State of California
DEPARTMENT OF TRANSPORTATION

California State Transportation Agency

Memorandum

Serious drought.
Help Save Water!

To: BRUCE ROBERTS, Acting Deputy Director
Division of Rail

Date: September 10, 2014

File: P2545-0015
P2545-0014

ORIGINAL SIGNED BY:

From: MARSUE MORRILL, Chief
External Audits - Contracts
Audits and Investigations

Subject: **PROPOSITION 1B AUDIT REPORT - PENINSULA CORRIDOR JOINT POWERS BOARD**

Caltrans Audits and Investigations (A&I) audited costs claimed and reimbursed to the Peninsula Corridor Joint Powers Board (PCJPB) totaling $3,783,565. Two projects were audited that were both funded with Proposition 1B (Prop 1B) Highway-Railroad Crossing Safety Account (HRCSA) funds. The Jerrold Avenue Bridge Grade Separation project, HRCSA-5001(001), totaled $2,785,590 and the San Mateo Bridges Grade Separation project, HRCSA-5102(001), totaled $997,975. The audit period was August 11, 2010 through August 22, 2012.

Based on our audit, we determined that reimbursed project costs totaling $3,783,565 were in compliance with the executed project agreement, state and federal regulations, contract provisions, and Caltrans/California Transportation Commission (CTC) program guidelines except for $160,213.12 that were not supported and were not in compliance with respective agreement provisions, state and federal regulations, and CTC program guidelines.

This report is intended for the information of Caltrans management, the Federal Highway Administration, the CTC, and the PCJPB. This report is a matter of public record, however, and its distribution is not limited. In addition, this report will be placed on Caltrans website.

Please provide A&I a corrective action plan related to the audit recommendation within 90 days of this memorandum. If you have any questions, please contact Luisa Ruvalcaba, Audit Manager, at (916) 323-7888.

Enclosure

cc: Peter W. Skinner, Senior Grant Analyst, Peninsula Corridor Joint Powers Board
Stephen Maller, Deputy Director, California Transportation Commission
Teresa Favila, Assistant Deputy Director, California Transportation Commission
Sylvia Fung, District Local Assistance Engineer, District 4, Caltrans
Carlos Ruiz, Proposition 1B Program Coordinator, Division of Rail, Caltrans
Luisa Ruvalcaba, Audit Manager, Audits and Investigations, Caltrans
Sukhraj Kaur, Auditor, Audits and Investigations, Caltrans

PROPOSITION 1B AUDIT REPORT

Peninsula Corridor Joint Powers Board

P2545-0014 and P2545-0015

September 2014

Prepared By:

Audits and Investigations

California Department of Transportation

Background, Scope and Methodology

BACKGROUND

As approved by the voters in the November 2006 general elections, Proposition 1B (Prop 1B) enacted the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 to authorize $19.925 billion of state general obligation bonds for specified purposes, including high-priority transportation corridor improvements, State Route 99 corridor enhancements, trade infrastructure and port security projects, school bus retrofit and replacement purposes, state transportation improvement program augmentation, transit and passenger rail improvements, state-local partnership transportation projects, transit security projects, local bridge seismic retrofit projects, highway-railroad grade separation and crossing improvement projects, state highway safety and rehabilitation projects, and local street and road improvement, congestion relief, and traffic safety.

Part of the funds were used for the Highway-Railroad Crossing Safety Account (HRCSA) for the completion of high-priority grade separation and railroad crossing safety improvements. The Peninsula Corridor Joint Powers Board (PCJPB) performed the Jerrold Avenue Bridge Grade Separation (HRCSA-5001(001)) and the San Mateo Bridges Grade Separation (HRCSA-5102(001)) projects which were funded with $2,785,590 and $997,975 in HRCSA funds, respectively.

SCOPE

The scope of the audit was limited to financial and compliance activities related to the above referenced projects. We performed our limited scope audit to specifically determine whether:

- The project costs incurred and reimbursed were in compliance with the executed project agreement, state and federal regulations, contract provisions, and Caltrans/California Transportation Commission (CTC) program guidelines.

- The project deliverables (outputs) and outcomes were consistent with the project scope, schedule, and benefits described in the executed project agreement or approved amendments thereof.

