



INSPECTOR GENERAL

California Department of Transportation

San Joaquin Regional Rail Commission

Project Audit



Independent Office of Audits and Investigations

Bryan Beyer, Inspector General
Diana Antony, Chief Deputy

September 2023
P1575-0074



For questions concerning the contents of this report, please contact (916) 323-7111 or email ioai.reports@dot.ca.gov.



Inspector General

California Department of Transportation

Bryan Beyer, Inspector General

Diana Antony, Chief Deputy

September 29, 2023

Tony Tavares
Director
California Department of Transportation
1120 N Street
Sacramento, CA 95814

Final Report – San Joaquin Regional Rail Commission, Project Audit

Dear Director Tavares:

The Independent Office of Audits and Investigations (IOAI) has completed its audit of the San Joaquin Regional Rail Commission (SJRRRC). We audited the costs that SJRRRC incurred related to three projects, of which the California Department of Transportation reimbursed SJRRRC a total of \$94,674,899.

Enclosed is our final report, which includes SJRRRC's response to the draft report. Our evaluation of the response is incorporated into this final report. The final report is a matter of public record and will be posted on IOAI's website.

A Corrective Action Plan (CAP) addressing the recommendations is due from Caltrans 60 days from receipt of this letter. Thereafter, CAP updates will be required every 6 months and 1 year from the report issuance date, until all findings have been addressed. The CAP should be sent to ioai.reports@dot.ca.gov.

If you have any questions regarding this report, please contact Rosa Golla, Audit Chief, at (916) 704-2188.

Sincerely,

Bryan Beyer, CIG
Inspector General

Gavin Newsom, Governor

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September 29, 2023
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Terms Used in Report

Terms/Acronyms	Definition
A&E	Architectural and Engineering
Benefits	Also known as outcomes, benefits are non-physical improvements, such as congestion reduction, air quality improvement, improved safety, or economic development ¹ .
CalSTA	California State Transportation Agency
Caltrans	California Department of Transportation
Caltrans' Procedures Manual	2017, 2018 and 2019 Caltrans' Local Assistance Procedures Manual
CFR	Code of Federal Regulations
Commission	California Transportation Commission
Deliverables	Also known as outputs, deliverables are the actual infrastructure, such as buses, bike lanes, transit lanes, and HOV lanes ¹ or required documents related to deliverables as stipulated in an executed contract.
IOAI	Independent Office of Audits and Investigations
Non-A&E	Services and planning studies that are not included in the definition of A&E related services or are not directly related to a construction project ² .
Project -02	The "Altamont Corridor Express Near-Term Capacity Improvement Program" project
Project -03	The "Altamont Corridor Express Extension Lathrop to Ceres/Merced" project
Project -04	The "Valley Rail" project
SJRRC	San Joaquin Regional Rail Commission
SJRRC's Procurement Policies	San Joaquin Regional Rail Commission's Procurement Policies and Procedures (October 2018)
TIRCP	Transit and Intercity Rail Capital Program

¹The Commission's Senate Bill 1 Accountability and Transparency Guidelines referenced these terms. We obtained the definitions from the Commission's presentation at a Senate Bill 1 Program Benefits Workgroup held on July 19, 2019.

²Source: Caltrans' 2018 Local Assistance Procedures Manual

Summary

The purpose of this audit was to determine whether the claimed and reimbursed project costs for the three projects were allowable and adequately supported in accordance with California Department of Transportation's (Caltrans) agreement provisions and state law. In addition, we determined whether documents related to project deliverables were submitted timely to Caltrans. This audit did not evaluate the project benefits since the projects were still in progress at the end of our audit period, which ended May 2021.

For this audit, we were unable to obtain reasonable assurance that \$4,024,400 claimed by San Joaquin Regional Rail Commission (SJRRRC) and reimbursed by Caltrans were allowable and adequately supported in accordance with Caltrans' agreement provisions and state law. We found, for example, that SJRRRC did not comply with state law and other related policies when it noncompetitively awarded two architectural and engineering (A&E) contracts to the same consultant. We also found that SJRRRC did not properly award one non-A&E contract because it only considered a single bidder and did not obtain prior written approval from Caltrans to do so. We also noted several contract management deficiencies that increased the risk of overpayment. Additionally, for two other A&E contracts, SJRRRC did not ensure that it paid its consultants an allowable amount of indirect costs. Finally, we determined that SJRRRC did not timely submit the required documents related to project deliverables.

Due to these significant areas of noncompliance, we are calling into question a total of \$4,024,400.

Table 1. Summary of Questioned Costs

Finding #	Description	Questioned Costs
1	Noncompetitively awarded two A&E contracts	\$2,900,000
2	Awarded one non-A&E contract without Caltrans' approval	\$1,000,000
3	Poor contract management over one non-A&E contract	n/a
4	Questioned indirect costs for two A&E contracts	\$124,400
5	Untimely submission of required documents related to project deliverables	n/a
Total Questioned Costs		\$4,024,400

Source: Analysis by the Independent Office of Audits and Investigations.

Introduction

Background

Senate Bill 1 (Chapter 5, Statutes of 2017), also known as the Road Repair and Accountability Act of 2017, provided the first significant, stable, and on-going increase in state transportation funding in more than two decades³. Caltrans and the California State Transportation Agency (CalSTA) administer various programs that provide federal and state funds to local public agencies. Included among these programs is the Transit and Intercity Rail Capital Program (TIRCP) that was created by Public Resources Code, Section 75220 et seq, and Health and Safety Code, Section 39719 et seq, and made CalSTA responsible for the administration of the program. In August 2015, the Secretary of CalSTA delegated its authority to Caltrans and directed Caltrans to administer the program pursuant to the TIRCP Guidelines and Caltrans' policies and procedures for the administration of similar grant programs.

TRANSIT AND INTERCITY RAIL CAPITAL PROGRAM DESCRIPTION FROM CALIFORNIA STATE TRANSPORTATION AGENCY'S WEBSITE

The TIRCP was created to fund transformative capital improvements that modernize California's intercity rail, bus (including feeder buses to intercity rail services, as well as vanpool services that are eligible to report as public transit to the Federal Transit Administration), ferry, and rail transit systems (collectively referred to as transit services or systems inclusive of all aforementioned modes unless otherwise specified) to achieve all of the following policy objectives, as established in Section 75220(a) of the Public Resources Code:

1. Reduce emissions of greenhouse gases
2. Expand and improve transit service to increase ridership
3. Integrate the rail service of the state's various rail operations, including integration with the high-speed rail system
4. Improve transit safety

Additionally, Section 75221(c) of the Public Resources Code establishes a programmatic goal to provide at least 25 percent of available funding to projects that provide a direct, meaningful, and assured benefit to disadvantaged communities.

Source: Excerpt obtained from [Transit and Intercity Rail Capital Program - California State Transportation Agency](#).

³Source: California Transportation Commission's SB 1 Accountability and Transparency Guidelines.

San Joaquin Regional Rail Commission (SJRRC) was awarded state funding for three projects. Table 2 provides additional project details. Senate Bill 132 (Chapter 23, Statutes of 2016), known as the Budget Act of 2016, appropriated \$400 million for Project-03, specifically for the extension of the Altamont Corridor Express to Ceres and Merced, including associated system improvements. Of that \$400 million, \$121.4 million had been allocated as of May 2021. In 2017 and 2018, the California Transportation Commission (Commission) allocated TIRCP funds to SJRRC for the construction of Project-02 and Project-04, which are located in the Sacramento region, San Joaquin Valley, and Bay Area.

The primary purposes of these projects were to make improvements and extensions of existing rail service to improve connectivity of the San Joaquin Valley with the Sacramento region. Caltrans, Division of Rail and Mass Transportation, administered these projects and has reimbursed SJRRC \$94,674,899 for these projects as of May 2021.

