



**FEDERAL HIGHWAY ADMINISTRATION, CALIFORNIA DIVISION
AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION**

PROGRAM REVIEW

**Consultant Selection and Contract Administration
Phase II: Project-Level Analysis
(FHWA S-51306)
(CALTRANS #08-04)**

**Final Report
January 31, 2008**

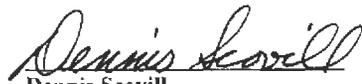
Prepared By:

David Cohen, Team Leader / Environmental Specialist, National Programs
Karen Bobo, Sr. Transportation Engineer, State Programs
Abraham Geevarghese, Realty Specialist, State Programs
Ada Lehner, Financial Program Manager, Financial Services
Scott McHenry, Sr. Transportation Engineer, Local Programs
Sarah Skeen, Structural Engineer, Structures Program
Cindy Vigue, Special Assistant to Division Administrator

In Cooperation With:

Tom Sanborn, Contracting Officer, (Caltrans, Division of Procurement & Contracts)
Eugene Shy, Process Review Engineer (Caltrans, Division of Local Assistance)

Approved:


Dennis Scovill,
Chief Operating Officer

Date: 2/1/08

Executive Summary

This program review was initiated following a FHWA national review of local assistance projects in Fiscal Year 2005 and a FHWA Division risk assessment performed in Fiscal Year 2006. The risk assessment scores were comparatively high because of FHWA's limited involvement with this program area and lack of formal review since a joint FHWA/Caltrans Local Programs architectural and engineering (A&E) Consultant Selection review was completed in 2001.

An interdisciplinary team was formed in FY2007 to provide two phases of review in the subject area. The first phase of the review was completed on August 31, 2007 and contained six global recommendations applicable to programmatic management of the consultant selection and contract administration. During the first phase, 16 site visits were conducted by FHWA and Caltrans staff with local agency contract managers for local assistance projects. During phase II, documentation was collected from 15 identified consultant contracts that were administered by Caltrans Division of Procurement & Contracts (DPAC).

Interviews with state contract managers in nine Caltrans Districts generated additional supporting information. Responses, observations, findings and recommendations for project level reviews for both state and local agency contracts are documented within this report.

Data collected was then analyzed by the review team to identify trends for areas of non-compliance and best practices and to identify potential correlations to the programmatic findings and observations made in Phase I. Based on the Phase II review, four recommendations and six successful practices were identified as follows:

Recommendations for Caltrans-Administered Consultant Contracts:

1. Review Team recommends that DPAC communicate to District Consultant Services units that California state form ADM 2031 is the most current valid form to use, and is to be used in monitoring, tracking, and documenting consultant performance.

Recommendation for Local Agency Administered Consultant Contracts of Federal-Aid Projects on the State Highway System (SHS): (Advertise, Award, and Administer (AAA) Projects):

2. Review Team recommends DPAC and Division of Local Assistance (DLA) develop procedures for A&E consultant contracts for AAA projects and designate the appropriate division to provide Caltrans oversight of these contracts. Since some of these projects are handled through encroachment permits, we also recommend that the Division of Traffic Operations, Office of Signs, Markings,

and Encroachment Permits also be involved in Caltrans' internal dialogue regarding this issue.

Recommendations for Local Agency Administered Consultant Contracts for Federal-Aid Projects off the State Highway System (Local Assistance Federal-Aid Projects):

3. Review Team recommends the cooperative agreements clarify the requirements regarding The Brooks Act. In particular, the establishment of a required qualifications-based selection (QBS) process. Noting that under QBS procurement procedures, cost proposals are not a consideration in the selection process until negotiations commence with the most qualified firm to arrive at a price that is fair and reasonable.
4. Review Team recommends that Caltrans revise the Local Assistance Procedures Manual (LAPM) to include clear instructions and procedures addressing major scope changes to ensure fair and open competition in the selection of all Architectural and Engineering (A&E) consultants. Caltrans should ensure that the major scope change procedures are followed by local agencies during the administering of Federal-aid A&E consultant contracts.

The findings comprising the bases for these recommendations are discussed in more detail within the body of the report.

