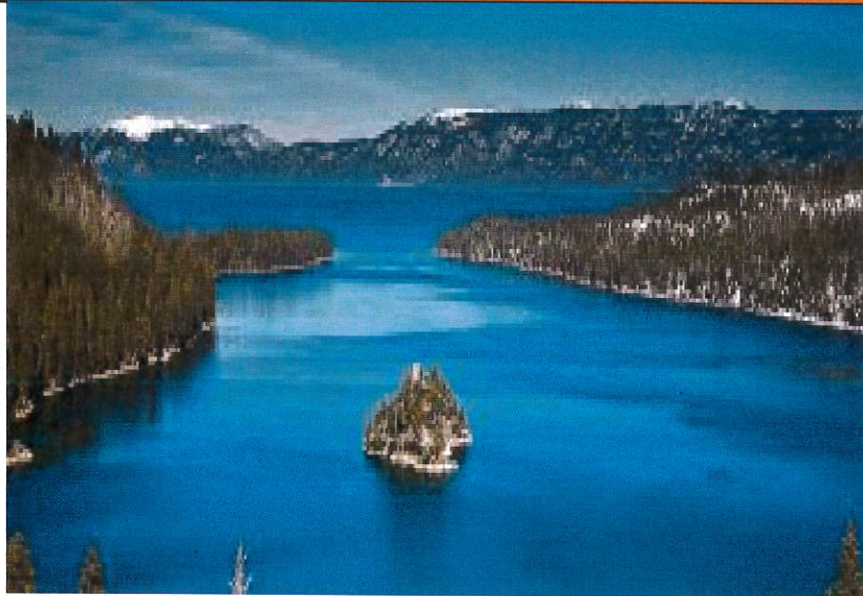


City of South Lake Tahoe Interim Incurred Cost Audit



**Audit Report
August 2019**

PREPARED BY:

Independent Office of Audits and Investigations – MS 2

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*“Provide a safe, sustainable, integrated and efficient transportation system
to enhance California’s economy and livability”*

TABLE OF CONTENTS

SUMMARY	2
OBJECTIVE	2
SCOPE	2
METHODOLOGY	3
CONCLUSION	3
VIEWS OF RESPONSIBLE OFFICIALS	3
FINDINGS AND RECOMMENDATIONS	4
FINDING 1 – City’s Project Labor Tracking is Inaccurate	4
FINDING 2 – Deficiency Identified in Consultant Procurement Transactions	4
FINDING 3 – Deficiency in Billing	6
FINDING 4 – Deficiency in Contract Administration and Monitoring	7
ATTACHMENT	
I. Summary of Questioned, Ineligible, and Disallowed Costs	
II. Missing Contract Provisions	
III. Criteria for Findings 2, 3, and 4	
IV. Audit Response from the City of South Lake Tahoe	

SUMMARY, OBJECTIVE, SCOPE, METHODOLOGY, AND CONCLUSION

SUMMARY

The Independent Office of Audits and Investigations (IOAI) audited costs totaling \$1,359,462 reimbursed by the California Department of Transportation (Caltrans) to the City of South Lake Tahoe (City) and found costs totaling \$133,118 were not in compliance with Caltrans agreement provisions, and state and federal regulations.

OBJECTIVE

The audit was performed to determine whether costs claimed by and reimbursed to the City were allowable, adequately supported, and in compliance with Caltrans agreement provisions, and state and federal regulations.

The audit included testing of costs incurred on the following projects:

- Bike lanes, paths, pedestrian sidewalks, lighting, hardscape and landscape improvement on the Sierra Blvd. from Palmira Ave. to Barbara Ave.
03-5398F15-F008-ISTEA - CML-5398(012)
- Bike Path on US 50 between El Dorado Beach Park and Ski Run Blvd.
03-5398R-N005-R2-ISTEA - CML-5398(008)
- Bicycle/Pedestrian Safety Improvements on the existing Class 1 Path at the Al Tahoe Blvd./Johnson Blvd. Intersection east to the Route 50/Al Tahoe Blvd. Intersection.
03-5398F15-F009-ISTEA - ATPL-5398(011)

Our audit period covered October 1, 2016, through November 30, 2018.

SCOPE

The scope of the audit was limited to financial and compliance activities related to the above referenced agreements. Our audit included interviews of City staff necessary to obtain an understanding of the City's financial management system (FMS), which includes procurement and contract management, and a review of the City's financial statements for fiscal year 2017. The audit also included transaction testing of claimed costs to ensure compliance with Title 2 of the Code of Federal Regulations (CFR) Part 200, 48 CFR Chapter 1 Part 31, 23 CFR Part 172, California Public Contract Code, Caltrans' Local Assistance Procedures Manual, and requirements stipulated in the agreements with Caltrans. The audit also included tests of one construction agreement and two consultant agreements procured by the City during the audit period. Field work was completed on March 21, 2019, and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not pertain to costs or credits arising after this date.

The City is responsible for the costs incurred and billed to Caltrans, compliance with applicable agreement provisions and state and federal regulations, and the adequacy of their FMS to accumulate and segregate reasonable, allowable costs that can be allocated to projects. Because of inherent limitations in any FMS, misstatements due to error or fraud may occur and

not be detected. Also, projections of any evaluation of the FMS and the procurement process to future periods are subject to the risk that the FMS may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient and 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 City. Therefore, we did not audit and are not expressing an opinion on the City's financial statements.

