

Memorandum

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To: COCO BRISENO
Deputy Director
Planning and Modal Programs

Date: October 19, 2017

File: P1575-0051

From: WILLIAM E. LEWIS
Assistant Director
Independent Office of Audits and Investigations



Subject: INCURRED COST AUDIT – CITY OF BAKERSFIELD

We audited costs claimed by and reimbursed to the City of Bakersfield (City) totaling \$68,756,514 for work performed under projects NCIPL-5109(106); BHLSZ-5109(166); NCIPL-5109(176); and NCIPL-5109(210) with Caltrans. The audit was performed to determine whether the costs were supported and in compliance with the agreement provisions and state and federal regulations. This audit was performed as a management service to assist Caltrans in fulfilling its fiduciary responsibilities to state and federal regulatory agencies. The final audit report, which includes the City's response, is attached.

Based on our audit, we determined that project costs totaling \$16,924 did not comply with respective agreement provisions, and state and federal regulations. In addition, we identified contracts improperly procured.

Please provide our office with a corrective action plan addressing the recommendations in the report, including estimated timelines, by December 4, 2017.

This report is a matter of public record and will be placed on Caltrans Independent Office of Audits and Investigations' website.

If you have questions or need additional information, please contact MarSue Morrill, Chief, External Audits - Local Governments, at (916) 323-7105.

Attachment

1. City of Bakersfield Incurred Cost Audit Report

- c: Nick Fidler, Public Works Director, City of Bakersfield
Nelson Smith, Finance Director, City of Bakersfield
Michael Tritz, Deputy Secretary for Audits and Performance Improvement, California
State Transportation Agency
Rodney Whitfield, Financial Services Director, Federal Highway Administration
Matt Schmitz, Project Delivery Director, Federal Highway Administration
Roberto Rodrigues, F.I.R.E. & Program Review Coordinator, Federal Highway
Administration
Susan Bransen, Executive Director, California Transportation Commission
Malcolm Dougherty, Director, Caltrans
Laurie Berman, Acting Chief Deputy Director, Caltrans
Sharri Bender Ehlert, District Director, District 6, Caltrans
Clark Paulsen, Chief, Division of Accounting, Caltrans
Ray Zhang, Chief, Division of Local Assistance, Caltrans
Gail Miller, Deputy District Director, Planning, Local Programs, and Environmental
Analysis, District 6, Caltrans
James Perrault, District Local Assistance Engineer, District 6, Caltrans
MarSue Morrill, CPA, Chief External Audits – Local Governments, Independent Office
of Audits and Investigations, Caltrans
Luisa Ruvalcaba, Audit Manager, Independent Office of Audits and Investigations,
Caltrans

City of Bakersfield Incurred Cost Audit



Audit Report

October 2017

PREPARED BY:

California Department of Transportation

Audits and Investigations – MS 2

Post Office Box 942874

Sacramento, California 94274-0001

www.dot.ca.gov/hq/audits

AUDIT TEAM

MarSue Morrill, Chief, External Audits-Local Governments

Clifford R. Vose, Audit Manager

Luisa Ruvalcaba, Audit Manager

Barbara Nolan, Auditor-in-Charge

Sharon Hoshiyama, Auditor

Lin Zhang, Auditor

P1575-0051

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SUMMARY, OBJECTIVES, SCOPE, METHODOLOGY, BACKGROUND, AND CONCLUSION

SUMMARY

The California Department of Transportation (Caltrans), Independent Office of Audits and Investigations (A&I) audited reimbursed project costs totaling \$68,756,514 to the City of Bakersfield (City). We found project costs totaling \$16,924 that did not comply with respective agreement provisions, and state and federal regulations. We also identified the total value and costs paid on contracts improperly procured.

OBJECTIVES

Caltrans A&I performs incurred cost audits to ensure Caltrans is meeting its legal and fiduciary responsibilities, and that state and federal funds are properly expended by local government agencies. This audit was performed to determine whether project costs claimed by and reimbursed to the City were allowable, adequately supported, and in compliance with respective agreement provisions, and state and federal regulations.

The audit included costs incurred on four projects: State Route 58 to Interstate 5 (SR 58 to I5) NCIPL-5109(106); Manor Street Bridge BHLSZ-5109(166); Morning Drive NCIPL-5109(176); and Centennial Corridor NCIPL-5109(210). Our audit period was from March 5, 2013 through March 29, 2016.

SCOPE

The audit was limited to financial and compliance activities. The audit of the City's financial management system included interviews of City staff to obtain an understanding of the City's financial management system. The audit comprised transaction testing of reimbursed project costs to evaluate compliance with Title 2 Code of Federal Regulations (CFR) Part 225 and 49 CFR Part 18 (both superseded by 2 CFR Part 200); 48 CFR Chapter 1 Part 31; 23 CFR; Caltrans's Local Assistance Procedures Manual; California Public Contracting Code; California Government Code; and requirements stipulated in the City's agreements with Caltrans. Our field work was completed on June 2, 2017 and transactions occurring subsequent to this date were not tested and, accordingly, our conclusion does not include costs or credits arising after this date.

The City is responsible for the claimed costs, compliance with applicable agreement provisions, state and federal regulations, and the adequacy of the City's financial management system to accumulate and segregate reasonable, allocable, and allowable costs. Because of inherent limitations in any financial management system, misstatements due to error or fraud may occur and not be detected. Also, projections of any evaluation of the financial management system to

future periods are subject to the risk that the financial management system may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit was less in scope than an audit performed to express 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.

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

BACKGROUND

Caltrans has a legal and fiduciary responsibility to ensure that all state and federal funds are expended in compliance with state and federal laws, regulations, and agreements. Title 23 CFR Part 1.9 requires that federal aid funds be expended in compliance with state and federal laws. Additionally, Title 23 CFR Part 1.36 states that payment of funds to a state can be withheld if the state has violated or failed to comply with federal laws or with the regulations of Title 23 CFR Part 1.36. Caltrans performs audits to ensure it is meeting its legal and fiduciary responsibilities and that state and federal funds are properly expended by local government agencies.

CONCLUSION

Based on our audit, we determined the City:

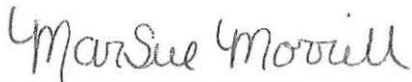
- Was reimbursed project costs totaling \$16,924 (see Attachment I) that were not in compliance with respective agreement provisions and state and federal regulations.
- Did not procure professional services in accordance with state and federal regulations.
- Paid consultant labor, service and travel rates that exceeded the amount allowed by contracts and agreement provisions.
- Did not adequately support construction costs, right of way costs, or submit timely requests for reimbursement.

