



**October 15, 2010**

**To:** Finance and Administration Committee  
**From:** Will Kempton, Chief Executive Officer  
**Subject:** Santa Ana Freeway (Interstate 5) Gateway Project Audit

**Overview**

Agreed-upon procedures have been performed in relation to a cooperative agreement between the Orange County Transportation Authority and the California Department of Transportation for improvements to the Santa Ana Freeway (Interstate 5) between the Riverside Freeway (State Route 91) and the Los Angeles County line. Agreed-upon procedures were also applied to a contract between the Orange County Transportation Authority and Caltrop Engineering Corporation for the same project. Recommendations have been made to improve project management and controls.

**Recommendation**

Direct staff to implement recommendation 3 of the Report of Independent Accountants on Applying Agreed-Upon Procedures.

**Background**

In October 2004, the Orange County Transportation Authority (OCTA) entered into Cooperative Agreement No. C-4-1081 (Agreement) with the California Department of Transportation (Caltrans) whereby Caltrans was to provide right-of-way acquisition, utility relocation, and related support services for improvements to the Santa Ana Freeway (Interstate 5) between the Riverside Freeway (State Route 91) and the Los Angeles County line (I-5 Gateway Project) with OCTA providing funding primarily through Measure M. The original contract value was \$25.3 million. Through several amendments, the Agreement increased to \$59.3 million.

OCTA also entered into contract C-3-0691 (Contract) with Caltrop Engineering Corporation (Caltrop) for construction inspection, survey, and public awareness

services for the I-5 Gateway Project. The maximum obligation under the Contract was \$18 million.

The Internal Audit Plan for fiscal year 2008-09 included an audit of the I-5 Gateway Project. The scope of the audit was refined to include the above referenced Agreement and Contract. The objective of this audit was to determine that costs incurred were in compliance with the Agreement, Contract, and policies and procedures. Through a competitive process, the Internal Audit Department (Internal Audit) employed the professional services firm of Wang Professional Corporation (Wang) to conduct agreed-upon procedures.

### ***Discussion***

#### **Procedures Related to Caltrans Cooperative Agreement No. C-4-1081**

In performing agreed-upon procedures relative to OCTA's Agreement with Caltrans, Wang identified four issues. First, the auditors determined that Caltrans failed to enforce quarterly progress billings from its contractor, Southern California Gas Company (SCG), for utility relocation work under a utility agreement. Wang recommended that Caltrans ensure its contractors comply with the terms and conditions of agreements. Caltrans District 12 agreed with the recommendation, indicating it would elevate the issue to its headquarters so agreement requirements are consistently enforced throughout Caltrans.

Wang's second finding and recommendation relate to the same utility Agreement. Based on documentation available for review, Wang recommended that OCTA recover \$105,923 from Caltrans for unsupported gas line relocation charges. Caltrans disputed the finding so Internal Audit reviewed additional documentation after Wang issued its report. The issue relates to an amendment to the Agreement that was not executed at the time relocation work was performed in 2005 and 2006. In October 2005, Southern California Gas Company (SCG) submitted an estimate of costs to Caltrans. Included in total costs was an estimate of \$123,162 for construction work. Several months later, SCG received bids from contractors, with the lowest bid being \$341,000. Caltrans did not initiate an amendment until 2008 when SCG invoiced. Caltrans should review its utility relocation process to ensure that amendments are executed in a timely manner and in accordance with its policy and procedures.

The third finding and recommendation by Wang relates both to the SCG utility agreement noted above as well as other utility relocation work performed by Caltrans for the I-5 Gateway Project. Wang noted several occasions where Caltrans approved payments of utility invoices prior to review by the senior resident engineer and contrary to Caltrans policies and procedures. Caltrans

responded that it is subject to the California Prompt Payment Act which allows only 45 days to process payments, but added that it will remind its staff of the requirement that the resident engineer review invoices prior to payment. Wang also recommended that OCTA verify approval by the Caltrans senior resident engineer prior to making payments and OCTA management agreed.

Wang's final finding related to the Agreement cites inadequate documentation supporting paid invoices. The auditors recommended that Caltrans request additional support for certain costs, such as a \$370,248 invoice from a SCG subcontractor. Caltrans responded that SCG is contractually required to retain such documentation and make it available for audit, but is not required to provide it with its invoice. Internal Audit agrees that significant purchased services should be supported by a detailed invoice; however, Caltrans policy and procedures do not require these controls.

#### Procedures Related to Caltrop Contract No. C-3-0691

Wang made three findings related to OCTA's contract with Caltrop for construction inspection, survey, and public awareness services. First, the auditors determined that Caltrop did not obtain prior written approval from OCTA's project manager for 175 overtime hours billed under the contract and recommended that OCTA recover \$31,253 for these charges. Both Caltrop and OCTA's project manager indicated that this overtime was discussed daily and weekly. In addition, the requirement, which had been included by Caltrop on its rate schedule, was later removed from the contract through an amendment.

Internal Audit has concluded that the project manager waived the preapproval requirement, making recovery of the amount unlikely. However, Internal Audit disagrees that overtime approval should be eliminated from contracts as it serves as an important contractor oversight tool. Internal Audit provided a recommendation within its Limited Scope Review Performed in Relation to an Audit of Interstate 5 Gateway Project Contracts (Limited Scope Review) report that the Contracts Administration and Materials Management (CAMM) Department develop a policy with regard to approval of the elimination of significant contract requirements through amendments. CAMM has updated its policies and procedures accordingly.

Wang also identified \$1,157 of inappropriate charges for meal time. Caltrop indicated that the employees inadvertently omitted meal periods from timesheets. Internal Audit has concluded that employee error is the probable cause of the suspected overbilling and recommends that OCTA waive recovery of this amount.