CONCLUSION

Based on our audit, we determined the total reimbursed costs of \$1,359,462 included \$1,226,344 of costs adequately supported and in compliance with agreement provisions, and state and federal requirements. Costs totaling \$133,118 were not in compliance with respective agreement provisions and state and federal regulations. Specifically, we identified the following deficiencies:

- The City does not have a job cost system that can track project labor costs.
- Professional service contracts tested were not procured in accordance with state and federal procurement requirements resulting in \$101,193 in questioned costs.
- The City billed for non-participating ineligible costs totaling \$24,343.
- The City billed unallowable costs to Caltrans resulting in \$7,582 in disallowed costs.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations take into account the city's response dated June 17, 2019, to our June 13, 2019, draft report. Our findings and recommendations, the City's response, and our analysis of the response are set forth in the Findings and Recommendations section of this report. The report is a matter of public record and will be placed on IOAI's webpage, which can be viewed at < <https://ig.dot.ca.gov> >.

If you have any questions, please contact Luisa Ruvalcaba, Audit Manager, at (916) 323-7888, or Yung Jo Ryoo, Auditor at (916) 323-7950.

FINDINGS AND RECOMMENDATIONS

FINDING 1 – City Has No Job Cost System to Track Project Labor Costs

The City does not have a job cost system that segregates, accumulates, and allocates labor costs by project. Instead, the City tracks engineering staff's labor costs manually for billing and local match purposes but does not input the cost information into their accounting system, OneSolution. In addition, the hourly rates and hours used for manual tracking were not supported by the City's formal accounting records.

2 CFR 200.302 (a) states in part: "...non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit to...the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes..."

Without a job cost system or adequate financial management system the City may bill the California Department of Transportation (Caltrans) for unallowable costs.

RECOMMENDATION

We recommend the City revise their manual labor tracking process to capture all project labor costs by recording them in the City's accounting system.

SUMMARY OF AUDITEE'S RESPONSE

The City stated that while their financial software does not have a module for job costing they do track project labor and incorporate it into their general ledger. The City did, however, determine to increase the effectiveness of the current tracking system and stated new procedures have been reviewed with staff and will be incorporated into future trainings.

For the City's full response See Attachment IV.

ANALYSIS OF AUDITEE'S RESPONSE

The City's response only addressed the labor costs billed to grantors. It did not address the labor costs used for local matching purposes. The City's current process does not include the recording of labor costs used for local match through a Journal Entry into the City's One Solution software. While the City does track costs outside their accounting system, the costs are not reflected properly in their accounting system. The finding remains unchanged.

FINDING 2 – Deficiencies Identified in Consultant Procurement Transactions

The City did not follow state and federal procurement requirements in procuring professional Architectural and Engineering service contracts with Nichols Consulting Engineers (NCE) and

Cardno, Inc. Specifically, we identified the following deficiencies for both the NCE and Cardno, Inc. procurements:

- Independent cost estimates were not completed.
- Cost proposal analysis was not performed.
- Prices and profit negotiations were not performed.
- The City allowed a cost-plus percent markup.
- The City requires the travel and per diem costs to be billed at an hourly rate.

In addition to the deficiencies noted above, the contract with Cardno, Inc. had the following additional deficiencies:

- Price was used as a factor in evaluating the proposals.
- The City changed the scope of work of the RFP after the selection of the consultant and negotiated the contract without obtaining 3 proposals.
- The City did not exclude Cardno, Inc., who developed part of the RFP, from bidding and they won the contract.
- The City did not submit the 'Consultant Certification of Contract Costs and Financial Management System', form 10-K, to the Independent Office of Audits and Investigations (IOAI) for review before the City finalized the negotiation.

Based on the above, we determined that the contract with Cardno, Inc. was not procured in an open and competitive process, therefore, the billed costs are questioned. This procurement and contract execution took place at the end of 2017, subsequent to enhanced training and resources made available to local agencies by Caltrans, Division of Local Assistance (DLA) for procuring consultant contracts. The City billed and was reimbursed \$101,193 in relation to the consulting costs paid to Cardno, Inc.

Deficiencies in procurements can result in a lack of fair and open competition and contracts being awarded to unqualified consultants. In addition, without proper procurement, a fair and reasonable contract price cannot be ensured.

RECOMMENDATION

We recommend the City:

- Ensure procurement procedures are in place to comply with state and federal, procurement requirements based on the procurement, and train staff accordingly.
- Contact Caltrans, DLA to take their procurement training.
See: <http://www.dot.ca.gov/hq/LocalPrograms/training.html>

We recommend Caltrans and DLA work with the Federal Highway Administration and the City to determine if any of the \$101,193 questioned costs identified above are to be repaid to Caltrans.

SUMMARY OF AUDITEE'S RESPONSE

The City states that small purchase procedures applied which did not require proposal evaluations, re-solicitation after a material change in the scope of the project, or 10-K forms to be

submitted to the Caltrans District Local Assistance Engineer during the procurement process. The City also states that they are allowed to use the drawings developed by Cardno, Inc. for the project since they were developed for a different agency under a different contract in an earlier phase of the project.

For the City's full response See Attachment IV.

