State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: DENIX D. ANBIAH
Chief
Division of Local Assistance

Date: January 29, 2010

File: P3000-381

From: GERALD A. LONG
Deputy Director
Audits and Investigations

Subject: Final Audit Report – Review of the Local Assistance Program

Attached is Audits and Investigations' final audit report on the Review of the Division of Local Assistance Program. Your response has been included as part of our final report.

Please provide our office with status reports on the implementation of your audit finding dispositions 60, 180, and 360 days subsequent to the report date. If all findings have not been corrected within 360 days, please continue to provide status reports every 180 days until the findings are fully resolved.

We thank you and your staff for their assistance provided during this review. If you have any questions or need additional information, please call Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107, or me at (916) 323-7122.

Attachments

c: Randell H. Iwasaki, Director
Cindy McKim, Chief Deputy Director
Martin Tuttle, Deputy Director, Planning and Modal Programs
Lee Taubeneck, Deputy District Director, Planning/Local Assistance, District 4
James McCarthy, Deputy District Director, Planning and Public Transportation, District 7
William Mosby, Deputy District Director, Planning, District 8
Robert Copp, Chief, Division of Traffic Operations
Sharon Scherzinger, Chief (Interim), Division of Transportation Planning
Clark Paulsen, Chief, Division of Accounting
Laurine Bohamera, Chief, Internal Audits, Audits and Investigations
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P3000-0381
Review of the Local Assistance Program
January 2010

Gerald A. Long
Deputy Director
Audits and Investigations
California Department of Transportation

REVIEW REPORT

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Summary

Audits and Investigations (A&I) has completed a review of the California Department of Transportation's (Department) Local Assistance Program (LAP). The purpose of the review was to evaluate the internal controls within the LAP, which includes the Division of Local Assistance (DLA) and District Offices, and Local Program Accounting (LPA), to determine whether policies, procedures, and processes are in place to meet the program's requirements, with an emphasis on Proposition 1B (Prop 1B).

The review disclosed the following findings:

- Improvement Needed in Oversight of Locally Administered Projects.
- Potential Conflict of Interest.
- Noncompliance with Existing Procedures.
- Existing Procedures and Processes Requiring Update.
- Unclear Policies and Procedures for Prop 1B Projects.
- Information on Prop 1B Reporting is Not Validated.
- Weaknesses with Baseline Agreements.

Background

LAP oversees more than one billion dollars annually, available to over 600 cities, counties, and regional agencies for the purpose of improving their transportation infrastructure or providing transportation services. Funding comes from various federal and State programs specifically designed to assist the transportation needs of local agencies and are considered locally administered projects. Annually, over 1,200 new projects are authorized through LAP, of which approximately 700 are construction projects.

LAP consists of the DLA in Headquarters and 12 District Local Assistance Offices. LAP is responsible for assisting local and regional agencies by ensuring specific program requirements are met, project applications are processed, and projects are delivered in accordance with federal and State requirements. LPA is organizationally part of the Division of Accounting, but works closely with LAP, providing accounting support to local agencies for system-wide construction programs and plans, organizing and directing fiscal and budgetary activities for all such programs on local streets and roads.

The Headquarters (HQ) DLA consists of the following eight offices:

- Project Implementation North
- Project Implementation South
- Bridge and Safety Programs
- Resource Management and State Transportation Improvement Program Coordination
- Special and Discretionary Programs

Background (Continued)

- Project Delivery and Accountability
- Policy Development and Quality Assurance
- National Environmental Policy Act Delegation and Environmental Compliance

The Project Delivery and Accountability (PD&A) Office was established to handle Prop 1B programs pertaining to the LAP. Its functions related to Prop 1B include Bond implementation and accountability; working with all stakeholders including the California Transportation Commission (Commission); Metropolitan Planning Organizations, Regional Transportation Planning Agencies, cities and counties on all matters of Bond policies and procedures; and directing compliance with Commission guidelines and legislation, and the Governor's Executive Orders regarding Bond fund accountability.

Deputy Directive 44 (DD-44) titled Federal-Aid and State Funded Highway Local Assistance, issued on July 1, 1995, delegated responsibility and accountability for delivery of local Federal-aid and State-funded projects and programs through minimizing oversight functions in the Department. Therefore, the Department placed responsibility and accountability for Federal-aid and State-funded programs' project delivery on the local agencies that are responsible for delivering their projects in accordance with Federal and State laws, regulations, policies and procedures. The Department provides the local agencies with requested assistance and training to the extent that resources are budgeted by the Legislature.

In addition, with the passage of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, the Department and the Federal Highway Administration (FHWA) entered into a Joint Stewardship and Oversight Agreement (Agreement) for administering the Federal-Aid Highway Program (FAHP). The Agreement recognized an oversight framework between the Department and the local agencies, to which FHWA agreed to allow a number of activities to be delegated to the local agencies, including certain procurement activities.

Objectives, Scope, and Methodology

We performed this review in accordance with the International Standards for the Professional Practice of Internal Auditing. The objectives of the review were to determine whether:

- LAP has clearly defined roles and responsibilities.
- There is an effective and efficient organizational structure to carryout program responsibilities.
- LAP is meeting its roles and responsibilities to its stakeholders.

Objectives, Scope, and Methodology (Continued)

- HQ DLA has policies, procedures, and processes in place to ensure:
  - Achievement of roles and responsibilities.
  - Appropriate stakeholder guidance.
  - Effective control and accountability for funds received and spent.
  - Funds are accurately reported in accordance with applicable requirements.
  - Adequate project monitoring.
  - Proper recordkeeping and documentation by local agencies.
  - Timely delivered projects.
- LAP provides comprehensive project oversight and monitoring.

The scope of the review consisted of evaluating the internal controls within LAP and LPA to determine whether policies, procedures and processes are in place to meet the program's requirements, with a focus on Prop 1B. The procedures followed by LAP had recently been documented in a risk assessment performed by the Department of Finance (DOF). As such, the auditors relied on the risk assessment to the extent possible to avoid duplication of audit effort.

LAP administers the following Prop 1B programs and projects: Traffic Light Synchronization Program, Trade Corridors Improvement Fund, Local Bridge Seismic Retrofit Account, State Local Partnership Program and a minimal amount of Corridor Mobility Improvement Account/Route 99 Corridor Account. Generally, Prop 1B projects follow the same process as regular LAP projects from the time a Master Agreement and/or Program Supplement is originated, with the exception of some additional requirements imposed on Prop 1B projects.

We selected Districts 4, 7, and 8 for testing because these districts were expected to receive a significant amount of Prop 1B dollars.

Conclusion

Our review, which focused on LAP's handling of Prop 1B programs and projects, determined that LAP has policies, procedures, and processes in place to meet the program's requirements, except for the following areas that can be improved:

- Improvement Needed in Oversight of Locally Administered Projects.
- Potential Conflict of Interest.
- Noncompliance with Existing Procedures.
- Existing Procedures and Processes Requiring Update.
- Unclear Policies and Procedures for Prop 1B Projects.
- Information on Prop 1B Reporting is Not Validated.
- Weaknesses with Baseline Agreements.

LAP should address the issues identified in the bullets above, and in more specific detail, in the Findings and Recommendations section of this report.

Views of Responsible Officials

We requested and received a response from the Chief of the Division of Local Assistance. In addition, as the audit results involved the Division of Traffic Operations and the Division of Transportation Planning, we also requested and received responses from those divisions. The program officials, in general, acknowledged our findings and recommendations. Please see the Attachments for the complete responses.