Table 2. Project Details as of May 2021

Program	Project Name		Funding Source	Project Status ⁴	Allocated Amounts	Reimbursed Amounts
TIRCP	Project -02	Altamont Corridor Express Near-Term Capacity Improvement Program project	State Funds	Project in Progress	\$8,000,000	\$7,914,659
	Project -03	Altamont Corridor Express Extension Lathrop to Ceres/ Merced project	State Funds	Project in Progress	\$121,432,732	\$68,924,443
	Project -04	Valley Rail project	State Funds	Project in Progress	\$30,275,000	\$17,835,797
Total					\$159,707,732	\$94,674,899

Source: Analysis by the Independent Office of Audits and Investigations.

⁴The Senate Bill 1 Accountability and Transparency Guidelines defines a project as “complete and operational” when the project is within six months of the construction contract acceptance, or the project becomes operable (open to the public). Since these projects are not in that state at the end of our audit fieldwork, these projects are considered “in progress”.

Figure 1. Map of the Three Projects



Source: <https://www.sjrrc.com/valley-rail/>

Scope and Methodology

Our objectives were to determine whether Caltrans reimbursed SJRRC for costs that were allowable and adequately supported in accordance with Caltrans' agreement provisions and state law. In addition, we determined whether SJRRC submitted the required deliverables. Our audit period for this audit was July 2018 through May 2021; as such, we did not test the benefits since these projects were still in progress at that time.

We gained an understanding of the projects and relevant criteria by reviewing applicable state law, Caltrans' guidelines, executed project agreements, project records, SJRRC's policies and procedures, and prior audits. We also reviewed a sample of four architectural and engineering (A&E) contracts and one non-A&E contract. Table 3 includes additional details, by contract.

Table 3. Details of Contracts Selected for Testing

Contract #	Project #	Consultant Name	Contract Amount
A&E Contract #1	Project-02	Consultant A	\$500,000
A&E Contract #2	Project-03	Consultant A	\$2,400,000
A&E Contract #3	Project-03	Consultant A	\$1,652,045
A&E Contract #4	Project-03	Consultant B	\$4,157,578
Non-A&E Contract #5	Project-04	Consultant A	\$1,000,000
Total			\$9,709,623

Source: Analysis by the Independent Office of Audits and Investigations.

We reviewed TIRCP Guidelines which states, "Caltrans will administer the TIRCP consistent with these guidelines and all applicable Commission and Caltrans policies and procedures for the administration of similar grant programs." As such, we reviewed the 2017, 2018 and 2019 Caltrans' Local Assistance Procedures Manual, since SJRRC's own policies refer to it as a reference.

We performed a risk assessment, including identifying and evaluating whether SJRRC properly designed and implemented internal controls significant to our audit objectives. Our evaluation of internal controls focused on SJRRC's review and approval processes of costs, contract procurement, and deliverables' completion. As part of our audit work,

we identified significant deficiencies related to SJRRC's internal control environment.

In addition, we assessed the sufficiency and appropriateness of computer-processed information that we used to support our findings, conclusions, and recommendations. We identified computer-processed data and determined the data was not related to our audit objectives and to significant areas identified in our audit. As a result, we did not perform a data reliability assessment.

Based on our planning, we developed specific methods for gathering evidence to obtain reasonable assurance to address our audit objectives. Our methodology included conducting interviews with key personnel, analyzing relevant documentation, and testing transactions related to claimed and reimbursed costs. Appendix A details our methods.

We conducted this 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. The evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Audit Results

Based on this audit, we obtained reasonable assurance that the costs claimed by SJRRC and reimbursed by Caltrans for the three projects we selected to review were in compliance with the executed project agreements and applicable federal and state regulations, except for \$4,024,400 as noted in Findings 1 through 4. As described in Finding 5, SJRRC did not submit the required documents related to project deliverables in a timely manner.

Appendix B includes more information related to each project, including the audit results.

Finding 1. SJRRC Did Not Comply with State Law and Other Related Policies When It Noncompetitively Awarded Two Architectural and Engineering Contracts to the Same Consultant.

Condition

SJRRC awarded two A&E contracts (referred to as A&E contracts #1 and #2) to Consultant A without utilizing a competitive process, known as a qualification-based selection process, as required by state law. This type of competitive process requires entities, such as SJRRC, to advertise the need for services using a request for qualifications and allows consultants to submit their responses in a manner that demonstrates their level of competence and professional qualifications necessary to satisfactorily perform the required services. However, SJRRC instead used a noncompetitive procurement method called a “sole source,” where it considered only one consultant. This method of procurement, however, is inconsistent with the Government Code, Section 4526, commonly referred to as the “Mini-Brooks Act,” causing us to question the entire amount of the two contracts, which totaled \$2.9 million (refer to Table 4 for additional information).

Table 4. Details of the Two Contracts Awarded to Consultant A, by Project

Project #		Contract Term	Contract Amounts	Questioned Costs
Project – 02	A&E Contract #1	May 7, 2018 - May 7, 2019	\$500,000	\$500,000
Project – 03	A&E Contract #2	February 1, 2018 - June 30, 2019	\$2,400,000	\$2,400,000 ⁵
Total			\$2,900,000	\$2,900,000

Source: Contracts and invoices provided by SJRRC.

Criteria

The procurement practices for the two A&E contracts that we reviewed fall under the Government Code, Section 4526, which states, in pertinent part:

Notwithstanding any other provision of law, selection by a state or **local agency head** for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms **shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required.** (Emphasis added)

Without indicating an exception to the above requirement, the government code leaves out alternative procurement options, such as using a sole source method for A&E contracts. The Legislature strengthened this section by adding the phrase “notwithstanding any other provision of law,” reinforcing its intent to override other, potentially conflicting laws. Additionally, for A&E contracts, SJRRC’s own policies generally conform to the law, as depicted with Chapter 6 of its Procurement Policies, titled *Competitive Negotiations (RFPS)*:

6.2.2 Architectural and Engineering Services. There are special rules for architectural/engineering services; these services **can only be procured on the basis of qualifications, not cost.** (Emphasis added)

6.16.3 Requirements. SJRRC will announce all requirements for architectural/engineering services

and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective proposers to perform the services required at fair and reasonable prices. **(See California Government Code 4526, et seq.)**

Section 6.2.2 emphasizes that SJRRC must only procure A&E services based on qualifications, and not cost; Section 6.16.3 even refers to the principles of the Mini-Brooks Act by referencing the Government Code, Section 4526 et seq. Furthermore, guidance from Caltrans explains the consequences of material noncompliance, as we have highlighted below from Section 20.2 of the 2017 and 2018 Caltrans' Procedures Manual. In those sections, both manuals state:

An Unrecoverable Project Deficiency is defined as a deficiency of such magnitude as to create doubt that the policies and objectives of Title 23 of the United States Code (or other applicable federal codes) will be accomplished by the project, and the project has proceeded to the point that the deficiency cannot be corrected. This level of deficiency shall result in the withdrawal of all or a portion of the federal and/or state funds from the project. Examples of some of the most common (found by Caltrans and FHWA) Unrecoverable Project Deficiencies (Federal) are:

- Consultant contract awarded, but not through competitive negotiations, when a noncompetitive negotiated contract is not warranted.

Cause

In two separate memos to file, dated December 2017, and April 2018, SJRRC's Director of Operations and legal counsel together determined that it was in SJRRC's best interest to forgo the competitive procurement process and proceed with only a single source for the services. SJRRC stated that, since approximately 2014, the California High Speed Rail Authority previously administered these projects, while SJRRC served as the contract manager. In late November 2017, the California High Speed Rail Authority informed SJRRC that it would terminate the two contracts in December 2017 and January 2018. To justify its decisions to move forward, SJRRC described why it was forgoing the competitive procurement process and awarded the contracts to the same consultant. The memos included the following reasons⁵:

⁵Source: The memos to file, dated December 2017, and April 2018, stated identical reasons. The Contract and Compliance Assistant, the Director of Operations, and the Legal Counsel signed both memos.