Finally, during its testing of Caltrop invoices, the auditors identified charges for subcontractor employees who were not identified in the Contract. The Contract's "Schedule I – Hourly Rate Schedule" includes project personnel by name, position, and rate. Changes to the schedule must be approved by OCTA; however, the auditors indicated there was \$724,022 (unaudited) in charges for unapproved individuals.

In its response, Caltrop argued that only "key personnel" required approval. While the addition or removal of key personnel is required under Article 3 of the Contract, Article 5 requires that rates for other personnel also be approved by amendment. Internal Audit has identified similar issues in the past with other OCTA contracts and has, therefore, provided a recommendation in the limited scope review report that OCTA enhance its review of contractor invoices prior to approval. Management agreed with the recommendation.

***Summary***

Agreed-upon procedures have been applied to two I-5 Gateway Project contracts. Recommendations have been made to improve internal controls and contract oversight.

***Attachment***

- A. Report of Independent Accountants on Applying Agreed-Upon Procedures

**Approved by:**



Kathleen M. O'Connell  
Executive Director, Internal Audit  
714-560-5669

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**REPORT OF INDEPENDENT ACCOUNTANTS  
ON APPLYING AGREED-UPON PROCEDURES**

**Applied to Cooperative Agreement No. 12-495**

**OCTA No. C-4-1081**

**With the State of California, Department of Transportation  
For the Period October 28, 2004 through March 10, 2009**

# WANG PROFESSIONAL CORPORATION

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## REPORT OF INDEPENDENT ACCOUNTANTS ON APPLYING AGREED-UPON PROCEDURES

Board of Directors  
Orange County Transportation Authority  
Orange, California

We performed procedures enumerated in Exhibit D, solely to assist Orange County Transportation Authority ("OCTA") in determining whether the project costs incurred by the California Department of Transportation ("Caltrans") under Cooperative Agreement No. C-4-1081, Right of Way & Utilities, and its contractors were in compliance with both the Cooperative Agreement and Caltrans' standard procedures. This engagement to apply agreed-upon procedures was performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified parties of this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The Executive Summary is presented in Exhibit A and the results are presented in Exhibits B and Exhibit C, Schedule of Findings and Recommendations, with total questioned costs of \$138,333. The procedures performed are presented in Exhibit D.

We were not engaged to, and did not conduct an examination, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the use of OCTA, Caltrans, and Caltrop Engineering Corporation and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their own purposes. However, this limitation is not meant to limit the distribution of this report which is a matter of public record.

*Wang Professional Corporation*

October 23, 2009

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit A

### Executive Summary

Orange County Transportation Authority is currently undertaking an Interstate 5 (I-5) Gateway Project (“Project”) to improve the two-mile section of the I-5 from Artesia Freeway (SR-91) to the Orange/Los Angeles County line. OCTA is the primary funding agency for the Project, with Caltrans acting as the lead oversight agency. OCTA contracted with Caltrans for right of way & utility relocation services, construction & engineering services, and landscape design services. OCTA separately contracted with Caltrop Engineering Corporation (“Caltrop”) to provide construction inspection, survey and public awareness services for the Gateway Project. In addition, OCTA also separately contracted with other contractors and cities for various other services. Construction began in 2006 and scheduled completion will be in 2010. Total costs of the Project were approximate \$331,000,000 as of June 30, 2009.

On February 26, 2009, OCTA’s Internal Audit Department engaged us to perform certain agreed-upon procedures on one Cooperative Agreement with Caltrans and one contract with Caltrop. Because of the limited budget, we have selected Utility Agreement No. 12-UT-920 for detailed testing and performed limited procedures enumerated in Exhibit D. The results of the agreed-upon procedures performed and recommendations are as follows:

- We found controls need to be improved on the Cooperative Agreement with Caltrans and the lack of these controls resulted in payments being made to Southern California Gas Company (“SCG”) without authorization and supporting documentation. We recommend that OCTA seek a reimbursement of \$105,923 from SCG via Caltrans for costs claimed by SCG. Caltrans’ written response dated March 18, 2010 was attached to this report.
- We found controls need to be improved on the contract with Caltrop and the lack of these controls resulted in payments being made to Caltrop that were not within the terms and conditions of the contract. We recommend that OCTA seek reimbursement of \$32,410 from Caltrop. Caltrop’s written response dated March 2, 2010 was attached to this report.

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations

#### Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

On October 28, 2004, State of California, Department of Transportation (“Caltrans”) and Orange County Transportation Authority (“OCTA”) entered into Cooperative Agreement (“Cooperative Agreement”, Caltrans No. 12-495 and OCTA No. C-4-1081) to provide right of way capital and support costs with local Measure M funds in connection with the I-5 Gateway Widening Project. OCTA’s total costs were estimated at \$28,286,000. On March 12, 2007, Amendment No. 1 to the Cooperative Agreement was executed to increase OCTA’s total estimated costs to \$36,372,000. On June 18, 2007, Amendment No. 2 to the Cooperative Agreement was executed to increase OCTA’s total estimated costs to \$42,011,000. On March 15, 2008, Amendment No. 3 to the Cooperative Agreement was again executed to increase OCTA’s total estimated costs to \$51,151,000.

As of March 10, 2009 and according to OCTA payment records, OCTA paid \$50,072,795 to Caltrans and its contractors. Out of \$50,072,795, \$25,870,861 was related to Right of Way property acquisition costs, including \$12,920,600 of finalized property acquisition costs and \$12,950,261 of progress billings. Out of the \$12,920,600 finalized property acquisition costs, we judgmentally selected \$10,553,036 or 81.67 percent of total final property acquisition costs as sample files for testing. We did not note any instances of non-compliance in testing property acquisition files.