GERALD A. LONG
Deputy Director
Audits and Investigations

April 15, 2009
(Last Day of Audit Field Work)

FINDINGS AND RECOMMENDATIONS

Finding 1 - Improvement Needed in Oversight of Locally Administered Projects

Our review found that the Local Assistance Program (LAP) needs to improve its oversight of locally administered projects to ensure that State and federal requirements are met. Currently, the LAP uses the delegated process authorized by Deputy Directive 44 (DD-44), titled Federal-Aid and State Funded Highway Local Assistance, to oversee local agency performance. During the life of a project, LAP performs project monitoring by having local agencies self-certify their full compliance with applicable State and federal regulations. LAP's direct oversight is limited to performing process reviews of a specific function (i.e. Consultant Selections and Consultant Contract Administration, Roadway Safety Projects, etc.), on a sample basis. District Division of Local Assistance (District DLA) engineers are involved at project inception when they will participate in a field review, and are responsible for processing project documentation, so the project will be eligible for federal funds. In addition, they ensure projects are completed through a final project inspection and approve the final payment of expenditures. The existing process and procedures poses various weaknesses and risks noted below and in Findings 2, 3, and 6.

With the passage of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, the California Department of Transportation (Department) and the Federal Highway Administration (FHWA) entered into a Joint Stewardship and Oversight Agreement (Agreement) for administering the Federal-Aid Highway Program (FAHP), which allows the Department to delegate certain responsibilities to local agencies. However, the Agreement states that the Department is responsible and accountable to FHWA for locally administered federal-aid projects, including delegated activities. In addition, the Department is responsible to FHWA for assuring that local agencies have adequate project delivery systems in place and sufficient accounting controls to properly manage FAHP funds.

During our review, we found that the current framework used by LAP, poses a risk to the Department in the administration of locally administered projects. Specifically, LAP is not:

- Managing day-to-day local project activities by attending all field reviews at project inception; performing field reviews during the life of the project; overseeing local agencies' construction engineers during the construction phase of a project; and ensuring that local agencies submit award packages within 60-days from project award. 49 CFR, Part 18.40 (a) states, in part, that the Department is

Finding 1 - (Continued)

responsible for managing the day-to-day operations of grant and sub-grant supported activities.

- Ensuring progress payment invoices are submitted to the District DLA for review and approval; reviewing progress payments to ensure that expenditures are reasonable and consistent with the project's scope; reviewing and approving cost detail on the progress payments or the final report of expenditures; and performing reviews of indirect rates when billed to the Department.

  The State Administrative Manual, section 8422.1 provides that prior to payment, the agency will determine what items or services involved have been received or provided. In addition, the Department's Accounting Manual states in Chapter 12, Section 2.08, under Receiving Policy that, "The essential aspects of receiving are: 1) Acknowledgement of delivery and receipt of goods or services; and 2) Acceptance, authorization for payment, preparation and submission of receiving documentation to the Division of Accounting . . . receiving staff should accurately verify the receipt of materials and performance of services by vendors."

- Monitoring local agencies' procurement process. 23 CFR, Part 172.9 (a) requires the Department to approve the local agency's written procedures for each method of procurement it proposes to utilize.

- Performing sufficient reviews of State only funded projects. The Local Assistance Procedures Manual (LAPM) also states that the Department administers the implementation of State funded programs and projects for the California Transportation Commission (Commission) and State Legislature.

The Department is responsible and accountable to FHWA for locally administered federal-aid projects, including delegated activities. Inadequate monitoring of local agencies is a high risk to the Department that can lead to projects being federally ineligible, and therefore, subject to repayment of ineligible costs to FHWA.

As a result of DD-44, in 1995, local assistance procedures were re-engineered and, as a result, the LAP work force was significantly reduced. The modified LAP procedures allowed local agencies to perform a self-certification and the Department to rely more on process reviews of a function rather than monitoring individual projects. Recently, the LAP hired additional staff to perform progress invoice and construction reviews in the districts starting October 2009. However,

Finding 1 - (Continued)

we did not validate the new process, because it was put in place after the end of audit fieldwork.

Recommendation

We recommend that LAP:

- Provide adequate project monitoring over local agencies to ensure compliance with State and federal laws and regulations.
- Review and approve progress invoices submitted by local agencies prior to payment to ensure only allowable costs are authorized; and establish consistency within districts of invoice details required.

DLA Response

DLA concurs with bullets 1 and 2 and does not agree with bullets 3 and 4. Please see Attachment I to this report for the complete response.

Auditor's Comment

Based on DLA's response, we added additional information to the Background section and revised the above finding, as applicable.

Although responsibility for 23 CFR, Part 172.9(a), is delegated to the local agency, the Department is still responsible and accountable to FHWA for locally administered Federal-Aid projects, including delegated activities.

DLA states that the implementing agency is responsible for the development and construction of local transportation projects funded with State funds, but the Department has fiduciary responsibilities for state funded projects in accordance with California Government Code 13400. DLA has proposed some corrective actions to partially address the finding.

Finding 2 - Potential Conflict Of Interest

Our review found that LAP needs to better communicate federal regulations and State policies on conflict of interest, and monitor compliance with applicable regulations and policies.

Specifically, we found:

- A potential conflict of interest when a city hired a consultant as its City Engineer from a firm who later performed the design work related to the construction project. The same consultant, acting as the City Engineer, performed the vast majority of the construction engineering for the same project. As a result, the construction contract could be ineligible for as much as $10,047,396 in federal reimbursement, because the relationship

Finding 2 - (Continued)

increases the risk that the City Engineer could overlook defects in the design work.

49 Code of Federal Regulations (CFR) Part 18.36 (b) (3) states grantees and subgrantees will maintain a written code of standards of conduct, governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, or agent of the grantee, or subgrantee, shall participate in selection, or in the award or administration of a contract supported by federal funds, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (i) The employee, officer or agent, (ii) Any member of his immediate family, (iii) His or her partner, or (iv) An organization, which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

The City may not have been familiar with the federal regulations applicable to federally funded projects because the guidelines provided by HQ Division of Local Assistance (DLA) related to conflict of interest were not specific. In September 2008, HQ DLA updated the LAPM related to retaining a consultant as an agency engineer and bringing attention to 49 CFR Part 18.36 (b) (2) regarding conflict of interest.

- We also found that District DLA engineers involved in project ranking and selection do not sign and maintain a copy of the Conflict of Interest certification (Form ADM-3043), and therefore, are not in compliance with the State's Conflict of Interest regulations or with Deputy Directive 09-R3 (DD-09-R3).

  The Department of General Services requires that the Department maintain Form ADM-3043 for every staff person involved in the procurement process. In addition, DD-09-R3 prohibits employees from willfully engaging in any activities that give the appearance of being incompatible or in conflict with their duties as State employees. Compliance with these requirements helps to safeguard State funds and the public's interest.

  According to District DLA engineers, they were not aware of these requirements. As a result, they were not in compliance with departmental policy and could potentially perform duties that are in conflict without their knowledge.

Finding 2 - (Continued)

- Three HQ employees and one district engineer were identified that did not file a Statement of Economic Interest (Form 700), although their positions required that one be filed annually. According to the employees, they were never informed of the requirement.

  The Political Reform Act requires that each State and local agency adopt a conflict of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make. The Department fulfills this requirement by requiring that employees in certain positions fill out a Form 700 annually.

Recommendation

We recommend that HQ DLA:

- Follow-up to determine if the local agency is eligible for the federal reimbursement received on the project discussed. If ineligible, determine if reimbursement from the local agency can be sought.
- Issue further instructions to local agencies requiring them to monitor for potential conflict of interest.
- Issue instructions to District DLA and HQ personnel on departmental policies regarding conflict of interest and monitor their compliance.
- Notify impacted staff of the annual requirement to complete the Statement of Economic Interest and monitor compliance.
- Update the LAPM to require Department employees involved in project ranking and scoring to complete Form ADM-3043 and monitor compliance.

DLA Response

DLA, in general, acknowledges our findings, although disagrees with bullet 1. However, DLA has proposed a number of corrective actions to address the finding. See Attachment I for the complete response.

Finding 3 - Non-Compliance with Existing Procedures

HQ DLA has established many tools and procedures for LAP to carry out its responsibilities. However, LAP lacks sufficient processes, and in some cases, resources, to ensure compliance with these procedures. Without processes in place to ensure compliance, LAP runs the risk of reimbursing local agencies for ineligible project costs. We noted the following instances of noncompliance with established procedures.

