

City of La Quinta Interim Incurred Cost Audit Report



Audit Report
July 2019

PREPARED BY:

Independent Office of Audits and Investigations – MS 2

Post Office Box 942874 Sacramento, California 94274-0001

< <https://www.ig.dot.ca.gov> >

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SUMMARY, SCOPE, METHODOLOGY, AND CONCLUSION

SUMMARY

The Independent Office of Audits and Investigations (IOAI) performed an Interim Incurred Cost Audit of the City of La Quinta (City) on three projects with contract costs totaling \$3,395,753. We found that the City did not maintain adequate procurement and contract management. We identified disallowed costs totaling \$65,768 and questioned costs totaling \$174,136. See Attachment I for a summary of all disallowed and questioned costs.

SCOPE

We conducted our audit of the City's billed costs on projects BRLKS-5433(014), Dunes Palms Road Over Coachella Valley Stormwater Channel; HSIPL-5433(015), upgrade all intersection safety lightening and street name signs; and HSIPL-5433(017), upgrade traffic signal interconnect system with fiber optic cable.

The audit objectives were to determine whether costs claimed and reimbursed to the City were adequately supported in accordance with respective California Department of Transportation (Caltrans) agreement provisions and state and federal regulations. We tested the City's financial management system (FMS), which includes procurement and contract management, and we tested associated internal controls. Our testing was to determine if the City's accounting system is adequate to accumulate and segregate reasonable and allowable project costs. We also tested the City's procurement and contract management practices.

The City is responsible for the claimed costs and compliance with applicable agreement provisions and state and federal regulations. In addition, the City is responsible for the adequacy of their FMS. Considering the 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 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. We completed our field work on February 28, 2019. Transactions occurring after this date were not tested and, accordingly, our conclusions do not include costs or credits arising after this date.

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.

The audit included interviews of City staff to obtain an understanding of the City's financial management system, review of prior audit reports, and review of costs claimed. The audit also included examining, on a test basis, evidence supporting the amounts and disclosures in the data

and records selected. Further, we assessed the accounting principles used and significant estimates made and evaluated the overall presentation of costs claimed.

CONCLUSION

Based on our audit, we determined the City's accounting system does accumulate, segregate, and allocate reasonable and allowable project costs, however, we identified the following deficiencies related to procurement, contract management, and costs billed to Caltrans:

- The City's procurement practices did not provide evidence that fair and open competition was performed or proper procurement procedures were followed.
- The City did not maintain an adequate contract administration system to ensure consultants perform in accordance with the terms, conditions, and specifications of the contract resulting in \$65,768 in disallowed costs and \$174,136 in questioned costs.

Our draft report contained a finding related to deficiencies in procurement policies and procedures. Subsequent to our fieldwork and issuance of our draft report the City provided documentation to support adequate procurement policies and procedures. Therefore, the finding was removed.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations take into account the City's response dated May 31, 2019, to our May 22, 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 IAOL's webpage, which can be viewed at <<https://www.ig.dot.ca.gov>>.

If you have questions, please contact Nancy Shaul, Audit Manager, at (916) 323-7940.

FINDINGS AND RECOMMENDATIONS

FINDING 1 – Removed

The City of La Quinta (City) provided additional support documentation to substantiate that the City established procurement policies and procedures in accordance with state and federal requirements.

FINDING 2 – Deficiencies in Procurements Conducted

The City's procurement practices did not support that fair and open competition was performed or proper procurement procedures were followed as required by the California Department of Transportation (Caltrans) agreement provisions and state and federal regulations. The City stated that they did not retain all required procurement documents due to the City's two-year retention policy.

Three consultant procurements originating in 2014 were tested. The City was unable to provide all the documentation to support that the selection of two of the consultants, Bengal Engineering, Inc. (Bengal) and NAI Consulting (NAI), were conducted in accordance with state and federal regulations. Specific deficiencies are identified below.

Bengal Procurement

The City was missing supporting documents and files to demonstrate that the procurement of Bengal was conducted with fair and open competition or that a fair and reasonable price was obtained. The City entered into a contract with Bengal on June 2, 2014, to perform professional engineering services and prepare plans, specifications, and an estimate for the replacement of the Dunes Palms Road low water crossing with a new all-weather bridge. The City staff stated that all the required procurement support documentation was not available due to the City's retention policy. Costs paid to the City on the Bengal contract totaled \$953,828. For a summary of missing documents, see Table I below.

In addition, we identified the following deficiencies:

- Key personnel were not identified on the cost proposal (fee schedules) in the amendments as required by Caltrans, Division of Local Assistance's (DLA) Local Assistance Procedures Manual (LAPM) Chapter 10.5, 10.6, and 10.8 (May 2013).
- There was no evidence that a cost analysis was performed as required by LAPM Chapter 10.2 (May 2013).

NAI Procurement

The City was missing supporting documents and files to demonstrate that the procurement of NAI was conducted with fair and open competition or that a fair and reasonable price was obtained. The City entered into a contract with NAI on July 1, 2015, to perform general project management and contract administrative support services. For a summary of missing documents, see Table I below.

In addition, we identified the following deficiencies:

- No Exhibit 10-H (cost proposal) as required by LAPM Chapter 10.3 (December 2014).
- No Exhibit 10-K Certification of Contract Costs and Financial Management System as required by LAPM Chapter 10.3 (December 2014).
- No Exhibit 10-U, Consultant in Management Support Role Conflict of Interest and Confidentiality Statement as required by LAPM Chapter 10.1. (December 2014)
- No evidence that an independent cost estimate was performed as required by LAPM Chapter 10.5 (December 2014).

Table I
Summary of Procurement Documents Missing

Deficiency	Bengal	NAI
Proof of the solicitation	X	X
Evidence of proposals received by specific deadline	X	X
Independent Cost Estimate prepared prior to acceptance of proposals	X	X
Evidence that price / costs were negotiated in file	X	X
Evidence of price or cost analysis in file	X	X
How is independence of the scoring panel addressed, i.e.10-T	X	X
Evaluation Criteria and Factors in the RFP		X
Score sheets retained	*	X
Short List Criteria and Factors in the RFP	X	X
Scoring Sheets criteria / factors match the RFP	X	X
Winning bidder not Suspended/Debarred, did agency verify	X	X
Evidence of profit negotiated as a separate item	X	X
Cost proposal included		X
Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement	NA	X

Footnote: X = document is not provided; * = one of three scoring sheets was provided; NA = Not applicable.

For additional detailed criteria, see Attachment II.

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 conduct all consultant procurements in accordance with state and federal regulations to ensure the deficiencies noted above, including the retention period for records, are corrected in the future.

In addition, we recommend the City contact the Caltrans, DLA to take DLA's Architectural and Engineering consultant procurement training.