Timeliness

- The expected deliverables were not completed at the time California High Speed Rail Authority terminated the contracts.
- The need for a third party to complete the work and related delays were not anticipated or caused by SJRRC.
- While other contractors could perform the same duties as the consultant, SJRRC's competitive solicitation process takes between 3-4 months from solicitation to award of the contract.

Familiarity

- The consultant had an essential familiarity with SJRRC and the working draft environmental documents (i.e., the expected deliverables), and the design phase of the project.
- The amount of staff time and resources needed to train a new contractor would significantly reduce the effectiveness of the projects and the ability to meet time deadlines for the projects.
- California High Speed Rail Authority procured these contracts through a competitive bid process, so a single source procurement is the most prudent way of ensuring the projects are continuing to be delivered successfully.

The memos further cited Chapter 7 of SJRRC's Procurement Policies, titled *Non-Competitive Purchases*. Specifically, SJRRC provided one example of a sole source procurement:

There are other sources of supply but because of financial, schedule, performance and other factors a single source of supply is immune from effective competition. **Such an immunity is created when the award to a different contractor would create a waste of SJRRC funds resulting from a substantial increase in support costs,** a substantial schedule delay not owing to poor planning by SJRRC, an unacceptable technical risk towards completion of a project (or continuation of a warranty), or substantial increases in lifecycle costs. (Emphasis added)

SJRRC's justification for sole-sourcing the two contracts, however, was in direct contradiction to the Government Code, Section 4526; the 2017 and 2018 Caltrans' Procedures Manual; and even its own policy (from Chapter 6, cited above). Simply put, the law does not give a local agency head the flexibility of sole-sourcing A&E contracts. SJRRC should have instead used a competitive, qualification-based selection process for the projects.

Effect

By not awarding A&E contracts through the competitive qualifications-based selection process, SJRRC cannot demonstrate that it awarded its contracts competitively or that it selected the most qualified consultant at a fair and reasonable price. Consequently, we are questioning the entire amount of the two contracts (\$2.9 million).

Recommendations

- 1.1 Caltrans should coordinate with SJRRC to develop a corrective action plan that recovers all of SJRRC's past reimbursed expenses, as well as prevents any of its future reimbursements, related to these two contracts.
- 1.2 SJRRC should provide training to its staff on state procurement requirements.

Finding 2. SJRRC Did Not Obtain Prior Approval from Caltrans as Required by its Master Agreement with Caltrans When it Entered into a Contract with Only One Bidder for a Non-Architectural and Engineering Contract; this, Along with Other Deficiencies, Caused us to Question All Costs Related to this Contract.

Condition

For Project-04, SJRRC awarded one non-A&E contract (referred to as non-A&E contract #5) for on-call network integration services to Consultant A (the same consultant noted in Finding 1) without complying with a significant term of its Master Agreement with Caltrans nor with its own policies for contracts of this type. The Master Agreement in effect at the time required SJRRC to utilize a competitive process for non-construction contracts exceeding \$25,000, unless it received prior written approval from the State (or in this instance, Caltrans) to noncompetitively negotiate. Although SJRRC did, in fact, seek out proposals from potential consultants, it only received one proposal (from Consultant A). Instead of asking Caltrans for permission to move forward with the single proposal it received, it went ahead with what it deemed as a “sole-source” contract and prepared an internal, justification memo for its action.

Moreover, we found additional procurement-related deficiencies that also compromised the validity of the contract. For example, we found that the contract’s decision panel failed to score the applicant’s proposal properly when it weighed all factors equally instead of giving more weight to price. In addition, SJRRC did not properly prepare an independent cost estimate as required, which would have served as the basis for price negotiations and would have helped ensure that it obtained consultant services at a fair and reasonable price. Our review revealed that its independent cost estimate did not include a breakdown of labor and overtime, and did not itemize other direct costs (e.g., travel and mileage).

Due to these significant areas of noncompliance, we are calling into question the entire amount of the \$1 million contract.

Criteria

In Article III, Section 3(D)(1) of the Master Agreement between SJRRC and Caltrans (titled *Third Party Contracting*), the pertinent language reads:

Recipient shall not award a construction contract over \$10,000 or other contracts over \$25,000 on the basis of a noncompetitive negotiation for work to be performed under this agreement without the prior written approval of the State. (Emphasis added)

Simply put, since SJRRC did not receive prior written approval from Caltrans, it did not comply with this term of the agreement. In addition, the 2018 Caltrans' Procedures Manual, Section 10.5 (which was in effect at the time of the contract) further stated, in pertinent part:

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, **a non-competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the Caltrans' District Local Assistance Engineer.** In either case, the readvertisement of the RFP should be considered as an option. (Emphasis added)

We found no record (or signature from a Caltrans' District Local Assistance Engineer) of such a public interest finding.

Cause

In an unsigned memo to file, dated October 24, 2018, SJRRC stated that it only received one proposal. The memo further explained that after requesting feedback from the six firms that did not submit a proposal, it determined that the competition was adequate, a re-solicitation would be a waste of time, and the procurement process would take too much time. SJRRC then recommended that its Board of Directors award the contract to Consultant A as a sole source purchase. On November 2, 2018, the Board of Directors passed and adopted a resolution to approve the sole source procurement. However, we believe this decision was incongruent with the competitive contracting requirements specified in its Master Agreement with Caltrans.

Effect

By not adhering to state requirements, SJRRC cannot demonstrate that it provided fair and open competition and that it selected the most qualified consultant at a fair and reasonable price. Without proper justification, sole source contracts can potentially present a risk to the State of overpayment for goods and services.

Recommendation

- 2.1 Caltrans should coordinate with SJRRC to develop a corrective action plan that recovers all of SJRRC's past reimbursed expenses, as well as prevents any of its future reimbursements, related to this contract.

Finding 3. SJRRC's Poor Contract Management Practices Over One of Its Non-Architectural and Engineering Contracts May Have Caused It to Overpay Its Consultant.

Condition

SJRRC did not properly manage one non-A&E contract for Project-04 (referred to as non-A&E contract #5 and discussed in Finding 2). We found, for example, several inconsistencies with state requirements for contract management. This particular contract was again with Consultant A for on-call services, which are services generally used when needed. The contract's Scope of Work described the approach for "addressing several known network integration activities that could become tasks under this contract." Once those network integration activities became known, "task orders" were issued. Task orders are mini-contracts that define a specific project's scope, costs, and schedule according to the terms of the executed contract. We reviewed four out of 13 task orders dated as of May 2021 and found that although the task orders included a cost estimate (a "not to exceed" amount) and an estimated period of performance, SJRRC excluded other key elements, including:

- Task order date.
- Breakdown of personnel, including employee names, title/classifications, hourly rate, period of performance by employee, total hours, and activity.
- Approval signatures from SJRRC and Consultant A.

We further reviewed the associated invoices for each task order and found additional concerns. Specifically, we found that SJRRC paid the consultant for:

- Costs that occurred outside of the period of performance authorized in the task order.
- Costs for staff that were not included in the on-call contract's fee schedule.
- Costs for staff that were reimbursed at higher rates than stated in the on-call contract's fee schedule.

These significant deficiencies not only call into question SJRRC's contract management practices, but they also call into question the amounts reimbursed by Caltrans for the consultant's services. Since we have already questioned the entire amount of this contract under Finding 2, these additional deficiencies only add to our position in the prior finding.