Finding 3 - (Continued)

- The Program Supplement requires that local agencies submit a complete award package to the District Division of Local Assistance Engineer (DLAE), within 60 days after award of the construction contract, and that a copy of the award package be included with the local agency's first construction invoice submitted to LPA. In addition, the LAPM requires the award package be submitted immediately to the DLAE. An award package includes construction award information on a construction contract, including disadvantaged Business Enterprise (DBE) information. Our review identified one district that did not ensure that local agencies submit award packages within the required timeframe. Specifically, an award package was submitted late, and when the award package was eventually submitted, HQ DLA discovered the contract documents included a DBE goal when it should have been race neutral. This made the contract ineligible for federal reimbursement. As a result, the contract and $1,134,720, which had already been reimbursed to the local agency, were ineligible for federal reimbursement. As of the end of fieldwork, no steps had been taken to recover the ineligible costs.

- A Cooperative Agreement (Coop) is necessary for locally administered projects located on the State Highway System (SHS), since it serves to protect the Department on work performed on the SHS. The LAPM requires the Coop to be executed prior to requesting the Authorization to Proceed, which allows the local agency to start work on the project. Our review identified a project that was granted an exception to proceed in May 2008, prior to the Coop execution. The exception was granted by the Division of Design (Design) because the district stated that the Coop was under development. However, as of April 21, 2009, HQ DLA still had not received the executed Coop. Without an executed Coop, unapproved work may be done on the SHS and increase the State's liability. In addition, costs may be incurred without an understanding of who will be responsible for them.

  More over, the lack of the Coop prevented HQ DLA from executing the Program Supplement (PS), which allows funds to be encumbered and enables the local agency to bill the Department for work performed. In this particular project, the local agency was unable to bill due to the lack of an executed PS. FHWA requires invoicing of projects within a certain timeframe. In order to monitor project inactivity, HQ DLA produces the

Finding 3 - (Continued)

Looking Ahead Report to identify inactive projects and provide the local agency an opportunity to take actions. Projects with no invoicing during the allowed timeframe will be considered inactive and be included in the FHWA quarterly Inactive Report. Due to the lack of billing, this project was placed in the Looking Ahead Report and potentially could end up on the Inactive Report. **Projects on the Inactive Report for more than a quarter without adequate justification are in jeopardy of losing their federal funds.**

- In 2005, HQ DLA issued a policy requiring local agencies to invoice State and federal funded projects at least every six months, in an effort to reduce the level of project inactivity. However, we found that procedures were not fully developed; roles and responsibilities were not clearly defined and communicated and were never included in the LAPM. As a result, although reports are being produced identifying projects with no billings within the last six months, there is no monitoring to determine the reason for project inactivity.

  Our review found that as of May 15, 2009, District 4 had 237 projects, District 7 had 295 projects, and District 8 had 117 projects with executed PSs, but no billings in the last six months. The PSs state that if there is no invoicing within six months, the State could potentially suspend future funding. However, without adequate monitoring, compliance with the PS's terms is not being enforced. In addition, as State and federal funds become more limited, it is important to maximize them for other projects. Excess funding on these projects could be made available for use on new transportation projects.

- The LAPM and PS both state that the local agency is responsible for preparing and submitting the final report of documents that collectively constitute a "Report of Expenditures" within six months of project completion. However, there is no established procedure and the DLAEs are not consistently monitoring to ensure compliance with this requirement. We tested 16 projects, of which 11 were closed and final billed. We found that seven of the 11 projects were final billed between 225 to 330 days after project completion, instead of within 6 months (180 days) as required. As a result, excess funding tied up in these projects is not available for use on other projects.

- The LAPM requires the performance of maintenance reviews to ensure that federal-aid highway projects are maintained at an

Finding 3 – (Continued)

acceptable level of physical integrity and operation as required by FHWA. Either throughout the year or during the month of October, the DLAE, or his/her designated representative is to review a sample of completed local agency federal-aid projects, to determine a local agency's maintenance of effort on federal funded projects. Upon completion of the maintenance review, the DLAE is to forward a consolidated report of the findings to HQ DLA, by the first of December, to ensure reviews are performed by all districts.

Our review found that HQ DLA does not compile the required maintenance reviews received from the District DLA Offices that are to be submitted annually to FHWA. To illustrate, in March 2009, we requested a copy of the 2008 reviews performed by the three districts tested and found that the reviews performed by one district were done subsequent to our request date. According to HQ DLA, they stopped compiling districts' maintenance reviews when they found that FHWA was not using them.

- The LAPM requires the DLAE to perform periodic process reviews and inspection of local agency project files, during construction, for compliance with State and federal requirements. However, there is no monitoring to ensure that the process reviews and the inspections are performed. In addition, there are no required procedures, and no supporting documentation of work performed. The DLAE's lack of monitoring to ensure that local agencies are in compliance with their self-certifications, increases the risk that the LAP will be unable to detect noncompliance with State and federal requirements timely. According to HQ DLA, the DLAEs only get involved with process reviews when they are assisting Headquarters.

Recommendation

We recommend that HQ DLA comply with existing procedures by:

- Ensuring the MA/PS include the required fiscal provisions.
- Establishing procedures to ensure award packages are submitted timely.
- Establishing procedures to identify ineligible costs and ensure they are reimbursed to the Department timely.
- Ensuring the Coops are executed prior to requesting the Authorization to Proceed. If an exception is granted, ensure the PS is not executed, and the projects are identified and monitored to ensure the PS is executed in a reasonable timeframe.

Recommendation (Continued)

- Establishing roles and responsibilities to ensure that local agencies invoice at least once every six months, or provide written justification.
- Ensuring monitoring and enforcement of the invoicing policy and incorporating the policy and procedures in the LAPM.
- Establishing monitoring procedures to ensure the timely submittal of the Final Report of Expenditures.
- Ensuring the district's maintenance reviews are performed and compiled annually.
- Establishing procedures to ensure the DLAEs are performing process reviews and review/inspection of construction files.

DLA Response

DLA agrees, in general. See Attachment I for the complete response.

Finding 4 - Existing Procedures and Processes Requiring Update

LAP has delegated many procedures to the local agencies, and deferred other tasks, due to limited resources. LAP has new programs that require additional monitoring and accountability. With limited resources and increasing responsibilities, the existing procedures and processes may not be sufficient to meet the new requirements and may require evaluation in the following areas:

- Our review found that HQ DLA's process for updating the Local Assistance Program Guidelines (LAPG) is arduous and burdensome, resulting in untimely communication of changes to users. The LAPG are program specific and provide local project sponsors with a complete description of federal and State programs available for financing local public transportation related facilities. Currently, updates are made by issuing the Local Program Procedures (LPP) as an interim notification until the LAPG can be updated and published as a paper manual. Currently, there are four to eight LPPs per year and it takes approximately four to five months to process each LPP. At the time of our review, there were 17 LPPs waiting to be completed. As a result, users may be using outdated processes and procedures that do not comply with current program requirements. According to HQ DLA, they have maintained the existing manual update process to maintain its formality.

- We noted that district staff, including a critical employee, were not aware of key subjects related to LAP, and therefore, were unable to effectively fulfill their responsibilities, such as providing responses to questions on LAP processes, the Cooperative/Subvention reimbursement process, and completion of Conflict of Interest Statements, when employees are involved in project ranking/scoring, proper review of documents requiring signatures,

Finding 4 - (Continued)

and indirect cost rate approval. According to HQ DLA, the frequency of staff turn-over has contributed to untrained staff. Employees must be properly trained, in order for them to properly perform their assigned duties, and ultimately ensure compliance with program requirements.