To achieve our audit objectives, we performed the following audit procedures:

- Reviewed the PCJPB's prior audits and single audit reports;

- Reviewed the PCJPB's policies and procedures relating to the job cost system and procurement;

- Interviewed employees, completed a review of the internal control system, and gained an understanding of the PCJPB's internal controls, job cost system, timekeeping, accounts payable, and billing processes related to projects funded by Prop 1B.

For the projects under review, we performed the following audit procedures:

- Reviewed project billing invoices sent to the Caltrans accounting office to ensure that the PCJPB properly prepared and/or billed Caltrans for reimbursement of project expenditures;

- Reviewed supporting documentation from the project billing invoices to ensure that project expenditures were supported and in compliance with project agreement, state and federal laws and regulations, contract provisions and Caltrans/CTC Guidelines;

- Obtained procurement records to ensure that the PCJPB procured billed contracts in accordance with applicable state and federal procurement requirements;

- Reviewed significant contact change orders to ensure that they were properly approved and supported;

- Reviewed and compared project agreement and project final delivery report to ensure that project deliverables (outputs) and outcomes were met and that variances to the project's scope, schedule, costs and benefits were properly approved and supported.

The PCJPB is responsible for the fair presentation of incurred costs; ensuring compliance with contract provisions, state and federal regulations, CTC program guidelines; and the adequacy of its job cost system to accumulate and segregate reasonable, allocable, and allowable costs. Our responsibility, based on our audit, is to express an opinion on the allowability of the reimbursed costs in accordance with the applicable agreements, contract provisions, state and federal regulations, and Caltrans/CTC guidelines.

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 and procedures may deteriorate.

Our findings and recommendations take into consideration the PCJPB's response dated August 22, 2014, to our August 15, 2014 draft report. Our findings and recommendations, the PCJPB response, and our analysis of the response are set forth in the Findings and Recommendations section of this report. A copy of the PCJPB response is included as Attachment II.

METHODOLOGY

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

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

FINDING 1: Lack of Original Ranking Sheets and Extensive Contract Amendments

The PCJPB was missing the original ranking sheets used during the selection of the contractor, and extensive amendments essentially resulted in the sole sourcing of the contract.

The PCJPB failed to retain the original scoring sheets completed by each evaluator to rank the competing consultant's proposals. The scoring sheets serve as source documentation for the procurement. The issue was noted in the procurement of contract 05-PCJPB-P-027 billed to the Jerrold Avenue Bridge project and contract 10-PCJPB-P-053 billed to the San Mateo Bridges project. The PCJPB believed that a summary of all the evaluator's ranking scores was sufficient source documentation.

49 Code of Federal Regulations (CFR) Part 18 Section 36(b)(9) states "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

49 CFR Part 18 Section 18.20(6) states "*Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc."

In addition, the PCJPB entered into contract 05-PCJPB-P-027 with three consultants for on-call construction management services through the Request for Proposal (RFP) process. The contractors were Parsons Transportation Group, PB Americas, and HNTB. The contract was for a two-year base period with the option to extend three additional years. The maximum aggregate compensation for the two-year base period was not to exceed $55 million. Compensation for the first and second one-year option terms was not to exceed $10,000 each year and compensation for the third one-year option was not to exceed $5 million. The PCJPB reserved the right to determine how the amounts would be divided among the three consultants. As the options described were exercised, the contract resulted in a five-year $80 million contract.

Subsequent to the exercised options to extend, the contract was amended eight times. Amendment six increased the contract amount by a not-to-exceed $75 million amount. Amendments six through eight increased the contract period for an additional four years. Although the scope of services did not change, the contract was increased by 94 percent

($75 million/ $80 million) in funding and 80 percent (4 years/ 5 years) in duration through amendments. The result is an essential sole sourcing of the procurement via amendments six through eight making the billed costs from contract 05-PCJPB-P-027 questionable. The amounts reimbursed to the PCJPB are $117,353.28 for the Jerrold Avenue Bridge project and $42,859.84 for the San Mateo Bridges project (see Attachment I).

49 CFR Part18 Section36(c)(1), states "(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §18.36."

RECOMMENDATION:

- The PCJPB retain the original ranking sheets and revise the procurement policies and procedure manual to include the retention requirement.

