we found the following deficiencies:

- Inadequate Process for Initiating, Monitoring and Closing-out Governmental Agreements
- Inadequate Monitoring of Expenditures
- Performance Measures are Not Always Evaluated or Monitored
- Inadequate Invoice Review
- Weaknesses with the US Army Corps of Engineers' Agreement

We only audited agreements executed by the DEA. However, during the course of our audit, we noted that districts 4, 6, and 11 execute their own agreements with some partner agencies such as the U.S. Fish and Wildlife Services and the Department of Fish and Game. We did not audit these agreements and recommend that Caltrans management determine whether all governmental agreements of this type should be executed by DEA or allow districts to execute their own agreements.

Views of Responsible Officials

We requested and received a response to our findings from the Chief of the DEA. This official generally, agreed with the findings and recommendations and has already implemented some corrective action. For a copy of the complete response, please see Attachment 1.

WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

December 6, 2012

FINDINGS AND RECOMMENDATIONS

Finding 1 - Inadequate Process for Initiating, Monitoring and Closing-out Governmental Agreements

Our review of the seven governmental agreements disclosed that the Division of Environmental Analysis (DEA) does not have an efficient or effective process for initiating, monitoring and closing out governmental agreements.

We found the following weaknesses with the current process:

- We found that the DEA allowed services for three agreements to begin before the agreements were executed. The agreement with the US Department of Commerce, National Marine Fisheries Service (NMFS) was executed on October 29, 2010, and services began 3 months before in July 2010. Similarly, the agreement with the Department of Parks and Recreation was executed on March 16, 2010, yet services were provided 8 months before in July 2009. The agreement with the Department of Fish and Game was executed on November 5, 2010, and the services began four months before in July 2010. In addition, the agreement with the US Army Corps of Engineers (USACE) had three task orders that required the same approval process as a regular agreement. We found that the request for two of the three task orders with USACE were submitted to DPAC after the date services began. For example, one task order was submitted to DPAC on July 22, 2010, for services that began on June 1, 2010; and the second was submitted to DPAC on September 29, 2010, for services that began on September 7, 2010

  Work performed prior to execution of an agreement increases the risk for payment of work outside the scope of the agreement. Furthermore, it puts the partner agency at risk of not getting paid since there is no legal authority to pay without an executed agreement. Additionally, contract managers do not have the authority to allow work to begin before the agreement is executed.

  The State Contracting Manual (SCM) Section 9.05 A.4 prohibits work from beginning before contract execution and the effective date of the contract. The Division of Procurement and Contracts (DPAC) has a process in place that requires programs to request agreements 5-6 months in advance of the agreement start date. According to DEA, they were not aware that task orders required the same length of time as a regular agreement, and as a result, did not start the process with sufficient time.

- DEA executed four of the seven agreements for amounts greater than the partner agency's budget (cost proposal). The cost proposals contain the partner agency's estimate of the amount of work to be

Finding 1 - (continued)

completed for the term of the agreement. We reviewed the amount of each agreement, compared it to the cost proposal submitted by the partner agencies and found that combined these four agreements were overfunded by more than $3.8 million. The DEA was unable to explain why it executed the agreements for amounts greater than the agencies' cost proposals.

Agency Name:	*Agreement Amount **	*Agency Cost Proposal **	*Difference **
U.S. Army Corps of Engineers	$4,500	$3,000	$1,500
U.S. Dept of Commerce, National Marine Fisheries Service	$4,200	$3,200	$1,000
U.S. Environmental Protection Agency	$1,900	$1,300	$600
Department of Fish and Game	$4,000	$3,300	$700
Totals	**$14,600**	**$10,800**	**$3,800**

Amounts shown in thousands.

By executing agreements for amounts greater than the partner agency's cost proposal, the likelihood for unnecessary payments in excess of agreement needs is increased. Also, some of these agreements required advance payments, DEA advanced more money than the agency needed to perform the services. Furthermore, DEA encumbered funds unnecessarily prohibiting these funds from being used to meet other critical transportation needs.

Caltrans' Service Contract Managers Handbook (SCMH), Chapter 4, Section 4.2 specifies that the "contract manager is responsible for reviewing draft contracts for accuracy and completeness of scope of work…estimated quantities, dollar amounts, and end products."

- DEA does not have control procedures for closing out contracts and recovering advanced funds that were not spent in a timely manner. The agreement with the United States Fish and Wildlife Services (USFWS) allowed for advance payment and ended in January 2012. At the time of our field work, April 2012, an unspent balance of $1.2 million remained in this agreement. There was no documentation in the file showing that the contract manager evaluated and recovered the unspent balance. Similarly, the agreement with the USACE is scheduled to end on September 30, 2012, and at the time of our field work, there was an unspent advance of $921,413.

  A loss of state funds could occur if agreement dollars are unspent and are not identified and collected from partner agencies. In addition,

Finding 1 - (continued)

these agencies are advanced large amounts of money without contract provisions for earning interest on the advances. Therefore, Caltrans is losing potential income due to lost interest earnings. Finally, when advanced funds are not recovered from the partner agency timely, the funds may not be returned to the DEA, but to the State Highway Account.

Government Code (GC) 11261 states that, final determination should be made at the end of a contract and the unexpended balance of the amount advanced shall be returned; and GC 11019 (b) requires control procedures for advance payments. In addition, SCMH Section 4.5 states that the contract manager is responsible for closing out contract files, requesting and reviewing final deliverables, documenting services from contractors, and disencumbering unused funds.

DEA asserts that it has had a significant amount of turnover in staffing due to maternity leave and employees leaving Caltrans. As a result, it had to assign the contract management responsibilities to several biologists whose primary function is not contract management.