The Review Team also noted the following Successful Practices:

1. Caltrans' utilization of a standard agreement (State Form STD 213) with each A&E consultant.
2. Confidentiality of all Caltrans data and information specified by contractual agreement.
3. Caltrans' tracking and documentation of on-call contracts (State Form ADM 2033).
4. On-line contract advertisements in the California State Contracts Register maintained by California Department of General Services.
5. Ongoing work with the California State University, Sacramento to establish an online training and certification program for A&E consultant contract managers.
6. Caltrans, Local Assistance Procedures Manual has a dedicated chapter for consultant selection, and it is available on-line at http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_p/p10consult.pdf.

Verification of Compliance:

In all cases, with the exception of two local assistance projects pending proper documentation, all 16 local agency and all 15 State consultant contracts were found to be compliant with the federal-aid program requirements.

Purpose

The purpose of the second phase of this Program Review is to determine the level of compliance with the federal-aid highway program requirements in architectural and engineering (A&E) consultant selection and contract administration processes in California.

This review is the second phase of the two-phase Consultant Selection and Contract Administration Program Review. The first phase of the Program Review involved an examination of Caltrans' procedures to verify programmatic compliance with the federal-aid highway program requirements. The first phase also verified Caltrans' stewardship and oversight roles on local agency administered A&E consultant contracts. The first phase of the Program Review was conducted in Fiscal Year 2007, and the final report was issued on August 31, 2007.

The second phase of the review involved project-level review and analysis of federal-aid A&E consultant contracts to determine the level of compliance. Caltrans' compliance with the federal-aid program requirements was determined by answers to a series of questions and the review of contract documents. The resulting set of 27 questions and 14 documents comprise the standard of review which is similar to other efforts undertaken by FHWA Headquarters and the FHWA Washington Division in this subject. (The FHWA Headquarters Office of Federal-Aid Program Administration is concurrently conducting a national compliance review in this subject.)

Objectives

- Apply the standards of review to the sampled A&E consultant contracts
- Analyze the data to infer trends for areas of non-compliance and best practices.
- Document the inferences, findings, observations, and recommendations.
- Discuss any possible root causes and identify any correlations to the programmatic findings and observations made in Phase I.

Scope and Approach

The scope of the project-level analysis used two samples of actual consultant contracts (and associated task orders, if any) for compliance with the federal-aid highway program requirements. The two samples represented Caltrans and local agency administered A&E consultant contracts.

The reviews of both Caltrans and local agency, also known as local public agency (LPA), administered contracts were multi-disciplinary in nature, and included federal-aid A&E contracts associated with environmental analysis, right-of-way, design, and construction engineering. In regard to the LPA consultant contracts portion of the review, FHWA interviewed all of the Caltrans' District Local Assistant Engineers and their staff. The interview focus was on how Caltrans verify's that LPA's administer these contracts in accordance with federal-aid program requirements.

Given the diverse nature of the two categories of federal-aid project delivery, different criteria were used to select the populations and to select the samples. The number of consultant contracts selected for review was based on time periods determined jointly with Caltrans. The LPA sample set was selected from a list of contracts that had pre-award audits and were awarded between 2002 and 2004. The resulting sample size was 99 projects with 16 of those contracts being selected for this review. The State sample set was selected from a list of consultant contracts that had been awarded during the 2006-07 fiscal year. The resulting sample size was 50 contracts with 15 contracts selected for inclusion in this review. The most recent available data was used in sampling both LPA and Caltrans' consultant contracts.

The process review team, which conducted the data collection, was comprised of members from both FHWA, and Caltrans Division of Local Assistance (for non-state highway projects) who analyzed the data to infer trends in best practices and areas of non-compliance. The selected State contracts were reviewed by the FHWA team only.

Standards of Review

The following standards of review were applied to each identified consultant contract:

1. How did Caltrans ensure that this project followed the consultant selection process?
2. How was the need for a consultant justified?
3. Was there evidence of advertisement for RFQs or RFPs in the following methods?
 - a. Professional publications / newsletters
 - b. Direct mailing notices using a register of known qualified consultants
 - c. Direct mailing notices to recognized DBE organizations (If race-conscious)
4. Did the ads for the RFQs or RFPs include the following information:
 - a. Type of service solicited
 - b. Description of project
 - c. Deadline for receiving reply
 - d. Address and telephone number
 - e. Name of contact information
 - f. A civil rights statement of EEO assurances
 - g. Evaluation criteria
 - h. Description of information that must be submitted
5. How did Caltrans establish the evaluation criteria?
6. Did the criteria include::

