

ORANGE COUNTY TRANSPORTATION AUTHORITY INTERNAL AUDIT DEPARTMENT



Comprehensive Transportation Funding Programs

County of Orange Regional Capacity Program La Pata Avenue Phase II Project No. 13-ORCO-ACE-3655 Construction Phase

May 8, 2023



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**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
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Table of Contents

Conclusion	1
Background	1
Objectives, Scope, and Methodology	2
Detailed Results	4
Audit Comments, Recommendations, and Management Responses	6
Non-Compliance with Competitive Bidding Requirements.....	6
Mitigation Expenditures Past Allowable Funding Period.....	6

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

Conclusion

The Internal Audit Department (Internal Audit) has completed an audit of La Pata Avenue Phase II - Construction Phase (Project) of the County of Orange (County), Project Number 13-ORCO-ACE-3655, awarded by the Orange County Local Transportation Authority (OCLTA) under the Comprehensive Transportation Funding Programs (CTFP) Regional Capacity Program.

Based on the audit:

- Costs charged to the Project were reasonable, allocable, and adequately supported, except for \$468,644.83 in contractor mitigation costs incurred after project completion on December 4, 2018, as reported by the County, and beyond the five-year approved funding deadline. OCLTA reimbursed the County \$140,593.45 towards these costs.
- The County did not adhere to competitive bidding requirements when selecting Orange County Waste and Recycling (OCWR) for Project mitigation work.
- The County's accounting and cash management procedures were adequate to ensure that Project funds were used only for costs chargeable to the Project.
- The County established and maintained a separate cost center for the Project.
- The Project was encumbered and completed within the timeframes dictated by CTFP guidelines and extensions were approved in accordance with CTFP guidelines. The County submitted the final report to OCLTA within 180 days of the Project completion date as required by CTFP guidelines. However, as noted above, mitigation expenditures totaling \$468,644.83 were incurred, and \$140,593.40 was funded by the CTFP, after project completion, per the County's final report, and beyond the five-year funding deadline approved by the OCLTA Board of Directors (Board).

Background

Regional Capacity Program

The OCLTA provided funding totaling \$18,773,866 for construction under the Regional Capacity Program, Project No.13-ORCO-ACE-3655. The project was for the construction of La Pata Avenue gap closure between Ortega Highway and north boundary of Prima Deshecha landfill. Costs incurred for the Project totaled \$62,579,553 of which \$18,773,866 was funded by the CTFP and \$43,805,687 was funded by the County. The Project was funded and programmed for fiscal year (FY) 2013-14. The Project began on December 10, 2013. On December 14, 2015, the OCLTA Board approved a scope change to consolidate Phase One and Phase Two for construction of the Project, with a combined County matching rate of 70 percent. On June 13, 2016, the OCLTA Board approved a 24-month extension to Project funding. The County reported that the Project was completed on December 4, 2018.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

Objectives, Scope, and Methodology

The objectives were to determine whether:

1. Costs charged to the Project were reasonable, allocable, eligible, and adequately supported.
2. The County complied with competitive contracting requirements.
3. The County's accounting and cash management procedures were adequate to ensure that Project funds were used only for costs chargeable to the Project and were tracked separately within the accounting system.
4. The Project was encumbered, completed, and the final report submitted, within the timeframes dictated by CTFP guidelines; any extensions were approved in accordance with CTFP guidelines.
5. Records and documentation related to the Project were adequately maintained.

The scope was limited to the Project. The methodology included the following procedures:

1. We reviewed the Project agreement to obtain an understanding of the Project and CTFP requirements.
2. We obtained and reviewed Project contract files to verify evidence of competitive bid procedures.
3. We inquired of management and identified fund accounting procedures used by the County to account for Measure M2 revenues and expenditures.
4. We reviewed Project financial records to determine that proper accounting and cash management procedures were followed.
5. We obtained a detailed listing of Project expenditures and selected a haphazard sample of 70 out of 216 contractor expenditures and a haphazard sample of 2,004 hours out of 128,929 hours of payroll expenditures for testing. For the expenditures tested, we determined whether the expenditures were properly supported, approved, recorded, and consistent with the approved timeframe and in accordance with the contract and/or CTFP requirements. In addition, we tested expenditures to determine compliance with CTFP limitations on contract change order, labor overhead, project management, and mitigation costs. Since the sample was non-statistical, conclusions are limited to the sample items tested.
6. For construction phase work performed by local agency forces, we determined if the decision that local agency forces could perform the work more cost effectively or timely than a contractor was documented in accordance with CTFP guidelines.
7. For right-of-way acquisition costs, we reviewed supporting documentation to ensure that excess parcels acquired with Program funds were properly accounted for and any net proceeds from disposal of these parcels were returned to OCLTA in proportion to the amount of Measure M2 funds used in the purchase.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

8. We reviewed the Project start date and completion date to determine whether the Project was encumbered prior to the end of the programmed FY and completed within the three-year timeframe required by CTFP guidelines; or, whether there was evidence of approval for an extension to the timeframe. We also reviewed the final report date to determine that the County submitted the final report to OCLTA within 180 days of Project completion, as required by CTFP guidelines.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023

Detailed Results

Our audit disclosed the following:

Compliance with Competitive Contracting Requirements

We reviewed documentation evidencing that the County complied with competitive contracting requirements except when selecting OCWR for Project mitigation work totaling \$960,170.

Separate Project Fund

The County recorded costs of the Project under Activity Codes ER09018 and ER16012 in the Road Fund (Fund 115).

Accounting and Cash Management Procedures

The County established adequate controls to ensure that Project funds were used only for approved Project costs. Costs charged to the Project were reviewed and approved by the project manager. Payments from OCLTA were tracked separately within the accounting system.