ANALYSIS OF AUDITEE'S RESPONSE

The City stated that small purchase (contracts under \$150,000) procedures applied to this project, however, we found that the competitive proposal methodology did apply. The City originally proposed a contract at \$274,516. Based on the initial project estimate the City issued an RFP, solicited proposals, evaluated proposals received, and selected a consultant. Subsequent to selecting a consultant the City reduced the scope of the contract and reduced the amount of the contract to \$103,232 without resoliciting. If the smaller scope of work had been advertised, other firms may have submitted proposals.

As this is a federal project, the federal procurement rules and regulations apply, specifically in the case of conflict of interest. Cardno, Inc. did the concept plans for the project and by being allowed to compete for the engineering and design portion of the project creates a conflict of interest since it puts them at an advantage over other consultants.

FINDING 3 – Deficiencies in Billing

During our review of the City's billings to Caltrans, we found the City included unallowable costs in the following federal funded projects.

- CML-5398(008): The City's invoice included non-participating ineligible costs such as construction engineering, utility, and personal use costs totaling \$24,343. We are not disallowing these costs as the federal share to be reimbursed was not impacted. The effective reimbursement rate was less than the maximum reimbursement rate after taking the ineligible costs into account.
- CML-5398(012): The City was reimbursed for consultant services costs that included a 5 percent mark-up totaling \$4,344. Cost plus percentage mark-up is prohibited by federal regulation. These costs are disallowed.

RECOMMENDATION

We recommend the City:

- Reimburse Caltrans \$4,344 in disallowed costs identified above.
- Ensure staff are trained on state and federal regulations which specify eligibility of reimbursable costs.

SUMMARY OF AUDITEE'S RESPONSE

- The City disagreed with the first bullet of this finding and stated they think the costs were eligible. They further indicated that Caltrans accepted the billings. The City did state, however, that in the future they will assure to bill only construction items to construction projects.
- The City provided support that a double billing to the ATPL-5398(011) project had been corrected.
- The City agreed that the mark-up was not allowable and will be updating their policies and procedures to prohibit mark-ups.

For the City's full response See Attachment IV.

ANALYSIS OF AUDITEE'S RESPONSE

The City did not provide any additional information to support that the costs were eligible even though the invoices had been accepted. The finding was modified to remove the issue of double billing.

FINDING 4 – Deficiency in Contract Administration and Monitoring

The City's contract administration and monitoring of professional service contracts with NCE and Cardno, Inc. was not performed in accordance with the state and federal cost principles and contract terms. The City paid for labor costs in excess of the amounts included on the contract cost proposals without an amendment or prior approval. Specifically, we identified the following deficiencies:

- Cardno, Inc. assigned staff with classifications not listed in the approved contract fee schedule. The reimbursed amount for unauthorized labor classifications totaled \$1,448 and is disallowed.
- NCE assigned staff with hourly rates higher than the rates on their approved cost proposal. resulting in an over billing of \$1,789. These costs are disallowed. NCE billed for a Principal Consultant on tasks 1 and 11 without the position being included in their contract for those tasks.
- The City did not include required contract provisions in the contracts with NCE and Cardno, Inc. See a summary of the missing provisions in Attachment II.

By not implementing adequate contract management the City cannot ensure that work is performed according to contract requirements and that they are billing Caltrans for allowable project costs.

RECOMMENDATION

We recommend the City:

- Reimburse Caltrans \$3,237 (\$1,448 + \$1,789) in disallowed costs identified above.
- Monitor the executed consultant contracts to be in accordance with federal, state and city regulations.
- Ensure staff are trained on contract administration requirements.
- Ensure all third-party contracts include the required contract provisions.

SUMMARY OF AUDITEE'S RESPONSE

- The City disagreed that the Cardno Inc. costs are disallowed. The City states that the City staff noticed the classifications change in the billing invoice and at that time questioned the change and confirmed the substitutions.
- The City disagreed that the NCE costs are disallowed. The City states the Principal Consultant was included in two tasks, tasks 1 and 11, that he was not originally proposed in since first it was for the Principal Consultant to attend the kickoff meeting and the second he was needed after a key staff person resigned.
- The City agreed that contract provisions were missing. The City is in the process of reviewing "Attachment II" with proposed missing provisions and will incorporate all requirements from the Caltrans LAPM in future contracts and/or agreements. Staff will pursue procurement training from Caltrans, as well as in-house training and webinar opportunities."

For the City's full response See Attachment IV.

ANALYSIS OF AUDITEE'S RESPONSE

- The City noticed the change in classifications and contacted Cardno Inc. subsequent to the change being made, hence without required prior approval.
- NCE did not obtain pre-approval for including the Principal Consultant in tasks 1 and task 11 on the NCE contract.

The finding remains unchanged.