- a. Professional excellence, demonstrated competence and specialized experience of the firm
 - b. Staffing capability, workload and ability to meet schedules
 - c. Principals to be assigned and education and experience of key personnel
 - d. Nature and quality of completed work
 - e. Reliability and continuity of firm
 - f. Other factors deemed relevant to the contract effort
7. How did Caltrans oversee that the evaluation and ranking criteria for this contract were reasonable based upon the responses filed?
 8. How was the short list of at least the top 3 qualified consultants developed from the ranked firms?
 9. Were there any unusual changes in the final ranking of the "short" list? If so, what was the reason(s)?
 10. Was the top ranked consultant selected? If not, what was the basis?
 11. Were there any protests regarding the ranking and selection? How did Caltrans address the protests?
 12. Did Caltrans prepare a cost estimate prior to cost negotiations?
 13. How did Caltrans review the negotiated contract amount to ensure that it was reasonable compared to Caltrans' cost estimate?
 14. Was there a pre-award audit?
 15. Did the consultant meet the DBE goal or make a Good Faith Effort (assumes race conscious requirements)?
 16. Was the prime consultant a DBE?
 17. Was one of the four methods of payment specified in the contract:
 - a. Lump sum
 - b. Actual cost plus fixed fee
 - c. Cost per unit of work
 - d. Specific rates of compensation
 18. Was a scoping meeting held with the selected consultant and documented? How did Caltrans ensure that the scope was well-defined?
 19. Was there a project coordinator for the contract? How was this person selected? Who was it?
 20. How was the periodic review of the consultant's work performed and documented?
 21. Were progress reports submitted regularly by the consultant? How were they tracked, monitored, and reviewed by Caltrans?
 22. (For "full oversight" projects) Was the FHWA area engineer given an opportunity to review the project and its consultant contract?
 23. How did Caltrans ensure that the consultant's work was progressing to Caltrans' satisfaction?
 24. What was the overall quality of the work? What performance measures did Caltrans use to determine the overall quality?
 25. Were there any cost overruns on this contract?
 26. Were there any major changes in the contract that required a contract amendment? If so, was Caltrans' (and, for full oversight projects, the FHWA's) approval requested?
 27. Was a performance evaluation of the consultant's work prepared after the completion of the contract?

28. Did Caltrans obtain reimbursement for costs resulting from the consultant contractor's errors or omissions, if any? How were the errors and omissions identified?

In order to verify Caltrans' and LPAs' responses to these questions for each selected contract, the following documentation was also requested:

1. Copies of RFPs or RFQs
2. Documentation of DBE participation, when applicable
3. Solicitation/advertisement records
4. Identification of selection committee members
5. Evaluation and ranking records of proposing firms
6. Independent cost estimate
7. Record of negotiations
8. Pre-award audit, when applicable
9. Executed consultant contracts and amendments
10. Minutes of construction engineering oversight/design progress meetings as applicable
11. Documentation of progress and final payments
12. Consultant performance evaluation
13. Final Voucher including consultant's accounting records documenting compliance with federal 48 CFR, Part 31 accounting requirements
14. Documentation of task orders associated with the master contract

Data Analysis and Observations

As previously mentioned, the data collected for this review was divided into two categories – State and LPA consultant contract reviews. The data collected was analyzed; the trends and other noteworthy observations are discussed below.

Caltrans-Administered Consultant Contracts

Using the standards of review identified above, 15 Consultant Contracts from 9 Caltrans Districts were reviewed. A summary table of responses to the 27 questions within the Standards of Review for each Consultant Contract is attached to the report in Appendix B. The participating offices in this review are listed below.

Caltrans Districts	
3 - Marysville	8 - San Bernardino
4 - Oakland	11 - San Diego
6 - Fresno	12 - Irvine
7 - Los Angeles	HQ - Sacramento
	(Districts 53 and 59)

The following is a list of observations and trends in the data collected from the review of contract documents furnished by the Caltrans Division of Procurement & Contracts and the relevant District contract management staff.