Criteria

Task orders must contain similar elements of a contract given the fact that they are defined as "mini-contracts." The California Department of General Services' State Contracting Manual, Chapter 2, Section 2.05 describes the elements of a valid contract, in pertinent parts:

Each contract must contain the following information:

- Identification of the parties.
- Term for the performance or completion of the contract (dates or length of time).
- Consideration (The contract must clearly express the maximum amount to be paid and the basis on which payment is to be made: e.g., a fixed amount regardless of time spent, billing based on time spent at a specified rate plus actual expenses, or cost recovery.)
- Scope and deliverables (The work, service, or product to be performed, rendered, and/or delivered.) Clear and concise language must be used to describe the scope.
- Signature by a person for each party who is authorized to bind that party.

The 2018 Caltrans' Procedures Manual, Chapter 5, provides local agencies with basic information required to obtain reimbursement for their expenditures on federal and state funded projects. Although the invoice format may vary, Caltrans' Procedures Manual lists information that must be included, such as the period for which claimed costs were incurred.

As stated in the executed contract between SJRRC and Consultant A, "each invoice shall itemize the services rendered during the billing period and the amount due" and "SJRRC agrees to compensate the Consultant in accordance with the approved fee schedule" (which is part of the executed contract). The expectation of complying with the fee schedule is clearly spelled out in the executed contract.

Further, the executed contract included the approved fee schedule, by employee classification, roles/duties, and hourly rate and it also stated that all direct labor charges should be billed by class of employee and rate per hour. Any number of hours and costs not specifically identified in the contract (such as a higher billing rate) must be approved by SJRRC before any request for reimbursement can be made by the consultant.

Cause

SJRRC's policies and procedures lack specificity with respect to task orders and invoices. In general, these documents should include key elements, such as:

- Date the document was prepared.
- Description of services, including scope of work and expected deliverables.
- Breakdown of personnel, including employee names, title/ classifications, hourly rate, period of performance by employee, total hours, and activity.
- Approval signatures from involved parties.

SJRRC stated that during its invoice review, it failed to verify that costs were within the period of performance, travel costs were itemized, and staff and their respective billing rates agreed to the on-call contract's fee schedule.

Effect

By not adequately performing its contract oversight responsibilities, SJRRC cannot demonstrate that it complied with the terms of its executed contract. These practices also increased the risk that it overpaid the consultant for its services. By extension, Caltrans may have then reimbursed SJRRC for costs that were unallowable.

Recommendations

- 3.1 SJRRC should design and implement a review process to ensure its billings are accurate, valid, and comply with the contract terms.
- 3.2 SJRRC should provide contract management and oversight training to staff.

Finding 4. Three Subconsultants Did Not Have Accepted Indirect Cost Rates as Required, Causing Us to Question the Amounts Reimbursed for Their Indirect Costs.

Condition

We found that three subconsultants did not have an accepted indirect cost rate during the contract periods, as required. From an accounting perspective, indirect costs are frequently referred to as “overhead expenses,” which are expenses not readily identified to a particular activity. Common examples of indirect costs include rent, utilities, and salaries for executive managers. See text box for a comparison of direct and indirect costs.

When consultants enter into contracts with Caltrans or with local government agencies, they are generally allowed to charge a rate to account for these types of indirect costs, known as an “indirect cost rate.” In addition, consultants can receive an additional amount for its “fixed fee” for profit, which was agreed upon by both parties and then applied to actual costs incurred through the duration of the contract period.

Prior to contract execution, Caltrans requires consultants to first obtain acceptance of its indirect cost rate before seeking reimbursement for their services; otherwise, such costs would be disallowed.

What are Direct and Indirect Costs?

Direct Costs can be identified specifically with a particular final cost objective, such as a federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Typical direct costs include:

- Direct labor costs (i.e., the compensation of employees who work specifically on completing the objectives of a federal award);
- Direct labor employees’ related fringe benefit costs;
- Travel of direct labor employees; and
- Materials, supplies, or other items purchased for use on a specific federal award.

Indirect costs are incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Typical indirect costs include:

- Depreciation on buildings and equipment;
- The cost of operating and maintaining facilities; and
- General administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

Source: <https://www.fema.gov/node/what-are-direct-and-indirect-costs>

For Project-03, SJRRC awarded two contracts (referred to as A&E contracts #3 and #4) to two separate prime consultants. One prime consultant added two subconsultants whereas the other prime consultant added 10 subconsultants. Each of these consultants, regardless of whether they were a prime or subconsultant, were supposed to have an accepted indirect cost rate prior to contract execution. Although each consultant individually certified that they were responsible for applying accepted indirect cost rates, we found the following:

- For A&E contracts #3 and #4, subconsultant 2 certified in its cost proposals that it had an accepted indirect cost rate of 177.46 percent. However, this rate was only valid for 2017 and should not have been applied to these contracts since the effective start date was in February 2020. Simply put, the rates in the cost proposals were not valid because they had expired. Therefore, we are questioning the entire amounts related to subconsultant 2 for A&E contracts #3 and #4 of \$62,331 that this subconsultant could have potentially billed under these two contracts, including the amount it could have charged for fixed fee profit.
- For A&E contract #4, subconsultant 5 did not separate direct and indirect costs in its cost proposal, as required, and only displayed a loaded billing rate (also known as a fully burden rate). In addition, the subconsultant did not have an accepted indirect cost rate for the duration of the four-year contract. Based on its cost proposal, this subconsultant could bill up to \$52,375 in direct and indirect costs (combined); however, since the subconsultant only reported having a loaded billing rate, we cannot determine the indirect portion of this amount. Consequently, we are questioning the entire amount they could have potentially charged under the contract.
- For A&E contract #4, subconsultant 9 certified in its cost proposal that it had an accepted rate of 159.02 percent. However, we found no evidence that Caltrans had accepted this rate (or any other rate) prior to the execution of the contract nor at any time throughout the duration of the four-year contract. Therefore, we are questioning the entire amount of \$9,694 that this subconsultant could have potentially billed under this contract, including the amount it could have charged for fixed fee profit.

Based on our review, we determined that Caltrans could have reimbursed SJRRC up to \$124,400 in questionable indirect costs. See Table 5 for a breakdown of questioned costs per contract, by prime and subconsultant.

Table 5. Questioned Indirect Costs by Contract, By Prime and Subconsultant

Consultant	Portion of Total Award		Accepted Indirect Cost Rate?	Questioned Costs	Fixed Fee Rate of 10% per Contract	Total Questioned Costs
	Direct Labor Cost	Indirect Cost				
A&E Contract #3						
Prime	\$ 361,422	\$ 480,764	YES	\$ -	\$ -	\$ -
Sub 1						
Full Time Staff	173,866	310,646	YES			
Field Staff	33,820	50,351	YES			
On-Call Staff	440	441	YES			
Sub 2	\$ 18,045	\$ 32,023	NO	\$ 32,023	\$ 3,202	\$ 35,225
A&E Contract #4						
Prime	\$ 1,085,092	\$ 1,686,667	YES	\$ -	\$ -	\$ -
Sub 1	21,781	18,385	YES			
Sub 2	13,886	24,642	NO	24,642	2,464	27,106
Sub 3	47,563	54,479	YES			
Sub 4	169,240	284,543	YES			
Sub 5	52,375	undeterminable	NO	52,375		52,375
Sub 6	12,322	19,594	YES			
Sub 7	33,566	46,069	YES			
Sub 8	16,208	34,774	YES			
Sub 9	5,542	8,813	NO	8,813	881	9,694
Sub 10	8,533	11,979	YES			
Totals	\$ 2,053,701	\$ 3,064,170		\$ 117,853	\$ 6,547	\$ 124,400

Source: Contracts and invoices provided by SJRRC and analysis by the Independent Office of Audits and Investigations.