**For a summary of Ineligible, Questioned, and Disallowed Costs see Attachment I
For specific criteria see Attachment III**

Attachment I Summary of Questioned, Ineligible, and Disallowed Costs						
Questioned Costs						
Project	Billing No.	Consultant	Invoices	Description	Amount Reimbursed	Finding
ATPL-5398(011)	Multiple	Cardno, Inc.	1-5	Consultant Costs	\$ 101,193	2
				Sub Total	\$ 101,193	
Ineligible Costs - Not to be Recovered						
CML-5398(008)	19	CCMI	8598	Labor Compliance	\$ 975.00	3
	19	Eastern Sierra Engineer	170520	Material Testing	\$ 445.00	
	20	CCMI	8725, 8801, 8917, 9070	Labor Compliance	\$ 3,900.00	
	20	South Tahoe Utility	05.08.17	Meter Installation	\$ 7,032.00	
	20	Lumos & Associates	94945, 3485LTB	Revised Striping	\$ 2,659.00	
	20	Eastern Sierra Test	170618, 170726, 170821, 170919	Material Testing	\$ 5,966.00	
	21A	Liberty Utility	New 3485LTB	Utility Line	\$ 3,348.00	
	21A	CalCard	12.21.17	Metting Supplies	\$ 18.00	
				Sub Total	\$ 24,343.00	
Disallowed Costs						
ATPL-5398(011)	Multiple	Cardno, Inc.	Multiple	Unapproved Consultant Costs	\$ 1,448	4
CML-5398(012)	Multiple	Multiple	503062502	Consultant Fees	\$ 4,344	3
			503062503			
			503062517			
			503062518			
			503062519			
Multiple	Nichols Consulting Engineers	503062502	Consultant Fees	\$ 1,789	4	
		503062518				
				Sub Total	\$ 7,582	
					Total	\$ 133,118

**Attachment II
Missing Contract Provisions**

Missing Provision	Master Agreement Requirement
Determine eligibility of cost per 48 CFR, Ch 1, Part 31 (2 CFR 200)	Article IV, #19: Contractors and Subcontractors will be obligated to the Contract Cost Principles and Procedures per 48 CFR, Ch 1, Part 31 (2 CFR 200)
Comply with Uniform Administrative Requirements (49 CFR 18 or 2 CFR 200)	Article IV, #18: Agrees to comply with 2 CFR part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
Invoice on letterhead that include address	Article IV, #5: Invoices shall be submitted on letterhead that includes the address.
Payments can only be made on costs incurred and paid by the consultant	Article IV, #7: Payments can only be released as reimbursements of actual allowable PROJECT costs already incurred and paid for.
Travel and subsistence in accordance with Department of Personnel Administration regulations	Article IV, #17: PROJECT related travel and subsistence (per diem) claimed for reimbursement shall not exceed rates authorized for rank and file STATE employees under current Department of Personnel Administration (DPA) rules.
Maintain an accounting system that accumulates and segregates project costs.	Article V, #2: Contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT cost and matching funds by line item for the project.
Accounting system must conform to GAAP	Article V, #2: The financial management system of contractors and all subcontractors shall conform to GAAP.

Attachment III
Criteria for Findings 2, 3, and 4

Finding 2 – Deficiencies Identified in Consultant Procurement Transactions

23 CFR 172.7 (a)(1)(iii)(B) states: *“Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.”*

23 CFR 172.7 (a)(1)(v)(B) states in part, *“Prior to receipt or review of the most highly qualified consultant’s cost proposal, the contracting agency shall prepare a detailed independent estimate with an appropriate breakdown of the work or labor hours, types or classification of labor required, other direct costs, and consultant’s fixed fee for the defined scope of work.”*

Caltrans LAPM Chapter 10.9 states in part, *“The informal method must be sound and appropriate for the consulting services procured and project files must contain justifications for the selection. The method of procurement shall be an open and competitive process in selecting consultants and should consider a minimum of three different consultants whenever possible.”*

Caltrans LAPM Chapter 10.5 states in part, *“Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.”*

23 CFR 172.7 (a)(1)(v)(E) states: *“The contracting agency shall retain documentation of negotiation activities and resources used in the analysis of costs to establish elements of the contract in accordance with the provisions of 2 CFR 200.333. This documentation shall include the consultant cost certification and documentation supporting the acceptance of the indirect cost rate to be applied to the contract, as specified in §172.11(c).”*

Caltrans LAPM Chapter 10.2, pg. 13 (2016 ver.) states in part, *“One of the contract administrator’s duties is to ensure fee/profit negotiation is conducted and keeps records.”*

23 CFR 172.9 (b)(2) states, *“The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.”*

Article IV-Fiscal Provisions. 17 of Master Agreement for Federal Aid project (Agreement No. 03-5398F15) states in part, *“Payment to Administrating Agency for Project-related travel and subsistence (per diem) expenses of Administering Agency forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (DPA) rules.”*

23 CFR 172.7 (a)(1)(ii)(A) states, *“The RFP shall provide all information and requirements necessary for interested consultants to provide a response to the RFP and compete for the solicited services. The RFP shall provide a clear, accurate, and detailed description of the scope*

of work, technical requirements, and qualifications of consultants necessary for the services to be rendered.”

2 CFR 200.319 (c)(2) states, “Non-Federal entity must ensure solicitations “Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.”

Caltrans LAPM Chapter 10.3 states in part, “Prime consultants (in negotiating phase with a prospective consultant) with a proposed contract totaling \$150,000 or more, and any subconsultants listed on the contract, must certify the accuracy of their contract costs and adequacy of their financial management systems (see Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System). The certification is to be submitted to the local agency who in turn will forward a copy to A&I.”

2 CFR 200.319 (a) states: “In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements.”

Finding 3 – Deficiencies in Billing

Finance letter for CML-5398(008) defines Utility as a non-participating cost and does not identify construction engineering, design, or personal use costs as allowed.