Recommendation

We recommend that DEA designate one individual to be responsible for all contract management functions related to partner agency agreements. Once this individual is designated, we recommend that the following be completed:

- Develop a timeline to request agreements and task orders in accordance with DPAC's recommendations. The timeline should take into consideration the time required to negotiate with the partner agencies.
- Negotiate with partner agencies in a timely manner and agree on an appropriate budget for each agreement using the partner agency's cost proposal.
- Develop control procedures for closing out agreements in a timely manner. These procedures should include a process for evaluating unspent funds advanced and recovering the remaining funds. The procedures should also include the process for disencumbering funds when the agreements do not involve advances.

DEA Response

The DEA agrees that creating a position to handle the contract management function for the division would be beneficial. However, DEA tried to create the position recently, but was unsuccessful. DEA will continue exploring an appropriate course of action. For a complete response, please see Attachment 1.

Finding 2 - Inadequate Monitoring of Expenditures

We identified instances in which contract managers did not adequately monitor expenditures because they failed to require expense reports to support payments and were not tracking funds advanced to the partner agencies. Specific examples are as follows:

a) Not all contract managers ensured that quarterly or annual expense reports were submitted by all partner agencies as required by the agreements. Three out of the seven agreements allow for advance payments and the quarterly and annual expense reports are critical to verify that the services were provided and to support the advance payments. Quarterly or annual expense reports were missing for the following four partner agencies: USFWS, USACE, EPA and DFG. For the expense reports that were received, we reviewed the projects' expenses and compared them to the workload list. We noted that not all projects on the workload list correlate with the projects on the expense reports.

b) Five of the agreements reviewed lacked documentation to show that the contract manager was tracking the funding, the expenditures and the balances. In addition, contract managers for the agreements with EPA, DPR and CCC did not keep payment logs to monitor expenditures. Payment logs are a basic tool used to ensure amounts paid are appropriate for the amount of work being performed and to ensure all advance payments are accounted for properly. The contract manager for the agreement with EPA provided an advance payment for federal fiscal year 2010 in the amount of $222,584. However, the expense reports submitted to Caltrans only supported $147,602. As of the time of our audit, the contract manager had not calculated the $74,982 in surplus advanced funds. The agreement with the USACE also allows for advance payment and we determined that there are a significant amount of unspent funds as discussed in the External Audit Report which can be found as Attachment 2.

Contract Managers are required to monitor contract expenditures to ensure that the services contracted for are received. In addition, when contract expenditures are not adequately monitored the risk increases for overspending the contract and paying for services not in the agreement.

The SCM Section 9.09 A.3, requires that the contract manager keep track of expenditures by preparing a spreadsheet (or payment log) of expenditures. These tools are necessary for the contract manager to ensure the amounts paid to the contractor do not exceed the limits allowed in the agreement.

The SCMH, Section 4.3.1 directs contract managers to track dollars available versus dollars spent, as well as the type of contract and the

Finding 2 - (continued)

method of payment. Further, it requires contract managers to maintain a constant status of available contract balances by keeping a running total of charges and costs for each contract on a spreadsheet.

Recommendation

We recommend that DEA contract managers:

- Require that partner agencies comply with the terms of the agreements by submitting quarterly and/or annual expense reports timely.
- Review expense reports to make sure that the projects' expenses correlate to the projects on the workload list for the particular agency, and if deviations are noted, follow-up with the partner agency.
- Monitor advance funding so that funds are disencumbered timely and unspent balances are recovered from the partner agency.

DEA Response

The DEA is already requiring that all contract managers comply with the recommendations listed above. For the complete response, please see Attachment 1.

Finding 3 - Performance Measures are Not Always Evaluated or Monitored

Contract managers are responsible for administering agreements and monitoring contractor's performance. In March 2011, DEA implemented the Standard Tracking Exchange Vehicle for Environmental (STEVE) database for contract managers to use for efficient project management. STEVE keeps track of project related work being done by DEA staff, district environmental staff and partner agency personnel. DEA's contract managers use the STEVE database and quarterly meetings to keep track of partner agencies workload. DEA also has designated coordinators who many times lead the quarterly meetings instead of the contract managers.

We reviewed the performance measures for the 7 agreements, reviewed notes from the quarterly meetings and workload lists; and interviewed the contract managers and coordinators to determine how performance measures are evaluated and monitored. We found that not all contract managers evaluate and monitor performance measures for the following reasons:

- DEA contract managers authorize payment for services without verifying adherence to the agreements' performance measures. Contract managers rely on STEVE to track the environmental projects; however, the database information does not correlate to the performance measures in the agreement. For example, each agreement specifies the number of days and intervals for project performance, but there is no direct correlation in the database to indicate that a performance measure has been achieved. Furthermore, neither the "Priority #" nor the "Needed By" fields are entered regularly into the database and used to establish project needs or milestones.

Finding 3 - (continued)

DEA requires that district personnel input project data into the STEVE database directly and the information is used at quarterly meetings with each agency to review the workload. According to some contract managers, district personnel do not always enter all the information into STEVE. As a result, the information in STEVE is not always complete and up to date. In addition, because the information is entered at the district, the contract manager does not assign a "priority" to the particular project and is not able to hold the partner agency responsible if the priority is not met.

- Quarterly meetings are beneficial for maintaining open communication between DEA staff, district personnel and partner agency staff. However, at the time of our audit, we determined that the quarterly meetings were not efficient for setting "priorities" or monitoring performance because not all projects are discussed. The meeting coordinator gives every district and partner agency personnel an opportunity to discuss their individual projects. However, not all districts are represented at all meetings and it appears that contract managers can't mandate that district personnel attend the quarterly meetings. We participated in one of the quarterly meetings and noted that not all districts were represented. As a result, not all projects were discussed and priorities were not set.

- The contract manager for four agreements did not maintain complete records of the quarterly meetings where the workload was discussed; and some did not conduct meetings during certain quarters of the year. As a result, it was not clear how the contract managers for these four agreements evaluated performance measures since no other documentation was available for review. One of the contract managers interviewed stated that there is no correlation between performance measures and payment to the agency and that it is up to the district to determine whether performance measures are met or not. We find this statement problematic as it is the contract managers' responsibility to make sure that payment is made for services received.