VIEWS OF RESPONSIBLE OFFICIALS

Our findings and recommendations consider the City's response dated September 13, 2017 to our August 31, 2017 draft report. Our findings and recommendations, the City's response, and our analysis of the response are set forth in the Findings and Recommendations of this report.

This report is intended as information for Caltrans management, California Transportation Commission, FHWA, and the City. The report is a matter of public record and will be placed on Caltrans' website, which can be viewed at <www.dot.ca.gov/audits/INC.html>.

If you have questions, please contact Barbara Nolan, Auditor, at (916) 323-7880, or Luisa Ruvalcaba at (916) 323-7888.



MARSUE MORRILL, CPA

Chief

External Audits – Local Governments

Independent Office of Audits and Investigations

October 18, 2017

FINDINGS AND RECOMMENDATIONS

FINDING 1 – Procurement Practices Need Improvement

The City of Bakersfield (City) did not procure professional services in accordance with state and federal regulations. The audit included testing one of the City's Responsibility Statement and Questionnaire (RSQ) prequalification processes used for construction contract procurements and three requests for qualifications and/or proposals (RFQ/RFP) over the four audited projects: State Route 178 at Morning Drive (Morning Drive); State Route 58 to Interstate 5 (SR 58 to I5); Centennial Corridor and Manor Street Bridge (Manor Street). Refer to Attachment II for criteria.

Specifically, we found the following deficiencies:

Morning Drive project

The City limited bidding for construction services to only those firms that had been prequalified through an RSQ process completed in November 2012. The City had no process in place to qualify other potential bidders once the project was advertised in May 2013. Prequalification of bidders is allowable only when bidders are afforded sufficient time between the call for bids and the date of opening bids to obtain a prequalification rating, per 23 CFR 635.110 (c), and 49 CFR 18.36 (c) (4). Limiting bidders to those who had been prequalified may restrict open and free competition and could result in higher construction costs. Further, the RSQ process used to prequalify bidders was not approved by the Federal Highway Administration (FHWA) as required by 23 CFR 635.110 (a). The City stated that the process had been in use for at least 15 years. As of August 9, 2017, FHWA California Division was working with the City on the City's prequalification process.

As a result of the RSQ process, there were nine prequalified bidders, four of the nine submitted bids, and the construction contract was awarded to Granite Construction Company. While the City did not allow additional contractors to submit bids during the advertisement period, no protests were filed. The construction contract, including change orders, totaled \$25,930,825 as of January 21, 2015, the most recent progress pay estimate we tested. FHWA advised A&I that no repayment will be sought for the construction costs associated with the prequalification.

SR 58 to I5 project

For the procurement of advanced preliminary engineering and associated environmental services, the City did not maintain documentation to show that the City complied with established state and federal procurement laws and regulations, including:

- Preparation of an independent cost estimate prior to soliciting proposals.
- Completion of a panel member conflict of interest form.
- Negotiation of contract cost.

- Negotiation of profit as a separate element of cost.
- Approval for a noncompetitive procurement

The City stated that a baseline of 10 to 15 percent of the cost of construction is used as an estimate for the cost of a construction support contract. However, an independent cost estimate is used as a basis in negotiating contract price, and without specific detailed information, such as level of effort and expertise, there is increased risk of services being paid at unfair or unreasonable cost. Additionally, profit should be separately negotiated to ensure that it is not excessive considering the levels of risk assumed by the contractor and the City.

Although this procurement was advertised, only one firm responded to the RFP, which is considered a noncompetitive, or sole-source, procurement. Federal regulations and the Local Assistance Procedures Manual (LAPM) require agencies to obtain approval when using the noncompetitive method for procurement.

The contract was awarded to Parsons (14-288) for the amount of \$17,733,606, of which the City invoiced Caltrans for \$14,353,256 (see Attachment I) through request for reimbursement (RFR) 20.

Centennial Corridor project

For the procurement of right of way and associated engineering and surveying services, we found that panel members did not complete a conflict of interest form. We also found that one evaluation criterion listed in the RFP was not used in the actual evaluation of proposals. Specifically, the score sheets did not include a rating for "Other team members' experience and availability," even though the RFP identified that this evaluation factor would represent 10 percent of the total evaluation score. We also noted an inconsistency in the evaluation panel where two separate staff evaluated only three of the six proposals received, and the two evaluators did not assign scores to at least two of the seven criteria used. State and federal regulations require that the award of a contract be based on the advertised criteria and although the score sheets provided support the award of the contract, the failure of panel members to assign scores to all advertised criteria could have affected the final rankings of proposals received.

The contract was awarded to Overland, Pacific Cutler (14-026) in the amount of \$15,873,536, of which the City invoiced Caltrans for \$4,366,068 (see Attachment I) through RFR 6.

Manor Street project

For a March 2012 procurement of seismic assessment and plans, specifications and estimate services, the City did not maintain documentation to show:

- Preparation of an independent cost estimate prior to soliciting proposals.
- Identification of all evaluation factors and their relative importance.
- Completion of a panel member conflict of interest form.
- Negotiation of contract cost. Negotiation of profit as a separate element of cost.

The independent cost estimate is used as a basis in negotiating contract price and without one, there is increased risk of not procuring services at a fair and reasonable cost. Profit should be separately negotiated to ensure that it is not excessive considering the levels of risk assumed by the contractor and the City.

We also found that the City included an additional evaluation factor on the score sheets that was not included in the RFP. Specifically, the City awarded up to five points based on the firm's prior work experience with the City. State and federal regulations require all evaluation factors and their relative importance to be identified in the RFP. Using a firm's prior work experience with the City could result in a firm having an unfair advantage when compared to another equally qualified firm without prior work history with the City. Any arbitrary action is considered a restriction of competition, per 49 CFR 18.36 (c) (1) (vii).

The contract was awarded to Wei Koo Engineering (12-073), and with three amendments, the total contract value is \$1,053,336, of which the City invoiced Caltrans for \$270,380 (see Attachment I) through RFR 6.