- The LAPM describes processes, procedures, documents, authorizations, approvals and certifications, which are required in order to receive federal-aid and/or State funds for many types of local transportation projects. The vast HQ DLA procedures and the frequent additions to the LAPM have resulted in some procedures being contradicting, missing, or lacking clarity and need to be updated as noted below:

  a. Currently, the LAPM requires the notification be provided to local agencies to proceed for each project phase, once the E-76 is approved. However, the LAPM is not specific on the notification method. The LAPM needs to provide guidance on the method district engineers can use to provide the notification (formal letter, email E-76, etc), and what records are to be maintained in the district project file.

  b. The LAPM and Field Review Form (Review Form) do not clearly state what the DLAE signature on the Review Form is attesting to. The LAPM and the Review Form need to be revised to clarify whether the signature indicates that the DLAE attended the field review and is agreeing to the form contents, or if the signature indicates that the field form was reviewed and received.

  c. The LAPM and the PS are not consistent on the date when the local agency must submit the complete award package to the Department. The LAPM states in two sections that the award package must be submitted to the DLAE immediately after the award of the contract. However, the PS states that the award package must be submitted to the DLAE within 60 days after the project contract award. Either the PS or the LAPM needs to be modified so they are consistent.

  d. Currently, the LAPM requires invoices to include a section to show indirect rates, if indirect costs are billed. However, it does not require local agencies to certify that no indirect costs are included when no indirect rate is shown on the bill. Without a certification, there is no assurance that indirect costs are not included in the amount being billed to the Department,

Finding 4 - (Continued)

which would result in over-billing of costs. The LAPM needs to be updated to require certification that no indirect costs are included, if none are billed.

e. The sample final billing invoice, exhibit 17-D, on Chapter 17 of the LAPM does not include a line item for indirect costs billed and needs to be updated. The change will allow the sample final billing invoice to be consistent with the billing invoice formats included in Chapter 5. Also, the MA, exhibit 4-C, and PS, exhibit 4-D, include a sample copy of the older version of MA and PS, and they should be updated to reflect current versions.

f. HQ DLA produces the Looking Ahead Report to manage inactive projects. However, the LAPM does not currently include the related processes and procedures for managing inactive projects for staff to follow. The manual should be updated.

g. The Final Report of Expenditures (FROE) has three issues needing clarification. First, the FROE package requires a form entitled Final Detail Estimate that is actually reporting final actual expenditures rather than estimated costs. The form name should be revised to correctly reflect the form content. Second, the LAPM should clarify the due date of the FROE. Currently, the LAPM states that the FROE due date is 180 days from project completion, but in practice, it is interpreted as 180 days from the project acceptance date. Third, the LAPM lacks clarity on the effect of noncompliance with the requirement to submit the FROE within 180 days of project completion.

h. The LAPM includes an audit requirement threshold on the MAs for State Funded projects, which appears to be based on the prior threshold of $300,000 for Single Audits. The threshold has since been increased to $500,000. The LAPM needs to be updated to reflect the change.

i. The LAPM needs to provide the same contract management oversight requirements on State funded projects as it does for the federally funded projects. According to the District DLA Offices, they perform less oversight for the State funded projects due to less oversight requirements in the LAPM.

Recommendation

We recommend that HQ DLA:

- Evaluate the LAPG updating process to ensure the timely updates.
- Ensure District DLA staff receive adequate training.
- Update the LAPM with items "a "to "i" as noted above.

DLA Response

DLA agrees, in general. See Attachment I for the complete response.

Finding 5 - Unclear Policies and Procedures for Prop 1B Projects

The HQ DLA Project Delivery and Accountability Office (PD&A), lacks clear policies and procedures to define the roles and responsibilities of those involved in the bond programs to ensure adequate administration and compliance with bond program requirements. We noted the following:

- The Traffic Light Synchronization Program (TLSP) lacks procedures to process project amendments, project monitoring, and close-out audits.

- The Trade Corridors Improvement Fund (TCIF) program has no written documentation identifying the responsible parties for the performance and/or submittal of the corrective action plans, amendment process, final delivery report/supplement to final delivery report, and to provide project completion information to A&I for required audits.

- An executed TCIF baseline agreement could not be located within the Department for more than two months. As a result, funds could not be made available to a local agency. When the baseline agreement was eventually found, the Pooled Money Investment Board had stopped state funding for new projects, and the Department could not commit funds to the local agency.

- The Local Bridge Seismic Retrofit Account (LBSRA) program lacks procedures for submitting the final delivery report, and the supplement to the final delivery report to the Commission.

- Funding for four LBSRA projects was sub-allocated, prior to the program guidelines being adopted.

  The PSs for some of the LBSRA projects were executed prior to the full development of the LBSRA program guidelines. For these PSs, requirements were issued under a separate letter referencing only the PS accountability paragraph. Once the program guidelines were finalized, HQ DLA did not modify the PSs that were already

Finding 5 - (Continued)

executed to fully incorporate the requirements. As a result, these PSs do not require adherence to the guideline requirements of project baseline agreements, final delivery report, supplement to the final delivery report, or the audits of project expenditures.

Executive Order S-02-07 requires the Department be accountable for ensuring that Prop 1B funds are spent efficiently, effectively, and in the best interests of the people of the State of California.

The Department's Bond Program has the lead in implementing the Prop 1B program. Currently, there are no defined roles and responsibilities between the Department's Bond Program and the PD&A Office. This increases the risk that the Department will not be able to fulfill its responsibility for the Bond Program.

Recommendation

We recommend that HQ DLA's PD&A Office establish clear policies and procedures for the bond programs under its responsibility.

DLA Response

DLA acknowledges the audit finding and has either planned or taken corrective actions to address the issues. See Attachment I for the complete response.

Auditor's Comment

Subsequent to the issuance of the draft report, it came to our attention that some TCIF responsibilities had been moved to the Division of Transportation Planning (DOTP). DOTP has provided a response to the audit finding. See Attachment II for the response.

The finding related to TLSP is addressed and monitored by the Division of Traffic Operations (Traffic Ops) in the Final Report – Division of Traffic Operations Program Evaluation, P3000-0383.

Finding 6 - Information on Prop 1B Reporting is not Validated

The PD&A Office is reporting the bond activities through the Local Assistance – Online Data Information System (LA-ODIS). However, we noted that HQ DLA does not monitor the information reported on LA-ODIS to ensure the validity and accuracy of the data reported by the implementing agencies. In addition, HQ DLA does not monitor to determine if the project costs billed are in accordance with the work performed.

Instead, LAP relies on its existing monitoring process as described in Finding 1. Given the LAP's inadequate project monitoring over local agencies, the reporting process established for the bond program, LA-ODIS, is not sufficient. The Department is unable to ensure the validity of the reporting included in the bond accountability Web site.

Finding 6 - (Continued)

The Prop 1B Guidelines require the implementing agencies to submit quarterly reports on the activities and progress made toward the implementation of the project to the Commission, who will forward the reports, on a semiannual basis, to the Department of the Finance. The TCIF, TLSP, and LBSRP Guidelines all state that the purpose of the quarterly delivery reports is to ensure projects are being executed in a timely fashion and are within the scope and budget identified when the decision was made to fund the project.

HQ DLA believes its role is to collect and provide the information to the Commission and that the Commission had accepted its reporting process. However, in communicating with the Commission, its staff stated that they were not involved in accepting the LA-ODIS reports and that its staff had communicated concerns regarding the LA-ODIS reporting to the Department's Bond Program Office. The Commission expressed concerns regarding the formatting, validity of data, and the need for the data to be certified by the sponsoring agency.

Recommendation

We recommend that HQ DLA:

- Require the sponsoring agency to certify the contents of the LA-ODIS reporting as true and accurate to the best of their knowledge. The certification can be done by adding a section to LA-ODIS for an electronic signature or having the agency submit a written signed certification.
- Either include in the quarterly reports a disclaimer stating that the information is provided exactly as submitted by the sponsoring agency and the contents are not validated for accuracy and correctness; or review and approve progress invoices in conjunction with the review of data reported on the LA-ODIS.

DLA Response

DLA acknowledges the audit finding and has either planned or taken corrective actions to address the issues. See Attachment I for the complete response.