- Performance measures are not well established for all agreements. For example, the USACE agreement only lists performance measures for certain permit actions and not for others. As noted in Attachment No. 2, External Audit Report, we found that the performance measures for nationwide permits are not being met by two of the three USACE district offices. However, the contract manager at Caltrans did not make this determination and the database did not show this information.

- District Environmental personnel are not satisfied with the level of service received from the partner agencies. Specifically, one district is not receiving the required correspondence from the agency in a timely

Finding 3 - (continued)

manner and does not follow-up to ensure deliverables have been received. In addition, there is inconsistency among the districts inputting the necessary information into the STEVE database. DEA determined that district personnel should be responsible for the day-to-day project monitoring. However, not all district personnel consistently update project status in the database and do not have authority over the contract management function.

The SCM Section 9.04 A.7. describes that the contract manager should monitor the contract to ensure compliance with all contract provisions, including monitoring progress to ensure that services are performed according to the quality, quantity, objectives, timeframes, and manner specified in the contract. In addition, Section 9.09 A.6. states that the contract manager must monitor the contractor's performance and document it accordingly.

The SCMH, Section 4.3 states that the primary responsibility of contract managers is to monitor the progress of work to ensure contracted services are performed according to the quality, quantity, and manner specified in the agreement.

When the contract manager does not monitor partner agency performance as required, it is not possible to determine if Caltrans is receiving the "premium services" under its contract. It is critical that performance measures are well established in order for the contract manager to monitor the services performed and to ensure that the services are consistent with the payments made to the partner agency.

Recommendation

We recommend that DEA management:

- Require that contract managers evaluate and monitor the performance of the partner agencies to make sure that Caltrans is paying for the "expedited services" as described in the agreements.
- Coordinate with environmental district staff to ensure project information is input into STEVE in a timely manner and priorities are clearly identified.
- Require that the STEVE database is used to its full potential and that all available fields are filled out, especially the priority and status of each project.

DEA Response

DEA is working on a policy memo addressing the issues identified in this finding and recommendation. For a complete response, please see Attachment 1.

Finding 4 - Inadequate Invoice Review

We reviewed a sample of invoices for the seven agreements and found that DEA paid for expenses that were not in the terms of the agreements. Specifically:

a) All seven agreements had invoices paid with one or more of the following conditions:

- Salaries were paid at levels different than the authorized levels without explanation.
- Labor staff hours were paid, but not supported by accurate and timely expense reports.
- Travel expenses and other direct expenses were paid, but were not included in the cost proposal.
- Additional benefits were paid, but not included in the cost proposal.

b) Payments were made without supporting documentation in two of the seven agreements. Examples of such expenses for federal fiscal year 2011 included: $12,207 for travel, $3,202 for awards, and $1,400 for training. These payments also lacked justification to determine reasonableness.

c) Overhead expenses were paid under the USFWS agreement at a rate higher than the authorized rate. The authorized rate in the agreement was 22 percent and the overhead rates paid were as high as 40 percent.

Inadequate review of invoices increases the risk of Caltrans overpaying for services outside the agreement scope or for services not provided.

The SCM Section 9.00 states that the contract manager is the authorized representative of the State of California for administering a contract. In addition, Section 9.04 A.9 requires the contract manager to review and approve invoices for payment to substantiate expenditures for work performed.

The SCMH Section 4.3.3 requires that contract managers review invoices for accuracy, timeliness, and compliance with cost and payment terms of contracts and ensure personnel shown match those listed in the cost proposal.

Recommendation

We recommend that DEA management ensure that contract managers follow the requirements established. Specifically, contract managers should:

- Ensure that only authorized personnel review and approve all invoices prior to payment.

- Verify that expenditures billed are appropriate and allowable in accordance with the terms of the agreement
- Ensure personnel shown on the invoice match those listed in the cost proposal, if applicable.

DEA Response

DEA Office Chiefs are already requiring that contract managers follow the requirements in the contract manager's handbook, especially the ones listed on the recommendation. DEA is also planning on conducting a refresher training course for all the employees who currently perform contract management functions. For the complete response, see Attachment 1.

Finding 5 - Weaknesses with the US Army Corps of Engineers' Agreement

We conducted an external audit of the agreement with the USACE and determined that the costs claimed and paid were allowable and supported for all three USACE offices. However, we found the following weaknesses with this agreement:

- Cost estimates need more accuracy. The cost estimates for two of the USACE offices were $405,013 more than actual costs.
- Annual advance payments are contrary to the State Contracting Manual.
- Not all Quarterly Expense Reports were received as required.
- Performance measures not met for nationwide permits and not established for other permit actions.
- Two of the USACE offices began work before the task orders were executed.

A&I issued a separate audit report to USACE with detailed findings and recommendations. A copy of the external audit report can be found as Attachment 2 to this report.

Recommendation

We recommend that the DEA monitor implementation of the recommendations issued to the USACE and provide A&I with status updates.

DEA Response

DEA will be meeting with the USACE to review the implementation of the recommendations addressed in the external audit report. For the complete response, please see Attachment 1.

Audit Team

Laurine Bohamera, Chief, Internal Audits
Juanita Baier, Internal Audit Manager
Kathy Brooks, Auditor
Tim Pasco, Auditor

ATTACHMENT 1

DIVISION OF ENVIRONMENTAL ANALYSIS RESPONSE TO THE DRAFT REPORT

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: WILLIAM E. LEWIS
Assistant Director
Audits and Investigations

Date: December 12, 2012

File: P4000-0381

From: JAY NORVELL
Chief
Division of Environmental Analysis

Subject: RESPONSE TO DRAFT AUDIT REPORT ON CONTRACT MANAGEMENT

The Division of Environmental Analysis appreciates the opportunity to comment on and respond to the Draft Audit Report on Contract Management. We will be aggressively responding to the review and the opportunity to improve this important and productive project delivery effort. We provide this response to you on the Draft Report to provide context, input on finalizing the report, and our response on how we will address the recommendations.