RECOMMENDATION

We recommend the City take the following actions:

- Ensure its prequalification process meets the requirements of 23 CFR 635 and continue working with FHWA to obtain approval prior to using the prequalification process in the future.
- Ensure that the procurement of consultants meets the requirements of current state and federal regulations such as the Public Contract Code and 23 CFR 172.
- Ensure that staff are trained on current state and federal procurement regulations and record retention requirements and demonstrate compliance with regulations.

In addition, we recommend DLA work with FHWA to determine if any professional service costs identified above are to be repaid to Caltrans. If costs are to be repaid, the City should identify any other costs billed to Caltrans beyond the RFRs mentioned above. (As noted earlier, FHWA advised A&I that no repayment will be sought for the construction costs associated with the prequalification.)

SUMMARY OF CITY'S RESPONSE

- The City will continue to work with FHWA on the City's prequalification process.
- The City disagrees that competition was limited and resulted in higher construction costs.
- The City requested an item related to debarment status be removed because the criterion requiring it was not in effect at the time the contracts were procured.

- The City will ensure that staff are properly trained on procurement and record retention regulations.
- The City also requested that “any costs identified above” be clarified.

See Attachment VI for the City’s complete written response.

ANALYSIS OF CITY’S RESPONSE

The audit found that limited competition and higher construction costs are *potential* effects of the City’s prequalification process. The report was edited to remove an item related to debarment. At the request of the City, we also clarified, by identifying actual costs paid on contracts tested, in addition to the contract total values. It is at the discretion of DLA and FHWA to determine amounts, if any, that are to be repaid.

FINDING 2 – Contract Management Needs Improvement

The City paid labor, service and travel rates that exceeded the amount allowed by contracts and agreement provisions. The City also paid for a consultant position that was not listed in the contract. Additionally, we found that contracts did not include required contract provisions. Federal regulations require agencies to ensure work is delivered under the contract is consistent with the terms, conditions and specifications of the contract. We noted the following exceptions. See Attachment II for Criteria and Attachment III for a summary of the exceptions.

Morning Drive project - T.Y. Lin contract #11-088

In 6 of 37 instances tested (16 percent), the hourly rate billed for consultant staff exceed the wage rates estimated in the cost proposal. Paragraph 2.a of the TY Lin contract 11-088 states in part, “...*Actual costs shall not exceed the estimated wage rates and other costs set forth in the DESIGN CONSULTANT’s proposal.*” We also found in four of nine instances tested (44 percent), where charges for individual meals were greater than the allowable state per diem rates resulting in \$18.87 in disallowed costs. The Master Agreement between the City and Caltrans limits reimbursable travel and per diem costs to the rates approved by the California Department of Personnel Administration (DPA). We question the allowability of \$1,752 (see Attachment I) in excessive labor costs and disallow \$16.87 (see Attachment I) in meal charges over the allowable rates. The City stated that the contract was managed so that the total consultant labor costs did not exceed the aggregate amount budgeted, rather than the amounts listed for individual staff.

SR 58 to I5 – Parsons contract #14-288

In 18 of 19 instances tested (95 percent), the lodging rate charged exceeded the allowable state travel rate. The Master Agreement between the City and Caltrans limits reimbursable travel and per diem costs to the rates approved by the DPA, which is \$90 per night for lodging in Kern County. The consultant charged between \$94 and \$138 per night for lodging. We disallow \$265 in lodging costs over the allowable amount. We also found in two of nine instances tested (22 percent), charges for individual meals were greater than the allowable state per diem rates resulting in \$5 in disallowed costs. Finally in 10 of 43 instances tested (23 percent), the cost for daily per

diem rates was greater than the allowable \$46 state total daily per diem rate. The consultant charged between \$48 and \$59 per day, resulting in disallowed costs of \$56. The disallowed costs are \$265, \$5 and \$56 for a total of \$326 (see Attachment I).

Centennial Corridor – Overland Pacific Cutler (OPC) contract #14-026

In 23 of 113 instances tested (20 percent), the hourly rate billed for consultant staff exceed the wage rates estimated in the cost proposal. Paragraph 2.1 of OPC contract 14-026 states in part, “...Actual costs shall not exceed the estimated wage rates and other costs set forth in CONSULTANT’s cost proposal...” We also noted that OPC billed “Utility Coordination” but this position is not listed in the contract, and therefore we are unable to determine if the rate charged is reasonable. We are questioning \$8,608 due to these exceptions. In three of eight instances tested (38 percent), lodging costs were supported only by a hotel reservation, rather than an actual receipt. Federal regulations require costs to be adequately supported by source documentation. City staff stated that the City normally require receipts, but in these instances, the receipts were overlooked. We question \$444 for inadequately supported lodging costs. Without receipts, the City cannot show that the lodging costs were actually incurred. Total questioned costs are \$8,608 and \$444 for a total of \$9,052 (see Attachment I).

We also found in seven of eight instances tested (88 percent) the lodging rate charged exceeded the allowable California state travel rate. The Master Agreement between the City and Caltrans limits reimbursable travel costs to the rates approved by the California Department of Personnel Administration, which is \$90 per night for lodging in Kern County. The \$83 in lodging costs over the allowable amount is disallowed, \$36 of which is included in the \$444 questioned cost for inadequate support. In 10 of 33 instances tested (30 percent), the cost for full take appraisal services exceeded the amount listed in the contract cost proposal. Sub-consultants billed and the City paid for appraisal services ranging from \$2,000 to \$2,250 when the contract listed the amount as \$1,950. Costs totaling \$1,250 for the ten exceptions noted are disallowed. Total disallowed costs are \$83 and \$1,250, totaling \$1,333 (see Attachment I).

All projects – Various contracts

The City did not include required provisions in contracts with consultants. We reviewed five contracts and found exceptions in all of them. The specific provisions and the affected contracts are listed below. (Additional provisions may be required for contracts subject to a conformance review.) See Attachment II for Criteria and Attachment IV for details by contract.

- Termination for convenience.
- Travel rates limited to state rates.
- Follow 48 CFR in determining allowability of costs.
- Compliance with Uniform Administrative requirements.
- Record retention for three years from final project payment.
- Right of state to audit.
- Access to records by state.
- Accounting systems that accumulate and segregate project costs.
- Accounting systems that comply with Generally Accepted Accounting Principles.

The City does not have its own written policy and procedure for contract management, but relies on Caltrans LAPM. However, the LAPM does not provide individualized guidance to fit every local agency's system. Without adequate contract management, the City risks incurring costs that are not accurate or valid.