Finding 7 - Weaknesses with Baseline Agreements

Each Prop 1B project is required to have an executed baseline agreement. We reviewed 21 baseline agreements, and noted the following issues:

- Baseline agreements do not contain sufficient information to determine measurable expected performance benefits. Based on the information contained in the baseline agreement, it is difficult to determine how to measure the achievement of specific goals. This increases the risk that projects are not adequately accountable for the expected performance benefits and that project goals are met.

Finding 7 - (Continued)

- Baseline agreements were not executed within the required three months of project adoption. We found that the TLSP baseline agreements were executed as much as eight months late, the TCIF baselines agreements were executed more than eight months late, and the LBSRA baseline agreements were executed two months late. As a result, execution of the baseline agreements was not in compliance with program guidelines.

- The LBSRA program does not execute baseline amendments to the baseline agreements at the same level of authority as the original baseline agreement. While the baseline agreements are signed by the Department Director and the sponsoring agency's department Director, the amendments are only signed by the HQ DLA Program Coordinator and the sponsoring agency's project manager. As a result, changes could be made without the knowledge of the person who entered into the original agreement without formal delegation of authority.

- Documentation for the amendments to some baseline agreements was missing. HQ DLA increases the risk that amendments are not justified and supported.

The TLSP, TCIF, and LBSRA Guidelines all require that within three months after the adoption of projects, the Department and the implementing agency will execute a project baseline agreement, which includes the project scope, benefits, and delivery schedule.

Recommendation

We recommend that HQ DLA ensure that:

- Baseline agreements contain sufficient information to determine measurable expected performance benefits.
- Baseline agreements be executed within three months as required.
- Amendments to baseline agreements be signed at the same level of authority as the original baseline agreements or a formal delegation of authority be executed.
- Adequate supporting documentation be retained to substantiate amendments processed.

DLA Response

DLA acknowledges the audit finding and has either planned or taken corrective actions to address the issues. See Attachment I for the complete response.

Auditor's Comment

Subsequent to the issuance of the draft report, it came to our attention that some TCIF responsibilities had been moved to DOTP. DOTP has

Auditor's Comment (Continued)	provided a response to the audit finding. See Attachment II for the response to the audit finding. The finding related to TLSP is addressed and monitored by Traffic Ops in the Final Report – Division of Traffic Operations Program Evaluation, P3000-0383.
Audit Team	Laurine Bohamera, Chief, Internal Audits Zilan Chen, Audit Supervisor Luisa Ruvalcaba, Auditor Mary Lam, Auditor

ATTACHMENT I

DIVISION OF LOCAL ASSISTANCE
RESPONSE TO THE DRAFT REPORT

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

Flex your power!
Be energy efficient!

To: GERALD A. LONG
Deputy Director
Audits and Investigations

Date: January 27, 2010

File:

From: DENIX D. ANBIAH, Chief
Division of Local Assistance

Subject: Response to Draft Report – Evaluation of Local Assistance Program

Attached is the Division of Local Assistance response to Audits and Investigations, December 2009, "Review of the Local Assistance Program" findings.

If you have any questions or need additional information, please contact Mohsen Sultan, Chief, Office of Policy Development and Quality Assurance at (916) 653-3581 or *Mohsen.Sultan@dot.ca.gov*.

Attachment

DIVISION OF LOCAL ASSISTANCE (DLA)
RESPONSE TO FINDINGS
RESULTING FROM
CT A/I EVALUATION OF DLA PROGRAM - P3000-381

FINDING NO. 1
...LAP is not:

- *Managing day-to-day local projects activities by attending all field reviews at project inception; performing field reviews during the life of the project; overseeing local agencies' construction engineers during the construction phase of a project; and ensuring the local agencies submit award packages within 60-days from project award. 49 CFR, Part 18.40 (a) states, in part, that the Department is responsible for managing the day-to-day operations of grant and sub-grant supported activities.*

- *Ensuring progress payment invoices are submitted to the DLAE for review and approval, reviewing progress payments to ensure that expenditures are reasonable and consistent with the projects' scope; reviewing and approving cost detail on the progress payments or the final report of expenditures, and performing reviews of indirect rates when billed to the Department.*

- *Monitoring local agencies' procurement process, 23 CFR, Part 172.9 (a) requires the Department to approve the local agency's written procedures for each method of procurement it proposes to utilize.*

- *Performing sufficient reviews of State only funded projects.*

Response to Finding No. 1

Bullet No. 1:

DLA is following established oversight procedures in accordance with FHWA & Department Joint Stewardship and Oversight Agreement, 2007, Deputy Directive DD-44, "Federal-Aid and State Funded Highway Local Assistance, July 1, 1995,, and the LAPM. We concur that the LAP is not managing day-to-day activities of locally administered projects, but that is because it is not required of LAP to do so, in accordance with the aforementioned documents. However, we are working with FHWA and local agencies on finding deficiencies in our oversight of local agencies and correcting through the Local Oversight Action Plan (LOAP), which will be finalized by September 30, 2011. Recently, the Department has added seven (7) new construction oversight positions, at the Senior Transportation Engineer Level, in response to a LOAP recommendation for construction oversight on Recovery Act projects. This new staff will be assigned specific oversight tasks, as agreed upon by FHWA. We are working with the Department's Division of Budgets and Department of Finance to fund additional oversight positions to perform oversight on all federal-aid projects. If DLA is not successful in acquiring additional positions, the Department will have to evaluate the risk and make a department wide decision.

Bullet No. 2:

We agree with this finding.

The review period of this audit of the LAP was from November 2008 to April 15, 2009. New procedures for the review and approval of Local Agency invoices have since been implemented by DLA's Office Bulletin 09-05, "Progress Invoice Review" which was effective September 1, 2009.

The development and implementation of new invoice review/approval procedures was delayed due to a huge increase ($1.6 B in federal funds) in statewide Local Assistance project implementation workload associated with implementing the regional share of the American Recovery and Reinvestment Act of 2009.

The new Local Agency invoice review/approval procedures require that local agency submit invoices (progress and final) directly to the Caltrans District Local Assistance Engineer (DLAE) for review and approval prior to forwarding the invoice to Local Programs Accounting (LPA) for additional review and payment.

The purpose of review by the DLAE of the local agency invoice is to ensure:

- Federal and State eligibility of the invoiced costs, including:
  - work is consistent with approved scope of project
  - work is eligible for reimbursement
  - compliance with Federal and State procedures/requirements

- Local agency invoice documentation supports the costs invoiced

- Level of work performed is consistent with invoiced costs

Local agency indirect cost rates are approved by Caltrans Audits and Investigation prior to the reimbursement of local agency invoice indirect costs. Local Programs Accounting will verify that local agency indirect cost rates have been approved prior to approving any invoice cost for reimbursement of indirect cost.

Bullet No. 3:

We do not agree with this finding.

According to the Joint Stewardship and Oversight Agreement between Caltrans and FHWA, the responsibility for 23 CFR 172.9 is delegated to the local agency.

Please refer to Page B-3 of Appendix B to the Stewardship Agreement, under PS&E and Advertising.

Bullet No. 4:

We do not agree with this finding.

DLA **is** complying with State laws and CTC Guidelines for the oversight of State-funded projects.

Under State law, the implementing agency is responsible for development and construction of local transportation projects funded with State funds (i.e., the DLA is not responsible for oversight of these activities). For example, the local agency is responsible for compliance with CEQA and the State Contract Act).

In addition, the new DLA "Invoice Review" process requires that ALL project invoices (Federal and State funded) be reviewed by the DLAE and LPA prior to payment. An "Invoice Review Checklist" includes reference to the need for executed funding agreements, CTC allocations prior to beginning work, STIP Timely Use of Funds deadlines, executed environmental documents, etc.

DLA procedures do require that the local agency submit a Final Project Expenditure Report. This report includes a certification, by the DLAE, that the project was constructed in accordance with the approved scope of work.