1. Caltrans typically establishes umbrella contracts that cover multiple projects and have high dollar amounts. Task orders are issued for specific project work. When soliciting for these contracts, the State uses RFQs exclusively. It also tends to perform post audits on its contracts.
2. The reviewed consultant contracts indicate that Caltrans has established standard processes to solicit and evaluate statements of qualifications (SOQ). The integrity of the panel members' review is assured when the reviewer certifies the comments and rankings. Additionally the contracting office also reviews the completed forms.
3. The cost estimates for A&E consultant contracts associated with environmental documents are not based on the traditionally used engineer estimates. Instead, they are based on past experiences and similar project data.
4. Task scope is first defined by the Caltrans contracting officer's technical representative (the technical or subject office that is requesting the work). The methods for assuring that consultants understand the identified scope vary from formal process to informal process and in some instances no meeting is needed because of the straight forward nature of the tasks. The level of interaction is dictated by the complexity of the work.
5. Quality and schedule of the work are assured through the monthly submission of a progress report and invoice. Additional feedback is given at project meetings and with the comments and acceptance of contract deliverables.
6. Task evaluations are conducted at the completion of a task. This is a relatively new process that has been implemented during the last year. This is in addition to the evaluation completed at the end of the contract. The implementation of these evaluations varies among the offices reviewed.

Local Assistance

There are two components to the local agency portion of the review: the interviews with all the District Local Assistance Engineers (DLAE) and their staff, and a review of 16 consultant contracts administered by LPAs.

Caltrans DLAE:

The interviews with the DLAEs and their staff resulted in the following observations.

1. Caltrans is involved in the consultant contract process on an as-needed basis. The smaller LPAs are more likely to request Caltrans participation in the process. The range of involvement includes review of proposals, participation in selection panel, and monitoring progress and quality of consultant work. Over the short run, the turnover of some DLAEs and their staff has impacted Caltrans' participation in the process. The turnover has resulted in the need to build new working relationships with the LPAs.

LPA:

Using the standards of review identified above, 16 different LPAs were reviewed. A summary table of collected data is attached to the report in Appendix C. The participating LPAs in this review are listed below.

City of Bakersfield	City of Modesto
City of Carlsbad	City of Palmdale
City of Del Norte	City of Placentia
City of Dixon	Placer County
City of Galt	City of San Diego
City of Irvine	SANBAG *
City of Larkspur	City of San Luis Obispo
City of Los Angeles	City of Santa Cruz

* San Bernardino Council of Governments

The following is a list of observations and trends in the data collected from the review of contract documents furnished by the LPAs.

1. Due to failure to meet record keeping and retention requirements, one of the local assistance contracts was not in compliance with the federal-aid program requirements. Further investigation determined that this was an isolated incident and that project involvement of parties that do not typically deliver federal-aid projects is thought to have contributed to this outcome. The local government was given 60 days to search for the missing documents, investigate the reason for the missing documents. If documents are not provided to the FHWA California Division by February 15, then a federal-aid ineligibility determination for the consultant contract will be considered after a final review of facts by the team, the FHWA California Division Local Programs Director, and the Finance Director.
2. One local agency had its own extensive process to select A&E consultants. The document mainly dealt with the City's processes. The city was able to produce all requested documentation and the DLAE had the necessary submittals for the consultant contract. The City's process mirrored Caltrans procedures in the Local Assistance Procedures Manual.

3. A majority of the contracts reviewed did not include all of the information identified in questions relating to project advertisement information (question 4) and SOQ evaluations (Question 6) as identified in the Standards of Review section of this report.
4. The LPAs tend to use local industry knowledge, historic information, and similar projects costs to estimate the consultant contract costs.
5. Project meetings and progress milestones are used to monitor the progress and satisfaction with work performed by the consultant. Performance measures involving schedule and completion of the work were the only measures documented.
6. Two of the LPAs experienced cost overruns on their contracts. This was due in part to changes in project requirements and additional needs being defined after the contract was awarded. Some reasons for these changes were regulatory, additions to the scope, and lack of coordination among shareholders. It is also interesting to note that when contract costs exceeded the original contract amount, LPAs typically must pay for these additional costs with their own local funds.