RECOMMENDATION

We recommend the City take the following actions:

- Reimburse Caltrans for the \$1,676 (see Attachment I) in disallowed costs identified above.
- Ensure that the City only reimburses consultants/contractors for services and other direct costs supported by, and in compliance with, contract terms.
- Ensure that the contract accurately reflects the payment methodology the City intends to use (e.g. actual labor rates versus lump sum) and is managed accordingly.
- Ensure staff are trained on contract management requirements.
- Ensure all third party contracts include the required contract provisions, including limitations on travel rates.

In addition, we recommend Caltrans DLA work with FHWA to determine if any of the \$10,804 (see Attachment I) in questioned costs identified above are to be repaid to Caltrans.

SUMMARY OF CITY'S RESPONSE

The City is working on improvements to current contract language. The City will remit, or credit active projects, all final agreed upon unallowable costs. See Attachment VI for the City's complete written response.

ANAYLSIS OF CITY'S RESPONSE

The City agreed to pay the unallowable costs. The City is working with the attorney's office to develop contract language that will meet contract requirements. The City is also making every effort to comply with regulations and recognizes the need to stay within the state's per diem rates.

FINDING 3 – Construction Management Exceptions Noted

The City did not adequately support the construction work for two items of 20 samples tested on the Morning Drive project. Specifically, we noted that neither the engineer's daily report nor the quantity calculation sheet captured the specific calculation for roadway excavation on progress pay estimate (PPE) 17, and therefore, we were unable to independently verify whether payment for 3,000 cubic yards (CY) of removed material was accurate. The construction management staff stated that the measurement was estimated based on 200 loads at 15 CY per load, but staff was unable to provide the source documentation for the number or volume of loads. Per 23 CFR 635.123, source documents for the quantities of work completed are required. The City provided documentation for the average end area of the total roadway excavation, and for this reason no costs are questioned.

We also found that the City approved a partial payment for change order work on PPE 16 related to the installation of wildlife openings, but the work was not recorded on any of the engineer's daily reports covering the PPE 16 time frame. The City was unable to provide documentation to show the change order work was performed. State regulations require that any change order work be recorded on the engineer's daily report. The City provided photo documentation showing some wildlife openings were installed on the project, and for this reason no costs are questioned. See Attachment II for Criteria.

RECOMMENDATION

We recommend the City:

- Ensure project records comply with state and federal regulations and that staff are trained and comply with the regulations.
- Ensure staff maintain source documentation that will support the necessary measurements and calculation for determining the quantity of work performed and paid for during construction.
- Ensure that quantities from source documents are entered in appropriate project records.

SUMMARY OF CITY'S RESPONSE

The City disagrees that its construction management "needs improvement", given that only two exceptions were noted on the project, but will make efforts to continue to comply with regulations. See Attachment VI for the City's complete written response.

ANAYLSIS OF CITY'S RESPONSE

We agree with the City's response and have changed the title description.

FINDING 4 – Questionable and Unallowable Right of Way Costs

The City did not document the need for a loss of rent payment for property being acquired on the Centennial Corridor project, and improperly calculated the payment. In an effort to reduce potential increased relocation costs, the City agreed to pay a property owner \$27,137 for the monthly rent of nine units in a multi-family residential property rather than risk the units being re-rented and incurring additional relocation costs payable to new tenants. However, the City did not document any analysis of the potential increased cost compared to the lost rent amount. Additionally, the City included in the calculation two occupied units, which could not be re-rented by the property owner. Further, the calculation for the loss of rent was based on 30 day months, rather than on the actual number of days in the months rented, for months that required proration. For example, when escrow on the property closed on August 20, 2013, the 20 days of lost rent was prorated based on 30 days rather than the 31 days in the month of August. Finally, the loss of rent included seven days prior to the initiation of negotiations.

The Caltrans Right of Way Manual (ROWM) beginning at section 8.01.31.00 and including Exhibit 8-EX-4 provides guidance on rental of residential units prior to acquisition and requires an estimate of potential relocation benefits be prepared, rental agreements to be offered concurrently with the initiation of negotiation and be calculated on the actual number of days in the month. We estimated the potential cost of relocation to be only \$13,795. The difference between the total lost rent paid and potential relocation cost is \$13,342, which could reasonably be applied as potential additional replacement housing assistance payments. While we will not question the potential cost savings of \$13,342, the lost rent was improperly calculated. We recalculated the monthly rents excluding the days prior to the initiation of negotiations and the period of time the occupied units were not vacant, and prorated the rent based on the number of days in the month. These costs totaling \$3,559 (see Attachment I) are disallowed. See Attachment II for Criteria and Attachment V for a breakdown of the calculations.

RECOMMENDATION

We recommend the City establish procedures to ensure right of way payments are adequately analyzed and supported prior to approving payment and that the City reimburse Caltrans for the \$3,559 in disallowed costs identified above.

SUMMARY OF CITY'S RESPONSE

The City provided some analysis on other potential housing assistance payments that would outweigh the questionable lost rent. The City does not dispute the lost rent overpayment. The City will require written approval of lost rent calculations in the future. See Attachment VI for the City's complete written response.

ANAYLSIS OF CITY'S RESPONSE

The analysis of potential additional costs is reasonable and the report was edited to remove the questioned lost rent.

FINDING 5 – Grant Management Needs Improvement

The City did not submit requests for reimbursement (RFR) in a timely manner for three of the four projects reviewed. Agreements between the City and Caltrans require the City to invoice for reimbursement at least every six months. In 3 of 4 instances tested (75 percent), invoices were submitted between 36 and 94 days late. City staff stated the volume of invoices impacted the timeliness of billing. By not invoicing every six months, the project could potentially be placed on the "Inactive List" or be suspended. Late invoices can also impact the timeliness of Caltrans' oversight and increase the risk of billing for unallowable or unreasonable costs. The exceptions on the three projects were:

- The Morning Drive project, RFR 25 was submitted 75 days late.
- The SR 58 project, RFR 19 was submitted 36 days late.
- The Manor Drive project, RFR 6 was submitted 94 days late.

We also found that the City billed unallowable costs to the Morning Drive project. Specifically, \$13,824 in costs incurred for another City project (7th Standard Road) were misallocated to various other City projects, including the Morning Drive project. The City identified the error and a portion of the costs, \$1,062, were offset on a subsequent invoice. However, \$885 (including related overhead) were billed to and reimbursed by Caltrans to the City on RFR 26. The City stated that staff had corrected the error, but did not provide any evidence of the correction. Non-allocable costs are unallowable under federal regulations and therefore, we disallow the \$885 (see Attachment I) costs.