23 CFR 172.9 (b)(2) states, “The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used.”

Caltrans LAPM Chapter 10.8 states in part,

- *Administer the Contract:* “If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices”
- *Substitution of Consultant Personnel and Subconsultants:* “after contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.”

23 CFR 172.9 (b)(5) (v. 2016) states, “When using the specific rates of compensation payment method: the contracting agency shall manage and monitor the consultant's level of effort and classification of employees used to perform the contracted services.”

Finding 4 – Deficiencies in Contract Administration

Caltrans LAPM Chapter 10.8 states in part, “If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices” and “after contract execution the consultant should not substitute key personnel (project manager and others listed by name in the

cost proposal) or subconsultants without prior written approval from the local agency. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract. The proposed substituted person must be as qualified as the original, and at the same or lower cost.”

Caltrans LAPM Chapter 10.2 states in part, “The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.”

23 CFR 172.9 (b)(5) states, “When using the specific rates of compensation payment method: the contracting agency shall manage and monitor the consultant’s level of effort and classification of employees used to perform the contracted services.”

Caltrans’ MA for Federal Aid Projects with the City requires:

- Contractors and subcontractors be obligated to the Contract Cost Principles and Procedures per 48 CFR, Chapter 1, Part 31.
- Administering Agency to comply with 2 CFR, Part 200, Uniform Administrative Requirement, Cost Principles and Audit Requirement for Federal Awards.
- Payments to Administering Agency can only be released by State as reimbursement of actual allowable project costs already incurred and paid for by Administering Agency.
- Payments to Administering Agency for Project-related travel and subsistence (per diem) expenses of Administering Agency forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file State employees under current State DPA rules.
- Administering Agency, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred project costs and matching funds by line item for the project.
- The financial management system of Administering Agency, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by State.

Attachment IV



**City of South Lake Tahoe
Interim Incurred Cost Audit Response
Caltrans – June 2019**

June 14, 2019

Finding 1 – City has no job cost system to track project labor costs

The City of South Lake Tahoe (City) does not have a job cost system that segregates, accumulates, and allocates labor costs by project. Instead, the City tracks engineering staff's labor costs manually for billing and local match purposes but does not input the information into their accounting system, OneSolution. In addition, the hourly rates and hours used for manual tracking were not supported by the City's formal accounting records.

City's Response:

The City does have a system for tracking project labor costs and does input actual time billed to the grant into the One Solution financial software system. While the City's Financial software does not have a module for job costing, the city does track project labor costs and incorporates those costs billed to the grants into the City's Financial software and General Ledger through a journal entry in One Solution into the grant project account in the general ledger. Excel spreadsheets are used to track full Project and Grant costs and are verified against the General Ledger each billing cycle. These costs include all revenue and expenses including labor either billed to the grant or City labor in-kind match. Since billing staff time to grants occurs infrequently, an example of this was not included in the audit testing timeframe. The timesheets sampled in the audit test, were not timesheets that would've been used in a grant billing and are not an accurate representation of the system in place. Since less than 3% of the City's current grants are incurring labor costs as either direct billed or match, the City can not justify the additional cost of a job cost module at this time. However, should the frequency of labor cost billing increase, the City will consider the module.

To increase the effectiveness of the current tracking system, the following procedures have been reviewed with staff and will be incorporated into future trainings:

- Employees utilizing grant funding for staff time billing or match continue to use the "Grant Timesheets", however, they commit to documenting 100% of their time worked on the timesheet, including non-grant hours. The hours documented match their payroll timesheets, including sick, vacation or holiday hours used.*
- Employees thoroughly review the timesheet for accuracy, sign and date the form and submit to the Department Head/ Director for verification and signature on all Grant timesheets.*
- Authorized grant timesheets are scanned and kept in a central electronic file to be utilized by the Grant Administrator when/if those hours are billed to a grant or used as match.*
- Employee hourly rates are billed at the direct rate paid in the same pay period as noted on the grant timesheets. Benefit costs are actual direct rate in the same pay period. These rates are printed directly from the City's payroll system and attached to the grant timesheet.*

- Grant Administrator verifies number of hours and days worked in the City's payroll system, matches the number of hours/days worked on the Grant timesheet prior to billing a grant.
- All labor costs used as match is documented on the Project/Grant tracking spreadsheet and documentation of actual Payroll labor costs is printed from One Solution Budget/Actual and either submitted to the granting agency where applicable or kept in the Grant/Project File.
- All labor costs billed to a grant for reimbursement is tracked on the Project/Grant tracking spreadsheet and is also entered into the City's One Solution software through a JE from the original budget the employee was paid into the project account number.

FINDING 2 – Deficiency Identified in Consultant Procurement Transactions

The City did not follow state and federal procurement requirements in procuring professional Architectural and Engineering service contracts with Nichols Consulting Engineers (NCE) and Cardno, Inc. Specifically, we identified the following deficiencies:

- Independent cost estimates were not complete.
- Cost proposal analysis was not performed.
- Price and profit negotiations were not performed.
- City allowed a cost-plus percent markup contract.
- The City required the travel and per diem costs to be billed at an hourly rate.
- In addition to the deficiencies noted above, the contract with Cardno, Inc. had these additional deficiencies:
- Price was used as a factor in evaluating the proposals.