Out of \$50,072,795, \$14,210,031 was related to Right of Way Utility Relocation costs, including \$3,624,543 of finalized utility relocation costs and \$10,585,488 of progress billings. Out of the \$3,624,543 finalized utility relocation costs, we judgmentally selected \$3,406,550 or 94 percent of total final utility relocation costs as sample files for testing. Utility Agreement No. 12-UT-920 was executed between Caltrans and Southern California Gas Company (“SCG”) on December 13, 2005. SCG was required under the Utility Agreement to perform the utility relocation work in accordance with the terms and conditions of the Utility Agreement. A final payment of \$305,923 was paid to SCG on March 26, 2008 by OCTA at the request of Caltrans. We selected Utility Agreement No. 12-UT-920 for detailed testing. During our testing of the Utility Agreement, we noted the following findings:

1. Caltrans Right of Way Section did not request or enforce required quarterly progress billings from its contractor, SCG, as required under the Utility Agreement.

#### Criteria:

Section IV. “Payment For Work”, Page 2 of the Utility Agreement No. 12-UT-920, states that “*Not more frequently than once a month, but at least quarterly, OWNER will prepare and*

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations (Continued) Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

*submit progress bills for costs incurred not to exceed OWNER's recorded costs as of the billing date less estimated credits applicable to completed work."*

#### Condition:

On December 13, 2005, Caltrans and SCG entered into Utility Agreement No. 12-UT-920 which requires SCG to relocate "one (1) underground two-inch (2") and one (1) underground four-inch (4") Gas Main Line(s) and their related facilities at Artesia Blvd. within the limits of STATE's project". The original estimated total costs for the work performed were \$334,000, of which the State was liable for \$167,000 and SCG was liable for \$167,000. SCG subsequently started the relocation work and did not submit a progress billing to Caltrans between December 13, 2005 and February 13, 2008. On February 14, 2008, SCG submitted first and final invoice under the Agreement in the amount of \$305,923, Invoice No. 95000935, to Caltrans for payment. We reviewed the utility files maintained by Caltrans and we noted that Caltrans Right of Way Section did not request or enforce quarterly progress billing from SCG as was required under the Utility Agreement entered between Caltrans and SCG. Caltrans should have enforced progress bills from SCG at least quarterly to ensure the incurred costs did not exceed the encumbered amount in the Agreement.

#### Recommendation:

Caltrans should ensure its contractors comply with the terms and conditions of the Agreements and enforce quarterly progress billing from its contractors in a timely manner.

2. Caltrans Right of Way Section approved the Second Amendment without justification and approved \$105,923 of payment without any supporting documentation.

#### Criteria:

Section IV. "Payment For Work", Page 3 of the Utility Agreement No. 12-UT-920 requires that Caltrans "***In the event if the final bill exceeds 125% of the estimated cost of this Agreement, an Amended Agreement shall be executed by the parties to this Agreement prior to this payment of the OWNER'S final bill. Any and all increases in costs that are the direct result of deviations from the work described in Section I of this Agreement shall have the prior concurrence of STATE.***" Caltrans Right of Way Manual Chapter 13, Page 89, also requires that Caltrans "***Any significant change to the originally planned and agreed-upon work must be covered by an Amended Utility Agreement, a Revised Notice to Owner (RW 13-4R), and a***

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations (Continued)

#### Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

#### *Supplemental FHWA Specific Authorization before work on the proposed changes commences.”*

#### Condition:

During the performance of work, SCG discovered that approximately 200’ feet of one (1) four-inch (4”) Gas Main Line was overlooked and additional relocation work was required on Firestone Blvd. North of Artesia due to related construction work. On July 14, 2006, SCG submitted a revised relocation plan (Work Order # 77932.007, Work Request # 1676665) to Caltrans for review and approval. Caltrans Senior Design Engineer reviewed and approved SCG’s plan on August 10, 2006. On the same day, Caltrans issued a revised Notice to Owner in accordance with the Right of Way Manual. On August 14, 2006, SCG submitted a Detailed Cost Estimate to Caltrans for review and approval. On August 25, 2006, Caltrans and SCG executed the First Amendment to the original Agreement as follows: “Whereas, in performance of said work, it was discovered that approximately 200’ feet of (1) four-inch (4”) Gas Main Line was overlooked and that additional relocation work is required on Firestone Blvd. North of Artesia due to recent” construction work (Paragraph 2). The First Amendment authorized the estimated total costs for the work at \$400,000, of which the State was liable for \$200,000, an increase of \$33,000 from the original estimated Caltrans costs of \$167,000.

As stated earlier, SCG never submitted a progress billing under this agreement. On January 8, 2008, SCG submitted a revised cost estimate of \$305,923 to Caltrans, which exceeded the \$200,000 amount from the First Amendment of the Utility Agreement. SCG claimed “the additional contract cost was due to the following change orders: Additional pipeline (40’ of 4” & 5’ of 2” over contract) Breaking and potholing slurry 50’ E/o Firestone Downtime due to Gas Co. (had to go to planning for changes). Additional Paving (3118.6 sq. ft. of grind & cap.)”

Caltrans Right of Way Section did not request that SCG provide as-built drawings or any other documentation to verify that additional costs were actually incurred. Instead, one Associate Agent with Caltrans, on January 10, 2008, sent an email to SCG which states: “From the email you sent with the attached estimate it looks like the following items were what caused the addition \$105,923 over the Amended UA agreement of \$200,000 and I just need to know why or what caused there to be these additional costs. It might be easier if I say what I think the reason might be and you can tell me if that is what happened or if there is another reason. Hopefully we can get the justification worked out and I can get the new amendment out to you.”