Criteria

The two executed contracts that we reviewed included a section where the prime and subconsultants individually sign a certification stating that, to the best of their knowledge, in pertinent parts:

All direct costs identified on the cost proposal(s) are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract

3. Title 23 United States Code Section 112 – Letting of Contracts
4. 48 Code of Federal Regulations Part 31 – Contract Cost Principles and Procedures
5. 23 Code of Federal Regulations Part 172 – Procurement, Management, and Administration of Engineering and Design Related Service
6. 48 Code of Federal Regulations Part 9904 – Cost Accounting Standards Board (when applicable)

Local governments are responsible for applying only cognizant agency or Caltrans accepted indirect cost rate(s). (Emphasis added)

SJRRC's own policies (specifically Section 6.16.2) refer to the Caltrans' Procedures Manual for further guidance. The 2019 Caltrans' Procedures Manual, which is consistent with 23 CFR Part 172, states, in pertinent parts:

Local Agencies are responsible for obtaining all required [Indirect Cost Rate (ICR)] supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A (*A&E Consultant Financial Document Review Request*) and the Exhibit 10A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K "*Consultant Certification of Contract Costs and Financial Management System*" and Exhibit 10-H "*Cost Proposal*" for all consultants, both prime and sub-consultants. **The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant's ICR schedule. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract.**

The Exhibit 10-H "*Cost Proposal*" includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention

period. **Unsupported costs may be disallowed and required to be returned to Caltrans.** Having proper documentation policy and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, allowable, and allocable to the contract and comply with Federal cost principles. (Emphasis added)

Cause

SJRRC stated that prior to awarding a contract, it performed a “responsibility check” to determine its contractual responsibilities. During this check, SJRRC indicated that it overlooked the requirement to obtain Caltrans' acceptance of its consultants' indirect cost rates.

Effect

Lack of adequate contract oversight increases the risk that SJRRC reimburses its consultants for unallowable indirect costs.

Recommendations

- 4.1 Caltrans should coordinate with SJRRC to develop a corrective action plan to recover up to \$124,400 in questioned costs identified in this audit. For clarity, these costs are separate from those reported in findings 1 and 2.
- 4.2 SJRRC should ensure that all consultants have accepted indirect cost rates prior to contract execution and throughout the duration of its contracts (if required).

Finding 5: SJRRC Did Not Submit Required Documents Related to Project Deliverables in a Timely Manner.

Condition

We reviewed the program supplements⁶ for Project-02 and Project-03 as well as selected deliverable documents that were due by May 2021 and found that four out of six documents were not timely submitted to Caltrans. See Table 6 for a summary of the sample items we selected for testing and our results and refer to Appendices C and D for additional information on each deliverable.

Table 6. Timeliness of Selected Deliverable Documents

#	Project #	Deliverable As Stated in the Program Supplement	Program Supplement's Execution Date	Due Date	Submission Date	Submitted Timely?
1	Project-02	Ridership	September 2018	December 2018 (90 days from execution)	October 2019	No 10 months late
2	Project-02	Service Plan	September 2018	January 2019 (120 days from execution)	September 2019	No 8 months late
3	Project-02	Benefit Tracking and Reporting	September 2018	December 2018 (90 days from execution)	October 2019	No 10 months late
4	Project-03	Financial Plan	December 2020	March 15, 2021	March 30, 2021	Yes 15 days overdue; no exception noted.
5	Project-03	Purchase Rolling Stock	December 2020	March 15, 2021	February 22, 2023	No 23 months late
6	Project-03	Working Capital Reserve	December 2020	January 31, 2021	February 2, 2021	Yes 2 days overdue; no exception noted.

Source: Program supplements provided by SJRRC and analysis by the Independent Office of Audits and Investigations.

⁷As defined by the Master Agreement, a program supplement is a project-specific subcontract to the Master Agreement that is executed following a Commission-approved action and includes all project-specific information needed to encumber funding.

Criteria

The program supplements for the two projects we reviewed required SJRRC to submit the deliverable documents by established due dates. The excerpts from the program supplements for the two projects can be found in Appendices C and D.

Cause

Caltrans and SJRRC did not have a clear understanding of the expected deliverables, resulting in extensive deliberations and significant revisions to the first four documents listed in Table 6. Once both parties reached an agreement, the documents were considered acceptable to Caltrans, but it was well beyond the due date at that point.

For the submission of the vendor contract for the rolling stock purchase, SJRRC could not provide evidence that it was submitted because staff responsible for the process were no longer with SJRRC. We also inquired with Caltrans if it had received a copy of the document and Caltrans confirmed that its project files did not include the vendor contract. As a result, SJRRC submitted the vendor contract to Caltrans only after we inquired about it in February 2023.

Effect

By not timely submitting key documents for Project-02, Caltrans could not timely review SJRRC's proposed ridership methodology for capturing "before and after ridership data," evaluate how and if the proposed plan would increase ridership and determine if the plan was adequate and measurable to reduce greenhouse gas emissions.

For Project-03, Caltrans' oversight responsibilities were negatively impacted by not receiving a copy of the vendor contract for the purchase of rolling stock.

Recommendation

- 5.1 SJRRC should establish a process to ensure that it submits all required deliverable documents by the established deadlines.

Appendix A. Table of Methodologies

Audit Objectives	Methods
<p>Objective 1 To determine whether project costs were claimed and reimbursed in compliance with executed project agreements, Caltrans’ program guidelines, and applicable state and federal regulations cited in the executed project agreements.</p>	<p>Selected significant and high-risk areas to verify compliance with the Caltrans’ Procedures Manual and the TIRCP Guidelines. Those areas were:</p> <ul style="list-style-type: none"> • Procurement • Project costs, including match • Working capital reserve <p>Procurement</p> <p>Reviewed one large purchase/non-IT contract and one A&E contract for the project-02, one large purchase/non-IT contract and three A&E contracts for project-03, and one non-A&E for project-04.</p> <p>Determined whether the requests for qualifications and requests for proposals were appropriately advertised, evaluated, and awarded by reviewing procurement records such as project advertisements, independent cost estimates, consultant proposals, scoring sheets, negotiation documentation, contract agreements, and relevant criteria.</p> <p>Project Costs</p> <p>Selected five invoices (one for project-02, three for project-03, and one for project-04) of the largest dollar amount reimbursed for locomotives. Determined if reimbursed costs were authorized, project-related, incurred within the allowable time frame by reviewing the contract and relevant criteria.</p> <p>Selected four contracts (one for project-02, two for project -03, and one for project-04) for the A&E and non-A&E contracts. Determined if reimbursed costs were allowable, authorized, project-related, and incurred within the allowable time frame by comparing costs to the contracts, the task orders, and time keeping and payroll records. In addition, determined if travel reimbursement claims were supported, consistent with travel guidelines, and if travel expense records matched the timesheet records. Determined if the consultants’ indirect cost rates were accepted by Caltrans and applied for reimbursement.</p> <p>Working Capital Reserve</p> <p>For the working capital reserve, determined the tracking and reporting requirements by reviewing the executed project agreements and relevant criteria. Interviewed SJRRC and Caltrans’ staff, confirmed the working capital reserve was adequately accounted for in SJRRC’s financial system, and reported to Caltrans as required by the executed agreements.</p>

Audit Objectives	Methods
<p>Objective 2 To determine whether SJRRC submitted the required deliverables as described in the executed project agreements or approved amendments.</p>	<p>For the three projects, selected the documents related to project deliverables that were due as of May 2021. Evaluated whether deliverables were completed on schedule as described in the executed project agreements.</p>
<p>Objective 3 To determine whether project benefits were consistent with the project scope as described in the executed project agreements or approved amendments.</p>	<p>We did not evaluate the project benefits for the three projects because each project was in progress as of May 2021, the end of our audit period.</p>

Source: Analysis by the Independent Office of Audits and Investigations.

