

DEPARTMENT OF TRANSPORTATION**DIVISION OF LOCAL ASSISTANCE**

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*Making Conservation
a California Way of Life.*

November 20, 2018

Mr. Darrell Johnson
Chief Executive Officer
Orange County Transportation Authority
P.O. Box 14184
Orange, CA 95863-1584

Dear Mr. Johnson:

This letter notifies Orange County Transportation Authority (OCTA) of the California Department of Transportation's (Caltrans) determination for corrective actions regarding deficiencies identified by Audits & Investigations' (A&I's) Incurred Cost Audit, issued on April 26, 2016.

Finding 1: Questioned and Unallowable Right of Way Costs

OCTA improperly paid construction costs in the amount of \$553,293 to relocate and/or replace improvements pertaining to realty affected by the Orangethorpe Grade Separation (Orangethorpe) and State Route (SR) 22 projects.

- OCTA claimed \$181,690 in unallowable costs for reestablishment costs of businesses affected by Orangethorpe.
- OCTA claimed \$342,996 in questioned costs for inappropriately reimbursed general contractor costs and relocation and/or replacement improvements that exceeded fair market value for businesses affected by Orangethorpe.
- OCTA received reimbursement in the amount of \$28,607 for a payment to Southern California Gas Company to relocate a meter in the SR 22 project. Appropriate documentation was not provided.

At the request of the Division of Local Assistance (DLA), a reconciliation was performed by District 12 Right of Way, whereby OCTA produced documentation to support \$102,900 of the questioned costs for Orangethorpe, reducing OCTA's questioned cost liability for the Orangethorpe project from \$553,293 to \$450,393.

Corrective Action: OCTA will reimburse Caltrans the total remaining amount of \$450,393 of ineligible costs for the Orangethorpe and SR 22 projects by May 2, 2019. DLA will work with OCTA to recover costs in the time allotted.

Finding 2: Right of Way Policy and Procedure Exceptions

OCTA's Right of Way (R/W) policies and procedures were not in conformance with federal and state regulations for property acquisitions.

Corrective Action: OCTA must revise its Real Property Policies and Procedures Manual to include the following provisions:

- Property required for projects will be obtained through negotiation and in conformance with the Uniform Act.
- Federal law shall take precedence over state law when there are proceeds from the sale of excess property purchased with federal funds, and said proceeds shall be used for transportation purposes.
- Property owners must sign personal property inventories to ensure the certification of true and complete representation of all personal property to be relocated. Should a property owner refuse to sign, their refusal will be well documented in the file and parcel diary.
- Full signature will be required in relocation parcel diaries.
- A Quality Assurance component will be incorporated for R/W processes with each R/W consultant contract.

DLA will work with OCTA to ensure policies are clearly contained in OCTA's Real Property Policies and Procedures Manual by May 2, 2019.

Finding 3: Contract Management Practices Need Improvement

OCTA did not properly manage two of its professional services contracts.

- Oversight was not provided to ensure that consultants were providing services and billing appropriately under the terms, conditions, and specifications of the contracts.
- OCTA's third-party contracts did not contain federal and state required contract provisions.
- Improper management of the contracts resulted in a total of \$140,138 in disallowed and questioned costs.

Corrective Action: DLA and the Division of Rail and Mass Transportation (DRMT) have decided not to seek full reimbursement for the entire questioned amount for improper procurement. Consistent with the handling of similar findings on local agency contracts procured during this review period, the amount of \$140,138 is being addressed programmatically as concurred by the Federal Highway Administration (FHWA). DLA has updated the consultant selection guidance in Chapter 10 of the Local Assistance Procedures Manual (LAPM), and

developed A&E procurement training for local agencies to address the deficiencies observed statewide. Corrective actions include:

- OCTA must provide DLA with updates to their procurement and contract management procedures for concurrence by May 2, 2019. These updates must address at a minimum: written scopes must clearly define project locations and work to be performed, costs incurred must be allocated to the correct project, contract amendments must occur prior to contract expiration, reimbursed costs must be eligible per contract terms, and all required contract provisions need to be included in the contract. OCTA may refer to Chapter 10 of the LAPM for guidance on procurement and contract management procedures.
- OCTA staff involved with procurement and contract management must take Caltrans DLA online Procurement A&E Contracts training at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm>
- OCTA will provide a list to DLA of the staff who have completed the Procurement A&E Contracts training Modules 1-5. The list shall contain staff names, phone numbers, e-mail addresses, date(s) of completion and verification signature by the OCTA staff's supervisor.