Context

The effort to fund positions for enhanced services at regulatory agencies grew out of a major effort by the Department in the late 1990's and early 2000's to improve the dismal environmental delivery performance of the Department, which had plummeted to under 40 percent year to year. This involved surveys of relevant Caltrans Environmental and other managers across the state, interaction with California Transportation Commission staff and partner agencies, and the review of regulatory agency relationships by a special ombudsman in the Director's Office, Vice Admiral Leahy. This review led to a series of innovations still unfolding today including:

- The development of better environmental staff training, particularly the start of the Environmental Academy.
- Improved and more timely guidance for staff and for local partners on the web (the Standard Environmental Reference (SER) with annotated outlines and templates)
- The creation of Environmental Divisions in each District or Region.
- The elevation of the Environmental function in HQ and movement from the Planning chain of command to Project Delivery.
- Negotiation with FHWA and others for explicit and implicit delegations
- Enhanced support for environmental contracting.
- Implementation of an Environmental Management System (database tracking environmental project delivery effort)
- Enhanced interaction between District Directors and regulatory agency managers, and
- Funding of positions at regulatory agencies

These efforts, in concert, have resulted in dramatically improved environmental delivery. The "stretch goal" for year-to-year environmental delivery was originally 80 percent and we now consistently deliver over 90 percent. Our reports to the legislature on our "NEPA Delegation" since 2007 also indicate a substantial reduction in start to finish time for environmental delivery. This has been despite the reduction and redirection of HQ Environmental staff since 2004.

General Comments on the Audit

We note that need for this audit arose out of a Director's Meeting where Environmental was not directly represented. The concerns about relationships with regulatory agencies and issues with permits led to an audit of the contractual aspects, but there are other factors. The management of relationships with regulatory agencies rests on four pillars: management to management interaction, staff to staff interaction, staff stability on both sides, and contract management. This audit only deals with contract management.

Even perfectly run contracts may not result in regulatory success. You cannot "buy" discretionary permits; you can purchase increased attention and expedited reviews. While there are requirements to manage the financial aspects of our agreement, there are also legal obligations and even possible criminal penalties for regulatory non-compliance.

These agreements with regulatory agencies are not normal "payment for services" contracts and we cannot choose another vendor. These are agreements with partner agencies that have specific legal authority over our activities. We have limited ability to impose financial penalties as these partners have great authority over our ability to get our work done and control costs.

While it is important to respect and resolve the serious issues reported in the Draft Audit, it is also important to note that the audit did not find evidence of lost funding or misdirection of funds. The concerns are over cash management and late or incomplete documentation.

Federal agencies require advance funding. All advance funding that has been in excess of actual use has either been repaid to the Department or rolled over to fund additional time.

Work Plan for Addressing Audit Findings

In response to our September 28, 2012 Exit Conference, we agreed to provide you with our plan for how we would address the audit's recommendations. We offer the attached table with timelines for implementing our proposed solutions.

We look forward to working with you and your staff to implement these corrective measures to better manage our resources. If you have any questions on this reply, please contact Amy Bailey at Amy_Bailey@dot.ca.gov or (916) 651-8166 or Anmarie Medin at Anmarie_Medin@dot.ca.gov or (916) 653-6187.

C: Amy Bailey, Jennifer Gillies, Dale Jones, Anmarie Medin, Juanita Baier (Audits)

Audit Report Finding	Recommendation	Proposed Corrective Action/Step and Timeline:	Time Estimated for Corrective Action:
#1: Inadequate Process for initiating, monitoring and closing out agreements	Designate one individual to be responsible for all contract management functions.	We have tried to create a PY position to handle the contract management functions for DEA, however it was not approved. When the new DEA Chief is appointed, DEA will work with Audits on the most appropriate course of action.	180 days for follow up. Dependent upon hiring process for new Division Chief.
	Develop a timeline to request agreements and task orders in accordance with DPAC's recommendations.	1) Office Chiefs are instructing Contract Managers to follow all audit recommendations and will monitor compliance. 2) DEA Contracts Support Staff will work with PM Resource Management and DPAC to create training specific to DEA's issues. 3) DEA will no longer be using task orders in future agreements.	1) Done 2) Meet in 60 days to plan training. Deliver training in 180 days. 3) Done
	Negotiate with partner agencies in a timely manner and agree on an appropriate budget for each agreement using the partner agency's cost proposal.	Office Chiefs are instructing CMs to follow all audit recommendations and will monitor compliance through training mentioned above.	Done
	Develop control procedures for closing out agreements in a timely manner.	Training discussed above will include close-out procedures.	180 days as part of training
#2: Inadequate Monitoring of Expenditures	Require that partner agencies comply with the terms of the agreements	1) OCs will remind CMs to track reporting requirements. 2) Contract managers have a notification	1) Done 2) Done

	by submitting quarterly and/or annual expense reports timely.	process to remind them of due dates and overdue reports. 3) DEA is working with relevant agencies to create templates to use for the quarterly reports	3) Within 60 days; for use in quarterly report for Jan-March.
	Review expense reports to make sure that the projects' expenses correlate to the projects on the workload list for the particular agency and if deviations are noted, follow-up with the partner agency.	1) CMs are required to review expenses and follow-up with the partner agency when expense reports do not correlate with the projects on the workload list. 2) DEA is working with partner agencies and district staff to standardize methods to fully document workload.	1) Done 2) 90 days; will work with Audits as needed on methods.
	Monitor advance funding so that funds are disencumbered timely and unspent balances are recovered from the partner agency.	1) Contract managers are required to review quarterly expenditures and require adjustments to future advances as soon as agreements expire. 2) DEA no longer allows advances on an annual basis. All future agreements require advances on quarterly basis.	1) Done 2) Done
#3: Performance Measures are not always evaluated or monitored	Require that contract managers evaluate and monitor the performance of the partner agencies to make sure that Caltrans is paying for the "expedited services" as described in the agreements.	1) DEA is working with CMs to standardize performance monitoring to make sure that the services described in the agreement are provided. 2) DEA CMs will distribute performance metric data to districts to track services.	1) Within 60 days; for use in quarterly report for Jan-March 2) Done
	Coordinate with environmental district staff to ensure project information is input into	DEA is working on a policy memo specifying use of STEVE and clarifying the responsibility for filling out all the required fields.	Within 60 days