Summary of the City's Response

The City does not concur with Finding 2 and stated that some files were not available during the audit field work. Subsequent to the issuance of the draft report and exit conference, the City provided some procurement documents requested.

The City provided the following additional documents:

Procurement for Dune Palms Bridge

- ATT 4 2013 Dune Palms Bridge Request for proposal
- ATT 5 RFP Pre-Proposal conference documents
- ATT 6 Bengal proposal
- ATT 7 CNS proposal
- ATT 8 IDC proposal
- ATT 9 RBF proposal
- ATT 10 Nick Nickerson evaluation sheets
- ATT 11 Interview invitation letter

Procurement for Project Management and Contract Administrative Support Services

- ATT 18 2015 On-Call Project Management Services Request for Proposal
- ATT 19 Addendum No. 1 to RFP
- ATT 20 Addendum No. 2 to RFP
- ATT 22 2015 Onward Engineering Proposal
- ATT 23 2015 Southstar Engineering and Consulting Proposal
- ATT 24 2015 Overland Pacific and Cutler, Inc. Proposal

For the City's full response, see Attachment III.

Analysis of the City's Response

While the City did provide some additional support documentation with their response to the draft audit report, several procurement documents were still missing.

Finding 2 was modified to acknowledge the procurement documents subsequently submitted and questioned procurement costs were removed.

FINDING 3 – Deficiencies in Contract Management

The City did not maintain an adequate contract management system to ensure consultants performed in accordance with the terms, conditions, and specifications of its contract. In addition, the City's contract management procedures did not include proper processes to manage consultant contracts, review and approve invoices, and appropriately charge Caltrans funds. Specific deficiencies identified are outlined below.

Management of NAI Contract

The original contract with NAI was executed on July 1, 2015, with an option of two additional years of extension upon mutual agreement of both the City and NAI.

Extension Option #1 was exercised on June 27, 2016, and Extension Option #2 was exercised on June 30, 2017, and set to expire June 30, 2018.

On May 15, 2018, one month prior to the contract expiration date, the City extended NAI’s services by entering into a new contract with NAI for the same scope of work as the previous contract. This contract was also entered into with no solicitation or competitive bidding. The contract was entered into as sole source with no support or justification for a non-competitive bid contract.

In addition, the City paid NAI on the new contract for contract costs incurred prior to the May 15, 2018, execution date. According to a letter from NAI dated January 31, 2019, a discussion was held with the City Engineer regarding the remaining funds on the original NAI contract which were not enough to cover the cost of services from April 2018 – June 2018. The City Engineer and NAI agreed to have the remaining unbilled amount for services rendered during April 2018 to be billed on the new contract as well as for the cost of the services for May 2018 and June 2018. The City Engineer failed to take the matter to the appropriate authority, and the City Manager and City Council were unaware of this payment agreement between NAI and the City Engineer. Costs associated with this contract are disallowed.

Total disallowed NAI costs on the May 15, 2018, contract are summarized as follows:

Deficiency	Costs
Costs incurred prior to contract execution	\$17,507
Other contract costs paid	\$23,075
Total Disallowed Contract Costs	\$40,582

Management of Bengal Contract

The original contract with Bengal under Provision 3.4 Term (June 2, 2014 - July 31, 2018) stated the contract may be extended upon mutual agreement by both parties but did not specify an extension time frame.

We identified the following deficiencies with invoices the City paid to Bengal:

- No support for percentages of work completed.
- Employee hours and services rendered were not specified.
- No detail of services provided, such as time and materials.
- No support that City management reviewed or monitored that the costs and services billed were reasonable, allocable, allowable, and accurate beyond cursory budget reviews.

In addition to the deficiencies noted above, we identified several deficiencies with amendments to the Bengal contract. Amendments 1, 2, 3, 5, 6, and 7 were all executed to add additional funds with no change in scope to the original solicitation, which is unallowable on a lump sum contract. These costs are questioned. In addition, the Amendment 1 cost proposal included a 15% markup which is not allowed. Questioned costs on Bengal amendments total \$174,136.

Amendment 8 was executed after the first contract expiration date and with no competitive bidding selection process and no support, justification, or documentation for a sole source/non-competitive bid contract. These contract costs totaling \$25,186 paid to the City are disallowed.

Total questioned and disallowed costs are summarized on Attachment I.

For detailed criteria, see Attachment II.

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

RECOMMENDATION

We recommend the City:

- Reimburse Caltrans \$65,768 (\$40,582 + \$25,186) of total disallowed costs identified above.
- Implement contract management and oversight policies and procedures to properly manage consultant contracts and to review and approve consultant invoices.

We recommend that DLA work with the Federal Highway Administration and the City to determine if any of the \$174,136 questioned costs identified above are to be repaid to Caltrans.

Summary of the City's Response

The City does not concur with Finding 3. The City stated that each consultant contract is managed based on a weekly basis, project development team meetings are conducted monthly, the City staff are fully aware of status of contract deliverables on a daily basis, Consultant invoices are reviewed by the Project Manager, and the City Engineer reviews and approves them.

In addition, the City explained that Amendment 4 to the Bengal contract was to include preparation of Alternative Grad Control Structures which was not included in the original contract scope of work, thus did constitute a modification to the scope of the contract.

The City provided the following additional documents:

ATT 44	2018 D&D Staffing Plan City Council Staff Report
ATT 45	2019 Request for Proposal (RFP) for On-Call CIP Project Management & Engineering Services
ATT 29	Sample Action Item Log Submittal
ATT 30	Sample Schedule Submittal
ATT 31	Sample Submittal Log
ATT 32	Sample Decision Log Submittal
ATT 33	Sample Right of Way Acquisition Log

The City also provided copies of the Bengal contract Amendments 1-8.

For the City's full response see Attachment III.

Analysis of the City's Response

The City's additional documents provided with their response did not provide any new information or information that addressed the deficiencies identified in Finding 3. Project development team meetings and being aware of the status of projects and deliverables was not at issue. The City Council approved staffing plan (ATT 44) and the recent RFP (ATT 45) were also not at issue. The sample attachments provided (ATT 29 – 33) were just sample documents and did not support the deficiencies identified.

In addition, the copies of the amendments the City provided were not new. We consulted with the Caltrans DLA to determine that Amendments 1, 2, 3, 5, 6, and 7 did not modify the contract scope.

We concur with the City that amendment 4 did modify the scope of the original contract. Finding 3 was modified to remove the questioned costs for Amendment 4 of the Bengal contract.