Successful Practices

State-Administered Consultant Contracts:

1. The Standard Agreement

Caltrans prepares a standard agreement (State Form STD 213) with the A&E consultants. The information on the form specifies the term of the agreement, the maximum dollar amount of the agreement, and the terms and conditions for the contract. The terms and conditions detail the scope of the work and deliverables, the budget details and payment provisions, the California Department of General Services' (DGS) uniform requirements for State contracts, and any special terms and conditions.

2. Confidentiality of Data

The contract agreements include a "confidentiality of data" provision. This provision requires that "all financial, statistical, personal, technical, or other data and information relative to Caltrans' operations, which is designated confidential by Caltrans and made available to the consultant in order to carry out the agreement, shall be protected by the consultant from unauthorized use and disclosure."

3. Documenting and Tracking On-Call Contracts

Caltrans documents the cost proposals for on-call contracts by using the State Form ADM 2033. The form indicates the names of the people involved in the on-call contract, their loaded hourly billing rates, and the actual hourly rates.

4. Advertisements in the California State Contracts Register

Caltrans publishes the contract advertisement details on-line in the California State Contracts Register, maintained by the California Department of General Services. This on-line database supports Caltrans' outreach in advertising the contracts.

Local Agency-Administered Consultant Contracts:

5. Communication between the local agencies and the Caltrans representatives within the office of Local Assistance was found to be supportive of local efforts.

DLAE staff members were invited to participate in selection panels. A number of the selected consultants were technical specialists that had former Caltrans service. In all cases of reviewing local agency consultant contracts, the local agencies mentioned that Caltrans personnel were available and responsive in providing assistance.

Findings and Recommendations

State-Administered Consultant Contracts:

Finding 1. Monitoring, Tracking, and Documenting Consultants' Performance

Caltrans districts are responsible for the monitoring, tracking, and documenting consultants' performance. The State Form ADM 2031 is intended for this purpose. However, the team found that there is some confusion among the districts about how and when to use this form. Some districts use this form for the task orders, and some use it for the master contracts. The districts that use the form for the task orders monitor, track, and document subcontractors' performance, while the districts that use the form for the master contract are limited to monitoring, tracking, and documenting the prime consultant's performance. There are also some districts that are under the impression that the form has been rescinded with the A&E Consultant Handbook in 2006.

Recommendation 1:

We recommend that the Division of Procurement & Contracts (DPAC) clearly communicate to the consultant services units in Caltrans districts that the State Form ADM 2031 is still in effect, and should be used to monitor, track, and document consultants' performance. Based on the information provided in the ADM 2031 form, we also recommend that the districts monitor, track, and document the overall level of performance every year in the following areas: (1) Cooperation and Communication,

(2) Quality of the Deliverables, (3) Billing, (4) Adequacy of Consultant Personnel, (5) DBE/DVBE Participation, (6) Cost / Budget/ Schedule. In other words, each Caltrans district should have an overall rating for each of the six performance areas to track the overall health their program in consultant selection and contract administration. Root Cause Discussion: Given that the statewide guidance document for consultant contract administration has been rescinded, there is significant confusion among Caltrans districts about procedural aspects of A&E consultant contract administration. The issue about when and how to use the From ADM 2031 appears to come out of this confusion.

Local Agency Administered Consultant Contracts:

Finding 2. Caltrans' Oversight for Local Agencies' Compliance with the Federal-Aid Program Requirements in AAA Projects (i.e., Local Agency Sponsored Projects on the State Highway System)

For the local agency administered A&E consultant contracts associated with local agency sponsored projects on the State Highway System, Caltrans enters into cooperative agreements with the local agency project sponsors. If the total cost of the project within the State right of way is less than \$1 million, then Caltrans may issue an encroachment permit for the project instead of entering into a cooperative agreement.

Caltrans's oversight involvement of local agency sponsored projects on the State highway system ("AAA projects") is not well defined. Currently, neither the Division of Local Assistance (DLA) nor DPAC provide oversight in the administering of local agency (AAA) consultant contracts. However, Caltrans does perform a review of the consultant's end product which normally consists of prepared plans and specifications prior to the advertising and award of the construction contract on the State Highway System. These projects seldom use federal-aid funds in preliminary engineering.

Recommendation 2:

Because AAA projects have hybrid features of both local and state ownership, we recommend DPAC and DLA collaborate to develop written procedures for AAA project consultant contracts and develop written procedures for overseeing these contracts.