City's Response

- Estimated cost for the contract services was \$100,000 well under the \$150,000 threshold that allows for simplified acquisition procedures. Amount of contract was \$103,232.
- In the Small Project Procurement (SPP) procedures allowed in the CFR, the City followed its City Procurement, Policies and Procedures "as long as they include the steps to ensure that an adequate number of qualified firms be considered." (See Ref 1)
- Staff Report of Oct 17, 2017 documents the process for the selection and recommendation for award to the City Council shows that the Planet Bids website was used to advertise widely and assure fairness in the selection of the consultant. (See Ref 2)
- Ranking sheets included the scoring of the proposals with weighted evaluation criteria to the following questions:
 - Is the consultant's proposal economically sound? How does the proposal compare with the estimated costs and comparable tasks completed by consultants on past projects of similar scope? Intended to compare cost proposal with Analogous Estimating
 - Does the cost proposal rational including the minimum tasks expected to complete NEPA and CEQA? Intended to evaluate the cost breakdown and detail
 - How does the cost proposal fit the available grant funds, and will the City need to supply matching funds to make the difference if over the grant allotted funds? Over or under the estimate.

These questions were included from a template in the City Procurement, Policies and Procedures manual that included the evaluation of the compensation schedule.

- The City changed the scope of work of the RFP after the selection of the consultant and negotiated the contract without re-solicitation.

City's Response:

SPP procedures for simplified acquisition does not dis-allow any scope change (see Ref 1, 4). Such ruling about absolutely no scope change is not mentioned in the CFRs and is based on subjective interpretations to federal regulations.

As for a change in scope resulting in a possible unfair condition as removing scope might have made the project more accessible to smaller firms is being challenged. In most cases, a small consulting firm can add subconsultants to their team or team up with other consultants to address the project design needs. In fact, the DBE requirements require a project to be broken down into pieces that can be sub-consulted out to DBE firms.

Also, the change was very minor and mostly affected the subconsultant who would have provided the specialty services for the Geotech task. These tasks were changed to "optional" in the scope of services and excluded from the cost as they were not required to complete the overall scope of the project. The capability of smaller firms who would have been able to do the smaller scoped project remains the same since all proposals used subs for these specialty tasks.

- The City did not exclude Cardno Inc., who developed part of the RFP, from bidding and they won the contract.

City's Response:

2014 Design Workshop had a contract with the Tahoe Regional Planning Agency (TRPA), a governmental entity separate from the City, with respect to the AI Tahoe Blvd Safety and Mobility Project. Cardno was a subcontractor working on the concept plans for the Project. (see Ref 3, page 2). In addition, see attached letter from the State of CA, Fair Political Practices Commission, to our City Attorney, Heather Stroud; specifically addressing this concern. The FPPC concludes Section 1090 does not prohibit the City from entering into a contract with Cardno for the engineering design services given that Cardno provided preliminary design services under a previous contract.

- The City did not submit the 'Consultant Certification of Contract Costs and Financial Management System' form 10-K to the Independent Office of Audits and Investigations (IOAI) for review before the City finalized the negotiation.

City's Response:

10-K applies to contracts over \$150,000. The evidence that the City violated the LAPM requirement avoiding such approval before the contract award, is based on auditor's review of a Staff Report taken to City Council on 9-5-17 where a contract proposed for \$274,516 and was not acted on by council. Item was continued to 10-17-17 meeting where staff re-presented the small project after several events happened:

- *Local Assistance reviewed the RFP and warned the City that such a contract awarded would violate the procurement rules for expanding a professional services scope beyond that described in the RFP scope.*
- *City staff acknowledged the Local Assistance advisement and presented the SPP contract for Council award. Check list 10-3 signed by DLA, Quang Nyugen, shows that the procurement type section B.6 is "NA" (SPP), and section C.4 is "NA" for "was proposed ICR submittal sent to A&I for acceptance (Exhibit 10-K)?"*

FINDING 3 – Deficiency in Billing

During the review of the City's billings to Caltrans, we found the City included unallowable costs in the following federal funded projects:

- CML-5398(008): The City's invoice included non-participating ineligible costs such as construction engineering, utility, and personal use costs totaling \$24,343. We are not disallowing these costs, however, as this was a lump sum under-funded grant. The lump sum federal share will not be impacted since the effective reimbursement rate was less than the maximum reimbursement rate after the disallowance.

City's Response:

The City disagrees that we included "unallowable" costs; staff feels the costs were allowable costs charged in one Line Item task instead of broken out in separate tasks.

The City had an approved grant budget of \$1,480,024.00 in the Construction line item on the approved E-76 and Finance Letter. The city had a federal ratio of 60.94% with a local contribution of 39.06%. At the time of billing, staff believed all Construction related costs should be billed to Construction which is why the local contribution was so large. Staff billed a total of \$2,428,841 (\$2,352,675.28 in Cons Contract and \$76,165.79 in Cons related costs- i.e. materials testing, labor compliance) over the course of an 11-month period. Three separate billings were submitted to Caltrans with all back up documentation and invoices submitted. Caltrans approved all 3 and approved all final documentation and paid the city 60.94% in the amount of \$1,480,024.00, just a portion of the full Construction Contract. Caltrans never mentioned or requested the costs to be submitted in different line items separating Construction from Construction Engineering. Staff believed all invoices submitted were correct and complete and feels these costs should not be titled "unallowable" since Caltrans considered them to be allowable costs and paid the grant reimbursements in full. Technically this portion of the costs were paid from the city's 39.06% local contribution as well as 38% of the Construction Contract. In the future Staff will ensure to bill only Construction Contract items to Construction and will work with Caltrans staff to approve any changes needed for tasks and line items on the approved E-76 forms.