- The PCJPB reimburse Caltrans the unallowable amounts of $117,353.28 for the Jerrold Avenue Bridge project and $42,859.84 for the San Mateo Bridges project for the costs related to amendments six through eight from contract 05-PCJPB-P-027.

PCJPB'S RESPONSE:

The PCJPB disagreed with the audit finding. For the PCJPB's full response to the finding see Attachment II.

AUDITOR ANALYSIS TO PCJPB'S RESPONSE:

The PCJPB considers the consolidated score sheets, RFP wining proposals and staff reports to be "sufficient" records to justify the award of contracts. The PCJPB states that retention of original scoring sheets is no more than a futile exercise. The original ranking sheets utilized to evaluate the consultants by each individual evaluator however, are the main source documents for the consultant evaluation.

Also, the PCJPB's contract 05-PCJPB-P-027 for on-call construction management services was increased by 94 percent in funding and 80 percent in duration through amendments. Auditors understand that the PCJPB was in the final stages of the project and did not want to change the consultants due to the nature of the work, amount of effort, and scope of the original competition to go through a new procurement process. However, the PCJPB should have gone through the procurement process to avoid the increase in funding and duration of the contract thereby converting the contract to a sole source procurement. Auditor discussed the issue with Federal Highway Administration (FHWA) and they agreed with the finding. The finding remains unchanged.

FINDING 2: Improper Charging Practices

In PCJPB's accounting system fund codes are assigned to segregate fund sources for each project. Many of the transactions tested were determined to have been coded to the incorrect fund source although no indication of duplicate billing was noted. Overall, the PCJPB billed the correct reimbursement percentage of 27 percent for the Jerrold Avenue Bridge project and 22 percent for the San Mateo Bridges project, but as invoices were processed they were not properly coded to the fund code. This situation has the potential for duplicate billing to occur. PCJPB's management thought that the process was adequate as long as they did not exceed the total allowed reimbursement percentage per contract.

49 CFR Part 18.20 Section (b)(2), states "Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income."

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

RECOMMENDATION:

The PCJPB should code transactions to the correct fund codes so that the accounting records reflect the correct fund source.

PCJPB'S RESPONSE:

The PCJPB agreed with the audit finding. For the PCJPB's full response to the finding see Attachment II.

Audit Team

MarSue Morrill, Chief, External Audits

Luisa Ruvalcaba, Audit Manager

Sukhraj Kaur, Auditor

Attachment I

On-Call Engineering & Construction Management Services Consultant Agreement
Costs Billed in Amendments 6 through 8
Jerrold Avenue Bridge Grade Separation and San Mateo Bridges Grade Seperation Projects