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Exhibit B**

**Schedule of Findings and Recommendations (Continued)**

**Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081)  
With the State of California, Department of Transportation**

Caltrans Right of Way Section worked out a new amendment with SCG and approved an increase of \$105,923 (from \$200,000 to \$305,923). On February 7, 2008, one week before the first and final invoice, Caltrans and SCG entered the Second Amendment to the Agreement which incorporated exactly the same language provided by SCG as follows: "Whereas, in performance of said work, it was discovered that the existing gas main was too shallow to tie into so the excavation had to be extended until an area of the main was found to be deep enough, approximately 40' feet of four-inch (4") and 5' of two-inch (2") additional pipeline is needed, 50' of breaking and potholing slurry and 3,118.6 square feet of grind and cap is also needed because of the additional pipeline East of Firestone Blvd. North of Artesia due to the recent project" (Paragraph 2).

The following table summarized Caltrans share and SCG share under Utility Agreement No. 12-UT-920 as follows:

Date		Caltrans Share	SCG Share	Total
12/13/2005	Original Agreement	\$167,000	\$167,000	\$334,000
8/25/2006	First Amendment	\$33,000	\$33,000	\$66,000
2/7/2008	Second Amendment	\$105,923	\$105,923	\$211,846
	Total	\$305,923	\$305,923	611,846

During field work, we reviewed the utility files maintained by Caltrans and interviewed Caltrans engineers, including but not limited to Senior Resident Engineer, Utility Engineer, and Design Engineer. Based on work performed, we noted that Caltrans Right of Way Section did not forward any revised utility relocation plans to the Caltrans Senior Design Engineer for review and approval because there were no such plans in the utility files. In fact, both Caltrans Design Engineering Branch and Construction Branch did not know that there was a Second Amendment until we brought it to their attention. Therefore, Caltrans Right of Way Section approved the Second Amendment of \$105,923 without obtaining approval from Caltrans Senior Design Engineer.

At our request, on May 29, 2009, the Caltrans Senior Resident Engineer requested the final As-Built for the work performed from SCG. On July 1, 2009, the Senior Resident Engineer stated, based on his review of final As-Built drawings and original utility relocation plans submitted, "As we discussed earlier today, the SCG as-built drawings are not different than the original construction drawings. The only changes made were the relocation of the portion of line running along the northerly leg of Firestone East north of Artesia Ave." The Senior Resident Engineer further confirmed that the relocation of the portion of line running along the northerly leg of

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations (Continued) Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

Firestone East north of Artesia Ave was not “related to the Second Amendment”. Therefore, Caltrans Right of Way Section approved the Second Amendment without justification and approved \$105,923 of payment without any supporting documentation.

We discussed this finding with Caltrans and Caltrans disagreed with the finding. During the Exit Conference of March 23, 2010, we requested that Caltrans provide any documents, including but not limited to inspector’s diaries, to substantiate the scope of work for the Second Amendment was actually performed.

On April 30, 2010, the Senior Resident Engineer acknowledged that “our diaries for the SCG work along the north leg of Artesia/Firestone East Intersection did not provide any specific details regarding the change in the relocation. Diaries only documented that the work was completed to accommodate the new construction limits of the I-5 Gateway Project.” Therefore, Caltrans was not able to substantiate the scope of work for the Second Amendment was actually performed.

#### Recommendation:

Caltrans should enhance its internal controls over the utility relocation operations and comply with its own policies and procedures. We recommend that Caltrans revise its Right of Way Manual by requiring an approval from Caltrans Design Branch and Construction Branch before Right of Way Section can execute any amendments. We also recommend that OCTA seek a reimbursement of \$105,923 from SCG via Caltrans for costs claimed by SCG.

3. Caltrans Right of Way Section approved payment of \$305,923 to SCG before Caltrans Senior Resident Engineer reviewed the final invoice from SCG.

#### Criteria:

Section IV. “Payment For Work”, Page 2 of the Utility Agreement No. 12-UT-920 requires Caltrans that “*the STATE shall not pay final bills, which exceed the estimated cost of this Agreement without documentation of the reason for the increase of said cost from the OWNER and approval of documentation by STATE.*”

The Right of Way Manual Chapter 13, Page 14, requires Caltrans that “*The Department’s Construction Manual, Chapter 3, General Provisions, Section 3-809 Utility and Non-Highway*

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations (Continued)

#### Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

*Facilities, provides that whenever work is underway on any relocation being done to clear the right of way for construction, an engineer must be assigned to inspect and accept the work. Without an assigned engineer to inspect the work, the utility relocation should not proceed." "The PE or RE, or his/her delegate, shall inspect all utility relocation work. The inspection must be documented in Inspector's diary notes. Copies of these notes should be sent to the Utility Coordinator on a regular basis and placed in the Utility File."*

#### Condition:

While reviewing the utility files, we noted that there was a memo dated February 26, 2008, from the Associate Agent to the Senior Resident Engineer. The memo said *"In order for me to pay the final bill and subsequently close my utility file, please review for correctness the attached copy of said invoice and comments on the correctness of said invoice; please respond by March 12, 2008"*. However, on the same day, February 26, 2008, Caltrans Right of Way Section had already approved the payment of \$305,923 and instructed OCTA to pay the final bill of \$305,923 to SCG before Caltrans Senior Resident Engineer reviewed SCG's final invoice.

Because the utility files maintained by Caltrans did not contain Inspector's daily diary reports as required under Caltrans' Right of Way Manual, we inquired of the Senior Resident Engineer whether he or his construction crew had ever received the memo dated February 26, 2008 from the Associate Agent. The Senior Resident Engineer confirmed on June 2, 2009 that *"we have not discovered the memorandum in question at this time"*. The Senior Resident Engineer had not reviewed the final invoice for correctness and had not approved the final bill because he never received the final invoice. Caltrans Right of Way Section approved the payment of \$305,923 to SCG before the Caltrans Senior Resident Engineer reviewed SCG's invoice.