- ATPL-5398(011): The City billed consultant costs of \$9,571 twice for the same invoice. This cost is disallowed.

City's Response:

This item has already been addressed and submitted to Caltrans.

Feb. 19, 2019 staff noticed a portion of a Cardno Entrix invoice had been billed twice to Caltrans in error. This was a clerical error due to using a boiler plate expense form from the prior month. Staff noticed the error and emailed Caltrans Program Manager Ross Foon that same day. (email attached) Staff offered to cut Caltrans a check in the amount of \$9,570.65 or provide credit on the next invoice.

Caltrans instructed city staff to credit the amount on the next invoice utilizing staff time and any other invoices paid towards the project. Staff waited for all final design invoices to be paid and grant timesheets to be submitted and submitted credit documentation to Caltrans on 4/5/19. This finding should not be on this report as it was a self-reported error and corrected per instruction by Caltrans. Staff will be more diligent in the future to proof read documentation and verify expenses billed to Caltrans.

- CML-5398(012): The City was reimbursed for consultant services costs that included a 5 percent mark-up totaling \$4,344. Cost plus percentage mark-up is prohibited by federal regulation. These costs are disallowed.

City's Response:

The City agrees this was an oversight in reviewing Consultant Invoices. Staff will coordinate with Caltrans to address these costs. Procurement Policies will be updated to specifically address prohibiting mark- up, overhead and other additional fees or charges added to vendor invoices.

- CML-5398(012): The City was reimbursed \$4,405 for unauthorized subconsultant work. NCE added ASM to perform work as a subconsultant on task 7 without prior notification or approval from the City. These costs are disallowed.

City's Response:

See attached e-mail correspondence and PSA Amendment to the Consultant Agreement. The city was required by Caltrans to complete the Field Investigation covered in task 7 which was included in an amendment to the Consultant invoice. The work in question was requested by Caltrans and authorized by the City. These costs should not be disallowed.

FINDING 4 – Deficiency in Contract Administration and Monitoring

The City's contract administration and monitoring of the Professional Service Contract with NCE and Cardno Inc. was not performed in accordance with the state and federal cost principles and contract terms. The City paid for labor costs in excess of amounts included on contract cost proposals without an amendment or prior approval. Specifically, we identified the following deficiencies:

- Cardno Inc. assigned staff with classifications not listed in the contract fee schedule. The reimbursed amount for unauthorized labor classifications totaled \$1,448 and is disallowed. Note: These disallowed costs are also included in the \$102,641 questioned procurement costs identified in finding 2.

City Response:

The breakdown of the costs according to the invoices containing unauthorized labor classifications and rates are as follows:

Invoice	Classification Billed/reimbursed	Amount	Task	Contract Classification	Allowed Rate	Charged Rate	Hrs	Total Diff (savings)
255285	Tech Editor (Malini K Roberts)	1,137	5	Project Coord (Holly Josephson)	62.00	78.40	14.5	237.80
256497	Tech Editor (Malini K Roberts)	176.40	5	Project Coord (Holly Josephson)	62.00	78.40	2.25	16.40
253921	CADD/Draft GIS (Anna Claire)	135.26	5	Staff Scientist (Michelle Hochrein)	96.00	90.17	1.5	(8.75)

Unauthorized Cardno Staff were noticed in the billing and questioned by City Staff at the time and confirmed the substitution of an "Unauthorized Labor Classification". Staff realized that any such

substitution or key personnel requires questioning or risk this recommended disallowance (see Ref 5). The response from the consultant when questioned as to the substitution is as follows:

"I will field this question as I was the one that delegated the work to the selected staff. Neither Malini or Anna were listed in the proposal as these positions are considered supporting staff and not technical staff. Here is what their role was, why they were used and an approximate similar staff category:

- Malini:
 - Project Role: technical editor for environmental document
 - Why they were used: it was intended originally/when scoped, to have Holly perform this effort. However, after using Malini on several other documents I decided to use her as she was more efficient, had more experience doing this type of work, and to be blunt is a rock star at doing this (she is now my go to technical editor in the entire company)
 - You received a high quality document because of her work.
 - Similar staff category: project assistant or project coordinator
- Anna:
 - Project Role: GIS figure update
 - Why they were used: Michelle was on PTO during a time when a figure needed to be updated
 - Similar staff category: staff scientist (preferred as she is not an engineer) or assistant staff engineer"

The City's management of the contract and review of these invoices included monitoring of the specific rates of compensation and met 23 CFR 172.9 (b)(5)

- NCE also assigned staff with hourly rates higher than the rates on their cost proposal. The excess amount paid totaled \$2,210 and is disallowed.