Appendix B. Summary Of The Project Details, Including Audit Results

PROJECT-02 DETAILS

Project Name

Altamont Corridor Express Near-Term Capacity Improvement Program

Project Number

10SJRRCPs-02 (Project-02)

Program

Transit and Intercity Rail Capital Program (administered by Caltrans' Division of Rail and Mass Transportation)

Funding Source(s)

State Funds

Project Description

The project includes the purchase of one Tier IV locomotive to help increase performance and optimize train capacity and the lengthening of five platform stations at the Lathrop, Tracy, Vasco, Livermore, and Pleasanton platforms to accommodate 9 to 10 car passenger trains.

Audit Period

July 1, 2018 to May 25, 2021⁷

Project Status

Project is in progress

AUDIT RESULTS

Project Costs

Project costs were incurred and reimbursed in compliance with the executed project agreements, Caltrans program guidelines, and applicable state and federal regulations except for \$500,000 in questioned costs as referenced in Finding 1.

⁷Since this project is still in progress, the audit period's end date reflects the billing period end date of the last reimbursement claim which was May 2021.

Table 7. Schedule of Allocated, Reimbursed, and Questioned Costs for Project-02

Category	Allocated Amounts	Reimbursed Amounts as of May 2021	Questioned Costs
Plans, Specifications and Estimate	\$500,000	\$382,842	\$500,000
Construction	\$7,500,000	\$7,531,817	\$0
Total Costs	\$8,000,000	7,914,659	\$500,000

Source: Analysis by the Independent Office of Audits and Investigations.

Deliverables

We identified three deliverable documents that were due as of May 2021 and determined that all three deliverable documents were not submitted timely as referenced in Finding 5.

Table 8. Timeliness of Selected Deliverable Documents for Project-02

#	Deliverable Description As Stated in the Program Supplement	Program Supplement's Execution Date	Due Date	Submission Date	Submitted Timely?
1	Ridership	September 2018	December 2018 (90 days from execution)	October 2019	No 10 months late
2	Service Plan	September 2018	January 2019 (120 days from execution)	September 2019	No 8 months late
3	Benefit Tracking and Reporting	September 2018	December 2018 (90 days from execution)	October 2019	No 10 months late

Source: Analysis by the Independent Office of Audits and Investigations.

Benefits

We did not evaluate the project's benefits because the project was in progress at the time of our audit fieldwork.

PROJECT-03 DETAILS

Project Name

Altamont Corridor Express Extension Lathrop to Ceres/Merced

Project Number

10SJRRCP5-03 (Project-03)

Program

Transit and Intercity Rail Capital Program (administered by Caltrans' Division of Rail and Mass Transportation)

Funding Source(s)

State Funds

Project Description

The project includes consulting services for the project approval & environmental document (PA&ED) component, the procurement of two Tier IV locomotives, the purchase of 10 coach cars, construction of layover facilities, and parking structures at Lathrop Transfer Station, Downtown Manteca, Ripon Station, Modesto Station, Ceres Station, and the construction of infrastructure track work improvements within the Union Pacific Rail Road right of way. The project also includes the construction of double-tracking the Union Pacific Rail Road Fresno Subdivision between the Lathrop Transfer Station and Ceres Station, and the construction of signals, structures, and bridges to support the track work infrastructure improvements.

Audit Period

July 1, 2018 to May 25, 2021⁸

Project Status

Project is in progress

AUDIT RESULTS

Project Costs

Project costs were incurred and reimbursed in compliance with the executed project agreements, Caltrans program guidelines, and applicable state and federal regulations except for \$2,524,400 in questioned costs (\$2,400,000 for Finding 1 and \$124,400 for Finding 4).

⁸Since this project is still in progress, the audit period's end date reflects the billing period end date of the last reimbursement claim which was May 2021.

Table 9. Schedule of Allocated, Reimbursed, and Questioned Costs for Project-03

Category	Allocated Amounts	Reimbursed Amounts as of May 2021	Questioned Costs
Project Approval/ Environmental Document	\$7,600,000	\$4,743,481	\$2,524,400
Right of Way	\$5,152,297	\$0	\$0
Plans, Specifications and Estimate	\$34,006,667	\$3,895,104	\$0
Construction	\$74,673,768	\$60,285,858	\$0
Total Costs	\$121,432,732	\$68,924,443	\$2,524,400

Source: Analysis by the Independent Office of Audits and Investigations.

Deliverables

We identified three deliverable documents that were due as of May 2021 and determined that one document deliverable was not submitted timely as referenced in Finding 5.

Table 10. Timeliness of Selected Deliverable Documents for Project-03

#	Deliverable Description As Stated in the Program Supplement	Program Supplement's Execution Date	Due Date	Submission Date	Submitted Timely?
1	Financial Plan	December 2020	March 15, 2021	March 30, 2021	Yes 15 days overdue; no exception noted.
2	Purchase Rolling Stock	December 2020	March 15, 2021	February 22, 2023	No 23 months late
3	Working Capital Reserve	December 2020	January 31, 2021	February 2, 2021	Yes 2 days overdue; no exception noted.

Source: Analysis by the Independent Office of Audits and Investigations.

Benefits

We did not evaluate the project's benefits because the project was in progress at the time of our audit fieldwork.

PROJECT-04 DETAILS

Project Name

Valley Rail

Project Number

10SJRRCP-04 (Project-04)

Program

Transit and Intercity Rail Capital Program (administered by Caltrans' Division of Rail and Mass Transportation)

Funding Source(s)

State Funds

Project Description

The project includes consulting services for the project approval & environmental document (PA&ED) component, the specifications and estimate (PS&E) component, and Network Integration opportunities. The project will implement new daily roundtrips for the Amtrak San Joaquin service to Sacramento. Valley Rail also extends the Altamont Corridor Express service to Sacramento and to Ceres and Merced. New stations will be built as part of Valley Rail.

Audit Period

July 1, 2018 to May 25, 2021⁹

Project Status

Project is in progress

AUDIT RESULTS

Project Costs

Project costs were incurred and reimbursed in compliance with the executed project agreements, Caltrans program guidelines, and applicable state and federal regulations except for \$1,000,000 in questioned costs as referenced in Finding 2 and Finding 3.

¹⁰Since this project is still in progress, the audit period's end date reflects the billing period end date of the last reimbursement claim which was May 2021.

Table 11. Schedule of Allocated, Reimbursed, and Questioned Costs for Project-04

Category	Allocated Amounts	Reimbursed Amounts as of May 2021	Questioned Costs
Project Approval/ Environmental Document	\$13,149,000	\$1,704,494	\$0
Plans, Specifications, and Estimate	\$626,000	\$0	\$0
Construction	\$15,500,000	\$15,500,000	\$0
Non-A&E Professional Services	1,000,000	\$631,303	\$1,000,000
Total Costs	\$ 30,275,000	\$17,835,797	\$1,000,000

Source: Analysis by the Independent Office of Audits and Investigations.

Deliverables

No deliverables were due as of May 2021; therefore, we did not review any deliverables for Project-04.

Benefits

We did not evaluate the project's benefits because the project was in progress at the time of our audit fieldwork.