Root Cause Discussion: AAA projects are overseen by Caltrans either through the provisions of a cooperative agreement or an encroachment permit. Based on the standard provisions of a cooperative agreement or an encroachment permit, Caltrans has no oversight role in ensuring local agencies' compliance with the Federal-aid program requirements in locally administered consultant selection or contract administration activities for AAA projects. However, all local agencies that receive federal-aid funds sign a Master Agreement with Caltrans that they will follow the applicable federal and State laws and regulations, and the Local Assistance

Procedures Manual containing detailed procedures and guidance of the federal A&E consultant selection process (Brooks Act). In addition, California Government Code 4525, *et al.*, entitled "Contracts With Private Architects, Engineering, Land Surveying, and Construction Project Management Firms" requires State and local agencies to select such firms on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the needed services.

Finding 3. Brooks Act Requirements

One local agency was allowing automatic and indefinite continuation of the consultant contracts based upon their satisfaction with the services. A District Local Assistance Engineer reported to the review team that another contract was non-competitively extended from engineering and design related services to include construction management services without advertising and competition. The two local agencies had very little knowledge of the qualifications-based competition and selection requirements known as the Brooks Act. After a final review of facts by the team, the FHWA California Division Local Programs Director, and the Finance Director, a federal-aid ineligibility notice will be issued for the consultant contract administered by the first local agency. In addition, a coordination meeting with the second agency will be conducted by the team to more deeply review the facts in the latter case.

Recommendation 3:

We recommend Caltrans' cooperative agreements and/or encroachment permits issued to local agencies for locally sponsored federal-aid highway projects on the State Highway System specify that the requirements of the Brooks Act as contained in Chapter 10 "Consultant Selection" of the Local Assistance Procedures Manual shall be followed. The Brooks Act establishes a qualifications-based selection (QBS) process, in which A&E firms are selected on the basis of demonstrated competence and qualification for the type of professional services required and once the most qualified firm is determined, negotiations commence only with that firm to arrive at a fair and reasonable price. Under QBS procurement procedures, cost proposals from the competing firms are not a consideration in the A&E consultant selection process. Only the most qualified firm's cost proposal is opened and negotiations then proceed with the most qualified firm.

Finding 4. Management of Scope Changes in A&E Consultant Contracts

Two of the 16 contracts reviewed revealed problems with the management of scope changes. Two local agencies extended their consultant contract beyond the original period by adding work not included in the original contract. This practice could prevent fair and open competition as required by 49 CFR.

Recommendation 4:

The LAPM should be revised to include clear instructions and procedures for local agencies to follow in the addition and management of scope changes when administering A & E consultant contracts. With rare exception, federal-aid A&E consultant contracts should not be extended noncompetitively from one phase of project development into the next phase, unless the option for such extension is included in the original scope of work. Similarly, federal-aid A&E consultant contracts should not add projects which were not originally included in the scope of work of the RFP/RFQ packages.

Root Cause Discussion: Due to the complexity, cost, and lengthy process (as long as 9 months to a year) involved in following this qualification based selection process (Brooks Act), local agencies try to seek administrative and cost saving efficiencies using noncompetitive processes with little or no guidance from the DLAEs. The two DLAEs mentioned to the review team that they recognized this problem, advised the local agencies against the use of noncompetitive processes, but they did not want to pursue the issue any further because they could not point to a section in Caltrans' LAPM that speaks to this requirement.

Implementation Plan

Caltrans should develop an implementation plan to address the findings and recommendations proposed in this report. The implementation plan should include milestones and schedules established to address each finding and recommendation. Caltrans should also determine how best to achieve the desired outcomes of these recommendations. To the extent appropriate, FHWA California Division will assist Caltrans in developing the procedures, guidance, and/or processes necessary to ensure successful incorporation of recommended process improvements. A close out meeting was held with Caltrans to discuss the development of the implementation plan schedule and next steps.

Conclusion

In summary, a total of four recommendations and six successful practices were identified in Phase II of the Consultant Selection and Contract Administration Program Review. Furthermore, excluding two projects which are pending proper documentation, all 16 local agency and all 15 state-administered consultant contracts were found to be compliant with existing federal requirements.