Finding 4: Construction Management Practices Need Improvement

OCTA approved unsupported extra work construction costs, charged extra work to the incorrect contract change orders, did not enforce certain construction contract provisions, and was not consistent in following its own policy regarding construction quantity sheets resulting in questioned costs of \$16,038.

Corrective Action: DLA has decided not to seek reimbursement for the entire questioned amount for improper procurement. The amount of \$16,038 is being addressed programmatically as concurred by FHWA. DLA has updated the contract and procurement management Chapter 10 of the LAPM, and developed A&E procurement training for local agencies to address the deficiencies observed statewide. Corrective actions include:

- OCTA must provide DLA with updates to their procurement and contract management procedures for concurrence by May 2, 2019. These updates must address at a minimum: Construction change orders must be verified to reconcile to work performed, verification of work invoiced to work performed and OCTA must list the name of the reviewer of the construction calculation and quantity sheets. OCTA may refer to Chapter 10 of the LAPM for guidance on procurement and contract management guidance.
- OCTA staff involved with procurement and contract management must take Caltrans, DLA online Procurement A&E Contracts training at <http://www.dot.ca.gov/LocalPrograms/AE/index.htm>.
- OCTA will provide a list to DLA of the staff who have completed the Procurement A&E Contracts training Modules 1-5. The list shall contain staff names, phone numbers, e-mail

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addresses, date(s) of completion and verification signature by the OCTA staff's supervisor.

Summary of Actions:

OCTA must complete the following:

- Reimburse Caltrans \$450,393 of ineligible R/W costs by May 2, 2019.
- Update OCTA's Real Property Policies and Procedures Manual based on corrective actions in Finding 2 by May 2, 2019.
- Provide DLA with updated procurement and contract management procedures for approval.
- Provide a list to Paula Bersola of the staff who have completed the Procurement A&E Contracts training Modules 1- 5. The list shall contain staff names, phone numbers, e-mail addresses, date(s) of completion, and a verification signature by the County staffs' supervisor.
- Take Caltrans, Division of Local assistance online Procurement A&E Contracts training at <http://www.dot.ca.gov/hq/LocalPrograms/AE/index.htm>.

Please submit all corrective action documentation and any questions to Paula Bersola, Division of Local Assistance, at (916) 651-8911 or paula.bersola@dot.ca.gov.

Sincerely,



RIHUI ZHANG, Chief
Division of Local Assistance

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- c: Janet Sutter, Executive Director, Internal Audits, Orange County Transportation Authority
Michael Tritz, Deputy Secretary for Audits and Performance Improvement, California State Transportation Agency
Rodney Whitfield, Director, Financial Services, Federal Highway Administration
Susan Bransen, Executive Director, California Transportation Commission
Adnan Maiah, Acting District Director, District 12, Caltrans
Xiaolan Zhou, Deputy District Director, Division of Planning and Local Assistance, District 12, Caltrans
Tifini Tran, District Local Assistance Engineer, Division of Local Assistance, District 12, Caltrans
Ricky Rodriguez, Office Chief, Office of Right of Way and Land Surveys, District 12, Caltrans
Nancy Kataoka, Acting Chief, Division of Accounting, Caltrans
Dara Wheeler, Chief, Division of Rail and Mass Transportation, Caltrans
Ray Zhang, Division Chief, Division of Local Assistance, Caltrans
Mark Samuelson, Assistant Division Chief, Division of Local Assistance, Caltrans
MarSue Morill, Chief, External Audits-Local Governments, Audits and Investigations, Caltrans