ATTACHMENT I
SUMMARY OF DISALLOWED AND QUESTIONED COSTS

	Deficiency	Disallowed Costs	Questioned Costs	Project
Bengal Contract Management:				
Amendment 1	Costs adjusted within scope of original scope of solicitation		\$ 12,700	BRLKS-5433(014)
Amendment 2	Costs adjusted within scope of original scope of solicitation		\$ 7,800	
Amendment 3	Costs adjusted within scope of original scope of solicitation		\$ 31,678	
Amendment 5	Costs adjusted within scope of original scope of solicitation		\$ 19,900	
Amendment 6	Costs adjusted within scope of original scope of solicitation		\$ 9,583	
Amendment 7	Costs adjusted within scope of original scope of solicitation		\$ 92,475	
Amendment 8	Amendment executed as a new contract after expiration date of prior amendment and with no solicitation or competitive bid.	\$ 25,186		
		\$ 25,186	\$ 174,136	
NAI 'Extension'	Costs incurred prior to contract execution (April-June 2018)	\$ 7,950		BRLKS-5433(014)
		\$ 5,342		HSIPL-5433(015)
		\$ 4,215		HSIPL-5433(017)
		\$ 17,507		Total
	Other contract costs paid (July 2018-January 2019)	\$ 14,826		BRLKS-5433(014)
		\$ 5,141		HSIPL-5433(015)
		\$ 3,108		HSIPL-5433(017)
		\$ 23,075		Total
	Total	\$ 65,768	\$ 174,136	\$ 239,904

Attachment II

Additional Criteria for Findings 2 and 3

Finding 2

49 CFR 18.36(c)(iii-iv) states in part, "All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of Sec. 18.36. Some of the situations considered to be restrictive of competition include but are not limited to:
(iii) Noncompetitive pricing practices between firms or between affiliated companies,
(iv) Noncompetitive awards to consultants that are on retainer contracts."

2 CFR 200.318(i) states, in part, "non-Federal entity (or grantees and subgrantees) must (or will) maintain records sufficient to detail the history of 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."

23 CFR 172.7(a)(1)(v)(B): Independent Estimate. 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 classifications of labor required, other direct costs, and consultant's fixed fee for the defined scope of work. The independent estimate shall serve as the basis for negotiation."

23 CFR 172.11(a) states, in part, "(a) Allowable costs. (1) Costs or prices based on estimated costs for contracts shall be eligible for Federal-aid reimbursement only to the extent that costs incurred, or cost estimates included in negotiated prices are allowable in accordance with the Federal cost principles. (2) Consultants shall be responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with Federal cost principles."

2 CFR 200.323 (a) states, in part, "non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications."

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T "*Panel Member Conflict of Interest & Confidentiality Statement*".

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement.

49 CFR 18.35 Subawards to debarred and suspended parties. Grantees and Subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

LAPM Ch.10, December 9, 2014, states, "RETAINING A CONSULTANT AS AN AGENCY ENGINEER OR IN MANAGEMENT ROLE• For a state funded or federal-aid project, completion of Exhibit 10-U "Consultant in Management Position Conflict of Interest and Confidentiality Statement" by all consultant engineering staff in management positions that exercise authority over the A&E selection panel pertaining to the specific selection process and the firms being considered. • Selection of consultants for A&E management positions shall be by the use of qualification-based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years."

23 CFR 172.5(a) (1) "...The proposal solicitation (project, task, or service) process shall be by public announcement, advertisement, or any other method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of the contract..."

LAPM Chapter 10.1.5 Receive and Evaluate Technical Proposals, Documentation of when each proposal was received must be maintained in the project files.

LAPM Chapter 10.1.5 Negotiate Contract with Top-Ranked Consultant The cost proposal for the most qualified consultant will be opened and used to begin negotiations.

LAPM Chapter 10. "...Among the records to be retained are as follows (not an all-inclusive list):... Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation..."

LAPM Chapter 10-H Cost Proposal requires key personnel be listed.

Finding 3

2 CFR 200.303(a-e) states, in part, "The Non-Federal entity must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations and the terms and conditions of the Federal award...."

23 CFR 172.11(c) states, in part, "(c) Oversight— (1) Agency controls. Contracting agencies shall provide reasonable assurance that consultant costs on contracts reimbursed in whole or in part with FAHP funding are allowable in accordance with the Federal cost principles and consistent with the contract terms considering the contract type and payment method...."

23 CFR 172.7(a) states, in part, "(a) Procurement methods. The procurement of engineering and design related services funded by FAHP funds and related to a highway construction project subject to the provisions of 23 U.S.C. 112(a) shall be conducted in accordance with one of three methods: Competitive negotiation (qualifications-based selection) procurement, small

purchases procurement for small dollar value contracts, and noncompetitive procurement where specific conditions exist allowing solicitation and negotiation to take place with a single consultant.”

LAPM Chapter 10.2 Lump Sum, 12/19/2014 states, in part, “Normally a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined “milestones”. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.”

23 CFR 172.9, (e) (1-6) Contract modification states, in part, “(1) Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed...”

LAPM Chapter 10.8, January 2018, Contract Amendment states, in part, “A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

LAPM Exhibit 10R ARTICLE V ALLOWABLE COSTS AND PAYMENTS

(Option 4 - Use paragraphs A through E below for lump sum agreements. Use Exhibit 10-H1: Cost Proposal Format)

A. ... The total lump sum price paid to CONSULTANT will include compensation for all work and deliverables, including travel and equipment described in Article II Statement of Work. No additional compensation will be paid to CONSULTANT, unless there is a change in the scope of the work or the scope of the project....”

The Professional Services Agreement, between the City of La Quinta and NAI Consulting, Inc. 2.2 Method of Billing states, “Such invoice shall (1) describe in detail the Services provided, including time and materials, and (2) specify each staff member who has provided Services and the number of hours assigned to each such staff member.”

LAPM Chapter 10.1.8, Execute Contract and Issue Notice to Proceed to Consultant, The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed contracts shall have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

May 31, 2019

Department of Transportation
Office of Audits and Investigations – MS 2
PO Box 942874
Sacramento, CA 94274-0001

Dear Audit Team,

The City of La Quinta (City) has reviewed the preliminary Interim Incurred Cost Audit Report (Report) issued by the Independent Office of Audits and Investigations on May 22, 2019. Based upon the Report and our telephone conference call on May 23, 2019; the City has prepared the attached responses to the three preliminary audit findings and recommendations.

Responses include the following documentation:

1. The preliminary audit finding as stated in the Report,
2. The City's response to the audit finding, and
3. Attachments which provide supporting documentation to the City's response are noted within the text of the response and to the right of the document.

The City looks forward to receiving the final audit Report. Should you have any questions regarding these audit responses or the attachments, please do not hesitate to contact Claudia Martinez at cmartinez@laquintaca.gov or myself at kromero@laquintaca.gov.