RECOMMENDATION

We recommend the City take the following actions:

- Ensure billings to Caltrans occur within six months.
- Ensure the \$885 in unallowable costs are credited to the project, or repay Caltrans.
- Ensure non-allocable costs are not billed to projects that receive no benefit.

SUMMARY OF CITY'S RESPONSE

The City will make efforts to bill Caltrans every six months, and will adjust billing processes to ensure correction of errors. The City will remit or credit any agreed upon unallowable costs once the audit is final. See Attachment VI for the City's complete written response.

ANAYLSIS OF CITY'S RESPONSE

The City agrees with the finding. The report was edited to reflect that no evidence of the correction was provided to date.

ATTACHMENT I
AUDIT UNIVERSE AND QUESTIONED/DISALLOWED COSTS

Audit Universe

Project	Morning Drive	SR 58 to I5	Centennial Corridor	Manor Street Bridge	Total
Number	NCIPL-5109(176)	NCIPL-5109(106)	NCIPL-5109(210)	BHLSZ-5109(166)	
Requests for Reimbursement Tested	21, 25	19	1, 4, 5, 6	6	
Amount	\$9,497,217	\$6,866,564	\$52,331,133	\$61,600	\$68,756,514

Questioned Costs

					Total Questioned Costs
Finding 2 - Contract Management Needs Improvement	\$1,752	\$0	\$9,052	\$0	\$10,804
Total	\$1,752	\$0	\$9,052	\$0	\$10,804

Disallowed Costs

					Total Disallowed Costs
Finding 2 - Contract Management Needs Improvement	\$16.87	\$326	\$1,333*	\$0	\$1,676
Finding 4 - Questionable and Unallowable Right of Way Costs	\$0	\$0	\$3,559	\$0	\$3,559
Finding 5 - Grant Management Needs Improvement	\$885	\$0	\$0	\$0	\$885
Total	\$902	\$326	\$4,892	\$0	\$6,120

* Includes \$36 of questioned cost

Total Questioned and Disallowed Costs \$16,924

ATTACHMENT II
CRITERIA

Finding 1 – Procurement Practices Need Improvement

23 Code of Federal Regulations (CFR) 635.110 (c) states in part, "...Prequalification of contractors may be required as a condition for submission of a bid or award of contract only if the period between the date of issuing a call for bids and the date of opening of bids affords sufficient time to enable a bidder to obtain the required prequalification rating."

49 CFR 18.36 (c) (4) states, "Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period."

23 CFR 635.110 (a) states, "The procedures and requirements a [state transportation department] proposes to use for qualifying and licensing contractors, who may bid for, be awarded, or perform Federal-aid highway contracts, shall be submitted to the Division Administrator for advance approval. Only those procedures and requirements so approved shall be effective with respect to Federal-aid highway projects. Any changes in approved procedures and requirements shall likewise be subject to approval by the Division Administrator."

23 CFR 635.103 states, "The policies, requirements, and procedures prescribed in this subpart shall apply to all Federal-aid highway projects."

23 CFR 635.105 (c) states, "When a project is located on a street or highway over which the STD [State Transportation Department] does not have legal jurisdiction, or when special conditions warrant, the STD, while not relieved of overall project responsibility, may arrange for the local public agency having jurisdiction over such street or highway to perform the work with its own forces or by contract; provided the following conditions are met and the Division Administrator approves the arrangements in advance.

(1) In the case of force account work, there is full compliance with subpart B of this part.

(2) When the work is to be performed under a contract awarded by a local public agency, all Federal requirements including those prescribed in this subpart shall be met.

(3) The local public agency is adequately staffed and suitably equipped to undertake and satisfactorily complete the work; and

(4) In those instances where a local public agency elects to use consultants for construction engineering services, the local public agency shall provide a full-time employee of the agency to be in responsible charge of the project."

49 CFR 18.36 (b) (9) states in part, "Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement."

49 CFR 18.36 (b) (8) states, "Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement."

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49 CFR 18.36 (c) states, "Competition. (1) 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: (vii) Any arbitrary action in the procurement process."

California State Government Code 4527 (a) states in part, "...and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published."

23 CFR 172.7 (a) (1) (iv) (F) states in part, "The contracting agency shall retain supporting documentation of the solicitation, proposal, evaluation, and selection of the consultant in accordance with this section..."

23 CFR 172.7 (a) (1) (ii) (C) states in part, "Identify evaluation factors including their relative weight of importance in accordance with paragraph (a) (1) (iii) of this section..."

49 CFR 18.36 (c) (3) states in part, "Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations... (ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals."

49 CFR 18.36 (d) (3) (i) states in part, "Requests for proposals will be publicized and identify all evaluation factors and their relative importance..."

Local Assistance Procedures Manual (LAPM) (October 2013), Chapter 10, Section 10.5 states in part, "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 18.36 (f) (1) states, "Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price."

49 CFR 18.36 (f) (2) states, "Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost

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analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.”

Federal Master Agreement 06-5109R, Article I, Paragraph 9 states, “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 the federal-aid program, all Title 23 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.”

Caltrans Local Assistance Procedures Manual (October 2013), Chapter 10, Section 10.2 states in part, “An independent estimate for cost or price analysis is needed for all consultant contracts (49 CFR 18.36(f)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency’s negotiating team has a detailed cost analysis of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential.”

LAPM Chapter 10, page 10-26 (12/12/11) states in part, "A local agency may retain qualified consultants on its staff in professional capacities such as agency consultant engineers... Eligibility for federal and/or state reimbursement for local agency engineering (or equivalent) services requires the following: ... "Exhibit 10-T Panel Member Conflict of Interest and Confidentiality Statement" form by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered." Exhibit 10-T is "Applicable to local agency consultant procurements which will contain Federal or State funds in the consultant contract."

49 CFR 18.35 states, “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.”

2 CFR 200.212 states, “Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.”

23 CFR 172.7 (b) (3) (effective May 2015) states, “A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180.”

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23 CFR 172.5 (a) (3) (April 2011) states in part, "Noncompetitive negotiation may be used to procure engineering and design related services... when it is not feasible to award the contract using competitive negotiations... Contracting agencies shall submit justification and receive approval from the FHWA before using this form of contracting..."