Appendix C. Project-02’s Program Supplement Executed September 5, 2018

DELIVERABLES

Item	Requirement Description	Due Date
Ridership	<p>Proposed methodology for capturing increases in ridership and passenger miles traveled system-wide, including methods for estimating reductions in vehicles miles traveled resulting from infrastructure improvements at the five platform stations. The Recipient shall address methods for capturing boarding time savings for SJRRC’s commuter rail system, and originating ridership from disadvantaged communities. Before and after data collection is to be a key element of determining ridership changes, with adjustments made for broader system ridership trends caused by other factors.</p> <p>Methodology should capture the result of project benefits including but not limited to, improved operational flexibility, reliability, and on-time performance.</p> <p>The Recipient shall address methods for capturing frequency of transfers and originating ridership from disadvantaged communities. Before and after data collection is a key element of determining ridership changes, with adjustments made for broader system ridership trends caused by other factors.</p>	90 days from execution
Service Plan	Provide the Department a rail operations service plan that demonstrates how lengthening the five track platforms, will increase riding capacity in the corridor as proposed in the original application.	120 days from execution
Benefits Tracking and Reporting	<p>Provide the Department with benefit tracking and reporting, consistent with TIRCP and ARB guidelines for any additional project benefits not specifically identified in the special conditions above that demonstrate and document GHG reduction.</p> <p>Provide the Department with a plan for reporting greenhouse gas emission reduction benefits specific to disadvantaged communities. Once approved, this plan will lay out the specific approach to reporting project benefits for future reporting requirements.</p>	90 days from execution
Phase 2 Reporting	In order to track project benefits, the Recipient shall submit quarterly reporting following project completion and within 45 days of the operational benefits for at least three years using the new infrastructure.	Quarterly Reporting Beginning 45 Days From Operation and Following Project Completion

Appendix D. Project-03's Program Supplement (Amendment 3) Executed December 11, 2020

San Joaquin Regional Rail Commission
Program Supplement No. 10SJRRCP-03 A3
Attachment 1
Page 6 of 6

Item	Requirement Description	Due
Financial Plan	Update to the SJRRC 2018-2040 financial plan, including the Altamont Corridor Express (ACE) Extension Lathrop to Ceres/Merced project, Valley Rail and all other SJRRC capital projects. All sources and uses shall be identified.	March 15, 2021
Task 1 – Complete Environmental Work	Design and environmental documents, site improvements and other bid documents for the Stockton Diamond Grade Separation PA&ED funded with this award. Caltrans shall be allowed a minimum of 15 days to provide comment prior to the initiation of the public comment period.	Draft Environmental Document transmitted to Caltrans 15 days prior to start of public comment period.
Task 2(a) – Purchase Rolling Stock	Provide a copy of the vendor contract.	March 15, 2021
Task 2(b) – Update Equipment Deployment Plan	Provide the Department with an updated plan detailing the deployment of the Tier IV locomotives and additional rail cars to the active fleet, demonstrating the change in active units utilized during peak period service. The Recipient shall inform the Department of any changes or updates to the Deployment Plan, including forecasted dates for such changes	June 15, 2021
Working Capital Reserve	Submit quarterly working capital reserve reporting to Caltrans no more than 1 month after the end of each fiscal quarter	January 31, 2021 (and one month after the end of each fiscal quarter until the project is complete).

Auditee's Response



SAN JOAQUIN
REGIONAL
RAIL COMMISSION

Chair, **Leo Zuber**, City of Ripon
Vice Chair, **Nancy Young**, City of Tracy
Commissioner, **Lisa Craig**, City of Lodi
Commissioner, **Jose Nuño**, City of Manteca

Executive Director, **Stacey Mortensen**

Commissioner, **Miguel Villapudua**, San Joaquin County
Commissioner, **Kimberly Warmley**, City of Stockton
Commissioner, **Melissa Hernandez**, City of Dublin
Commissioner, **Lily Mei**, City of Fremont

September 21, 2023

California Department of Transportation
Independent Office of Audits and Investigations
P.O. Box 942874, MS-2
Sacramento, CA 94274-0001

VIA EMAIL

Finding 1. SJRRC Did Not Comply with State Law and Other Related Policies When It Noncompetitively Awarded Two Architectural and Engineering Contracts to the Same Consultant.

Agency Response:

- The Commissions' understanding at the time these agreements were transferred was that they were assignments by the State from California High Speed Rail Authority (CHSR) to the Commission as the contract manager on behalf of CHSR, with its own initial non-TIRCP funding source. Additionally, those services were procured by CHSR, under which the contractor demonstrated sufficient qualifications and price was not a factor. ①
- Commission contracts that were already procured and in place prior to any TIRCP Program Award would not have followed TIRCP guidelines, but rather the Commission's own Procurement Manual at that time. The scope of this IOAI engagement is aimed at a time period where the guidelines and framework were still being fully developed and interpreted by both the State and Grantees and did not outline specific steps to remedy contracts already in place that would utilize TIRCP as a combined supplemental funding source for existing agreements. ①
- At the inception of the TIRCP program a great deal of collaborative work and shared goals between the Caltrans, the Commission, and other agencies was being done on specific contracts that were already in place for project development. As time progressed those contracts were evaluated for the best path forward for contract administration, funding and project delivery, in light of limited resources and an increased need for dedicated day-to-day involvement.

- Not only did the Commission's executive management and legal counsel determine that it was in the agency's best interest, but CalSTA and CHSR were included in the determination as notated in the December 2017 memorandum referenced in the draft report. ②
- The determination to use TIRCP as a supplemental funding source after the initial contract assignment was to maintain the agreed upon workflow and project deliverables. Further, the Commission was in constant contact with the State throughout the award and administration of this contract. Throughout the program when Caltrans Local District has been contacted, the response has been that the LAPM is only for federal funding passed through Local Assistance, or other funds managed by Local Assistance, and this arrangement was not identified as such by the Caltrans.
- Finally, at no time were contract costs that were reimbursed questioned on the method or allowability of the procurement, nor were deficiencies communicated on the omission of required A&E forms to the Commission by Caltrans. ③

Finding 2. SJRRC Did Not Obtain Prior Approval from Caltrans as Required by its Master Agreement with Caltrans When it Entered into a Contract with Only One Bidder for a Non-Architectural and Engineering Contract; this, Along with Other Deficiencies, Caused us to Question All Costs Related to this Contract.

Agency Response:

- The Commission acknowledges that the Master Agreement states approval is needed, however, the LAPM provided guidance for the requirements of a Public Interest Finding (PIF) and its applicability. When Commission staff reached out to their district representative regarding the applicability of the stated requirement for clarification, it was communicated that the form is only required for federally funded agreements. This contract was not funded with federal funds, therefore a PIF was not completed. The Commission followed their procurement manual which is consistent with 2 CFR 200 which is the guidance found in the SJJPA ITA with the State. ④
- Additionally, the 2018 LAPM, which would have been the published guidance for this contract, states: *"Sole-source also known as noncompetitive is defined as the method of procurement of engineering and design related services when it is not feasible to award the contract using competitive negotiation. Sole- source contracts should be used only in very limited circumstances. Document the justification for sole- source in detail. For sole- source contracts, the DLAE must approve and sign the Public Interest Finding (PIF) EXHIBIT 12-F. If the PIF is not approved, the contract is considered invalid and not **federally** reimbursable. All sole-source PIF's must have an independent cost estimate attached."* This is consistent with

guidance received from contacts at the local assistance office and Caltrans staff through verbal discussions to clarify the applicability of the requirement.

- The Public Interest Finding Exhibit E.f of the LAPM only references federal funds and FHWA which is not what was funding these contracts. Further, there is no section of the LAPM that provides guidance or administrative remedy when funding sources are added to existing contracts that have already been procured, or that may have federal funds added at a later time.
- The Commission showed open and fair competition by releasing a public Request for Proposals (RFP) and received interest from 13 firms. An Independent Cost Estimate (ICE) and a Board Resolution were provided on July 12, 2022, to Caltrans IOAI and will be provided with this response. ⑤
- The Commission is not a state agency as defined within the public contract code provided in the audit review. The Commission is a joint powers authority under Government Code Section 6500. The initial creation of the TIRCP Program did not clearly and comprehensively outline program administration and compliance requirements or resources specific to the new program but rather relied on implementation through existing guidance, that at times proved to be inapplicable, contradictory to agreed upon understanding, or otherwise vague.
- The Commission was in constant contact with the State throughout award and administration of this contract. Throughout the program's duration when Caltrans Local District was contacted, the response has been that the LAPM is only for federal funding passed through Local Assistance or other funds managed by Local Assistance.
- Finally, at no time was the Commission informed of a deficiency in the adherence to the Master Agreement or that the expenditures incurred and reimbursed by the Caltrans were ineligible based on the procurement method or the lack of prior approval from Caltrans. At no time was supporting documentation for procurement/solicitation method or contract award requested for review or inquiry by the Caltrans. (See multiple emails provided with this response). ③

Finding 3. SJRRC's Poor Contract Management Practices Over One of Its Non-Architectural and Engineering Contracts May Have Caused It to Overpay Its Consultant.