	STEVE in a timely manner and priorities are clearly identified.		
	Require that the STEVE database is used to its full potential and that all available fields are filled out, especially the priority and status of each project.	As part of the STEVE policy memo, DEA will work with the Environmental Management Board on compliance.	Ongoing.
#4: Inadequate Invoice Review	Ensure that only authorized personnel review and approve all invoices prior to payment.	DEA requires that only authorized personnel review and approve invoices. CMs will work with Districts, when necessary, to ensure charges are accurate. Training mentioned above will refresh on this requirement.	Done
	Verify that expenditures billed are appropriate and allowable in accordance with the terms of the agreement	OCs remind CMs that they are required to review expenditures to make sure they comply with the agreement. CM's are also required to dispute charges that can not be verified according to state procedures. Training mentioned above will refresh on this requirement.	Done
	Ensure personnel shown on the invoice match those listed in the cost proposal, if applicable.	Contract Managers are required to review personnel in the invoices to make sure they match those in the cost proposal. Training mentioned above will refresh on this requirement.	Done
#5: Weaknesses in USACE Agreement	Monitor the implementation of the recommendations issued to the USACE and provide A&I with status updates.	DEA will be meeting with the USACE to review the implementation of the external audit recommendations.	Schedule meeting within 30 days. Follow up ongoing as needed.

ATTACHMENT 2

EXTERNAL AUDIT REPORT

United States Army Corps of Engineers

DEPARTMENT OF TRANSPORTATION
AUDITS AND INVESTIGATIONS
P.O. Box 942874, MS-2
SACRAMENTO, CA 94274-0001
PHONE (916) 323-7111
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August 31, 2012

Mr. Michael Jewell
Chief
U.S. Army Corps of Engineers
Regulatory Division
1325 J Street
Sacramento, CA 95814

Dear Mr. Jewell:

The California Department of Transportation (Caltrans) Audits and Investigations (A&I) audited the U.S. Army Corps of Engineers' (USACE) incurred costs of $791,462 under Agreement Number 43A0275 (Agreement) between Caltrans and USACE to determine if costs are reasonable, allowable, allocable and supported in accordance with:

- Agreement Provisions.
- Department of Defense Financial Management Regulation 7000.14-R.
- Section 214 of the Water Resources Development Act of 2000 (WRDA).

The Agreement period is March 8, 2010, through September 30, 2012, and includes three Task Orders with USACE district offices in Los Angeles, Sacramento, and San Francisco. Our audit also included a review of USACE's internal controls and contract management processes to determine if they are in compliance with state and federal regulations.

OBJECTIVES

The audit was performed as a management service to Caltrans to assist in its fiduciary responsibility to state and federal regulatory agencies. The audit was performed to determine whether costs incurred by USACE are allowable, supported and in compliance with the Agreement provisions, and state and federal regulations.

USACE is responsible for the fair presentation of costs incurred, ensuring compliance with Agreement provisions and state and federal regulations, and the adequacy of its financial management system to accumulate and segregate reasonable, allowable, and allocable costs.

METHODOLOGY

A&I conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that A&I 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. A&I believes 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 USACE. Therefore, A&I did not audit and are not expressing an opinion on USACE's financial statements.

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the data and the records selected. An audit also includes assessing the accounting principles used and significant estimates made by USACE, 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 Agreement. The audit consisted of a review of the Agreement provisions, an assessment of USACE's financial management system related to its ability to accumulate and segregate project costs, a review of costs incurred by each USACE district office, a review of USACE's invoicing and billing process, a review of USACE's performance measures, interviews of applicable personnel, and tests of transactions supporting costs incurred through September 30, 2011. Transactions arising subsequent to this date were not tested and, accordingly, A&I did not express an opinion on costs or credits arising after this date. As a result, conclusions expressed in this report pertain solely to USACE's compliance with state and federal regulations and Agreement provisions.

Due to inherent limitations in any financial management system, misstatements caused by error or fraud may occur and not be detected. Also, projections of any audit 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 and procedures may deteriorate.

BACKGROUND

Caltrans partners with regulatory agencies for priority review of transportation projects, beyond what the agencies existing financial resources permit. Under agreement with these partner agencies, environmental technical assistance, consultation, and coordination services are provided to enable Caltrans and the regulatory agencies to address issues timely and more effectively, therefore, accelerating the environmental review and permit process.

One of the partner agencies is USACE. USACE provides environmental technical assistance, oversight and coordination services to Caltrans regarding projects subject to its jurisdiction in California.

CONCLUSION

Based on our audit, A&I determined that USACE's financial management system is capable of accumulating and segregating costs in accordance with provisions of Agreement 43A0275, and

costs incurred are reasonable, allowable, allocable and supported. A&I found that USACE's charges were only for services prescribed by the Agreement; and its contract management process is adequate to perform expedited permit processing services under the Agreement, except for deficiencies detailed in the Findings and Recommendations section of this report.