FINDING NO. 2

- *A potential conflict of interest when a city hired a consultant as its City Engineer from a firm who later performed the design work related to the construction project. The same consultant, acting as the City Engineer, performed the vast majority of the construction engineering for the same project. As a result, the construction contract could be ineligible for as much as $10,047,396 in federal reimbursement, because the relationship increases the risk that the City Engineer could overlook defects in the design work.*

- *We also found that District DLA engineers involved in project ranking and selection do not sign and maintain a copy of the Conflict of Interest certification (Form ADM-3043), and therefore, are not in compliance with the State's Conflict of Interest regulations or with Deputy Directive 09-R3 (DD-09-R3).*

- *Three HQ employees and one district engineer were identified that did not file a Statement of Economic Interest (Form 700), although their positions required that one be filed annually. According to the employees, they were never informed of the requirement.*

Response to Finding No. 2

Bullet No. 1:

We do not agree with this finding. FHWA has determined that it is permissible for the City Engineer, Design Engineer and Construction Management Engineer to all be from the same consulting firm. However, DLA will investigate the local agency referenced above to ensure that the City Engineer was acting in conformance with 49 Code of Federal Regulations (CFR) Part 18.36 (b) (3) and that no conflict of interest has occurred. Due to the various complexities and interviews that need to take place prior to making a final determination, DLA does not anticipate a decision until September 30, 2010. If needed, DLA will request Audits an Investigation to conduct an audit on this particular agency.

Bullet No. 2:

Deputy Directive DD-09-R3 assigns responsibilities to Division Chiefs and District Directors but not to Program Managers. Therefore, it is the District Directors' responsibility that the District DLA engineers are in compliance with DD-09-03. However, DLA will take the following action to be proactive on this matter:

The responsible program coordinators will remind all District DLA Engineers that ADM-3043 is required and needs to be signed by all employees involved with the ranking and selection of projects.

Bullet No. 3:

The HQ Division of Local Assistance has had a notification process in place to remind employees to file their Conflict of Interest Statement of Economic Interest (Form 700) annually. This notification is sent in March of each calendar year to all designated employees who are required to file Form 700.

The supervisors of these four employees will discuss this requirement with them at the next annual update so that they are informed of this requirement and ensure compliance.

FINDING NO. 3

HQ DLA has established many tools and procedures ... to carry out its responsibilities. However the Local Assistance Program (LAP) lacks sufficient processes, and in some cases, resources, to ensure compliance with these procedures. Without processes in place to ensure compliance, LAP runs the risk of reimbursing local agencies for ineligible project costs. We noted the following instances of noncompliance with established procedures.

- *The Program Supplement (*Agreement*) requires that local agencies submit a complete award package to the Division of Local Assistance Engineer (DLAE) within 60 days after award of the construction contract, and that a copy of the award*

package be included with the local agency's first construction invoice submitted to LPA. In addition, the LAPM (Local Assistance Procedures Manual) *requires the award package be submitted immediately to the DLAE. An award package includes construction award information on a construction contract, including disadvantaged Business Enterprise (DBE) information. Our review identified one district that did not ensure that local agencies submit award packages within the required timeframe. Specifically, an award package was submitted, HQ DLA discovered the contract documents included a DBE Goal when should have been race neutral. This made the contract ineligible for federal reimbursement. As a result, the contract and $1,134,720 which had already been reimbursed to the local agency, were ineligible for federal reimbursement. As of the end of fieldwork, not steps had been taken to recover the ineligible costs.*

- *A Cooperative Agreement (COOP) is necessary for local administered projects located on the State Highway System (SHS), since it serves to protect the Department on work performed on the SHS. The LPAM requires the COOP be executed prior to requesting the Authorization to Proceed which allows the local agency to start work on the project. Our review identified a project that was granted an exception to proceed in May 2008, prior to the COOP execution. The exception was granted by the Division of Design (Design) because the District stated that the COOP was under development. However, as of April 21, 2009, HQ DLA still had not received the executed COOP. Without an executed COOP, unapproved work may be done on the SHS and increase the State's liability. In addition, costs may be incurred without an understanding of who will be responsible for them.*

  More over, the lack of the COOP prevented HQ DLA from executing the Program Supplement (Agreement)(PSA*), which allows funds to be encumbered and enables the local agency to bill the Department for work performed. For this particular project, the local agency was unable to bill due to the lack of an executed PSA. FHWA requires invoicing of projects within a certain timeframe. In order to monitor project inactivity, HQ DLA produces the "Look Ahead Report" to identify* potentially *inactive projects and provide the local agency an opportunity to take actions. Projects with no invoicing during the allowed timeframe will be considered inactive and be included in the FHWA quarterly Inactive Report. Due to a lack of billing, this project was placed on the "Look Ahead Report" and potentially could end up on the Inactive Report.* ***Projects on the Inactive Report for more than a quarter without adequate justification are in jeopardy of losing their funds.***

- *In 2005, HQ DLA issued a policy requiring local agencies to invoice State and federal funded projects at least every six months, in an effort to reduce the level of project inactivity. However, we found that procedures were not fully developed; roles and responsibilities were not clearly defined and communicated and were never included in the LAPM. As a result, although reports are being produced identifying projects with no billings within the last six months, there is no monitoring to determine the reason for project inactivity.*

- *The LAPM and PS both state that the local agency is responsible for preparing and submitting the final report of documents that .collectively constitute a "Report of Expenditures" within six months of project completion. However, there is no established procedure and the DLAEs are not consistently monitoring to ensure compliance with this requirement. We tested 16 projects, of which 11 projects were closed and final billed. We found that seven of the 11 projects were final billed between 225 to 330 days after project completion, instead of within 6 months (180 days) as required. As a result, excess funding tied up in these projects is not available for use on other projects.*

- *The LAPM requires the performance of maintenance reviews to ensure that federal-aid highway projects are maintained at an acceptable level of physical integrity and operation required by FHWA.*

- *The LAPM requires the DLAE to perform periodic process reviews and inspection of local agency project files, during construction, for compliance with State and federal requirements.*

Response to Finding No. 3

Bullet No. 1:

Options are being investigated to ensure timely submittal of the contract award package within an appropriate and reasonable time frame. LAP is also actively engaged in discussions with the FHWA regarding this matter to ensure their concurrence is obtained. Regarding the use of federal project construction contract documents that included a DBE Goal when Race Neutral contract special provisions were applicable, Caltrans has notified the City of Alhambra [FPN "STPL-5130(012)"] that the project is ineligible for federal funds and the City is in the process of repaying $ 1,134,720 in federal funds.

Bullet No. 2:

DLA concurs with this finding No. 3, Bullet No. 2.

An executed Cooperative Agreement between the local agency and Caltrans is required prior to Federal Authorization to Proceed (E-76) whenever there is an exchange of funds or effort between the local agency and State for projects on the SHS funded with federal subvention and/or State funds.

The requirement for an executed Cooperative Agreement prior to federal authorization (E-76) is designed to protect the Department as a whole, not just the Division of Local Assistance. Any exception to this requirement is granted by the Division of Design, not the Division of Local Assistance.

However, occasionally circumstances warrant a locally administered State Highway project receive Federal Authorization to Proceed prior to execution of a Cooperative Agreement.

The Caltrans Division Chief for the DLA is working with the Division Chief for Design to establish procedures to ensure the timely execution of a Cooperative Agreement in this situation. This will facilitate the execution of the Program Supplement Agreement (PSA) necessary to reimburse the local agency.

The projected completion date for developing the new procedures is April 30, 2010.

WRT to the Division of Local Assistance's "Look Ahead Report". This is a proactive report used to help minimize the number of potentially inactive projects in the future. The DLA works with the Districts to notify local agency project sponsors of invoicing inactivity. For clarification, deobligated federal funds due to invoicing inactivity may be reobligated at a later date if project circumstances warrant and FHWA concurs.