Upon finalization, this report will be formally transmitted to Caltrans for response. Caltrans will have 60 days to review and prepare a response which should include an implementation plan for addressing the findings and recommendations. The FHWA review team will monitor Caltrans' progress on the implementation plan for one year before submitting any unresolved recommendations over to the FHWA subject area expert.

Appendices

- Appendix A: Process Review Phase II Work Plan
- Appendix B: Caltrans Data
- Appendix C: LPA Data

Attachment A



FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
AND
CALIFORNIA DEPARTMENT OF TRANSPORTATION

Consultant Selection and Contract Administration
Program and Process Review Work Plan
Phase II: Project-Level Analysis

Year: FY 2008

Federal Highway Administration (FHWA) California Division Team:

David Cohen, Project Development & Environment
Karen Bobo, Field Operations
Sarah Skeen, Engineering Services
Scott McHenry, Field Operations
Abraham Geevarghese, Right of Way
Ada Lehner, Finance

California Department of Transportation (CALTRANS) Team

Eugene Shy, Process Review Engineer, Caltrans (DLA)
Germaine Belanger, Environmental Planner, Caltrans (DLA)
Carol Hanson, Senior Right of Way Agent, Caltrans
Tom Sanborn, Contracting Officer, Caltrans (DPAC)
District Local Assistance Engineers (DLAE), Caltrans

Approved by:

/s/ Dennis Scovill

**Dennis A. Scovill
FHWA California Division
Chief Operating Officer**

PURPOSE

The purpose of this process review is to determine the level of compliance with the federal-aid highway program requirements in architectural and engineering (A&E) consultant selection and contract administration processes in California.

This review is the second phase of the two-phase Consultant Selection and Contract Administration Program Review (Program Review). The first phase of the Program Review involved an examination of Caltrans' procedures to verify programmatic compliance with the federal-aid highway program requirements. The first phase also verified Caltrans' stewardship and oversight roles on locally administered A&E consultant contracts. The first phase of the Program Review was conducted in Fiscal Year 2007, and the final report was issued on August 31, 2007.

The second phase of the review will involve project-level review and analysis of federal-aid A&E consultant contracts to determine the level of compliance. This deductive approach in Phase II will complement the inductive findings made in Phase I. The level of compliance will be based on the 27 standards of review indicated in the project review questionnaire. The standards of review benchmark the standards applied in similar efforts undertaken by FHWA Headquarters and the FHWA Washington Division in this subject. (The FHWA Headquarters Office of Federal-Aid Program Administration is concurrently conducting a national compliance review in this subject.)

This review will be multi-disciplinary in nature, and it will involve federal-aid A&E contracts associated with environmental analysis, right-of-way, design, and construction engineering. The review will involve both Caltrans and locally-administered federal-aid A&E consultant contracts. For Caltrans-administered contracts, the phases of project development will be limited to environmental analysis and design, because Caltrans' right-of-way and construction engineering activities for "capital projects" are performed without A&E consultant services.

OBJECTIVES

- Apply the 27 standards of review to the sampled A&E consultant contracts
- Analyze the data to infer trends for areas of non-compliance and best practices.
- Report to document the inferences, findings, observations, and recommendations.
- Discuss any possible root causes in the final report, and identify any correlations to the programmatic findings and observations made in Phase I.

SCOPE AND APPROACH

The scope of the project-level analysis will involve the review of two samples of actual consultant contracts (and associated task orders, if any) for compliance with the federal-

aid highway program requirements. The two samples will represent Caltrans and locally administered A&E consultant contracts.

The review will focus on the A&E consultant contracts associated with the following four phases of project development: Environmental analysis, right-of-way, design, and construction engineering.

The number of consultant contracts selected for review will be based on past time periods determined jointly by Caltrans. These time frames will be determined based on data availability, data quality, and statistical needs to establish a "valid sample." Within these time periods, a representative number of consultant contracts will be sampled to be reviewed.

The reviews will involve an analysis of supporting documentation (14 items detailed below) for each identified consultant contract, a review of the responses to the project review questionnaire (based on the 27 standards of review detailed below) for each identified consultant contract, and site visits. The site visits will be scheduled jointly with Caltrans Headquarters representatives, and the Caltrans representatives will be invited to each visit to participate in the discussion and provide insight.