This was not an isolated case, as we noted similar exceptions in two additional utility relocation files we tested. For instance, on October 11, 2007, Caltrans instructed OCTA to pay the final invoice of \$379,484 to SCG under Utility Agreement No. 12-UT-918; however, on October 30, 2007 and 19 days later, Caltrans Right of Way Section began requesting that the Senior Resident Engineer review the final invoice of \$379,484. Again, on February 21, 2008, Caltrans instructed OCTA to pay the final invoice of \$44,818 to SCG under Utility Agreement No. 12-UT-898; however, on February 26, 2008 and 5 days later, Caltrans Right of Way Section requested the Senior Resident Engineer to review this final invoice.

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit B

### Schedule of Findings and Recommendations (Continued) Applied to Cooperative Agreement (Caltrans No. 12-495 and OCTA No. C-4-1081) With the State of California, Department of Transportation

#### Recommendation:

Caltrans should ensure that Right of Way Section staff follow Caltrans's Right of Way Manual and obtain Senior Resident Engineer's approval before instructing OCTA to pay final invoices. We also recommend that OCTA obtain Senior Resident Engineer's approval before making final payments to contractors.

4. Caltrans Right of Way Section approved the payment of \$305,923 to SCG without requesting supporting documentation.

#### Criteria:

Section IV. Payment For Work, Page 2 of the Utility Agreement No. 12-UT-920 states that "**...OWNER's itemized bill in quintuplicate, signed by a responsible official of OWNER's organization and prepared on OWNER's letterhead, compiled on the basis of the actual and necessary cost and expense incurred and charged or allocated to said work in accordance with the uniform system of accounts prescribed for OWNER...**"

#### Condition:

On February 14, 2008, SCG submitted its final invoice of \$611,845, of which Caltrans was liable for \$305,923 and SCG was liable for \$305,923, under Invoice No. 95000935. The final invoice contained only one single page of itemized costs without any other documentation to support the costs invoiced. SCG claimed in its final invoice \$609,451 of Contract Services Cost, Purchased Services Cost, and Overhead Costs. However, Caltrans Right of Way Section did not request any supporting documents, including invoices from SCG subcontractors. For example, SCG claimed \$370,248 of purchased services from a subcontractor, Southwest Contractors, and Caltrans Right of Way Section did not request that the invoice from Southwest Contractors be provided.

#### Recommendation:

Caltrans should perform detailed review of final invoices before instructing OCTA to make final payment. We recommend that Caltrans revise its Right of Way Manual by requiring Right of Way Section to determine the reasonableness of costs invoiced by utility companies before approving invoices. We also recommend that OCTA request additional documents, if not provided, before making final payments.

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit C

### Schedule of Findings and Recommendations

#### Applied to OCTA No. C-3-0691

#### With CALTROP ENGINEERING CORPORATION

On November 24, 2003, Caltrop Engineering Corporation (“Caltrop”) and Orange County Transportation Authority (“OCTA”) entered into Contract No. C-3-0691 (“Contract”) to provide construction inspection, survey and public awareness services for the I-5 Far North Improvement Project. Contract No. C-3-0691 is a time and material contract with a not-to-exceed amount on a Contract Task Order (CTO) basis. Caltrop was required by the Contract to bill OCTA for actual hours worked within the authorized limit and performance period under each CTO.

As of September 18, 2009, OCTA paid \$11,593,156 to Caltrop under Contract No. C-3-0691. Of the \$11,593,156, we randomly selected \$571,660 under Invoice Nos. 213823, 213943, and 215011 for detailed testing, which represented 4.9 percent of the total amount OCTA paid to Caltrop.

5. Caltrop either did not obtain “prior written approval from OCTA’s Project Manager” for overtime hours or approved overtime hours after the fact which was not in compliance with the requirements of the Contract.

#### Criteria:

The “Schedule I – Hourly Rate Schedule” of the Contract stipulates that “*Overtime for prevailing wage and non-exempt employees will be billed at time and a half with prior written approval from OCTA’s Project Manager*” from November 24, 2003 through October 1, 2006. However, this clause was deleted in its entirety from the original Contract because Amendment No. 2 to the Contract dated October 2, 2006 removed the language “...with prior written approval from OCTA’s Project Manager”.

#### Condition:

Caltrop billed OCTA \$4,976 and \$26,277 for 30 and 145 hours of overtime under Invoice Nos. 213823 and 213943, respectively, for overtime incurred prior to October 1, 2006. We noted that all of the 175 overtime hours billed were only approved by Caltrop’s Project Manager and were not approved by OCTA’s Project Manager as required by the Contract. Of the 175 overtime hours billed, 30 hours were approved by Caltrop’s Project Manager several days after the overtime hours occurred. For example, Caltrop’s Project Manager claimed he worked 14 hours of overtime for the pay period September 5, 2006 through September 14, 2006 but he submitted his “Overtime Authorization Form” on September 18, 2006. Neither OCTA’s Project Manager nor CalTrop management approved the 14 hours of overtime on the “Overtime Authorization Form”.

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Exhibit C**

**Schedule of Findings and Recommendations (Continued)**

**Applied to OCTA No. C-3-0691**

**With CALTROP ENGINEERING CORPORATION**

In addition, Caltrop's Project Manager claimed 15 hours of overtime for the pay period September 18, 2006 through October 1, 2006. However, his "Overtime Authorization Form" was never approved by his supervisor or management.

Therefore, we have questioned all 175 overtime hours billed in the amount of \$31,253 under Invoice Nos. 213823 and 213943 because Caltrop either did not obtain "prior written approval from OCTA's Project Manager" or approved overtime hours after the fact.

Recommendation:

Caltrop should review and approve overtime hours before costs are incurred and obtain prior written approval from OCTA Project Manager. We recommend that OCTA seek a reimbursement of \$31,253 from Caltrop.