Respectfully,



Karla Romero, Finance Director
760-777-7073 Direct
kromero@laquintaca.gov

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FINDING 1

Inadequate Written Procurement Policies and Procedures

"The City of La Quinta's (City) written procurement procedures in their Purchasing and Contracting Policy are not sufficient to allow the City's Design and Development staff to procure consultant contracts in accordance with state and federal requirements. Specifically, we identified the deficiencies below.

The City's Purchasing and Contracting Policy did not include:

- The required procedures for awarding of consultant contracts for the project. Management/Administrator or Agency Engineer in Management Support Role and job duties.*
- The different types of contracts and, specifically, the appropriate use of each.*
- The four required methods of payments for compensation of services.*
- The inclusion of all required fiscal provisions.*
- Requirements for cost proposals.*
- Consultant's Annual Certification of Contract Costs and Financial Management System.*
- Verification and documentation of suspension and debarment.*
- Requirements for a detailed independent cost estimate prior to competitive negotiations.*
- Detailed method, criteria, and weighting for selection for all procurements.*
- Monitoring and evaluation of the consultant's work and compliance with the terms, conditions and specifications of the contract.*

For detailed criteria see Attachment II.

23 CFR 172.S(c) states in part, "The contracting agency shall prepare and maintain written policies and procedures for the procurement, management, and administration of engineering and design related consultant services " Also, see 2 CFR 200.318 General Procurement Standards

Without adequate written procurement policies and procedures, it is difficult to ensure procurements are conducted in a fair and competitive manner and that reasonable contract costs are obtained in accordance with state and federal requirements. In addition, state and/or federal funding on completed and ongoing projects could be jeopardized, federal or state participation in all or a portion of the project may be disallowed, and reimbursement of contract funds may be required.

Finding 1 City Response:

The City does not concur with Caltrans Audit & Investigation (A&I) Finding 1. The City of La Quinta Purchasing and Contracting Policy reviewed by Caltrans is for local procurement, not for the procurement of contracts subject to State or Federal requirements.

The City is required to administer State and Federal Projects in accordance with the requirements set forth in the Caltrans Local Assistance Program Guidelines and Local Assistance Procedures Manual in accordance with Master State and Federal Agreements.

The City adopted "Master Agreement Administering Agency-State Agreement for Federal-Aid Projects, Agreement No. 08-5433F15" (**Attachment 1**) on November 1, 2016 which was executed on November 8, 2016 by the City of La Quinta and on November 20, 2016 by Caltrans.

Upon adopting the Master Agreement for Federal Aid projects, the City agreed to follow the requirements and procedures set forth in the Local Assistance Program Guidelines and the Local Procedures Manual in accordance with Article I, Part 9 of the Master Agreement:

Article I, Part 9 - **"9. Administering Agency shall conform to all state statutes, regulations, and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT."**

Response to
Finding 1:
Attachments

Attachment 1:

Master Agreement
Administering Agency-
State Agreement for
Federal-Aid Projects,
Agreement No. 08-
5433F15

The City adopted "Master Agreement Administering Agency-State Agreement for State-Funded Projects, Agreement No. 00445S" (Attachment 2), on February 4, 2014 which was executed by the City of La Quinta on February 7, 2014 and on February 14, 2014 by Caltrans. Upon adopting the Master Agreement for State-Funded projects, the City agreed to follow the requirements and procedures set forth in the Local Assistance Program Guidelines and the Local Procedures Manual in accordance with Article V, Part 9, and Article VI, Part 2 of the Master Agreement:

Article V, Part 9 - "9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with LOCAL ASSISTANCE PROCEDURES."

Article VI, Part 2 - "2. ADMINISTERING AGENCY shall conform to all applicable State and Federal statutes and regulations, and the Local Assistance Program Guidelines and Local Assistance Procedures Manual as published by STATE and incorporated herein, including all subsequent approved revisions thereto applicable to PROJECT unless otherwise designated in the project-specific executed PROJECT SUPPLEMENT."

In addition, 23 CFR 172.5(b) states that subrecipients responsibilities include "...adopting written policies and procedures prescribed by the awarding state transportation agency...". Passing a resolution adopting the language in the Master Agreement meets this requirement (Attachment 43). 23 CFR 172.5(c) 1-18 outlines the procedures Caltrans adopted in Chapter 10 of its Local Procedures Manual, which the City agreed to comply with when it adopted the Master Agreements for both State and Federal Funded Projects.

The City also provided a letter to David Lee, District Local Assistance Planner, at Caltrans Local Assistance dated June 28, 2018 adopting Caltrans Chapter 10 Local Procedures Manual as the City's procurement procedures for State and Federal projects (Attachment 3).

Response to Finding 1: Attachments

Attachment 2:

Master Agreement Administering Agency-State Agreement for State-Funded Projects, Agreement No. 00445S

Attachment 43:

City Council Resolution 2016-044

Attachment 3:

Letter Adopting Chapter 10 Local Procedures Manual

FINDING 1 RECOMMENDATION

We recommend the City update their written procurement procedures to comply with state and federal procurement requirements and train staff accordingly. Specifically, adopt the policies and procedures in the California Department of Transportation (Caltrans), Division of Local Assistance (DLA), Local Assistance Procedure Manual (LAPM), Chapter 10. In addition, we recommend the City's Design and Development managers and staff take DLA's Procurement A&E Contracts training.

Policies and procedures needed to be address include, but are not limited to, the following:

- *Proper execution, administration, and approvals of contract and amendments.*
- *Proper advertisement and evaluation factors for RFQ/RFP.*
- *Required contract language and provisions.*
- *Appropriate use of the contract type, payment methods, and scope of work.*
- *Record of performance of an independent cost estimate.*
- *Proper presentation of cost proposals.*
- *Detailed method, criteria, and weighting for selection for all procurements.*
- *Program management and oversight.*

FINDING 1 CITY CORRECTIVE ACTION PLAN:

- The City has appropriated funding in the 2019/20 travel and training budget to allow the City's Design and Development managers and designated staff to take DLA's Procurement A&E Contracts training. The City will make every effort to continue to comply with regulations including working with regulatory authorities to ensure that the content and language within the City's contracts meet Caltrans requirements.

FINDING 2

Deficiencies in Procurements Conducted

The City's procurement practices did not support that fair and open competition was performed or proper procurement procedures were followed as required by state and federal regulations and Caltrans agreement provisions.

Three consultant procurements were tested. The City was unable to provide documentation to support that the selection of two of the consultants, Bengal Engineering Inc. (Bengal) and NAI Consulting (NAI) were conducted in accordance with state and federal regulations. Specific deficiencies are identified below.

1. Bengal Procurement

The City had no supporting documents or files to demonstrate that the procurement of Bengal was conducted with fair and open competition or that a fair and reasonable price was obtained. The City entered into a contract with Bengal on June 2, 2014, to perform professional engineering services and prepare plans, specifications, and an estimate for the replacement of the Dunes Palms Road low water crossing with a new all-weather bridge. As the City cannot provide any support for conducting this procurement in accordance with state and federal requirements, we are questioning contract costs paid to the City totaling \$953,828.