Bullet No. 3:

DLA recognizes that the policies regarding invoicing every six months are being neither monitored nor enforced. Currently, only 23 CFR 106 regulations are being monitored and enforced (invoicing required every 12 to 36 months based on the project's unexpended balance). DLA will determine if the existing provisions in the Master Agreement need to be revised or consider available options to enforce these provisions.

The DLA will look at available options to enforce the six month invoicing policy and make a decision how to proceed by April 2010.

Bullet No. 4:

DLA concurs with this Finding.

The purpose for submitting a FROE within 180 days of project completion is to facilitate the timely close-out of Local Assistance subvention funded projects. This is not a federal requirement.

In years past, when all project subvention funds had been reimbursed, it was difficult to require a local agency to submit its FROE (little incentive for the local agency since all project funds had been received). To assist in this effort:

- The current Federal Master Agreement, Article "IV FISCAL PROVISIONS", Clause No. 10 states that the STATE will withhold the greater of either two (2) percent of the total of all Federal Funds encumbered for each PROGRAM SUPPLEMENT or $40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT. This is currently being enforced.

- Remaining federal funds can be deobligated from the project unless a FROE is submitted by the local agency
- Can require that all Local Assistance subvention funds be returned unless a FROE is submitted by the local agency

All FROEs for the projects tested have been submitted and the projects closed out. Although all FROEs are not always submitted within the 180 day time limit, there has been significant improvement in local agency submittal of FROEs.

The Office of Project Delivery and Accountability (PD&A) will be expanding its current Inactive Project monitoring activity to include monitoring and compliance with the 180 day time limit for local agencies to submit the FROE. The Office of PD&A intends to implement this new activity by April 2010.

Bullet No. 5:

We concur with the finding. FHWA had not required the submission of Maintenance Reviews by DLA in recent years. Upon recent inquiries from DLA, FHWA has asked that these reviews be submitted. On January 25, 2010, DLA requested that DLAEs begin compiling maintenance reviews and sending them to HQ. If HQ does not receive these reviews from the District within 90 days, HQ will follow up with the DLAEs to ensure those reports are completed.

Bullet No. 6:

We concur with this finding. The existing process was previously approved by the FHWA. However, HQ DLA has recently added 7 new Senior Transportation Engineer limited term positions to oversee construction practices of local agency ARRA projects. Six of these positions are physically located in the Districts, while the seventh is located in HQ and acts as the statewide Construction Oversight Coordinator. All seven positions are under the Office of Policy Development and Quality Assurance in HQ. The Construction Oversight Coordinator in HQ, will randomly select projects and provide guidance to the six (6) Construction Oversight Engineers, to ensure field reviews are consistently done throughout California. The Construction Oversight Engineers will review local agency construction records and practices for compliance with the LAPM and report back to the Construction Oversight Coordinator.

FINDING NO. 4

Our review found that HQ DLA's process for updating the Local Assistance Program Guidelines (LAPG) is arduous and burdensome, resulting in untimely communication of changes to users. The LAPG are program specific and provide local project sponsors with a complete description of federal and State programs available for financing local public transportation related facilities. Currently, updates are made by issuing the Local Program Procedures (LPP) as an interim notification until the LAPG can be updated and published as a paper manual. Currently, there are four to eight LPPs per year and it takes approximately four to five months to process each LPP. At the time of our review, there were 17 LPPs waiting to be completed. As a result, users may be using outdated processes and procedures that do not comply with current program requirements. According to HQ DLA, they have maintained the existing manual update process to maintain its formality.

We noted that district staff, including a critical employee, were not aware of key subjects related to LAP, and therefore, were unable to effectively fulfill their responsibilities, such as providing responses to questions on LAP processes, the Cooperative/Subvention reimbursement process, and completion of Conflict of Interest Statements, when employees are involved in project ranking/scoring, proper review of documents requiring signatures, and indirect cost rate approval. According to HQ DLA, the frequency of staff turn-over has contributed to untrained staff. Employees must be properly trained, in order for them to properly perform their assigned duties, and ultimately ensure compliance with program requirements.

The LAPM describes processes, procedures, documents, authorizations, approvals and certifications, which are required in order to receive federal-aid and/or State funds for many types of local transportation projects. The vast HQ DLA procedures

*and the frequent additions to the LAPM have resulted in some procedures being contradicting, missing, or lacking clarity and need to be updated...*The report goes on to site 8 examples.

Response to Finding No. 4

Bullet No. 1:

DLA is aware of this issue. We have implemented the DLA Office Bulletin (OB) as a solution to ensure timely dissemination of new or revised policy (or procedure) to our customers and stakeholders. We have also instituted a paperless LAPM distribution policy, which will help streamline the process and save cost. Additionally, DLA is in the process of hiring one additional person to help expedite manual and other publications updates.

Bullet No. 2:

We concur with this finding. Because of the State mandated furloughs, DLA is unable to provide training. If the furloughs end, DLA will begin developing and providing the necessary training to LAP staff.

Bullet No. 3:

We concur with this finding. Due to the State mandated furloughs, we are delaying all non-essential LPPs. However, HQ DLA has already taken steps to become more efficient (such as converting to paperless LPPs) and will continue to take steps in the coming months to streamline the process to reduce the backlog of pending LPPs. Addionally, we are presently in the process of hiring a new employee with primary responsibility in this area.

FINDING NO. 5

- *The Traffic Light Synchronization Program (TLSP) lacks procedures to process project amendments, project monitoring, and close-out audits.*
- *The Trade Corridors Improvement Fund (TCIF) program has no written documentation identifying the responsible parties for the performance and/or submittal of the corrective action plans, amendment process, final delivery report/supplement to final delivery report, and to provide project completion information to A&I for required audits.*
- *An executed TCIF baseline agreement could not be located within the Department for more than two months. As a result, funds could not be made available to a local agency. When the baseline agreement was eventually found, the Pooled Money Investment Board had stopped state funding for new projects, and the Department could not commit funds to the local agency.*
- *The Local Bridge Seismic Retrofit Account (LBSRA) program lacks procedures for submitting the final delivery report, and the supplement to the final delivery report to the Commission.*
- *Funding for four LBSRA projects was sub-allocated, prior to the program guidelines being adopted.*
- *The PSs for some of the LBSRA projects were executed prior to the full development of the LBSRA program guidelines. For these PSs, requirements were issued under a separate letter referencing only the PS accountability paragraph. Once the program guidelines were finalized, HQ DLA did not modify the PSs that were already executed to fully incorporate the requirements. As a result, these PSs do not require adherence to the guideline requirements of project baseline agreements, final delivery report, supplement to the final delivery report, or the audits of project expenditures.*

Response to Finding No. 5

The DLA concurs with the auditor's findings for the first two bullets. The DLA will be working with the respective Program Coordinators for the TLSP in the Division of Traffic Operations (TOPS) and TCIF program in the Division of Transportation Planning (DOTP) by March 2010 to address these findings. At the time of this

audit, the DLA was only responsible for accepting the project status data input into LA-ODIS by the agencies and forwarding this information to the respective Program Coordinators.

At the Direction of the Bond Program Manager, the DLA is now responsible for the "corrective action plans" and "baseline agreement amendments" for the TCIF program. With completion of the MOU with the DOTP, the DLA will work with the DOTP to develop policies and procedures consistent with the DOTP requirements for these same activities handled by the other Divisions having TCIF projects. The DLA intends to have these findings completed by March 2010.

With regard to the third bullet, the DLA acknowledges the finding. The processing and execution of TCIF baseline agreements are not handled within the DLA.

With regard to the fourth bullet, the DLA will follow-up with CTC staff and the Bond Program Manager to work on the development of the format and content of the final reports. The DLA intends to have this task complete by May 2010.

The DLA concurs that the funding for the four LBSRA projects was sub-allocated prior to the CTC guidelines were developed and adopted. These four projects have been completed. The DLA will work with the CTC staff to determine how best to meet the Bond reporting requirements. The DLA will meet with the CTC staff February 2010.