6. Caltrop personnel over-stated overtime hours and Caltrop over-billed OCTA \$1,157 for 6.5 hours of meal time.

Condition:

CalTrop billed OCTA \$21,466.47 for 119 hours of overtime under Invoice No. 215011 for the period December 24, 2007 through January 20, 2008. We noted that all 119 overtime hours billed were approved by Caltrop's Project Manager only and were not approved by OCTA's Project Manager as required by the Contract. We could not question the associated costs because Amendment No. 2 to the Contract dated October 2, 2006 removed the language "...with prior written approval from OCTA's Project Manager".

Of the 119 overtime hours billed, three Caltrop inspectors over-stated their overtime hours in the "Overtime Authorization Forms". For example, one inspector claimed in the "Overtime Authorization Form" that his shift hours were 6:00 a.m. to 6:30 p.m on January 10, 2008 (stated as "0600hrs to 1830hrs"), which totaled 12.5 hours for the day. Therefore, his overtime hours should have been 12.5 hours minus 8 regular hours and also minus the meal time and break time during the day. However, the inspector requested 4.5 hours overtime on the form which was exactly 12.5 hours minus 8 hours. The inspector did not deduct his meal time and any break time during the day. Instead, he included meal time into his overtime hours. We noted 12 similar instances for two additional inspectors. Caltrop over-billed OCTA \$1,157 for 6.5 hours of meal

**ORANGE COUNTY TRANSPORTATION AUTHORITY**

**Exhibit C**

**Schedule of Findings and Recommendations (Continued)**

**Applied to OCTA No. C-3-0691**

**With CALTROP ENGINEERING CORPORATION**

time, half an hour meal time each day for 13 instances we noted. Therefore, we have questioned 6.5 hours of meal time for which Caltrop inspectors did not work for OCTA.

Recommendation:

Caltrop should enhance its review and approval process of timesheets. We recommend that OCTA consider reinstating the deleted language "...with prior written approval from OCTA's Project Manager" into the contract in order to control project costs. We also recommend that OCTA seek reimbursement of \$1,157 from Caltrop.

7. Caltrop billed and OCTA paid Caltrop 5,378.25 hours or \$724,021.70 for unauthorized employees from its subcontractor, Pinnacle One.

Criteria:

The "Schedule I – Hourly Rate Schedule" of the Contract specifically approved and listed three Project Personnel by name and position title for subcontractor, Pinnacle One.

Condition:

Pinnacle One billed Caltrop \$15,270 for one Project Control personnel's 112 hours at an hourly rate of \$136.34 under Invoice No. 029271. Caltrop subsequently included the invoice amount of \$15,270 from Pinnacle One in its Invoice No. 215011 to OCTA. However, the Project Control personnel was not approved by OCTA as authorized personnel and was not listed under the "Schedule I – Hourly Rate Schedule" of the Contract. Additionally, we noted that the Project Control personnel's two timecards for Week Ending Date December 7, 2007 and December 14, 2007 with a total of 72 hours were not approved either by Pinnacle One management or by Caltrop's Project Manager.

As a result of the audit findings, the Project Controls Department of OCTA has since identified 5,378.25 hours or \$724,021.70 (un-audited) for unauthorized employees from its subcontractor, Pinnacle One.

Recommendation:

We recommend that Caltrop enhance its review and approve process of invoices from its subcontractors and ensure personnel working under this Project were authorized by OCTA.

# ORANGE COUNTY TRANSPORTATION AUTHORITY

## Exhibit D

### LIST OF AGREED-UPON PROCEDURES PERFORMED

1. We reviewed the provisions of the Cooperative Agreement to understand the scope of the Project and the specific requirements of the Cooperative Agreement.
2. We conducted interviews and made inquiries of OCTA, Caltrans, and Caltrop personnel in order to obtain an understanding of the scope of the Project, the grant funds, billings, and payments procedures.
3. We reviewed Caltrans' Right of Way Manual and Caltrans standard procedures to determine whether the costs incurred by Caltrans and its contractors were in compliance with both the Cooperative Agreement and Caltrans' standard procedures.
4. We reviewed utility relocation files and traced invoices to supporting documentation to determine the validity of these expenditures. We judgmentally selected \$3,406,550 or 94 percent of total final utility relocation costs as sample files for testing. We found controls need to be improved on the Cooperative Agreement with Caltrans and the lack of these controls resulted in payments being made to SCG without authorization and supporting documentation. The results of the agreed-upon procedures performed are presented in Exhibit B
5. We reviewed property acquisition files and traced invoices to supporting documentation to determine the validity of these expenditures. We judgmentally selected \$10,553,036 or 81.67 percent of total final property acquisition costs as sample files for testing. We did not note any instances of non-compliance in testing property acquisition files.
6. We conducted interviews, made inquiries of OCTA personnel, and reviewed one invoice each from Contract Nos. C-2-0710, C-3-0691, and C-5-0632 to determine whether the proper monitoring and review procedures were in place within OCTA. We noted certain deficiencies which are presented in Exhibit C.
7. We judgmentally selected \$571,660 from Invoice Nos. 213823, 213943, and 215011 under Contract No. C-3-0691 for testing and the results are presented in Exhibit C. We found controls need to be improved on the contract with Caltrop and the lack of these controls resulted in payments being made to Caltrop that were not within the terms and conditions of the contract.

**DEPARTMENT OF TRANSPORTATION**

## AUDITS AND INVESTIGATIONS

1304 O STREET, SUITE 200  
P. O. BOX 942874 – MS 2  
SACRAMENTO, CA 94274-0001  
PHONE (916) 323-7111  
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TTY 711



*Flex your power!  
Be energy efficient!*

March 18, 2010

Mr. Raymond X. Wang, C.P.A.  
Wang Professional Corporation  
159 East Live Oak Avenue, Suite 101  
Arcadia, CA 91006-5252

Dear Mr. Wang:

The attached memo represents the California Department of Transportation's (Caltrans) response to the Orange County Transportation Authority (OCTA) draft Schedule of Findings and Recommendations on the contract compliance audit performed on Cooperative Agreement (Agreement) No. 12-495. The scope of the Agreement covers right of way capital and support costs in connection with the I-5 Gateway Widening Project.