In addition, we identified the following deficiencies:

- *Key personnel were not identified on the cost proposal as required by LAPM Chapter 10.5 (July 2015).*
- *There was no evidence that a cost analysis was performed as required by LAPM Chapter 10.2 (July 2015).*

2. NAI Procurement

The City had no supporting documents or files to demonstrate that the procurement of NAI Consulting was conducted with fair and open competition or that a fair and reasonable price was obtained. The City entered into a contract with NAI Consulting on July 1, 2015, to perform general project management and contract administrative support services. As the City cannot provide any support for conducting this procurement in accordance with state and federal requirements, we are questioning contract costs paid to the City totaling \$163,214.

In addition, we identified the following deficiencies:

- *No Exhibit 10-H (cost proposal) as required by LAPM Chapter 10.3 (July 2015).*
- *No Exhibit 10-K Certification of Contract Costs and Financial Management System as required by LAPM Chapter 10.3 (July 2015).*
- *No Exhibit 10-U, Consultant in Management Support Role Conflict of Interest and Confidentiality Statement as required by LAPM Chapter 10.1.*
- *No evidence that an independent cost estimate was performed as required by LAPM Chapter 10.5 (July 2015).*

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.

Finding 2 City Response:

The City does not concur with A&I finding 2. The basis for this finding was that the City did not maintain specific documents associated with the Consultant Selection Process in its project files. Some files were not available at the time of audit, and the City has procured these files since. The City has also provided additional documents, including staff reports issued to and approved by the City Council that clearly detail the fair and open competitive process used to select its consultants.

1. City Response: Bengal Procurement

The City has since procured many of the documents requested by the A&I Team. These documents are provided as additional support demonstrating the City conducted its procurement process competitively, fairly, and openly and that a fair and reasonable cost was obtained.

The City of La Quinta procured Bengal Engineering, Inc. engineering services in accordance with the requirements set forth in Chapter 10 of the Caltrans Local Procedures Manual. The following represents the chronology of events associated with the Consultant Selection Process:

The City Appointed a Consultant Selection Committee Consisting of:

- Timothy Jonasson, P.E., Design and Development Director,
- Bryan McKinney, P.E., Principal Engineer, and
- Nick Nickerson, Project Manager/NAI Consulting, Inc.

The Request for Proposal was issued on October 15, 2013 **(Attachment 4)**.

The Pre-Proposal Conference was conducted on November 12, 2013 at 10:30 am **(Attachment 5)**.

The City received four (4) proposals from the following qualified consultants on November 25, 2013:

- Bengal Engineering, Inc. **(Attachment 6)**
- CNS Engineers, Inc. **(Attachment 7)**
- IDC Consulting, Engineers, Inc. **(Attachment 8)**

City Response to Finding 2: *Attachments*

Attachment 4:

2013 RFP to prepare PS&E for Dune Palms Bridge Project (2011-05)

Attachment 5:

RFP Pre-proposal Conference Docs

Attachment 6:

Bengal Engineering RFP

Attachment 7:

CNS Engineers, Inc. RFP

Attachment 8:

IDC Consulting Engineers, Inc. RFP

- RBF Consulting **(Attachment 9)**

The Consultant Selection Committee met on December 16, 2013 to review and discuss the merits of each of the four (4) proposals received as documented by proposal evaluations/rating sheets **(Attachment 10)**. Following discussion, the Consultant Selection Committee determined that all four (4) of the engineering firms submitting proposals should be interviewed.

Interviews were conducted on January 17, 2014 **(Attachment 11)**. Following the interviews, the Consultant Selection Committee recommended Bengal Engineering, Inc. be awarded a Professional Services Agreement **(Attachment 12)** to prepare the plans, specifications, and estimates for the Dune Palms Road Low Water Crossing Replacement at the Coachella Valley Storm Channel **(Attachment 13)**.

The Professional Services Agreement with Bengal Engineering was prepared in accordance with the requirements outlined within Chapter 10 of the Caltrans Local Procedures Manual and was submitted for review and acceptance by Caltrans Audit and Investigation. This included Exhibits 10K and 10H which outlined key personnel **(Attachment 14)**.

Caltrans Audit and Investigation issued the contract Conformance Letter Review on May 22, 2014 **(Attachment 15)**. All deficiencies noted by Caltrans Audit and Investigation Conformance Review were incorporated and submitted to City Council for award consideration.

The City Council considered and approved a Professional Services Agreement with Bengal Engineering, Inc. on June 17, 2014 **(Attachment 16)**.

2. City Response: NAI Procurement

The City of La Quinta procured the NAI Consulting, Inc. services in accordance with its Local Purchasing and Contracting Policy requirements **(Attachment 17)**.

City Response to Finding 2: *Attachments*

Attachment 9:
RBF Consulting RFP

Attachment 10:
RFP Rating Sheets –
Nick Nickerson

Attachment 11:
Interview Letters

Attachment 12:
Professional Services
Agreement with
Bengal Engineering

Attachment 13:
Bengal Engineering
Cost Proposal

Attachment 14:
Exhibits 10K and 10H

Attachment 15:
Caltrans A&I
Conformance Letter

Attachment 16:
Award of Bengal
Engineering PSA City
Council Staff Report

Attachment 17:
City of La Quinta
Local Purchasing and
Contracting Policy

NAI Consulting, Inc. was selected to provide general Capital Improvement Program (CIP) Project Management and Administrative Support Services to the City as a result of the City's Request for Proposals issued on April 7, 2015. The following represents a chronology of the City's Consultant Selection Process associated with this Request for Proposals:

The City Appointed a Consultant Selection Committee Consisting of:

- Timothy Jonasson, P.E., Design and Development Director,
 - Ed Wimmer, P.E., Principal Engineer, and
 - Leonard St Sauver, Construction Manager/Inspection Supervisor
- The Request for Proposal was issued on April 7, 2015 **(Attachment 18)**.
 - Addendum No. 1 was issued on April 15, 2015 **(Attachment 19)**
 - Addendum No. 2 was issued on April 28, 2015 **(Attachment 20)**

The City received five (5) proposals from the following qualified consultants on April 30, 2015:

- NAI Consulting, Inc. **(Attachment 21)**
- Onward Engineering **(Attachment 22)**
- Southstar Engineering and Consulting **(Attachment 23)**
- Overland Pacific and Cutler, Inc. **(Attachment 24)**
- Construction Planning and Management, LLC

The Consultant Selection Committee met to review and discuss the merits of each of the five (5) proposals received. The Consultant Selection Committee recommended NAI Consulting, Inc. be awarded a Professional Services Agreement (PSA) to provide Project Management and Contract Administrative Support Services to the City.