With regard to the sixth bullet, DLA concurs that some Program Supplements (PSs) were executed prior to full adoption of the LBSRA program guidelines. The DLA will research these PSs for on-going LBSRA projects and will issue amended covenant language to address the LBSRA program guidelines and accountability requirements by end of March 2010.

FINDING NO. 6

The PD&A Office is reporting the bond activities through the Local Assistance – Online Data Information System (LA-ODIS). However, we noted that HQ DLA does not monitor the information reported on LA-ODIS to ensure the validity and accuracy of the data reported by the implementing agencies. In addition, HQ DLA does not monitor to determine if the project costs billed are in accordance with the work performed.

Response to Finding No. 6

While Local Agencies are responsible for reporting accurate data, the DLA staff monitors the Prop 1B program related data reported on LA-ODIS for reasonableness. The DLA implemented the auditor's recommendation for this finding by adding a data certification requirement field in LA-ODIS, January 5, 2010.

With regard to the Auditor's comment on DLA's role in monitoring that project costs billed are in accordance with the work performed, the DLA recently implemented an invoice review process to ensure costs billed are consistent with the work performed. This activity was implemented September 1, 2009.

With regard to the last paragraph concerning the DLA's roles and responsibilities for the various bond programs, the DLA will work the CTC staff, Bond Program Manager and Bond Program Coordinators to clarify and document the respective roles, responsibilities and deliverables, by March 2010. The first meeting occurred January 2010 to begin development of the roles and responsibilities for the TCIF program.

FINDING NO. 7

Each Prop 1B project is required to have an executed baseline agreement. We reviewed 21 baseline agreements, and noted the following issues:

- *Baseline agreements do not contain sufficient information to determine measurable expected performance benefits. Based on the information contained in the baseline agreement, it is difficult to determine how to measure the achievement of specific goals. This increases the risk that projects are not adequately accountable for the expected performance benefits and that project goals are met.*

- *Baseline agreements were not executed within the required three months of project adoption. We found that the TLSP baseline agreements were executed as much as eight months late, the TCIF baselines agreements were executed more than eight months late, and the LBSRA baseline agreements were executed two months late. As a result, execution of the baseline agreements was not in compliance with program guidelines.*

- *The LBSRA program does not execute baseline amendments to the baseline agreements at the same level of authority as the original baseline agreement. While the baseline agreements are signed by the Department Director and the sponsoring agency's department Director, the amendments are only signed by the HQ DLA Program Coordinator and the sponsoring agency's project manager. As a result, changes could be made without the knowledge of the person who entered into the original agreement without formal delegation of authority.*

- *Documentation for the amendments to some baseline agreements was missing. HQ DLA increases the risk that amendments are not justified and supported.*

Response to Finding No. 7

The DLA acknowledges the findings noted in the first two bullets. The contents and information contained in the baseline agreements for the TLSP and TCIF program were obtained by CTC staff and the DOTP. The DLA will work with the CTC staff and DOTP staff to review and identify performance parameters that can be measured. The DLA intends to complete this task by March 2010. The DLA acknowledges that the baseline agreements for the TLSP, TCIF and LBSRA programs were executed late. The TLSP and TCIF programs are administered by the TOPS and DOTP.

The stated above, DLA is not responsible for the content, processing, or execution of baseline agreements for the TCIF and TLSP programs. As to the baseline agreements and amendments for the LBSRA program, the DLA has adopted a revised amendment process that was approved by the Bond Program Manager (who has delegated authority to sign the original agreements). The revised amendment process was also discussed with the appropriate CTC staff. All amendments require appropriate supporting documentation to be submitted and retained.

We agree that the baseline agreements for LBSRA projects do not contain sufficient information to determine measurable expected performance benefits; however, since LBSRP is not a new program, the existing guidelines and requirements address the measurable performance benefits. Based on chapter 7 of the Local Assistance Program Guidelines (LAPG), bridges that were originally screened into this program are analyzed for seismic deficiencies. The result of the analysis and recommended scopes of retrofit are presented to a strategy committee in a strategy meeting. Strategy committee selects the most cost effective strategy to seismically retrofit the bridges. All the analysis, recommended strategy, cost estimates and approved scope of work is documented in a final strategy report for each bridge and all the documents are kept in the project file. To insure that nothing beyond the approved scope of work is included in the final plans, specifications, and estimate (PS&E), a copy of 100% PS&E must be submitted to structures local assistance (SLA) for concurrence. Projects will not be authorized for construction until DLA has received the concurrence letter from SLA.

Exhibit 6-D, the document used as amendments to the baseline agreements for LBSRA, and supporting documents are kept in the project files.

ATTACHMENT II

DIVISION OF TRANSPORTATION PLANNING
RESPONSE TO THE DRAFT REPORT

Review of the Local Assistance Program
TCIF Program Response

Finding 5- Unclear policies and procedures for Proposition 1B projects

- The Trade Corridor Improvement Fund (TCIF) has no written documentation identifying the responsible parties for the performance and/or submittal of the corrective action plans, amendment process, final delivery report/supplement to final delivery report, and to provide project completion information to Audits and Investigations (A&I) for required audits.

Response:

The TCIF Program is in the process of preparing a written process and procedure for TCIF project managers, to ensure compliance with the bond accountability requirements at the project reporting level. This process and procedure will include the proper project reporting procedure, environmental document submission, baseline amendment process, funding request process, close out reporting process and list all of the information required to perform a final audit. A conference call is scheduled for January 19, 2010 to go over the procedure with all of the project managers responsible for projects in the TCIF program. A written process and procedure for the TCIF program will be provided to A&I by March 1, 2010.

- An executed TCIF baseline agreement could not be located within the department for more than two months.

Response:

All executed baseline agreements have now been electronically scanned and are in the possession of the TCIF Program. An electronic copy can be made and sent to the requestor as soon as the request is received.

- There are no defined roles and responsibilities between the Department's Bond Program and the HQ DLA Project Delivery and Accountability Office.

Response:

The TCIF Program has developed a Memorandum of Understanding with the Division of Local Assistance for the TCIF Program. This MOU lists each element the Division will be held responsible for in order fulfill the accountability requirements for the TCIF portion of the Proposition 1B program. A copy of the signed MOU will be sent to A&I.

Finding 7 Weakness with Baseline Agreements

- Baseline agreements do not contain sufficient information to determine measurable expected performance benefits. Based on the information contained in the baseline agreements, it is difficult to determine how to measure the achievement of specific goals. This increases the risk that projects are not adequately accountable for the expected performance benefits and that project goals are met.

Response:

TCIF baseline agreements were submitted directly to the California Transportation Commission (CTC). Caltrans provided direction early in the project selection process to the CTC and the local agencies on the necessary performance agreements and how each project would need to identify measureable performance outputs and outcomes. Upon receipt of the baseline agreements by program staff, several projects were found to be deficient in sufficiently identifying measurable performance outputs and outcomes. The Department will be requesting baseline agreement amendments for any project that does not identify measureable performance outputs and outcomes in its original baseline agreement. Caltrans will also request that the amended baseline agreements be signed at the same level of authority as the original baseline agreement. A review of all of the TCIF baseline agreements will be undertaken in February and any sponsors that have failed to provide performance outputs and outcomes will be instructed to submit an amended baseline agreement with the appropriate outputs and outcomes as required under Proposition 1B. We expect to have amended baseline agreements in place by August 1, 2010.

- Baseline agreements were not executed within the required three months of project adoption. The TCIF baseline agreements were executed more than eight months late. As a result, execution of the baseline agreements was not in compliance with the program guidelines.

Response:

Six projects in the TCIF program involved negotiating MOUs between the freight railroads and the project sponsor agencies before baseline agreements could be prepared. Because this is a new process for the railroads, the Department, and other sponsor agencies, these MOUs required a much longer lead time than a standard baseline agreement for highway projects. Two additional baseline agreements were completed in December 2009. The TCIF program cannot predict when the remaining four baseline agreements will be completed, but we are working with the project sponsors to get them completed as soon as possible.