Project Costs and County Documentation

The County incurred costs totaling \$62,579,553 for the Project. The Project funding consisted of CTFP funds of \$18,773,866 and \$43,805,687 from the County. The County's required 30 percent match was met, funding for construction change orders did not exceed ten percent of the total construction costs, funding for project management costs did not exceed 15 percent of total construction costs, and funding for project management overhead costs did not exceed 30 percent of project management labor charges, as outlined in CTFP guidelines. In addition, total mitigation costs did not exceed 50 percent of total construction costs.

Internal Audit tested expenditures totaling \$16,603,665 and determined the expenditures were properly supported, approved, recorded, and in accordance with the contract and/or CTFP requirements, except for mitigation costs that were incurred after the allowable five-year funding period and after project completion, as reported in the County's final report. A total of \$468,644.83 in mitigation costs were incurred after project completion and after the five-year funding deadline approved by the OCLTA Board. Despite this, OCLTA staff approved reimbursement toward these costs in the amount of \$140,593.45, on June 9, 2022.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

Use of Local Agency Forces

No construction phase work was performed by local agency personnel.

Right-of-Way Acquisition

There was no right-of-way acquired during the construction phase of this project.

Project Completion

The construction phase of the Project was programmed for funding in FY 2013-14. Contract work was awarded on December 10, 2013, which was prior to the programming deadline. The Project was completed on December 4, 2018, per the County's final report, which was within the three-year timeframe, plus the two-year extension, approved by the OCLTA Board. The final report was submitted to OCLTA on May 28, 2019, which was within 180 days after Project completion, in accordance with CTFP guidelines. However, Internal Audit noted that contractor mitigation expenditures totaling \$468,644.83 were incurred after both Project completion and the five-year funding period deadline.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

Audit Comments, Recommendations, and Management Responses

Non-Compliance with Competitive Bidding Requirements

The County selected OCWR for Project work totaling \$960,170 without utilizing a competitive procurement process, as required by CTFP guidelines. The OCLTA reimbursed \$288,051 towards these costs.

CTFP guidelines state that, “Agencies should select consultants based upon established contract management and applicable public contracting practices....as well as competitive bidding environments for construction contracts.”

Recommendation 1:

Internal Audit recommends the County implement controls to ensure all contractors are competitively procured, in accordance with CTFP guidelines.

Management Response (County):

The County agrees with the comment and recommendation provided by Internal Audit. Controls will be implemented to ensure all contractors are competitively procured, in accordance with CTFP guidelines.

Mitigation Expenditures Past Allowable Funding Period

The County submitted Project mitigation costs totaling \$468,644.83 that were incurred after the project completion date and after the five-year extended funding period approved by the OCLTA Board. OCLTA staff approved reimbursement of 30 percent of these costs, totaling \$140,593.45.

CTFP guidelines require funds to be used within three years of contract award, with a provision for the Board to approve a one-time delay of up to 24 months. In June 2016, the OCLTA Board approved an extension to the Project funding period for 24 months through December 2018. The County submitted a final report dated May 28, 2019, indicating a project completion date of December 4, 2018. CTFP guidelines define project completion as “the date all final invoices have been paid and any pending litigation has been adjudicated for either the engineering phase or for the right-of-way phase, and all liens/claims have been settled for the construction phase”. However, subsequently, the County submitted costs for reimbursement that were incurred under additional contracts for mitigation after December 2018 and beyond the five-year Board-approved funding period.

**ORANGE COUNTY TRANSPORTATION AUTHORITY
INTERNAL AUDIT DEPARTMENT
Comprehensive Transportation Funding Programs
County of Orange
May 8, 2023**

OCLTA staff indicated that, in this circumstance, rather than using the date of the construction contract award (for measuring the three-year, plus two-year approved extension period), staff considered the dates of subsequent contract awards made for mitigation services and, for those contract expenditures, considered a new three-year period from the date of the subsequent contract awards. This interpretation, and extended funding period, was not brought to the OCLTA Board for approval.

Recommendation 2 (OCLTA Management):

Internal Audit recommends management enforce timely use of funds requirements or obtain Board approval for exceptions to the CTFP guidelines.

Management Response (OCLTA Management):

Management agrees with the audit findings, and staff will consider ways to avoid future occurrences of allowing multiple contracts within a single project to be tracked according to their timeline needs by either clarifying the CTFP Guidelines or seeking a Board action on a case-by-case basis. The next set of CTFP Guidelines revisions is planned to go to the Board in the summer of 2023, where adjustments will be made to clarify the timely use of funds requirements.

As background, this Project presented notable distinctions from conventional CTFP construction undertakings, chiefly characterized by using multiple contracts to deliver a \$63 million project. This contrasts with typical CTFP projects where only one primary contract must be tracked. The Project featured a broader scale of implementation elements, evidenced by its new roadway construction through an area with utility and geological challenges. Finally, the Project's overall timeline was protracted compared to the usual duration of CTFP projects. For example, this Project required mitigation efforts and a monitoring period beyond the five years allowed under CTFP rules.

These complexities were not sufficiently understood at the onset when the OCLTA Board considered the project for funding.

It should also be noted that OCLTA carefully reviewed all expenditures to confirm the eligibility of all the costs for this \$63 million project. As a result of that careful review and confirmation of eligible versus ineligible costs, OCLTA could only support reimbursing the County for \$8,553,865.88 out of the original \$10,000,000 award. Thus, the additional time beyond a five-year period was only used to conclude the mitigation work necessary to deliver the Project per its regulatory approval requirements.