City Response to Finding 2: *Attachments*

Attachment 18:
2015 On-Call Project Management Services Request for Proposal

Attachment 19:
Addendum No. 1 to RFP

Attachment 20:
Addendum No. 2 to RFP

Attachment 21:
2015 NAI Consulting Proposal

Attachment 22:
2015 Onward Engineering Proposal

Attachment 23:
2015 Southstar Engineering and Consulting Proposal

Attachment 24:
2015 Overland Pacific and Cutler, Inc. Proposal

The City Council considered and approved a PSA with NAI Consulting, Inc. on June 2, 2015 **(Attachment 25)**.

The City's procurement process which resulted in the selection of NAI Consulting, Inc. was fair with open competition performed in accordance with the City's local Purchasing and Contracting Policy. Since the audit, the City has procured four of the five original proposals, the City has also provided the Request for Proposal, Addendums, and Staff Reports which provide a summary to the City Council of the overall selection process. These documents provide evidence of a fair and open selection in the procurement of On-Call Project Management and Administrative Services.

The PSA issued to NAI Consulting, Inc. for project management and contract administrative support services **(Attachment 26)** was not intended to be a "State Only", or "Federal Funding" stand alone contract; therefore, the documents identified as deficiencies were not obtained. Rather, the services called for within the scope of services were specifically for project management and administrative support services needed to implement the City of La Quinta Capital Improvement Program. NAI Consulting, Inc. does not serve in a management capacity with decision making authority. NAI Consulting, Inc. provides "on call", as needed staff augmentation services as directed by the Design Development Director or City Engineer.

FINDING 2 RECOMMENDATION:

We recommend the City conduct all consultant procurements in accordance with state and federal regulations.

In addition, we recommend DLA work with the Federal Highway Administration and the City to determine if any of the questioned costs totaling \$1,117,042 (\$953,828 + \$163,214) identified above should be repaid to Caltrans.

FINDING 2 CITY CORRECTIVE ACTION PLAN:

- The City will make every effort to continue to comply with regulations including additional training for staff and working with regulatory authorities to ensure

City Response to Finding 2: *Attachments*

Attachment 25:
2015 Project
Management and
Contract
Administrative
Support Services
Award PSA to NAI City
Council Staff Report

Attachment 26:
2015 PSA with NAI
Consulting, Inc.

proper processes and documentation is maintained for all projects. The City has implemented improvements to its processes and procedures, including working with the City Clerk's department for records management to ensure all records are accurately maintained and stored, as required.

- The City will work with the DLA and the Federal Highway Administration to determine if any of the questioned costs should be repaid to Caltrans.

FINDING 3

Deficiencies in Contract Management

The City did not maintain an adequate contract management system to ensure consultants performed in accordance with the terms, conditions, and specifications of its contract. In addition, the City's contract management procedures did not include proper processes to manage consultant contracts, review and approve invoices, and appropriately charge Caltrans funds. Specific deficiencies identified are outlined below.

Management of NAI Contract

The original contract with NAI was executed on July 1, 2015, with an option of two additional years of extension upon mutual agreement of both the City and NAI. Extension Option #1 was exercised on June 27, 2016, and Extension Option #2 was exercised on June 30, 2017 and set to expire June 30, 2018.

On May 15, 2018, one month prior to the contract expiration date, rather than execute a contract amendment the City extended NAI's services by entering into a new contract with NAI for the same scope of work as the previous contract. This contract was also entered into with no solicitation or competitive bidding. The contract was entered into as sole source with no support or justification for a non-competitive bid contract.

In addition, the City paid NAI on the new contract for contract costs incurred prior to the May 15, 2018, execution date. According to a letter from NAI dated January 31, 2019, a discussion was held with the City Engineer regarding the remaining funds on the original NAI contract which were not enough to cover the cost of services from April - June, 2018. The City Engineer and NAI agreed to have the remaining unbilled amount for services rendered during April 2018 to be billed on the new contract as well as for the cost of the services for May and June 2018. The City Engineer failed to take the matter to the appropriate authority, and the City Manager and City Council were unaware of this payment agreement between NAI Consultant and the City Engineer. Costs associated with this contract are disallowed.

Management of Bengal Contract

The original contract with Bengal under provision 3.4 Term (June 2, 2014 - July 31, 2018) stated the contract may be extended upon mutual agreement by both parties but did not specify an extension time frame.

We identified the following deficiencies with invoices the City paid to Bengal:

- *No support for percentages of work completed.*
- *Employee hours and services rendered were not specified.*
- *No detail of services provided, such as time and materials.*
- *No support that City management reviewed or monitored that the costs and services billed were reasonable, allocable, allowable, and accurate beyond cursory budget reviews.*

In addition to the deficiencies noted above, we identified several deficiencies with amendments to the Bengal contract. Amendments 1, 2, 3, 5, 6, and 7 were all executed to add additional funds with no change in scope to the original solicitation, which is unallowable on a lump sum contract. It is unclear whether the services added with Amendment 4 were within the scope of the original contract solicitation. These costs are questioned. In addition, the Amendment 1 cost proposal included a 15% markup which is not allowed. Questioned costs on Bengal amendments total \$190,236.

Amendment 8 was executed as a new, second contract after the first contract expiration date and with no competitive bidding selection process and no support, justification, or documentation for a sole source/non-competitive bid contract. These contract costs totaling \$28,450 paid to the City are disallowed.

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

Finding 3 City Response:

The City does not concur with the A&I conclusion that the City does not provide proper oversight on its consultant contracts or that it does not competently review and approve invoices and appropriately charge Caltrans funds. Each consultant contract is managed based on its scope of work, fee schedule and timeline schedule. Each consultant is required to provide a project status report on a weekly basis **(Attachment 27)**, project development team meetings are conducted monthly, minutes are prepared along with action item lists, project submittal logs, decision logs, etc. City staff are fully aware of status of contract deliverables on a day to day basis. Consultant invoices are reviewed by the Project Manager, a "Billing Control Log" is prepared and submitted to the City Engineer for review and approval. Each invoice is circulated for review and concurrence by up to three City staff members, who have knowledge of the scope of services being provided, before the invoice is processed for payment.