Total Unsuppored Costs = $ 117,353.28 + $ 42,859.84 = $160,213.12

Jerrold Avenue Bridge

Claim Invoice Number	Contractor	Invoice Date	Invoice Number	Invoiced Cost	Billable Share of 27% due to Caltrans
1	HNTB Corporation	10/22/2010	1047-37929-DS-112	$ 2,259.75	$ 610.13
	HNTB Corporation	11/19/2010	1069-37929-DS-112	2,156.39	582.23
	HNTB Corporation	12/21/2010	1088-37929-DS-112	5,615.69	1,516.24
	HNTB Corporation	1/7/2011	1103-37929-DS-112	10,848.25	2,929.03
	HNTB Corporation	2/8/2011	1123-37929-DS-112	32,160.26	8,683.27
	HNTB Corporation	9/3/2010	1143-37929-DS-112	7,959.66	2,149.11
2	HNTB Corporation	1/7/2011	1103-37929-DS-112Rev	(1,115.64)	(301.22)
	HNTB Corporation	2/8/2011	1123-37929-DS-112Rev	(32,160.26)	(8,683.27)
	HNTB Corporation	5/2/2011	1176-37929-DS-112	6,144.74	1,659.08
3	HNTB Corporation	3/30/2011	0000142306	46.87	12.65
	HNTB Corporation	4/28/2011	0000142907	482.39	130.25
	PB Amercia	3/30/2011	0000142306	481.43	129.99
	Parson Transportation Group	3/30/2011	0000142306	1,373.93	370.96
	PB Amercia	3/30/2011	0000142306	1,270.23	342.96
	Parson Transportation Group	3/30/2011	0000142306	126.08	34.04
	Parson Transportation Group	3/30/2011	0000142306	1,245.62	336.32
	HNTB Corporation	1/20/2011	0000140795	1,310.56	353.85
	PB Amercia	3/30/2011	0000142306	754.91	203.83
	HNTB Corporation	2/28/2011	0000141624	2,202.42	594.65
	Parson Transportation Group	2/18/2011	0000141454	6,766.73	1,827.02
	HNTB Corporation	4/6/2011	0000142467	5,973.50	1,612.85
	HNTB Corporation	4/28/2011	0000142906	5,686.61	1,535.38
	PB Amercia	4/11/2011	0000142565	669.79	180.84
	PB Amercia	4/14/2011	0000142683	897.34	242.28
	HNTB Corporation	5/25/2011	0000143477	3,576.59	965.68
	HNTB Corporation	5/26/2011	0000143517	181.77	49.08
	HNTB Corporation	5/26/2011	0000143524	5,453.07	1,472.33
	Parson Transportation Group	6/13/2011	0000143825	24,596.72	6,641.11
	Parson Transportation Group	6/13/2011	0000143825	944.87	255.11
	PB Amercia	6/13/2011	0000143823	8.22	2.22
	PB Amercia	6/30/2011	0000144248	522.98	141.20
	HNTB Corporation	6/13/2011	0000143829	451.23	121.83
	Parson Transportation Group	6/21/2011	0000144040	14,522.72	3,921.13
	Parson Transportation Group	6/21/2011	0000144038	7,538.88	2,035.50
	Parson Transportation Group	6/21/2011	0000144038	632.57	170.79
	PB Amercia	6/30/2011	0000144248	904.03	244.09
	HNTB Corporation	7/22/2011	0000154321	6,414.73	1,731.98
	Parson Transportation Group	9/21/2011	0000156050	11,587.05	3,128.50
	Parson Transportation Group	9/21/2011	0000156050	7,514.39	2,028.89
	HNTB Corporation	9/15/2011	0000155871	8,619.99	2,327.40
	PB Amercia	6/21/2011	0000144042	687.76	185.70
	PB Amercia	9/28/2011	0000156174	675.18	182.30
4	HNTB Corporation	10/3/2011	157428/1288-37929-DS-113	808.64	218.33
	HNTB Corporation	10/24/2011	157431/1292-37929-DS-113	6,574.34	1,775.07
	HNTB Corporation	11/7/2011	157643/1305-37929-DS-133	2,442.68	659.52
	HNTB Corporation	12/19/2011	159673/1327-37929-DS-133	739.57	199.68
	HNTB Corporation	2/21/2012	159762/1460-37929-DS-133	933.21	251.97
	Parsons Transportation Group	9/12/2011	157390/1108A121	9,804.22	2,647.14

Attachment I

Jerrold Avenue Bridge (continued)