23 CFR 172.7 (a) (3) (May 2015) states in part, "The following requirements shall apply to the noncompetitive procurement method: ...(ii) A contracting agency... shall submit justification to, and receive approval from FHWA before using this form of contracting..."

LAPM (May 2013), Chapter 10, Section 10.9 states in part, "Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchases, sealed bid or competitive proposals... FHWA considers these types of contracts as "Sole Source" contracts... A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services... Conditions under which noncompetitive negotiated contracts may be acceptable include... Competition is determined to be inadequate after solicitation of a number of sources..."

Finding 2 – Contract Management Needs Improvement

49 CFR 18.36 (b) (2) states, "Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.318 (b) states, "Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

TY Lin contract #11-088, Paragraph 2.a states in part, "...Actual costs shall not exceed the estimated wage rates and other costs set forth in the DESIGN CONSULTANT's proposal."

OPC contract #14-026, Paragraph 2.1 states in part, "...Actual costs shall not exceed the estimated wage rates and other costs set forth in CONSULTANT's proposal."

Federal Master Agreement, 06-5109R, Article IV, Paragraph 17 states, "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 Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice."

23 CFR 172.5 (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... The [state transportation agency]... shall approve the written policies and procedures, including all revisions to such policies and procedures, of a subrecipient to assess

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compliance with applicable requirements. These policies and procedures shall address, as appropriate for each method of procurement a contracting agency proposes to use, the following items to ensure compliance with Federal and State laws, regulations, and the requirements of this part:...

(11) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

(12) Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract..."

23 CFR 172.9 (d) (1) states in part, "A full-time, public employee of the contracting agency qualified to ensure that the work delivered under contract is complete, accurate, and consistent with the terms, conditions, and specifications of the contract shall be in responsible charge of each contract or project... The public employee's responsibilities shall include:...(v) Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work."

2 CFR 200.318 (b) states, "Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

LAPM (October 2013), Chapter 10, Section 10.3 states in part, "The local agencies, consultants, and subconsultants are responsible for complying with state, federal and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants."

49 CFR 18.36 (i) states in part, "A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section... (2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)..."

2 CFR 200, Appendix II, B states, "All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement."

23 CFR 172.9 (c) (1) states in part, "All contracts and subcontracts shall include the following provisions, either by reference or by physical incorporation into the language of each contract or subcontract, as applicable:..."

(v) Retention of all required records for not less than 3 years after the contracting agency makes final payment and all other pending matters are closed;

(ix) Determination of allowable costs in accordance with the Federal cost principles

(xii) A provision for termination for cause and termination for convenience by the contracting agency including the manner by which it will be effected and the basis for settlement..."

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Federal Master Agreement No. 06-5109R, Article V, Paragraph 2 states, "ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting 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."

Federal Master Agreement No. 06-5109R, Article V, Paragraph 7 states, "Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain all of the provisions of ARTICLE IV, FISCAL PROVISIONS, and this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS, and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors."

Federal Master Agreement No. 06-5109R, Article IV, Paragraph 18 states, "ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Federal Master Agreement No. 06-5109R, Article IV, Paragraph 19 states, "ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree that (a) Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT costs items and (b) those parties shall comply with federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Every sub-recipient receiving PROJECT funds as a contractor or sub-contractor under this AGREEMENT shall comply with Federal administrative procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

Federal Master Agreement No. 06-5109R, Article V, Paragraph 3 states, "For the purpose of determining compliance with Title 21, California Code of Regulations, Chapter 21, section 2500 et seq., when applicable, and other matters connected with the performance of ADMINISTERING AGENCY's contracts with third parties, ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to ADMINISTERING AGENCY under any PROGRAM SUPPLEMENT. STATE, the California State Auditor, or any duly authorized representative of STATE or the United States, shall each have access to any books, records, and documents that are pertinent to a PROJECT for

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audits, examinations, excerpts, and transactions and ADMINISTERING AGENCY shall furnish copies thereof if requested.”

Finding 3 – Construction Management Exceptions Noted

23 CFR 635.123 states,

- “(a) The [State Transportation Department] shall have procedures in effect which will provide adequate assurance that the quantities of completed work are determined accurately and on a uniform basis throughout the State. All such determinations and all related source documents upon which payment is based shall be made a matter of record.
- (b) Initial source documents pertaining to the determination of pay quantities are among those records and documents which must be retained pursuant to 49 CFR part 18.”

LAPM (February 1998), Chapter 16, Section 16.9 states in part, that a project accounting system “must contain a file of source documents supporting payments made to contractors. Source documents shall be any written record(s) prepared by the administering agency which clearly record:

- To what specified portion of work it applies;
- The necessary measurements and/or calculations by which the quantity is determined; and
- The name of the individual who made the determination.

... Quantities from source documents must be entered in the appropriate project records.”

LAPM (October 2012), Chapter 16, Section 16.7 states, “The administering agency’s Resident Engineer, Assistant Resident Engineers, and construction inspectors shall keep daily reports to record work in progress.

The Daily Reports shall record the hours worked by men and equipment:

- Where work is being paid for based on the cost of labor, equipment, and material
- When there is an anticipated change in character of work
- When there is a potentially significant overrun or underrun, or
- When there is disputed work or a potential claim

The detail should be sufficient to permit review of the contractor’s costs of the work in a manner similar to force account... The narrative portion of the report should include a description of the contractor’s operation and the location where the work was performed... “

Finding 4 – Questionable and Unallowable Right of Way Costs

49 CFR 24.102 (i) states, “The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared, which states what available information, including trial risks, supports such a settlement.”

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Caltrans Right of Way Manual (ROWM) Section 8.01.31.00 states in part, "...vacant units may be rented by the State prior to acquisition to keep the units vacant and thus ... minimize relocation costs..."

Appendix A to Part 24, Subpart B (of the Uniform Act) states in part, "After an Agency has established an amount it believes to be the market value of the property and has notified the owner of this amount in writing, an Agency may negotiate freely with the owner in order to reach agreement. Since these transactions are voluntary, accomplished by a willing buyer and a willing seller, negotiations may result in agreement for the amount of the original estimate, an amount exceeding it, or for a lesser amount. Although not required by the regulations, it would be entirely appropriate for Agencies to apply the administrative settlement concept and procedures in § 24.102(i) to negotiate amounts that exceed the original estimate of market value. Agencies shall not take any coercive action in order to reach agreement on the price to be paid for the property.