Our findings and recommendations were discussed with officials from each USACE district office their comments were taken into consideration when finalizing the report. The results of the audit were discussed with the following USACE staff:

- Mark Cohen, Deputy Chief, Regulatory Division of the USACE Los Angeles District on June 4, 2012. Mr. Cohen agreed with the findings and recommendations and submitted a written response. The response can be found as Attachment II, which is enclosed.
- Paul Maniccia, Branch Chief, Regulatory Division of the USACE Sacramento District on May 21, 2012. Mr. Maniccia agreed with the findings and recommendations as presented by A&I auditors. He did not submit a written response to the audit results.
- Jane Hicks, Chief, Regulatory Division of the USACE San Francisco District on June 8, 2012. Ms. Hicks disagreed with some of the findings but did not submit a written response to the audit results. Detailed information on the findings and recommendations Ms. Hicks disagreed with can be found in the enclosed Attachment I.

The detailed findings and recommendations can be found in Attachment I of this report titled Findings and Recommendations.

This report is intended for USACE's and Caltrans' management. However, this report is a matter of public record and its distribution is not limited.

If you have any questions, please contact Juanita Baier, Audit Manager, at (916) 323-7951, or Teresa Greisen, Audit Manager, at (916) 323-7910, or Laurine Bohamera, Audit Chief, at (916) 323-7107.

Sincerely,

WILLIAM E. LEWIS
Acting Assistant Director
Audits and Investigations

Enclosures

c: William Leady, Colonel, District Commander, USACE, Sacramento District
R. Mark Toy, Colonel, District Commander, USACE, Los Angeles District
John K. Baker, P.E. District Commander, USACE, San Francisco District
David Castanon, Chief, Regulatory Division, USACE, Los Angeles District
Mark Cohen, Deputy Chief, Regulatory Division, USACE, Los Angeles District
Paul Maniccia, Branch Chief, Regulatory Division, USACE, Sacramento District
Jane Hicks, Chief, Regulatory Division, USACE, San Francisco District
Robert Pieplow, Acting Deputy Director, Project Delivery, Caltrans
Jay Norvell, Chief, Division of Environmental Analysis, Caltrans
Laurine Bohamera, Audit Chief, Audits and Investigations, Caltrans
Teresa Greisen, Audit Manager, Audits and Investigations, Caltrans
Juanita Baier, Audit Manager, Audits and Investigations, Caltrans

FINDINGS AND RECOMMENDATIONS

FINDING No. 1 – Cost Estimates Need More Accuracy

We found that the USACE requested and received more funding than what was reasonable or necessary. Caltrans advanced $405,013 more than necessary for two USACE offices during federal fiscal year 2011. The cost estimates for the two offices were significantly greater than actual costs as noted below:

	Estimate	Actual	Difference
Sacramento Office	$419,336	$139,296	$280,040
San Francisco Office	$200,796	$ 75,823	$124,973
Total			**$405,013**

There was no documented reason for the large difference between the estimated workload and the actual workload. Either Caltrans did not have enough work for these offices or the offices did not assign sufficient staff to complete the workload originally estimated. Because the terms of the agreement allow for advance funding, it is critical that estimates be reasonable and as accurate as possible. The Agreement also has a provision requiring the USACE to return unspent funds to Caltrans at the conclusion of the Agreement. However, because the provision does not require that unspent funds be returned to Caltrans at the end of the fiscal year, the USACE has the benefit of keeping the advanced funds and any accumulated interest not spent during the fiscal year.

Criteria: USACE Agreement Exhibit B, Paragraph 4. A. states "*Allowable costs issued under this Agreement must be necessary, reasonable, and allocable. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.*"

Recommendation: We recommend that USACE management:

- Develop an accurate cost estimate for each office by requesting input from the Caltrans' district offices.
- Assign sufficient staff in order to provide Caltrans with expedited services as described in the Agreement.

USACE Response to Finding No. 1 – The Sacramento office agreed with this finding and recommendation and did not provide a written response. The San Francisco office disagreed with the finding and stated that they lost the staff person assigned to work on this Agreement and it took the office several months to hire another one. The San Francisco office did not provide a written response.

Auditor's Analysis of Response: The finding and recommendation remain unchanged. Each USACE office is responsible for complying with the terms of the Agreement by assigning sufficient staff to provide the expedited services as described in the Agreement.

FINDINGS AND RECOMMENDATIONS

FINDING No. 2 – Annual Advance Payments

The Agreement with the USACE allows for large annual advance payments to be made prior to the performance of work which is contrary to the State Contracting Manual (SCM). Each USACE office invoices Caltrans annually for the advance payments based on the estimated workload for the fiscal year. According to USACE, advance funds are necessary in order for each office to staff their office accordingly and avoid interruption in services to Caltrans. USACE staff also stated that in the past Caltrans has taken a long time in processing the advance and the advance goes to their Finance Center in Millington, Tennessee. As a result, it takes longer for each district office to receive the funds. During the course of our audit, we determined that each USACE district office could request advances via Electronic Funds Transfers (EFT) which would expedite the USACE receiving the funds. EFT would allow each USACE office to have the advance funds in a timely manner.

Criteria: The SCM Section 7.32 states "*Contracts or agreements containing provisions for advance payments should preferably provide for small periodic payments rather than the total contract price or lump-sum advances (California Government Code Sections 11256-11263, 11019, and 12425).*"

Recommendation: We recommend that future agreements with USACE include provisions requiring that advances be paid on a quarterly basis via EFT.

USACE Response to Finding No. 2 – The Sacramento and Los Angeles offices agreed with this finding and recommendation. The San Francisco office expressed concerns regarding quarterly advances but agreed that EFT would be beneficial and did not provide a written response. The Los Angeles office provided a written response. For the complete response, please see Attachment II.