Claim Invoice Number	Contractor	Invoice Date	Invoice Number	Invoiced Cost	Billable Share of 27% due to Caltrans
	Parsons Transportation Group	11/21/2011	157638/1110A693	43,459.43	11,734.05
	Parsons Transportation Group	12/12/2011	158265/1111A857	27,860.24	7,522.26
	Parsons Transportation Group	12/27/2011	158675/1111A545	287.58	77.65
	Parsons Transportation Group	1/3/2012	159623/1112A543	13,570.48	3,664.03
	Parsons Transportation Group	2/21/2012	159768/1201B204	16,259.31	4,390.01
	Parsons Transportation Group	4/18/2012	161054/1203A153	1,546.48	417.55
	Parsons Transportation Group	4/19/2012	160492/1202A887	6,824.39	1,842.59
	PB Americas	11/21/2011	157854/AR461774A	6,189.22	1,671.09
	PB Americas	11/21/2011	157892/AR464886A	7,752.99	2,093.31
	PB Americas	11/21/2011	157872/AR465253A	3,566.72	963.01
	PB Americas	12/5/2011	158157/AR464990	997.94	269.44
	PB Americas	10/3/2011	157429/AR459689	746.46	201.54
	PB Americas	12/19/2011	158237/AR468976	492.49	132.97
	PB Americas	12/27/2011	159616/AR468519	816.81	220.54
	PB Americas	12/27/2011	159626/AR468280	4,126.67	1,114.20
	PB Americas	1/23/2012	159594/AR469895	1,954.08	527.60
	PB Americas	1/23/2012	159618/AR469848	3,009.09	812.45
	PB Americas	1/23/2012	159617/AR470067	495.86	133.88
	PB Americas	2/21/2012	159763/AR472502	3,062.50	826.88
	PB Americas	2/21/2012	159761/AR472515	477.77	129.00
	PB Americas	3/8/2012	160065/AR475994	1,087.22	293.55
	PB Americas	3/31/2012	160499/AR476920	1,756.02	474.13
	PB Americas	4/19/2012	161088/AR476805	1,084.13	292.72
	PB Americas	4/23/2012	161220/AR476999	22.67	6.12
	HNTB Corporation	9/20/2011	1287-37929-DS-112	22,691.42	6,126.68
	HNTB Corporation	9/27/2011	1283R-37929-DS-133	87.55	23.64
	HNTB Corporation	10/14/2011	1309-37929-DS-112	15,528.28	4,192.64
	HNTB Corporation	11/11/2011	1319-37929-DS-112	12,525.97	3,382.01
	HNTB Corporation	12/21/2011	1446-37929-DS-112	10,139.18	2,737.01
	HNTB Corporation	1/13/2012	1452-37929-DS-112	10,901.71	2,943.46
	HNTB Corporation	2/10/2012	1466-37929-DS-112	2,036.90	549.96
	PB Americas	3/2/2012	AR442184	(473.94)	(127.96)
5	Parsons Transportation Group	4/27/2012	1204A342	5,092.74	1,375.04
	Parsons Transportation Group	6/8/2012	1206A131	7,235.09	1,953.47
	PB Americas	4/24/2012	AR481931	248.23	67.02
	PB Americas	5/18/2012	AR484470	256.97	69.30
7	Parsons Transportation Group	11/20/2012	1211A271	5,980.40	1,614.71
	HNTB Corporation	9/17/2012	1603-37929-DS-112	10,236.88	2,763.96
8	Parsons Transportation Group	12/28/2012	1212A849	5,417.58	1,462.75
	Grand Total			**$ 434,644.17**	**$ 117,353.28**

Attachment 1

San Mateo Bridges

Claim Invoice Number	Contractor	Invoice Date	Invoice Number	Invoiced Cost	Billable Share of 22% due to Caltrans
1	PB Americas, Inc.	2/3/2011	AR439588	$ 7,090.67	$ 1,559.95
	PB Americas, Inc.	3/4/2011	AR442797	34,440.18	7,576.84
2	PB Americas, Inc.	3/22/2011	AR444454	17,639.51	3,880.69
	PB Americas, Inc.	5/4/2011	AR448520	13,556.90	2,982.52
3	Parsons Transportation Group, inc.	1/5/2011	0000140449	3,174.00	698.28
	Parsons Transportation Group, inc.	2/18/2011	0000141454	1,871.64	411.76
	HNTB	4/28/2011	0000142906	812.32	178.72
	PB Americas	4/11/2011	0000142565	1,414.00	311.08
	PB Americas	4/14/2011	0000142683	972.11	213.86
	Parsons Transportation Group, inc.	6/13/2011	0000143825	8,603.50	1,892.77
	Parsons Transportation Group, inc.	6/13/2011	0000143825	944.87	207.87
	PB Americas	6/9/2011	0000143762	896.53	197.24
	Parsons Transportation Group, inc.	6/21/2011	0000144040	2,538.49	558.47
	Parsons Transportation Group, inc.	6/21/2011	0000144041	631.94	139.03
	Parsons Transportation Group, inc.	6/21/2011	0000144038	4,378.42	963.25
	Parsons Transportation Group, inc.	6/21/2011	0000144038	632.57	139.17
	PB Americas	6/21/2011	0000144043	1,582.05	348.05
	Parsons Transportation Group, inc.	9/21/2011	0000156050	6,156.72	1,354.20
	Parsons Transportation Group, inc.	9/21/2011	0000156051	315.96	69.51
	HNTB	9/15/2011	0000155871	2,350.92	517.20
	PB Americas	6/21/2011	0000144042	687.76	151.31
	PB Americas	9/28/2011	0000156174	600.16	132.04
4	HNTB	4/15/2011 - 9/23/2011	Various	4,705.58	1,035.23
	Parsons Transportation Group, inc.	8/16/2011 - 3/23/2012	Various	29,749.44	6,544.88
	PB Americas	9/28/2011 - 2/29/2012	Various	6,876.86	1,512.91
	PB Americas	8/29/2011- 1/24/2012	Various	24,077.23	5,296.99
5	PB Americas, inc.	3/28/2012	AR479463	165.33	36.37
	Parsons Transportation Group, inc.	4/27/2012	1204A342	665.86	146.49
	Parsons Transportation Group, inc.	0/8/2012	1206A131	944.09	207.70
7	Parsons Transportation Group, inc.	11/20/2012	1211A271	2,908.14	639.79
8	Parsons Transportation Group, inc.	12/28/2012	1212A849	1,443.01	317.46
9	Parsons Transportation Group, inc.	10/25/2010	10101414	5,065.61	1,114.43
	Parsons Transportation Group, inc.	11/15/2010	10110195	2,131.13	468.85
	Parsons Transportation Group, inc.	12/15/2010	10120132	1,371.70	301.77
	Parsons Transportation Group, inc.	1/19/2011	11010119	3,423.44	753.16
	Grand Total			**$ 194,818.64**	**$ 42,859.84**