ROWM 8.01.31.01 states in part, "An estimate of the potential relocation benefits by type of unit affected, along with other justifying material, will be prepared by [Relocation Assistance Program]... It must show that using this procedure will expedite project delivery and/or minimize overall costs to the State..."

ROWM 8.01.31.02 states in part, that the "...offer to enter into rental agreements [be made] concurrently with initiation of negotiations..."

ROWM Exhibit 8-EX-4, Clause # 11 states, "Rental payable hereunder for any period of time less than one month shall be determined by prorating the monthly rental rate herein specified on the actual number of days in the month."

Finding 5 – Grant Management Needs Improvement

Federal Master Agreement 06-5109R, Article IV, Paragraph 4 states, "ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period."

48 CFR 31.201-4 states, "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 . . . (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown."

2 CFR 225 Appendix A, Section C.1 states in part, "To be allowable under Federal awards, costs must meet the following general criteria: . . . b. Be allocable to Federal awards under the provisions of 2 CFR Part 225."

ATTACHMENT III
Procurement and Contract Management Exceptions

PROCUREMENT EXCEPTIONS							
Project	Independent Cost Estimate	Panel Member Conflict Form	Negotiation of Contract Cost	Negotiation of Profit as a separate element of cost	Approval for noncompetitive procurement	All Evaluation Factors Identified with Relative Importance	Panel Member Inconsistencies
SR 58 to I5	X	X	X	X	X		
Centennial Corridor		X				X	X
Manor Street Bridge	X	X	X	X		X	

CONTRACT MANAGEMENT EXCEPTIONS						
Project	Wage Rates	Travel Rates (per diem)	Lodging Rates	Position not included in contract	Inadequate support (no receipt for lodging)	Excessive Rate for Service
Morning Drive	X	X				
SR 58 to I5		X	X			
Centennial Corridor	X		X	X	X	X

X = Exception noted

**ATTACHMENT IV
CONTRACT PROVISIONS EXCEPTIONS**

Project	Contractor	Contract number	Contract date	Missing Provisions								
				Termination for convenience	Travel rates limited to state rates	Compliance with Uniform Administrative requirements	Use of 48 CFR Part 31 for determining the allowability of costs	Record Retention for three years from final project payment	Right to audit	Access to records by state	Accounting system that accumulates and segregates project costs	Accounting system that complies with GAAP
Manor Street	WKE*	12-073	6/6/2012	x, 1	x	x	x	x, 2	x	x, 3	x	x
Centennial Corridor	OPC	14-026	3/5/2014		x			x, 2			x	x
Morning Drive	TY Lin	11-088	8/17/2011		x			x, 2	x	x, 3	x	x
	Mendoza	13-121	7/17/2013		x			x, 2			x	x
SR 58	Parsons	14-288	11/20/2014		x			x, 2			x, 4	x, 4

x = Provision not located or incomplete

GAAP = Generally Accepted Accounting Principles

1 = Contract included provision for termination for cause, but not for convenience

2 = Contract stated records to be retained for three years from final payment under contract, not from final project payment

3 = Contract limited access to records to City representatives

4 = Contractor completed Caltrans Local Assistance Procedures Manual Exhibit 10-K, but the provisions were not included in the contract

* The WKE contract was subject to a conformance review and additional fiscal provisions may be required

**ATTACHMENT V
LOST RENT CALCULATION**

Apartment	Adjustments							Allowable lost rent					
	a	b	c	d = a*c	e (Apt. D only)	f = a*e (Apt D only)	g = 20/31	a-d	a	a	a-f	a*g	
	Rent	Exclude	April Multiplier	April exclusion	July multiplier	July Exclusion	August multiplier	April	May	June	July	August	Total
A	575	4/1/15 through 4/14/15	0.466667	268.33	-	-	0.65	306.67	575.00	575.00	575.00	370.97	2,402.63
B	675	4/1-7/15	0.233333	157.50	-	-	0.65	517.50	675.00	675.00	675.00	435.48	2,977.98
C	675	4/1-7/15	0.233333	157.50	-	-	0.65	517.50	675.00	675.00	675.00	435.48	2,977.98
D	575	4/1/15 through 7/19/15	-	-	0.61	352.42	0.65	-	-	-	222.58	370.97	593.55
F	575	4/1-7/15	0.233333	134.17	-	-	0.65	440.83	575.00	575.00	575.00	370.97	2,536.80
H	675	4/1-7/15	0.233333	157.50	-	-	0.65	517.50	675.00	675.00	675.00	435.48	2,977.98
M	675	4/1-7/15	0.233333	157.50	-	-	0.65	517.50	675.00	675.00	675.00	435.48	2,977.98
X	695	4/1-7/15	0.233333	162.17	-	-	0.65	532.83	695.00	695.00	695.00	448.39	3,066.22
Y	695	4/1-7/15	0.233333	162.17	-	-	0.65	532.83	695.00	695.00	695.00	448.39	3,066.22
TOTAL	5,815												

c = ineligible days/30 e = ineligible days/31 g = eligible days/31
(1)

Allowable loss of rent	23,577.36
Loss rent paid	27,136.67 (2)
Disallowed loss rent	(3,559.31)

Fixed Residential Moving Expenses

Apartment	Bed	Bath	Kitchen/Living	Total	Cost
A	1	1	2	4	1,295.00
B	2	1	2	5	1,570.00
C	2	1	2	5	1,570.00
D	1	1	2	4	1,295.00
F	1	1	2	4	1,295.00
H	2	1	2	5	1,570.00
M	2	1	2	5	1,570.00
X	2	1.5	2	6	1,815.00
Y	2	1.5	2	6	1,815.00
					13,795.00
				Lost Rent	27,136.67 (2)
				Difference	(13,341.67) (3)

NOTES

- (1): The City prorated 20 days based on 30 day month, rather than 31 days in actual month of August. ROWM suggests proration should be calculated based on actual number of days in the month
- (2): Amount of Lost Rent paid by the City of Bakersfield
- (3): Amount initially questioned, but based on additional analysis provided by the City of Bakersfield, we waive further review.

NOTE: This responses below were copied pasted from the City's response to the draft report. Rather than providing a separate document, the City imbedded its response into the body of the draft report. We copied and pasted here to have a record of their response, as the final report was edited.