City Response: Management of NAI Contract

The City of La Quinta was in the process of transitioning its Engineering Division at the time that NAI's contract was expiring. The City Council had approved a staffing plan that would reduce the amount of services provided by its "on call" engineering project management consultant **(Attachment 44)**. City staff and management felt it would not be productive to bring on a new project management consultant as work was transitioning to new in-house staff. The decision was made that it would make for an easier transition if NAI could train the new staff in their processes and a one-year sole source contract was approved to facilitate this process **(Attachment 28)**. The City has attempted to hire new in-house engineering staff without success, see job posting dates below:

- Senior Civil Engineer-
 - 4/11/2018 - 5/2/2018
 - 6/1/2018 - 6/29/2018
- Associate Engineer
 - 4/11/2018 - 5/2/2018
 - 6/6/2018 - 7/2/2018
 - 2/6/2019 - 2/27/2019

City Response to Finding 3:

Attachments

(Attachment 27):
Weekly Status Report
Examples

(Attachment 44):
2018 D&D Staffing
Plan City Council Staff
Report

(Attachment 28):
2018 NAI Consulting,
Inc. PSA City Council
Staff Report

As such, the City has recently published a new request for proposals and is in the process of selecting a consultant for engineering project management consultant services among the companies that have submitted proposals **(Attachment 45)**.

City Response: Management of Bengal Contract

Bengal Contract Term:

The original contract with Bengal Engineering clearly specified a term for the Consultant to perform its services:

"3.4 Term. Unless earlier terminated in accordance with Sections 8.7 or 8.8 of this Agreement, the term of this agreement shall commence on June 2, 2014 and terminate on July 31, 2018 (initial term). This agreement may be extended upon mutual agreement by both parties (extended term)."

Article IV Performance Period of the Caltrans Exhibit 10-R A&E Boilerplate Agreement Language states:

"A. This AGREEMENT shall go into effect on (DATE), contingent upon approval by LOCAL AGENCY, and CONSULTANT shall commence work after notification to proceed by LOCAL AGENCY'S Contract Administrator. The AGREEMENT shall end on (DATE), unless extended by AGREEMENT Amendment."

The City of La Quinta determined the "Term" language used in its Professional Services Agreement was consistent with the purpose and intent of the sample language suggested in the Caltrans Exhibit 10R A&E Boilerplate Agreement Language.

Bengal Invoices:

Section 2.1 Contract Sum of the Bengal Professional Services Agreement specifies the method of compensation to be lump sum. The contract sum is paid on a monthly percentage of completion basis. The Bengal Contract is actively managed by City staff and Bengal is required to submit a status report on a weekly basis. In addition, Project Development Team meetings are conducted on the second Tuesday of each month. The Consultant is required to submit the following: Action Item Log **(Attachment 29)**; Schedule **(Attachment 30)**; Submittal Log **(Attachment 31)**; Decision Log **(Attachment 32)**; and Right of Way Acquisition Log **(Attachment 33)**.

City Response to Finding 3:

Attachments

(Attachment 45):
2019 RFP for On-call
CIP Project
Management &
Engineering Services

(Attachment 29):
Sample Action Item
Log Submittal

(Attachment 30):
Sample Schedule
Submittal

(Attachment 31):
Sample Submittal Log

(Attachment 32):
Sample Decision Log
Submittal

(Attachment 33):
Sample Right of Way
Acquisition Log

Bengal's invoice and the City's Billing Control Log provides the percentage of work completed by work objective. City staff reviews each invoice submitted by Bengal for accuracy and consistency with the status reports and project logs.

City Response: Timely Invoice Submittal to Caltrans

Caltrans A&I comment regarding the two slightly delayed invoice submittals is noted. The City is updating its tracking log procedures to ensure reimbursement requests are submitted to Caltrans in a timelier manner.

City Response: Bengal Amendments

The City does not concur with the finding regarding non-allowable amendments as part of a "Lump Sum or "Fixed Fee" contract. It is unreasonable to assume that any "Lump Sum" or "Fixed Fee" contract with a scope of work defined and negotiated before work performed on a project as complicated as replacing a low water crossing with an all-weather bridge is all inclusive of any contingency that may come up during the project development process. This is especially true of projects subject to review and comment from Caltrans Environmental, State and Federal Resource Agencies, Flood Control Districts, and/or Utility Providers. The City of La Quinta does not concur with Caltrans A&I finding that Amendments 1 through 7 added additional contract funds without adding additional scope to the contract. Amendments 1 through 7, and 8 are addressed individually below:

Amendment No. 1 (Attachment 34)

Amendment No. 1 resulted in an overall contract reduction in the amount of (\$2,233). Amendment 1 contained a boilerplate statement that indirect costs would be subject to a 15% markup, but there were no indirect costs associated with Amendment 1. In fact, there are no indirect reimbursable expenses authorized of any sort within the Bengal Engineering, Inc. Contract. The consultant has been directed to remove the boilerplate language from future Amendments.

Bengal's original contract scope of work assumed Section 7 Consultation would be required by the U.S. Fish and Wildlife Service (USFWS). During the Consultant's initial consultation

**City Response
to Finding 3:
*Attachments***

(Attachment 34):
Bengal Engineering
Amendment No. 1

with the USFWS, it was determined that a Section 7 Consultation would not be required. Subsequently, the scope of work and budget in the amount of \$22,133 was removed from the contract.

Bengal's original contract scope of work included up to six potholes and associated survey to locate and document existing utilities. Due to the lack of accurate atlas information obtained from the Coachella Valley Water District (CVWD) up to 8 additional potholes were added to the contract, resulting in a new total of 14 potholes, along with additional survey work to document the CVWD facility once it was located. This additional work resulted in a net contract increase of \$11,900.

Bengal's original contract scope of work included a Noise Impact Analysis assessing the project's potential effect on existing and future noise conditions. The original scope of work for the Noise Impact Analysis did not include the preparation of a Noise Technical Report which modeled the existing, no build, and build conditions required by the Preliminary Environmental Study approved by Caltrans Environmental Staff. The addition of the supplemental Noise Technical Report resulted in a net contract increase of \$6,800.

Bengal's original contract scope of work for Project Management did not include the time necessary to provide oversight for these added items. Following negotiation, the City agreed to add 8 additional Project Management hours to the contract. Additional Project Management time resulted in a net contract increase of \$1,200.

Amendment No. 2 **(Attachment 35)**

Bengal's original contract scope of work included the preparation of Cultural and Paleontological Resources within the initially anticipated Area of Potential Effect (APE) footprint. During the July 7, 2015 field meeting with Caltrans Environmental Staff, Caltrans Environmental Staff required the Cultural field survey be extended along the east edge of Dune Palms Road, south of the Channel and expanded the anticipated scope of the Architectural Survey to include the entire Dune Palms Mobile Home Estates located on the north east side of the proposed project limits. The additional

City Response to Finding 3:

Attachments

(Attachment 35):
Bengal Engineering
Amendment No. 2

Cultural Resource work required by Caltrans Environmental resulted in a net contract increase of \$7,800.