Attachment II

BOARD OF DIRECTORS 2014

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MICHAEL J. SCANLON
EXECUTIVE DIRECTOR

August 22, 2014

State of California
Department of Transportation
Marsue Morrill, Chief
External Audits – Contracts
Audits and Investigations
State of California Department of Transportation

Dear Ms. Morrill:

The Peninsula Corridor Joint Powers Board (JPB) is in receipt of the Caltrans draft Prop 1B Audit Report, dated August 15, 2014. The draft Audit Report has two findings: Finding 1, Lack of Original Ranking Sheets and of Contract Amendments; and Finding 2, Improper Charging Practices.

The JPB does not disagree with Finding 2, Improper Charging Practices, and will be submitting a corrective action plan within the required 90-day deadline. In short, the JPB is revising its internal budgeting procedures to ensure the reimbursable percentage allowed under HRCSA is properly reflected when the funds are initially budgeted within a project. This setup procedure will simplify the billing process by reflecting the accurate percentage to be billed. In addition, we have instituted changes to our budget transfer and procurement requisition process which include the review by grants staff of both documents before finalization, providing an additional level of review when grant funds are applied to a project and to specific procurements.

However, the JPB respectfully disagrees with Finding 1, Lack of Original Ranking Sheets and of Contract Amendments, for the reasons set forth below and we note that our position is consistent with Federal Department of Transportation (DOT) advice to grantees.

Finding 1, Lack of Original Ranking Sheets and of Contract Amendments:

A. Original Ranking Sheets

The Audit Report cites 49 Code of Federal Regulation, Part 18, Section 36 (b)(9) that requires in part, "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

The Audit Report concludes that this CFR language requires the JPB to retain original scoring sheets.

We have reviewed the CFR language and respectfully disagree with the conclusion that the CFR specifically requires that original, individual scoring sheets be retained. There is simply nothing in the plain language of the CFR that requires the retention of these particular records. Retention of original scoring sheets may be a recommended practice, but that does not mean that it is required by the regulation.

Attachment II

We consider our consolidated scoring sheets, RFP winning proposals and Staff Reports to be "sufficient" records to justify the award of the contract. That is the applicable standard; to wit, "sufficient" records. Grantees should be afforded discretion in determining which records are in fact "sufficient."

Also, we have found that retaining individual scoring sheets, which then may need to be disclosed to the public in response to a Public Records Act request, leaves the agency open to unfounded protests by unsuccessful bidders who pick apart individual scores and/or notes. The concern is not only facilitating unfounded protests, but also chilling the ability of evaluators to do their jobs.

We also understand that non-retention of individual scoring sheets is a common practice by many other transit agencies and that such agencies follow this practice for the valid reasons set forth above.

Finally, once the bid protest period has lapsed, and the contract has been commenced, original scoring sheets have no utility or purpose at all. Accordingly, their retention is no more than a futile exercise.

B. Conversion of the Contracts to Sole Source

The Audit Report cites 49 CFR, Part 18, Section 36(c)(1) with the requirement that "All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 18.36."

The Audit Report concludes that Amendments six through eight of the General Engineering Consultant (GEC) contracts for contract # 05-PCJPB-027 resulted in converting the contracts to sole source.