ATTACHMENT VI AUDIT RESPONSE FROM THE CITY OF BAKERSFIELD

FINDING 1

- The City will continue to work with FHWA to clarify our process and provide the necessary documentation for FHWA to approve a prequalification process. It should be noted that; a) FHWA has stated that costs associated with the City projects are not in question because FHWA felt that there was not enough guidance provided to the City for pre-qualification process, and b) City disagrees with the Auditor's assumption that the bidding process for this project limited competition and resulted in higher construction costs. Nine contractors were pre-qualified and four chose to participate in the bidding process and all bids came in under Engineer's Estimate with the low bid being \$7 million less.
- As stated in the report, the requirements of 23 CFR 172 were not required at the time these contracts were awarded and the City does not believe this should be included in these findings. City has always allowed the Contractor to "self-certify" their good standing by signing a Debarred/Suspension form in the contract prior to award but moving forward, the City will verify that the contractor is not Debarred/Suspension prior to award.
- The City will continue to work to ensure that staff are properly trained on current procurement and record retention regulations.

In addition, the City requests that the language referencing repayment of "any costs identified above" to this finding be clarified as no specific cost violations have actually been noted and it implies that the entire contract amounts are to be repaid, which in their entirety exceeds \$34 million.

FINDING 2

- Once the audit report is final all agreed upon unallowable costs will be remitted to CalTrans or credited on active projects.
- Actual Cost-Plus-Fixed fee contracts require the consultant to provide a detail cost estimate specifying job classifications, names of employees, estimated hours, and hourly rates. This cost proposal is a snap shot of the consultant at the time the contract is negotiated and entered into. The City understands that personnel as well as hourly rates might change as these are multiyear agreements. We also understand that as a condition of a Cost-Plus-Fixed fee contract, we must pay actual costs. The City is currently working with our attorneys' office to develop contract language that will allow us to manage actual hourly rates to the Total Direct Labor Costs presented in the consultants cost proposal allowing us to meet both requirements.
- The City will make every effort to continue to comply with regulations including sending staff to training as necessary and working with regulatory authorities to ensure that the content and language within our contracts meet CalTrans requirements. The

City will also continue to ensure all contracts are reviewed by Caltrans as part of the Pre-Award audit process.

- The City recognizes the need to manage per diem and travel rates per our Master Agreement at the rates set by the State as opposed to the GSA rates. We will be working with our consultants to amend the per diem rates currently used and work on a policy for addressing the gap between actual hotel rates and the State's rate.

FINDING 3

Considering over 300 daily diaries were prepared for a \$25+ million project and these are the only two insignificant items that were found, we disagree with the comment that "Construction Management needs improvement".

The City will make every effort to continue to comply with regulations including sending staff to training as necessary and working with regulatory authorities to ensure proper documentation is maintained for all projects.

FINDING 4

The offer to purchase 25 Williamson Way, Bakersfield, CA (the "Subject Property") was made by the City on April 8, 2015. After protracted negotiations an agreement was reached between the parties and escrow closed on August 20, 2015. The original offer and eventual purchase price was \$1,450,000. The property owner wanted substantially more for the Subject Property, but agreed to accept the offered amount on the condition the parties enter into a Loss of Rent Agreement. Pursuant to that agreement, the City agreed to compensate the Owner for Owner's loss of rent from the effective date of the Agreement (April 1, 2015) until the closing date rather than pay to relocate any new tenants of the premises should the Owner be able to lease the vacant units after the effective date.

Finding 4 presents two open issues:

1. Whether there was sufficient savings of relocation costs to justify the lost rent payments; and
2. Whether the rent payments were improperly computed and should be adjusted for the reasons cited by Caltrans DLA (days prior to ION, period of time the occupied units were not vacant, and prorated rent based on the actual number of days in the relevant months).

1. Potential Savings

The cited manual provisions require an estimate of potential relocation benefits be prepared to determine whether rent payments are appropriate; put another way, do the potential savings exceed the amount of rent being paid? Caltrans DLA concluded that the potential relocation cost savings were \$13,795, which roughly represents the scheduled move benefits for the nine units in question. However, the potential relocation cost savings should also include the rental assistance

entitlement for any displaced persons who move into the nine units after the initiation of negotiations.

We understand many feel that post offer occupants are only entitled to compensation for moving expenses. However, the Uniform Act Regulations, 49 CFR Part 24, were revised in 2005 to cover those very occupants as follows:

§24.404(c)(3) The Agency shall provide assistance under this subpart to a displaced person who is not eligible to receive a replacement housing payment under §§24.401 and 24.402 because of failure to meet the length of occupancy requirement when comparable replacement rental housing is not available within the displaced person's financial means. (See §24.2(a)(6)(viii)(C).) Such assistance shall cover a period of 42 months.

§24.2(a)(6)(viii)(C) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement which exceeds the person's base monthly rent for the displacement dwelling as described in §24.402(b)(2). Such rental assistance must be paid under §24.404, Replacement housing of last resort.

The average replacement housing entitlement paid to the families displaced from the Subject Property was \$12,776.16. The total replacement housing payment for eight additional displacements would be \$102,209.28, which equates to total potential relocation savings of \$116,004.28 (including moving payments), had the property owner elected to relet the vacant units rather than sign the Loss of Rent Agreement. That amount clearly exceeds the sum paid to the property owner under the Loss of Rent Agreement. The allowable rent payments should therefore not be limited to \$13,795 as provided in Finding 4.

2. Rent Payment Computation Errors

We cannot dispute the lost rent overpayment of \$3,559 set forth in Finding 4. Pursuant to the Loss of Rent Agreement, the City agreed to pay the Owner \$5,815.00 per month from the effective date of the agreement through the closing date. Because of this agreement the Owner accepted the original offer waiving any right to additional compensation. The City erred when it failed to prorate rent payments for the months in which the effective date and closing date occurred as set forth in the agreement, and failed to prorate based on actual calendar days. The file notes do not indicate why this occurred, but future agreements will incorporate proper procedures.

Corrective Action Plan: The City will require its consultants to seek the City's written approval of the calculations made prior to entering into any rent loss agreement.

FINDING 5

- The City will make every effort to submit billings to Caltrans for reimbursement of costs every six months in order to avoid projects being listed as inactive.
- Once the audit report is final all agreed upon unallowable costs will be remitted to CalTrans or credited on active projects.
- Billing processes will be adjusted to ensure that any correction of errors will be reviewed so that all applicable projects are properly corrected including billings to the State for those erroneous charges.