FINDING No. 3 – Not all Quarterly Expense Reports Received as Required

The USACE offices in Los Angeles and San Francisco did not always provide expense reports to the Caltrans contract manager as required. According to staff from the Los Angeles office, expense reports were submitted to the Caltrans contract manager via email. However, there was no evidence that these quarterly reports were submitted to Caltrans. The Caltrans contract manager's files only contained annual reports. The San Francisco office believed that annual expense reports by individual would be sufficient. Expense reports are critical to verify that services were provided and to support the annual advance payments.

Criteria: Agreement Exhibit B 3. C states in part, "... *USACE shall provide the Contract Manager with a quarterly statement of expenditures for each MOA that details expenditures for the quarter, and cumulatively for both the current federal fiscal year and for the life of the Agreement. The Quarterly statement for each MOA shall identify actual costs for salaries, travel, other direct costs and indirect costs by individual.*" Also, Exhibit B 3. J states, "*All invoices with attached budget estimates, quarterly statements, and final statements of expenditures shall be itemized in accordance with Attachment 2, USACE Estimated Salary Rates, and shall include dates of service, Agreement number, MOA date classifications of employees and hours of work, fringe benefit charges, and itemized travel, supply and equipment expenses.*"

FINDINGS AND RECOMMENDATIONS

Recommendation: We recommend that all USACE offices provide the quarterly expense reports to the Caltrans contract manager as required by the Agreement.

USACE Response to Finding No. 3 – The Sacramento and San Francisco offices agreed with the finding and recommendation and did not provide a written response. The Los Angeles office also agreed with the finding and recommendation and provided a written response. For the complete response, please see Attachment II.

FINDING No. 4 – Performance Measures Not Met for Nationwide Permits and Not Established for Other Permit Actions

We reviewed the annual reports the USACE offices submitted to their Headquarters for federal fiscal year 2011. These annual reports indicate that the Los Angeles and San Francisco offices are not meeting the established performance measures for the nationwide permits. The Los Angeles office reported processing nationwide permits within 45 days and the Agreement specifies 20 working days. The San Francisco office reported averaging 75 days to process nationwide permits and the Agreement specifies 45 working days. The USACE Sacramento office reported performance measures that were not consistent with the performance measures stated in the Agreement.

USACE district offices use calendar days to calculate the number of days it takes them to issue the nationwide and standard individual permits because their database tracks permit actions by calendar days. However, the Caltrans Agreement specifies the number of days as "working days." We determined that counting working days for each permit action is not practical for tracking purposes.

Criteria: Appendix B. II. B of each Task Order specifies that the target turnaround time for reaching a decision on Nationwide and Standard Individual Permits will be as follows:

<u>Task Order No. 1 - Los Angeles and Task Order No. 2 - Sacramento</u>

Nationwide Permits - 20 working days upon receipt of federally complete pre-construction notification package.

Standard Individual permits - 120 working days upon receipt of federally complete application package.

<u>Task Order No. 3 - San Francisco</u>

Nationwide Permits - 45 working days upon receipt of federally complete pre-construction notification package.

Standard Individual permits - 120 working days upon receipt of federally complete application package.

However, Appendix B. II. B of each Task Order also states that if conditions relating to Endangered Species Act, National Historic Preservation Act, and/or other stated conditions apply, those permit actions are excluded from performance measurement. In addition, the Agreement lacks performance measures for permit actions such as regional permits, letters of permission, and jurisdiction determinations. As a result, we were not able to assess whether the USACE is providing "expedited services" for those permit actions.

Recommendation: We recommend that USACE and Caltrans Management:

- Agree on performance measures based on calendar days for all permit actions, including jurisdiction determinations, regional permits, and letters of permission. Once, the performance measures are agreed to, they should be included in future Agreements.
- Discuss the status of each permit application at quarterly meetings and identify technical issues and/or incomplete applications in a timely manner.
- Identify "priorities" at the quarterly meetings for each permit action in progress.
- Document the level of satisfaction from the Caltrans district offices on an annual basis.

USACE Response to Finding No. 4 - The finding and recommendations were discussed with the three district offices during the exit conferences. The Sacramento office agreed with the finding and recommendation and did not provide a written response. The San Francisco office expressed concerns with the recommendation requesting that performance measures be established for all permit actions. Even though this office expressed concerns, it did not provide a written response. The Los Angeles office agreed with the finding and recommendation and provided a written response. For the complete response, please see Attachment II.

Auditor's Analysis of Response: The finding and recommendation remain unchanged. In order for the Caltrans contract manager to evaluate whether the USACE is providing the expedited services, performance measures need to be established for all permit actions.

Finding 5 – Work Started Before the Task Orders Were Executed

Our audit found that two USACE district offices began providing services before the effective date of the task orders. Work for Task Order No. 2 began on July 17, 2010, but the effective date was September 9, 2010. Similarly, work for Task Order No. 3 began on September 7, 2010, but the effective date was December 30, 2010. According to USACE staff for the two district offices, a former Caltrans contract manager gave them instructions to begin work. Performing work before the effective date of a task order puts the USACE at risk of not getting paid since there is no legal authority to pay for services before the effective date.

Criteria: The State Contracting Manual Section 9.09 A. 4, states, "*Work cannot begin before contract execution and the effective date of the contract.*" In addition, Article XI of Task Orders 002 and 003 both state *"This MOA will become effective on the date of signature by the last Party, and approval by Department of General Services."*

FINDINGS AND RECOMMENDATIONS

Recommendation: We recommend that USACE and Caltrans negotiate future Agreements earlier in the contracting process so services are not provided before the effective date of the Agreement.

USACE Response to Finding No. 5 – This finding was discussed with the Sacramento and San Francisco offices during the exit conferences. The Sacramento office agreed with the finding and recommendation and did not provide a written response. The San Francisco office stated that services began at the direction of a former Caltrans contract manager but agreed that services should not start before an executed Agreement.