Consistent with advice given to federal grantees by the DOT, the JPB believes that Amendments six through eight were not cardinal changes to the contract. They were within the general scope of the contracts and therefore did not convert them to sole source procurements for the following reasons:

a) **Nature of the work**—The scope of work was not changed by Amendments six through eight. The scope of work calls for the provision of multi-disciplined, design, engineering, architectural and construction management services for the Agency's projects. The scope of work continued in Amendments six through eight can reasonably be considered essentially the same scope as the parties bargained for when the contract was awarded. The general principle put forth in federal decisions is that if the function or nature of the work as changed is generally the same as the work originally called for, the changes are considered to be within the general scope of the contract. Here, that is exactly the case, as the additional time and funding was necessary to allow the JPB to continue with uninterrupted design and design support services on existing and pending Caltrain capital projects that were in the final design or construction phases during such extensions.

Attachment II

b) **Amount of Effort**—Although Amendments six through eight made increases in the time of performance and related increases in the contract ceiling amounts, the changed work required the same level-of-effort as the work called for in the original contract term. It was not known at the time of the original solicitation of these "on call, as needed" contracts precisely what the JPB's GEC needs would be and all potential proposers were well aware of this fact as it was reflected in the procurement documents.

c) **Scope of the original competition**—The type of changes that occurred in Amendments 6-8 (extension of time of performance and concomitant increases in the contract ceiling amount) would reasonably have been anticipated by the competitors responding to the original solicitation. The original solicitation listed many "potential projects" that may be supported by the contract. It is generally accepted in the engineering and public construction industries that projects may be added, deleted, and most often lengthened for numerous reasons including funding availability, unforeseen conditions and design changes needed for constructability and other reasons.

Most significantly, the DOT agrees with the JPB's position here. A grantee inquired whether an Architectural and Engineering contract, which was increased in value by 100%, constituted a cardinal change. The DOT stated:

> We would question whether the additional work being done that causes a 100% increase in the value of the contract was (1) reasonably within the contemplation of the parties when the contract was awarded, and (2) essentially the same work that the parties bargained for at the time of initial award. For example, if the A&E firm was selected to design a building, and during the course of the design, perhaps late in the design work, a series of unforeseen design changes had to be made on account of funding constraints, construction code changes, etc., but the building retained its essential character (as in the hospital case above), <u>then the 100% cost growth is probably within the scope of the contract</u>. Available at http://www.fta.dot.gov/13057_7622.html (emphasis added).

Thus, according to the DOT, even a 100% increase in contract value was probably not a cardinal change because the increase was reasonably within the contemplation of the parties when the contract was awarded and it was essentially the same work the parties bargained for. The same can be said here.

The JPB respectfully submits that the additional time for performance and increases to the contract ceiling amounts covered by Amendments six through eight were reasonably within the contemplation of the parties when the contract was awarded and called for essentially the same work that the parties bargained for at the time of the initial award. Thus, consistent with DOT guidance to grantees, this did not rise to the level of cardinal changes and did not convert the contracts to sole source.

Moreover, the GEC contracts are Architectural and Engineering contracts that were procured through a competitive negotiation process that followed the Brooks Act

requirements. The goal of the procurement was to award to the most qualified firms. The JPB further believes that if the work begun in the contract prior to Amendments 6-8 was made the subject of a new procurement, it would have been an exercise in futility and a waste of public resources, since the firms involved in the final stages of design and design support during construction of the projects in question would have surely proposed and been found to have been the most qualified to continue the work.

Even if Amendments six through eight resulted in a sole source procurement, DOT rules allow sole source procurements, where justified. Given that the firms involved were in the final stages of design and design support during construction of the projects in question, a sole source procurement would have been more than justified in this case and would not run afoul of the requirement of full and open competition.

Finally, we would like to point out that the extension pursuant to the eighth and final Amendment resulted from the need to restart the competitive solicitation for GEC services that had been commenced on March 6, 2012 in order to ensure the broadest participation of potential proposers. This Amendment therefore was required to provide continuation of design and design support services during the completion of the re-solicitation of the GEC services.

For all of the reasons set forth above, the JPB respectfully requests that Caltrans reconsider Audit Report Finding 1.

Thank you,

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