Agency Response:

- The Commission acknowledges that this contract was not managed consistent with the State best practices, however, there has been confusion of the clarity, applicability, and implementation of provisions within the LAPM. Local Agency guidance has itself, over time evolved and therefore has created incongruence between long lived contracts and projects, and the applicability of guidelines, as well as a defined hierarchy of authoritative guidance

and remedy for incorporating new funding requirements to contracts that are already executed.

- The Commission was in constant contact with the State throughout award and administration of this contract. Throughout the program when Caltrans Local District has been contacted, the response has been that the LAPM is only for federal funding passed through Local Assistance, or other funds managed by Local Assistance. Several task orders were directly transitioned from the State to continue project delivery for shared goals and objectives. See Agency Response to Finding 2 above for additional justifications.
- All costs that fell under any contracts that are currently being identified as questioned costs (notwithstanding those the Commission acknowledges and agrees were ineligible) were submitted with documentation that was deemed sufficient at that time, by the Caltrans staff that was responsible for the program administration, monitoring, reimbursement and compliance. Further, it was never communicated that procurement, payment or justification documentation was insufficient, ineligible, or otherwise precluded said expenditure as ineligible for full reimbursement. ③
- Local Agency guidance has itself, over time, evolved and therefore has created incongruence between long-lived contracts and projects, and the applicability of guidelines. When guidance was found to be conflicting, as the program administration moved forward and through many there was a continual effort to reach out to other resources at the State level to confirm our understanding of the hierarchy or applicability. If at any time a requirement had been identified that was in need of remedy for a past contract/expense/procurement it would have been addressed with a corrective measure within in a reasonable timeframe.

Finding 4. Three Consultants Did Not Have Accepted Indirect Cost Rates as Required, Causing Us to Question the Amounts Reimbursed for Their Indirect Costs.

Agency Response:

- The Commission acknowledges that the indirect cost rates were not reviewed in compliance with LPP-005 from the Master Agreement. The LAPM superseded the LPP via directives from the DLAE but the Master Agreement was not updated. Staff requested the update in June 2021 from Caltrans legal and it was requested that it be accepted and then updated at a later date, please see emails provided with this response. To date, the Master Agreement has not been updated.
- The LAPM is unclear in its introduction to the section about audits and reviews due to it saying it is applicable to federal funding. This lack of clarity was brought up during the review period through verbal communications. The lack of clear guidance and inconsistencies between documents led the Commission to follow their own internal procedures. ⑥
- The Commission was in constant contact with the State throughout award and administration of this contract. Throughout the program when Caltrans Local District has been contacted,

the response has been that the LAPM is only for federal funding passed through Local Assistance, or other funds managed by Local Assistance.

Finding 5: SJRRC Did Not Submit Required Documents Related to Project Deliverables in a Timely Manner.

Agency Response:

- The Commission worked responsively and proactively with Caltrans on all requirements that were communicated, followed up with information request timely and collaborated with staff to implement a shared understanding of requirements and what evidence satisfied said requirements. This included emails, phone calls, in person meetings and in-depth coordination on a weekly and sometimes daily cadence.
- At no time was a deliverable requested or communicated to the Commission as being outstanding to the Commission, though both parties may have overlooked a specific due date that had been outlined in a form or application or reporting document.
- The Commission did not intentionally delay, omit, or fail to address any item of significance that was requested during the course of the program award period and seeks to identify firm expectations, cohesive award management and administration for financial and contract compliance collectively with Caltrans.

Nila Cordova

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Comments Concerning the Response Received From the SJRRC

To provide clarity and perspective, we are commenting on SJRRC's response to our report. The numbers below correspond to the numbers we have placed in the margin of the response.

1. SJRRC makes several claims regarding the two original consultant contracts procured by the California High Speed Rail Authority. However, as cited in our audit report, the California High Speed Rail Authority terminated the contracts in December 2017 and January 2018. Our audit finding pertains to the method SJRRC used to procure the new contracts in February 2018 and May 2018, relative to the law. Our conclusion, which remains unchanged, is that SJRRC violated the law when it noncompetitively awarded two A&E contracts to the same consultant. It is irrelevant that there was a prior contractual relationship between another state entity and this consultant; SJRRC was still required to follow the law when it awarded the new contracts. Additionally, SJRRC claims that TIRCP's guidelines and framework were still being developed during the award and administration of the contract; however, the TIRCP program has been in effect since 2015, and on August 2017, SJRRC and Caltrans entered into a Master Agreement, which included the 2018 TIRCP Guidelines as an appendix. Further, as stated in our report, SJRRC's own policies emphasize that A&E services must be procured on the basis of qualifications and specifically references Government Code, Section 4526, et seq.
2. SJRRC claims that CalSTA and the California High Speed Rail Authority were included in the determination to sole source the consultant contracts and references the December 2017 memo. To clarify, the December 2017 memo states that SJRRC met with CalSTA to discuss the project; it does not specify that CalSTA played a part in the decision-making process regarding this sole source procurement. Further, the memo, which was a memo to file, was signed by SJRRC staff only and neither CalSTA nor California High Speed Rail Authority were included as receiving a copy of the memo. Nevertheless, neither of these two state entities would have had the authority to waive the requirements of state law. Our conclusion is based on the requirements of Government Code, Section 4526, which governed the selection of the types of professional services at issue.
3. SJRRC claims in several areas of its response that it was not informed of deficiencies or other concerns by Caltrans in real time. As a condition of receiving state funds, SJRRC is responsible for complying with many legal requirements, among them include being subject to audit by Caltrans and other state audit

organizations. Our work and subsequent findings are independent of Caltrans; thus, the issues described in this report are separate from Caltrans' typical contract administration.

4. SJRRC claims that the Public Interest Finding form (PIF) is only required for federally-funded projects. To clarify, our audit finding is primarily centered on the fact that SJRRC failed to obtain prior written approval from Caltrans as required under the Master Agreement. We referred to the PIF as a related process to request and receive prior written approval; however, we did not base our finding on the lack of having it. Thus, our position remains unchanged.
5. SJRRC states that it received interest from 13 firms. However, the Board Resolution document clearly states that 13 firms **requested** the RFP and SJRRC received only one responsive proposal. This document was made available to us during our audit fieldwork and served as evidence to support our finding. Ultimately, our conclusion is based on the fact that SJRRC did not obtain prior written permission from Caltrans to move forward with the one responsive proposal, as required.
6. SJRRC claims that the Caltrans' Procedures Manual¹¹ audit section is unclear and that it states that it is applicable to federal funding only. The 2018 Caltrans' Procedures Manual, Chapter 10.3 (A&E Consultant Audit and Review Process) clearly indicates that all A&E contracts, regardless of funding source, are subject to the audit and review process. The introductory paragraph states:

This section outlines the audit and review process for A&E contracts that at any time use **state or federal funds**. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans' Independent Office of Audits and Investigations (A&I), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach." (Emphasis added)

¹¹SJRRC's response refers to the Caltrans' Procedures Manual as the LAPM.



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