DEPARTMENT OF THE ARMY
Los Angeles District, Corps of Engineers
P.O. Box 532711
Los Angeles, California 90053-2325

June 11, 2012

REPLY TO
ATTENTION OF:
Office of the Chief
Regulatory Division

Tim Pasco, Auditor
California Department of Transportation-HQ
MS-2
P.O. Box 942874
Sacramento, California 94274

Dear Mr. Pasco:

As you know, the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (USACE-LA) participated in an on-site financial audit of the State of California Department of Transportation Audit Investigation Team (Team) 13-15 March 2012, per the terms of Agreement 43A0275-TO-001. The results of this on-site audit were provided to us via email enclosure titled "Formal Audit Exit Conference", on 18 April 2012.

We participated in the "Formal Audit Exit Conference" with your Team on 04 June 2012. You then invited us 6to review the written findings and submit a formal response within 5 business days, 11 June 2012. In consideration of the written findings and the "Formal Audit Exit Conference", our response is as follows:

1. USACE-LA did not fully comply with reporting quarterly costs to the Department contract manager in accordance w/SA Exhibit B 3.C. and J.
Recommendation: USACE-LA should quarterly report the detail for all costs in accordance with SA Exhibit B 3.C. and J.
Response: We accept the Audit recommendation and have submitted quarterly reports detailing all costs in accordance w/SA Exhibit B 3.C. and J. for FY-2012, including the 1st and 2nd quarter cost detail reports, and will continue to do so.

2. State Contracting Manual states "Contracts of agreements containing provisions for advance payments should preferably provide for small periodic payments rather than the total contract price or lump-sum advances.
Recommendation: Caltrans should make advance payments on a quarterly basis through electronic fund transfers.

Response: In part, we have concerns regarding this recommendation for the following reasons:

- We accept the recommendation to work with Caltrans to set-up the electronic funds transfer. We agree to work with Caltrans to improve the timeliness of payments made under the contract.
- The internal processes of both organizations are fairly slow, and a disruption in funding could affect performance under the contract.
- Lack of funds availability could affect work efficiency and end-products since the Corps is mandated not to work on projects in the absence of funding. The continual work start and stoppage would greatly hamper efficiency, thus affecting our ability to meet the terms and conditions of our WRDA section 214 Agreement and Contract.
- The USACE-LA makes staffing decisions annually based on the availability of funds under the agreement. If funds are not received, we would need to attempt to redirect Caltrans -funded project managers to other projects and funding sources. This would adversely affect our overall budget and staffing plans.
- Other WRDA section 214 agreements make advance payments annually, and this facilitates a smooth operation of the programs and lowers administrative costs.

3. The performance measures of Agreement 43A0275-TO-001 is based on working days, however, all USACE districts use the ORM database to tract permit actions and the ORM database uses calendar days. In addition, ORM data does not identify if permit actions require consultation related to ESA, SHPO, and/or other stated conditions to exclude permit actions from the target turnaround time. It was not determined whether USACE-LA met the performance measures stated in the contract, however the 2011 annual report to USACE HQ indicates that the performance measures may not be met.

Recommendation: In the future, Caltrans and USACE-LA should agree on performance measures based on calendar days. In quarterly meetings between USACE and Caltrans, communication must improve to discuss the status of each permit application for technical issues, etc. Performance measurement factors should be identified and Caltrans district representatives should document performance measurement factors in Caltrans STEVE database for tracking purposes. In addition to NWP and SIP's, USACE and Caltrans should agree on performance measures for other permit actions. Finally, Caltrans Districts should annually participate in detailing Caltrans level of satisfaction with USACE office's performance under the agreement.

Response: USACE-LA accepts the recommendation to change tracking of actions from working days to calendar days. In addition, we accept the recommendation to address performance measures, etc. in the future long-term Caltrans/USACE-LA Contract. However, with regard to LA District, most delays in permit processing are associated with incomplete applications submitted by Caltrans, not ESA or SHPO, which typically are coordinated by Caltrans in advance of permit application submittal, and are not in themselves the source of delays. We already coordinate with our Caltrans counterparts on outstanding additional information required through "additional information requests" (via letters, e-mails, and telephone discussions), and we also update the status on some projects during our quarterly meetings with Caltrans. Regarding annual reviews of performance, Jennifer Gillies does contact USACE-LA each year before sending us a performance appraisal letter. We can also

include performance appraisal as an agenda item to discuss during our last quarterly meeting with Caltrans each year.

4. Administrative support costs were directly charged to Agreement 43A0275-TO-001 for administrative support employees. "Allowable costs must be accorded consistent treatment. A cost may not be assigned a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated as an indirect cost." If the administrative support services are usually charged as indirect cost in either the G&A overhead or Regulatory overhead, then there is inconsistent treatment of costs which results in an inequitable allocation of indirect costs."
Recommendation: If administrative support staff usually charge time to indirect cost, administrative support staff costs should not be directly charged to the Agreement
Response: The USACE-LA support staff services usually charge time to direct costs. Charges to indirect/overhead by administrative and other Corps Regulatory Division staff (including project managers) are limited, and include meetings, training, and other mandated District activities for all USACE-LA staff. Indirect costs usually comprise less than 10% of a staff member's total costs. Administrative staff, who are generally graded lower than project managers, can accomplish certain project or program related activities that benefit Caltrans through cost savings. We will include a line-item for estimated administrative staff costs in our future cost/budget estimates made under our Contract with Caltrans.

The USACE-LA would like to take this opportunity to thank you and the team for providing constructive recommendations to enhance existing processes. This benefits present and future agreements. We look forward to our continued long-term partnership and collaborative efforts in responsible environmental stewardship through our joint transportation planning process.

If you have any questions, please contact Stephanie Hall of my staff at 213-452-3410 or via e-mail at Stephanie.J.Hall@usace.army.mil. Please refer to this letter and SPL-2010-00616-SJH in your reply.

Sincerely,

Mark D. Cohen
Deputy Chief, Regulatory Division

"Building Strong and Taking Care of People!"