



**January 9, 2019**

**To:** Finance and Administration Committee

**From:** Darrell Johnson, Chief Executive Officer  
Janet Sutter, Executive Director  
Internal Audit Department

**Subject:** State of California, Department of Transportation, Incurred Cost Audit - Orange County Transportation Authority

### **Overview**

The California Department of Transportation, Division of Local Assistance, has issued a letter notifying the Orange County Transportation Authority of their determination of required corrective actions to be taken to address deficiencies identified in the State of California, Department of Transportation, Incurred Cost Audit, issued April 26, 2016. The Orange County Transportation Authority has been asked to reimburse \$450,393 of right-of-way costs, revise policy and procedure manuals, and obtain staff training by May 2, 2019.

### **Recommendation**

Direct staff to work with the California Department of Transportation, Division of Local Assistance, and to address corrective action recommendations.

### **Background**

In June 2014, the Audits and Investigations Division of the California Department of Transportation (Caltrans) began an incurred cost audit of five Orange County Transportation Authority (OCTA) projects funded through Caltrans. The projects included the Interstate 5 High-Occupancy Vehicle (HOV) project, the Kraemer Avenue Grade Separation project, the Orangethorpe Grade Separation project, the Sand Canyon Grade Separation project, and the State Route 22 HOV project. Funding sources included Congestion Mitigation and Air Quality Improvement funds, Trade Corridor Improvement Funds, and Regional Surface Transportation Program funds.

The audit included review of OCTA's financial management system and transaction testing to ensure compliance with the Caltrans Local Assistance Procedures Manual, and various state and federal regulations.

Fieldwork began in June 2014 and was completed during July 2015. The final audit report was issued to Caltrans' Deputy Director of Modal Programs in April 2016 and required that a corrective action plan be submitted. The corrective action plan, dated September 16, 2016, was issued and indicated that Caltrans' would work with OCTA to further evaluate the recommendations, determine whether certain costs should be recovered, and enhance policies and procedures within six to nine months.

### ***Discussion***

On November 20, 2018, Caltrans' Division of Local Assistance (DLA) issued a determination letter detailing corrective actions to be taken by OCTA to address issues identified in the audit from June 2014. The audit covered \$73,745,434 of reimbursed project costs related to five OCTA projects. The determination letter directs OCTA to reimburse Caltrans for \$450,393 in right-of-way costs (0.61 percent of the total reimbursement), and to revise its Real Property Policies and Procedures Manual and its procurement and contract management procedures, and submit them to Caltrans for approval. Finally, the letter directs OCTA staff involved with procurement and contract management to take Caltrans' online procurement training and submit confirmation to Caltrans. Corrective action documentation is to be submitted to Caltrans by May 2, 2019.

Regarding disallowed right-of-way costs, OCTA management and legal counsel disagree with Caltrans fundamental interpretation of relocation assistance law with respect to actual, reasonable, and related expenses for business relocations. The primary disagreement is on the eligibility of costs which are either reasonable expenses for Improvements Pertaining to Realty, or are determined to be actual reasonable and necessary reestablishment expenses at the new business locations. At the time of these business relocations, Federal law limited payments for reasonable and necessary reestablishment expenses related to Improvements Pertaining to Realty at the new location to \$10,000 per business relocation. However, Federal law does not limit necessary actual reasonable and related expenses for reestablishment of personal property at the new business location. Trade fixtures, equipment, machinery, and other items installed for use to conduct the same business at the new location determined to be personal property owned by each of the businesses are eligible for relocation and reestablishment reimbursement when not acquired. The costs associated to relocate these items were determined by OCTA, as the implementing and displacing Agency, to be necessary, actual, reasonable and

related expenses to be reimbursed upon relocation. The costs for these items were not included in the appraised value for the property or business acquisitions.

Caltrans' interpretation is that Improvements Pertaining to Realty are part of the real estate, and the costs to relocate these businesses are not reasonable and related expenses. Caltrans has determined many of the reestablishment expenses should be classified as Improvements Pertaining to Realty, and that total reimbursement should have been limited to \$10,000 per business.

OCTA management strives to minimize hardships and adverse impacts to people and businesses being displaced, and to maintain the economic and social well-being of the community effected by these public projects. In addition, OCTA assures that any unique circumstances of displaced persons or businesses are considered and dealt with fairly and in accordance with State and Federal relocation assistance laws. When relocation of a business is required because of a project, OCTA has followed this premise when interpreting the Federal Regulations.

Federal Regulation 49 CFR 24.301 (g)(1) states "Any owner-occupant or tenant who qualifies as a displaced person (defined at §24.2(a)(9)) and who moves from a dwelling (including a mobile home) or who moves from a business, farm or nonprofit organization is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary."

Federal Regulation, 49 CFR 24.301 (g)(3) states that eligible and actual moving expenses include," Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property. For businesses, farms or nonprofit organizations this includes machinery, equipment, substitute personal property, and connections to utilities available within the building; it also includes modifications to the personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property."

Further, Federal Regulation 49 CFR 24.301 (g)(7) states "Other moving-related expenses that are not listed as ineligible under Sec. 24.305, as the Agency determines to be reasonable and necessary."

OCTA's management and relocation assistance consultants, acting as the displacing Agency, have determined that payments to the relocated businesses to relocate their personal property and Improvements Pertaining to Realty were

actual reasonable and necessary in accordance with State and Federal relocation law.

In addition, both the Real Property Policies and Procedures Manual and procurement and contract management procedures have been revised and updated since the audit period (between July 2011 and December 2013), and OCTA management believes current procedures provide an adequate framework to ensure compliance with State and Federal law and guidelines.

OCTA management is reviewing the determination letter and will develop a response within the timeframe requested.

***Summary***

Caltrans DLA has issued a determination letter related to the incurred cost audit of funds awarded to OCTA on five projects.

***Attachment***

- A. Letter from Rihui Zhang, Chief, Division of Local Assistance, to Darrell Johnson, Chief Executive Officer, Orange County Transportation Authority, dated November 20, 2018

**Prepared by:**



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