The purpose of the audit is to ensure compliance with the Agreement and with all federal and State funding requirements. As of March 10, 2009, and according to OCTA payment records, OCTA has paid \$50,072,795 to Caltrans and its contractors.

A copy of the draft report was not provided. However, per the draft Schedule of Findings and Recommendations, you are questioning \$105,923 of costs reimbursed to Caltrans due to lack of justification and supporting documentation. As a result of the questioned costs, you are recommending that Caltrans reimburse OCTA for \$105,923. In addition, you noted three other findings related to incidents of weak internal control and noncompliance of the Agreement.

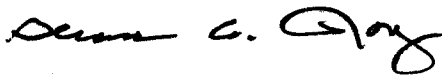
Caltrans disagrees with the questioned costs identified by OCTA. In addition, Caltrans agrees with some of the findings and disagrees with others as outlined in the chart on page 2.

Finding No.	Amount Questioned	Description of Findings	Caltrans Response
1	None	Caltrans Right of Way Section did not request or enforce quarterly progress billings from its contractor, SCG, as required under the Utility Agreement.	Caltrans Agrees – See Attachment 1 (Finding 1)
2	\$105,923	Caltrans Right of Way Section approved the Second Amendment without justification and approved \$105,923 of payment without any supporting documentation.	Caltrans Disagrees – See Attachment 1 (Finding 2).
3	None	Caltrans Right of Way Section approved payment of \$305,923 to SCG before Caltrans Senior Resident Engineer reviewed the final invoice from SCG.	Caltrans Agrees – See Attachment 1 (Finding 3)
4	None	Caltrans Right of Way Section approved the payment of \$305,923 to SCG without requesting supporting documentation.	Caltrans Disagrees – See Attachment 1 (Finding 4).

Caltrans is unable to provide you a copy of the prior audit reports issued on the Southern California Gas Company because the last audit report on the Southern California Gas Company was issued beyond Caltrans' record retention period.

Caltrans appreciates the opportunity to respond to the draft Schedule of Findings and Recommendations. If you have any questions or need more information, please contact Laurine Bohamera, Chief, Internal Audits, at (916) 323-7107 or Zilan Chen, Audit Supervisor, at (916) 323-7877.

Sincerely,



GERALD A. LONG  
Deputy Director  
Audits and Investigations

Attachment

- c: Cindy Quon, District Director, District 12  
Jim Beil, Deputy District Director, Capital Outlay Program, District 12  
Laurine Bohamera, Chief, Internal Audits, Audits and Investigations  
Zilan Chen, Audit supervisor, Internal Audits, Audits and Investigations

# Memorandum

*Flex your power!  
Be energy efficient!*

To: GERALD LONG  
Deputy Director  
Audits and Investigations

Date: March 17, 2010

From: CINDY QUON  
District Director  
District 12



Subject: **Caltrans's Response to Orange County Transportation Authority's Audit Findings and Recommendations under Caltrans Cooperative Agreement 12-495**

District 12 is providing the following responses and action items relating to Orange County Transportation Authority's Audit and Recommendations under Caltrans Cooperative Agreement 12-495.

OCTA's Audit of COOP 12-495 included sample file testing for over eighty-one percent (81%) of over twelve million dollars (\$12,000,000) of final property acquisition cost. OCTA's auditor did not note any instance of non-compliance in testing property acquisition files. Over an additional three million four hundred thousand dollars (\$3,400,000) of final utility relocation costs were also sampled for testing. A total of over fifteen million (\$15,000,000) dollars was selected by OCTA's auditor.

- (1) **Caltrans Right of Way Section did not request or enforce required quarterly progress billings from its contractor, SCG, as required under Utility Agreement**

**Management Response:**

The typical utility relocation is often completed in less than three months; therefore, Utility Owners consider it more cost effective to submit only a final bill because it reduces its accounting costs. Although this relocation ultimately took longer than three months, Southern California Gas Company apparently continued to treat it as a short-term project.

**Action:**

At the Department's next quarterly meeting with the statewide representatives of the Utility Owners (SCG), the District will recommend to our HQ Utility Branch that it remind the Utility Owners that they are expected to fulfill all requirements of executed Utility Agreements, including submitting progress billings on a quarterly basis. Since all utility agreement clauses are preapproved by HQ RW & Legal, the District will ask HQ RW to review the existing progress payment clause for process improvement.

- (2) **Caltrans Right of Way Section approved the Second Amendment without justification and approved \$105,923 of payment without any supporting documentation**

**Management Response:**

We disagree with the finding because SCG did provide justification. The Department and SCG executed the Second Amendment to Utility Agreement number 12-UT-920 prior to the payment of the final invoice as required per section IV PAYMENT FOR WORK paragraph numbered five. SCG provided documentation of the reason for the increase cost (\$105,923) over the executed UA. The Department's execution of the Second Amendment was considered the Department's acceptance of SCG documentation. SCG provided said documentation at the time of submitting the detailed cost breakdown and, at the request of the Utility Coordinator, expanded on that explanation two days later. The Utility Coordinator had every reason to question the necessity for the items of work that resulted in the cost increase. Per section UA 12-UT-920 IV PAYMENT FOR WORK paragraph numbered five, the documentation submitted by SCG was considered acceptable by the Department.