Amendment No. 3 **(Attachment 36)**

Bengal's original contract scope of work included the preparation of a basic Traffic Technical Memo. Following review of the draft Traffic Technical Memorandum, the City's contracted Traffic Engineer expanded the scope of work to include a comparative analysis of existing and future traffic based on collected data and the new City General Plan adopted on February 19, 2013. The additional work required the Consultant to obtain additional traffic counts. These additional study parameters ultimately resulted in a complete rewrite of the Traffic Technical Memorandum. The Traffic Technical Memorandum directly drive the Noise Impact Analysis and the Air Quality Technical Report. As such, both the Noise and Air Quality Reports were updated using the trip generation results from the expanded Traffic Technical Memorandum. The additional work to expand the Traffic Technical Memorandum and update the Noise and Air Quality Reports resulted in a net contract increase of \$31,678.

Amendment No. 4 **(Attachment 37)**

Bengal's original contract scope of work did not include the preparation of Alternative Grade Control Structures. The additional work was required to address the Coachella Valley Water District (CVWD) comments on the project Hydrology Study. CVWD has "Senior Right" within the Coachella Valley Storm Water Channel and the City will be required to obtain a Permanent Easement and/or Encroachment Permit from CVWD to construct the improvements. The additional scope of work is directly related to the Channel Hydrology and permitting requirements for the project. It was not feasible to separate the additional work from the contract and obtain a competitive procurement. The additional work to prepare the Grade Control Structure Alternatives resulted in a net contract increase of \$16,100.

Amendment No. 5 **(Attachment 38)**

Bengal's original contract scope of work did not include an analysis of the Coachella Valley Storm Water Channel between the limits of Jefferson Street and Washington Street.

City Response to Finding 3: *Attachments*

(Attachment 36):
Bengal Engineering
Amendment No. 3

(Attachment 37):
Bengal Engineering
Amendment No. 4

(Attachment 38):
Bengal Engineering
Amendment No. 5

As with Contract Amendment No. 4, this additional work was in direct response of the comments received from CVWD. CVWD owns a large part of the Channel and has statutory authority over Stormwater. The City could not respond and/or rebut CVWD without the information from the analysis. The additional scope of work is directly related to the Channel Hydrology and Permitting requirements for the project. It was not feasible to separate the additional work from the contract and obtain a competitive procurement. The additional work associated with the Channel Profile Analysis resulted in a net contract increase of \$19,900.

Amendments No. 6 and 7 **(Attachment 39)** **(Attachment 40)**

Amendments 6 and 7 are directly related. As previously established, the preparation of the Cultural Resources Study was included within Bengal's original scope of work. Following review of the Cultural Study by Caltrans Environmental, Caltrans Environmental required an additional study in the form an XP1 Report in accordance with Exhibit 5.2 of the Caltrans SER Handbook Vol. 2. The XP1 is an Extended Phase 1 Archeological Report which includes field investigation by a professionally qualified Archeologist. Caltrans Environmental requires that the XP1 Work Plan be prepared, agreed upon, and approved before the field investigation can move forward. Amendment 6, in the amount of \$9,583, was issued to allow the Bengal Archeological Team to prepare the detailed work plan for review and approval by Caltrans. Amendment 7, in the amount of \$96,449, was issued to Bengal Archeological Team to perform the field exploration. The Cultural component of the Environmental Study caused considerable delay to the project, to the extent, that the project was up against its Caltrans completion deadline for the Preliminary Engineering Funding. The work was also directly related to obtain Caltrans approval of the State (CEQA) and Federal (NEPA) Environmental Documents. The additional XP1 work required by Caltrans Environmental was directly linked to the previous Cultural Studies prepared by the Bengal Environmental Team. It was not feasible, nor logical, to separate the additional work from the contract and obtain a competitive procurement. The additional work associated with the XP 1 - Extended Phase I Archeological Report

City Response
to Finding 3:
Attachments

(Attachment 39):
Bengal Engineering
Amendment No. 6

(Attachment 40):
Bengal Engineering
Amendment No. 7

resulted in a combined (Amendments 6 and 7) net contract increase of \$106,032.

Amendment No. 8 (Attachment 41)

The additional scope of work authorized by Amendment 8 is a cumulative result of requirements established by the Caltrans approved (NEPA) Environmental Document, the City approved (CEQA) Environmental Document, the Environmental Permitting process with the various resource agencies, and the initiation of the Right of Way Acquisition Phase, including the coordination with utilities. The scope of work authorized, while related to other work objectives in the original contract, was not originally, nor could it have been, included within Bengal's original contract scope of work. The extent of the permitting requirements, utility relocation work, channel scour analysis, landscaping aesthetics, and right of way requirements could not have been known at the time the original scope of work was negotiated with Bengal Engineering, Inc. Nor could it be anticipated that the Environmental Document would take from 2014-2018 to complete or that it would take Caltrans over a year to allocate funding for right of way acquisition. It was not feasible, nor logical, to separate the additional work from the contract and obtain a competitive procurement for these services. Amendment 8 resulted in a net contract increase of \$89,875.

City Response: Amendment No. 8 Contract Extension

The City acknowledges that Amendment 8 was issued on October 16, 2018 and the original term expired on July 31, 2018. This 2 ½ month delay was an oversight. The Environmental Document and Environmental Permitting took nearly 4 years to complete. The City and its consultants were rushing trying to make up time and avoid lapsing funding issues with the Preliminary Engineering Phase. Ultimately, the City was successful in obtaining a two-year extension from Caltrans Headquarters from June 2018-2020. At this point in the project development process the City and its Consultant were diligently working through the requirements of the adopted environmental document, environmental permits, initiating the right of way phase, and coordinating with utilities. The contract term was extended immediately after it was discovered that it expired (Attachment 42). Delaying the project to change engineering teams would not have

City Response
to Finding 3:

Attachments

(Attachment 41):
Bengal Engineering
Amendment No. 8

(Attachment 42):
Bengal Engineering
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benefited the project, Caltrans, or the City. In fact, such a delay would have had a detrimental effect on the project cost and schedule. The City did not issue a second contract as stated, rather the City extended the Contract Term of the existing contract.

FINDING 3 RECOMMENDATION:

We recommend the City:

- *Reimburse Caltrans \$73,147 (\$44,697 + \$28,450) of total disallowed costs identified above.*
- *Implement contract management and oversight to properly manage consultant contracts to review and approve consultant invoices.*
- *Ensure billings to Caltrans are accurate.*

FINDING 3 CORRECTIVE ACTION PLAN:

- Once the audit report is final, all agreed upon unallowable costs will be remitted to Caltrans or credited on active projects.
- The City will continue to review all documentation listed in our response (Attachments 27, 29-33). In addition, the City will attach all documentation to the invoice for signature and review in order to properly manage consultant contracts and invoices.
- The City will make every effort to submit billings to Caltrans for reimbursement of costs in a timely manner and ensure that all billings are accurate.