City's Response:

The City disagrees with this finding and the costs being disallowed. NCE listed the Principal Engineer in their cost proposal and PSA at a rate of \$245/hour, specifically charging to Task 7 & 8 for Environmental Documents as required and requested by Caltrans. During the kick-off phase of the project (Task 1), a meeting between NCE & the City was held to discuss design, project deliverables etc. The Principal Engineer(s) participated in this meeting. This is not unusual or out of the ordinary in the initial phases of the project to ensure all parties are on the same page. The total budget for Task 1 was \$45,560.00 and the total amount charged to the City for this task was \$45,460.00. The fact that the Principal Engineer participated in this task did not change or alter the costs of the task charged to the City and paid to the Consultant. In addition, towards the end of the Project, the Senior Engineer for NCE resigned, requiring the Principal Engineer to assist in Task 11 (Bid Assistance). This was a crucial phase of the project as the Bid Documents were time sensitive in meeting the Construction timeline provided to Caltrans. Total budget in the Consultant PSA for task 11 Bid Assistance was \$9,955.00, total cost paid to NCE for task 11 was \$6,413.73; \$2,160.27 under budget. The fact that the Principal Engineer had time billed to this task, did not increase or alter the cost of the contract to the City, Caltrans (FHWA), in fact it was less. Staff feels these charges were allowable and reasonable in relation to the deliverables required in the PSA and overall task budget presented and feels the city followed 48 CFR chapter 1 stated below:

"31.201-4 Determining allocability. A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it— (a) Is incurred

specifically for the contract; (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.”

- The City did not include required contract provisions in the contracts with NCE and Cardno Inc. See a summary of the missing provisions in Attachment II.

City’s Response:

The city currently uses a Professional Service Agreement boiler plate developed by the City’s previous City Attorney, as well as contract language in accordance with Public Works Public Contracts and Uniform Public Construction Cost Accounting Act. City Engineering Division is in the process of reviewing “Attachment 11” with proposed missing provisions and will incorporate all requirements from the Caltrans LAPM in future contracts and/or agreements. Staff will pursue procurement training from Caltrans, as well as in-house training and webinar opportunities.

Reference Documents:

Ref. 1

2. What are small purchase/simplified acquisition procedures and when may this procurement method be used for engineering and design related services funded with FAHP funding? (Updated 08.01.2016)

Small purchase procedures (as specified in 23 CFR 172.7(a)(2)) involve contracts with total costs below the lesser of the Federal simplified acquisition threshold (as specified in 48 CFR 2.101 and currently established at \$150,000) or the State’s established threshold ([See Other Procurement Procedures Question & Answer No. 3](#)). Small purchase/simplified acquisition procedures for engineering and design related services do not have to follow a competitive negotiation/qualifications based selection (Brooks Act) process ([See Competitive Negotiation Question & Answer Nos. 1-2](#)) given the amount of contract award, however, the contracting agency should take steps to ensure that an adequate number of qualified firms be considered. The FHWA considers three sources as the minimum number to meet the adequate number of sources requirement.

For small purchase procurements, State and local public agencies must follow the State’s laws, regulations, and procurement procedures which are not in conflict with applicable Federal laws and regulations (as specified in 23 CFR 172.7(a)(2), 2 CFR 200.101, 2 CFR 200.317, and 2 CFR 1201.317). Project phases and contract requirements should not be broken down into smaller components merely to permit the use of small purchase procedures (as specified in 23 CFR 172.7(a)(2)).

Ref. 2

The solicitation, advertisement and selection of the professional consultant is held to a standard by Caltrans and the City’s purchasing and procurement policies. Public Works issued a widespread Request

for Proposals (RFP) for the Project on June 30, 2017 notifying 447 vendors via the City of South Lake Tahoe web posting on Planet Bids. The City received two proposals on July 21, 2017 from Cardno and Lumos and Associates. The two RFP submittals were reviewed in accordance with FHWA and Caltrans requirements. The review panel included one representative from the Lake Tahoe Unified School District and three representatives of the City's Engineering Division. Two of the panelists had no prior experience or knowledge of either of the two firms. The other two panelists have worked with both firms in the past and had previously worked with a principal of Cardno as a City employee 12 years ago. The panel was unanimous in their selection of Cardno. In conclusion, Cardno's proposal scored higher due to the thoroughness of the breakdown of tasks and schedule as well as an understanding of the critical issues involved in making the project a success.

Cardno's team includes Design Workshop, who helped TRPA and the Lake Tahoe Sustainability Collaborative perform most of the early public outreach on the project. The Cardno team was involved in early project planning and is up to speed with the project concept and design parameters. Cardno also has significant experience assisting public agencies with similar projects and negotiating through Caltrans' submittal requirements.

Ref. 3

February 22, 2019 FPPC Request for Advice to City Attorney, Heather Stroud, File No. A-18-276

Attached full report concluding: "No. Section 1090 of Government Code does not prohibit the City from entering into a contract with Cardno for the engineering design services for the project."

Ref 4

Exhibit 10-C A&E Consultant Contract Reviewers Checklist confirms DLA Deemed Cardno contract for \$103,232.

Ref 5

Caltrans LAPM Chapter 10.2 states in part, "*The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved before they incur work on the contract or the costs can be questioned or disallowed.*"

Ref 6

City of South Lake Tahoe, City Attorney's letter to FPPC for advice request 12-19-18.

Ref 7

Caltrans Cost-Effectiveness/Public Interest Finding.