SCG written justification specified during "**performance of said work, it was discovered** that the existing main was too shallow to tie into, so the excavation had to be extended..." Since SCG was in construction, SCG apparently necessitated additional excavation along the approved alignment in order to reach pipe that was at an acceptable depth. Thus, approval by Design is not required for this change in construction because it didn't alter the alignment. Although it probably would have been preferable for the Owner to advise the Utility Coordinator that this field change was needed, it is probable that the SCG construction crew made this field change without informing the SCG Caltrans liaison. As with most field changes, the SCG crew chief made this decision in order to avoid any construction delays to either the utility relocation itself or the highway construction contract.

**Action:**

Caltrans will ensure Utility Owners and Caltrans construction and consultant inspection staff work in close coordination to document and approve any necessary field changes.

- (3) Caltrans Right of Way Section approved payment of \$305,923 to SCG before Caltrans Senior Resident Engineer reviewed the final invoice from SCG

Management Response:

The audit's review of the RW file found the memo requesting the RE to review SCG's final invoice for correctness. RW is not in a position to comment on why the RE's files do not contain the invoice and memo.

The RE file did not contain the memo and invoice.

The RW Manual requires RW to send the final bill to construction, but approval of the final invoice for payment is not required.

The Department has only 45 days (per State law, see CA Prompt Payment Act) in which to pay all bills; thus, the District only has 15 days in which to process its portion of the payment process, Accounting has 15 days and the final 15 days are for payment to be sent. The Utility Coordinator was being proactive to pay the invoice and submitted it for payment prior to receiving a comment from the RE's office. However, if any concerns were raised during the 30 days of processing time, RW could have and would have stopped the payment request.

Action:

Caltrans RW Staff will be reminded of both the CA Prompt Payment Act and of the necessity of sending the final invoice to the RE for review and then allowing the RE to respond within second 15 days. In the future, RW will follow up with construction staff if the RE is non-responsive.

- (4) **Caltrans Right of Way Section approved the payment of \$305,923 to SCG without requesting supporting documentation**

**Management Response:**

SCG's invoice was on SCG's letterhead/forms and it was signed by a responsible official of the corporation (Cost Accounting Manager). SCG's invoice certifies SCG's billing was prepared in accordance with UA 12-UT-920. Both previous items are per section IV PAYMENT FOR WORK paragraph number one of the executed UA. If the Department had questions about the SCG's invoice, the Department would have requested additional supporting documentation.

SCG's cost breakdown was generally in accordance with the requirements of RW Manual Exhibit 13-EX-27, which is a suggested format for a final invoice. The UA does not require the Owner to submit copies of timesheets, material invoices, etc...or invoices from SCG's subcontractors. Per UA 12-UT-920, section IV PAYMENT FOR WORK paragraph numbered seven; all detail records shall be retained in the Owner's accounting files for a period of three years after date of final payment of the final invoice. Said detail records are available till March 26, 2011 in the event that the OCTA/Department's Audit and Investigations elects to audit SCG's final invoice.

**Action:**

Caltrans is in compliance with written procedures of processing final invoice for utility agreements. No further action is required.

If you have any questions or need further clarification, please contact Ricky Rodriguez, the District 12 Office Chief of Right of Way, at (949) 724-2386.

C: Jim Beil  
Ricky Rodriguez  
Saeid Asgari  
Robert Enriquez  
Zilan Chen



March 2, 2010

Mr. Raymond X. Wang  
159 E. Live Oak Avenue, Suite 101  
Arcadia, CA 91006-5252

Dear Mr. Wang:

Enclosed Please find the written response for draft Schedule of Audit Findings and Recommendations dated 2/18/2010, under OCTA Agreement No. C-3-0691. Should you have any questions please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Hashtrudi".

Alex Hashtrudi  
General Manager

Cc: Kathleen M. O'Connell, OCTA  
Gerry Dunning, OCTA  
Derich Sukow, Caltrop

**Orange County Transportation Authority**  
**Schedule of Findings and Recommendations**  
**Applied to OCTA No. C-3-0691**  
**With CALTROP ENGINEERING CORPORATION**

1. *Caltrop either did not obtain "prior written approval from OCTA's Project Manager" for overtime hours or approved hours after the fact which was not in compliance with the requirements of the contract.*

**Response:** Overtime for the project is discussed on a daily and weekly basis with the on-site OCTA Project Manager prior to the actual overtime usage. As noted, this requirement was ultimately removed as part of Amendment No. 2 to the Contract. In the case where overtime hours were approved after the fact, this was done to verify and confirm the actual number of hours worked as a result of the project contractor's operations.

2. *Caltrop personnel over-stated overtime hours and Caltrop over-billed OCTA \$1,157 for 6.5 hours of meal time.*

**Response:** With regards to the overstated hours for overtime due to the half-an-hour meal time period, we have reviewed our daily reports and discussed the issue with the specific inspectors to verify the work periods. The inspectors inadvertently omitted the meal period when recording their hours on Caltrop's "Overtime Authorization Form."

3. *Caltrop billed and OCTA paid Caltrop 5,378.25 hours or \$724,021.70 for unauthorized employees from its subcontractor, Pinnacle One.*

**Response:** Article 3 Paragraph B of the Contract defines key personnel to be provided on the project. In Paragraph C of the same Article, no personnel listed in Paragraph B may be removed or replaced without prior written authorization from the AUTHORITY. This item was discussed with the OCTA contracts division at the time of the addition of non-key personnel under Schedule I for Pinnacle One. As the position of Project Controls is not listed as "Key Personnel" in the original contract, it was determined that an amendment to the Contract for our subcontractor (Pinnacle One) was not required.

OCTA did request documentation in the form of certified payroll to establish the billing rates for added non-key personnel. With regards to unsigned timecards, Caltrop will enhance our review and approval process of invoices from our subcontractors to ensure all timecards are signed prior to submitting to OCTA.