The process review team will analyze the data to infer trends in best practices and areas of non-compliance. The findings, observations, and recommendations for the project-level analysis will be appended to the Phase I Final Report.

STANDARDS OF REVIEW

The following standards of review will be applied to each identified consultant contract:

29. Did this project follow the consultant selection process?
30. Was the need for a consultant justified?
31. Was there evidence of advertisement for RFQs or RFPs in the following methods?
 - a. Professional publications / newsletters
 - b. Direct mailing notices from a register of known qualified consultants
 - c. Direct mailing notices to recognized DBE organizations (If race-conscious)
32. Did the ads for the RFQs or RFPs include the following information:
 - a. Type of service solicited
 - b. Description of project
 - c. Deadline for receiving reply
 - d. Address and telephone number
 - e. Name of contact information
 - f. A civil rights statement of EEO assurances
 - g. Evaluation criteria
 - h. Description of information that must be submitted
33. Was evaluation criteria such as the following included:
 - a. Professional excellence, demonstrated competence and specialized experience of the firm

- b. Staffing capability, workload and ability to meet schedules
 - c. Principals to be assigned and education and experience of key personnel
 - d. Nature and quality of completed work
 - e. Reliability and continuity of firm
 - f. Other factors deemed relevant to the contract effort
34. Did the evaluation and ranking for this contract appear reasonable based upon the responses filed?
 35. Was a short list of at least the top 3 prospective consultants developed from the ranked firms?
 36. Were there any unusual changes in the final ranking of the "short" list? If so, what was the reason(s)?
 37. Was the top ranked consultant selected? If not, what was the basis?
 38. Were there any protests regarding the ranking and selection?
 39. Did Caltrans prepare a cost estimate prior to cost negotiations?
 40. Was the negotiated contract amount reasonable compared to Caltrans' cost estimate?
 41. Was there a pre-award audit?
 42. Did the consultant meet the DBE goal or make a Good Faith Effort (assumes race conscious requirements)?
 43. Is the prime consultant a DBE?
 44. Was one of the four methods of payment specified in the contract:
 - a. Lump sum
 - b. Actual cost plus fixed fee
 - c. Cost per unit of work
 - d. Specific rates of compensation
 45. Was the scope well defined, or was a scoping meeting held with the selected consultant and documented?
 46. Was there a project coordinator for this contract? Who?
 47. How was the periodic review of the consultant's work documented?
 48. Were progress reports submitted regularly by the consultant?
 49. (For "full oversight" projects) Was the FHWA area engineer given an opportunity to review the project and its consultant contract?
 50. Did the consultant's work progress to Caltrans' satisfaction?
 51. What was the overall quality of the work?
 52. Were there any cost overruns on this contract?
 53. Were there any major changes in the contract that required a contract amendment? If so, was Caltrans' (and, for full oversight projects, the FHWA's) approval requested?
 54. Was a performance evaluation of the consultant's work prepared after the completion of the contract?
 55. Did the local agency (and/or Caltrans) obtain reimbursement for costs resulting from the consultant contractor's errors or omissions, if any?

In order to verify Caltrans' responses to these questions for each selected project, the following documentation will also be requested:

15. Copies of RFPs or RFQs
16. Documentation of DBE participation, when applicable

17. Solicitation/advertisement records
18. Identification of selection committee members
19. Evaluation and ranking records of proposing firms
20. Independent cost estimate
21. Record of negotiations
22. Pre-award audit, when applicable
23. Executed consultant contracts and amendments
24. Minutes of construction engineering oversight/design progress meetings as applicable
25. Documentation of progress and final payments
26. Consultant performance evaluation
27. Final Voucher including consultant's accounting records documenting compliance with federal 48 CFR, Part 31 accounting requirements
28. Documentation of task orders associated with the master contract

REVIEW SCHEDULE

DUE DATE

Review Plan Approved	October 5, 2007
Identify a representative sample of Caltrans-administered consultant contracts	Complete
Develop standards of review for Caltrans-Administered consultant contracts	Complete
Prepare review schedule	October 15, 2007
Site visits	November 30, 2007
Draft Report	December 15, 2007
Final Report	January 31, 2008

RESOURCES REQUESTED

5 Overnight trips:	\$3500
4 Local trips:	\$ 500
Total:	\$4000