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Alameda Corridor-East Construction Authority:

Its Planning and Contracting Is Generally Sound, but Proposed Changes in Rail Traffic May Affect Its Construction Program

May 2000
99135

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May 10, 2000 99135

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning the management practices of the Alameda Corridor-East Construction Authority (authority). This report concludes that the authority's planning process and contracting procedures are generally sound, but that proposed changes in rail traffic may affect its construction program.

Respectfully submitted,

Mary P Noble

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CONTENTS

Summary 1

Introduction 5

Chapter 1

Planning for the ACE Program Has Generally Been Satisfactory but May Require Adjustments if Railroad Traffic Is Consolidated 9

Recommendations 16

Chapter 2

Contracting Policies and Implementation Are Generally Adequate, but Several Changes Would Strengthen Oversight and Assure Compliance With Regulations 17

Recommendations 23

Response to the Audit

Alameda Corridor-East Construction Authority 25

SUMMARY

RESULTS IN BRIEF

Audit Highlights . . .

Our review found that the planning and contracting processes of the Alameda Corridor-East Construction Authority (ACE) are generally sound.

However, a proposal to consolidate railroad freight traffic may significantly affect ACE's construction program.

In addition, some of ACE's contract award policies conflict with regulations, and its conflict-of-interest code does not cover all persons on its contractor selection committees.

The Alameda Corridor-East Construction Authority (ACE) has generally used a sound process for planning its construction program to mitigate anticipated traffic problems at rail crossings throughout the San Gabriel Valley. However, a proposal to consolidate rail traffic in the area of the program may affect ACE's plans, leading it to delay and possibly eliminate some projects. In addition, it has generally adopted and implemented appropriate contracting policies and procedures.

ACE was created in 1998 to find ways to alleviate anticipated motor vehicle congestion caused by an expected increase in rail freight traffic in eastern Los Angeles County. It has identified construction projects, ranging from low-cost improvements in safety features and signal devices at rail crossings to expensive grade separations, which involve building underpasses or bridges so that rail and motor vehicle traffic no longer intersect. These projects have a total estimated cost of $912 million. ACE has obtained various funding commitments amounting to roughly $370 million from local, state, and federal agencies, as well as from the Union Pacific Railroad (Union Pacific). It is currently seeking additional government funding to finance the remainder of the program's cost. Although its current funding sources do not require a cost-benefit analysis, we believe ACE might improve its chances of receiving future funds by quantifying expected program benefits in dollars and comparing them to estimated costs. This type of analysis could give ACE an advantage when competing with other agencies for limited government funds.

ACE's planning process included building upon a feasibility study, creating a project implementation plan, performing environmental assessments, and using a project scheduling system. These procedures ensured that ACE was addressing key elements of the construction planning and management process. In addition, ACE has included the public and local governments in its planning process. In some cases, ACE has made major design changes based upon input from the cities affected.

Despite the quality of its efforts, ACE may have to substantially alter its plans if Union Pacific agrees to consolidate the majority of its freight traffic to the southern of two lines crossing the San Gabriel Valley. If this happens, many of the grade separations planned for the northern line may no longer be necessary. ACE should therefore delay further work on a portion of the northern line until the disposition of freight consolidation is known.

For the most part, the contracting policies and procedures that ACE has adopted ensure that contracts will be properly awarded and monitored. These policies include awarding contracts through a competitive bidding process and requiring contractors to provide detailed task schedules and monthly progress reports. Nevertheless, one of ACE's contract award policies expands on state and federal regulations, another conflicts with federal regulations, and a third requires clarification. In addition, its conflict-of-interest code may inadequately protect against possible real or perceived conflicts because it does not include nonemployees who sit on its contractor selection committees. ACE rescinded another policy allowing contractors to begin work before contract execution when we pointed out that the policy conflicted with California Department of Transportation guidelines. Finally, ACE violated its procedures for changing a contract's scope of work by failing to commit to writing a change in scope for its program management contract.

RECOMMENDATIONS

To improve its competitive position when seeking future funding, ACE should consider quantifying program benefits in dollars.

To avoid spending money on projects whose benefits may be reduced by possible rail freight consolidation, ACE should delay activities planned for a portion of the northern rail line until Union Pacific makes a decision in July 2000.

To assure competitive contracting, ACE should make the following changes to its policies and procedures:

- Revise its policies regarding noncompetitive procurement to conform to those established in state and federal regulations.

- Require construction contractors to provide evidence of appropriate licenses only upon contract award.

- Clarify its procedure for handling cases in which ACE's board rejects the recommendation of its contractor selection committee.

- Amend its conflict-of-interest code to include members of contractor selection committees.

To ensure that contractors complete all elements of scopes of work, ACE and its contractors should agree in writing to any changes in scopes of work.

AGENCY COMMENTS

The Alameda Corridor-East Construction Authority agreed with our recommendations for the most part and will seek guidance from its board and funding authorities on how to best implement them. ■

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INTRODUCTION

BACKGROUND

The Alameda Corridor-East Construction Authority (ACE) was created in September 1998 by the San Gabriel Valley Council of Governments (council) to manage a construction program intended to mitigate anticipated traffic problems at rail crossings in eastern Los Angeles County. The program was established because of concerns that an increase in railroad freight traffic in the area would lead to problems with motor vehicle congestion and to long delays at railroad crossings. An increase in railroad freight traffic is expected with the completion of major rail corridor improvements between the ports of Los Angeles and Long Beach and downtown Los Angeles. Recognizing that the completion of these improvements in 2002 would trigger an increase in rail traffic through the San Gabriel Valley, the council commissioned a feasibility study (study) in 1997 to assess the condition of 55 rail crossings between downtown Los Angeles and Pomona.

The study predicted that an expected 60 percent increase in train traffic and a 40 percent increase in roadway traffic would cause the length of daily vehicle delays at rail crossings to triple by 2020. It also forecast a dramatic increase in rail crossing accidents, air pollution, and noise if no steps were taken to improve traffic flows. To solve these problems, the study proposed improving safety and signal devices at all rail crossings, increasing queuing capacity by widening roads at some crossings, and constructing grade separations at those crossings expected to experience long traffic delays. A grade separation is an underpass or bridge that separates rail and vehicle traffic to keep it from intersecting.

The council created ACE to implement the projects proposed in the study. ACE is governed by a seven-member board of directors (board) consisting of a designee of the council; representatives from the cities of El Monte, Industry, Montebello, Pomona, and San Gabriel; and a representative from Los Angeles County. The board meets each month and sets overall policy for the program, including approving the program's scope and budget as well as any contracts greater than

$250,000. The council can dissolve the ACE board by a majority vote of its own board of directors. In this case, the council would assume all the rights and responsibilities of ACE.

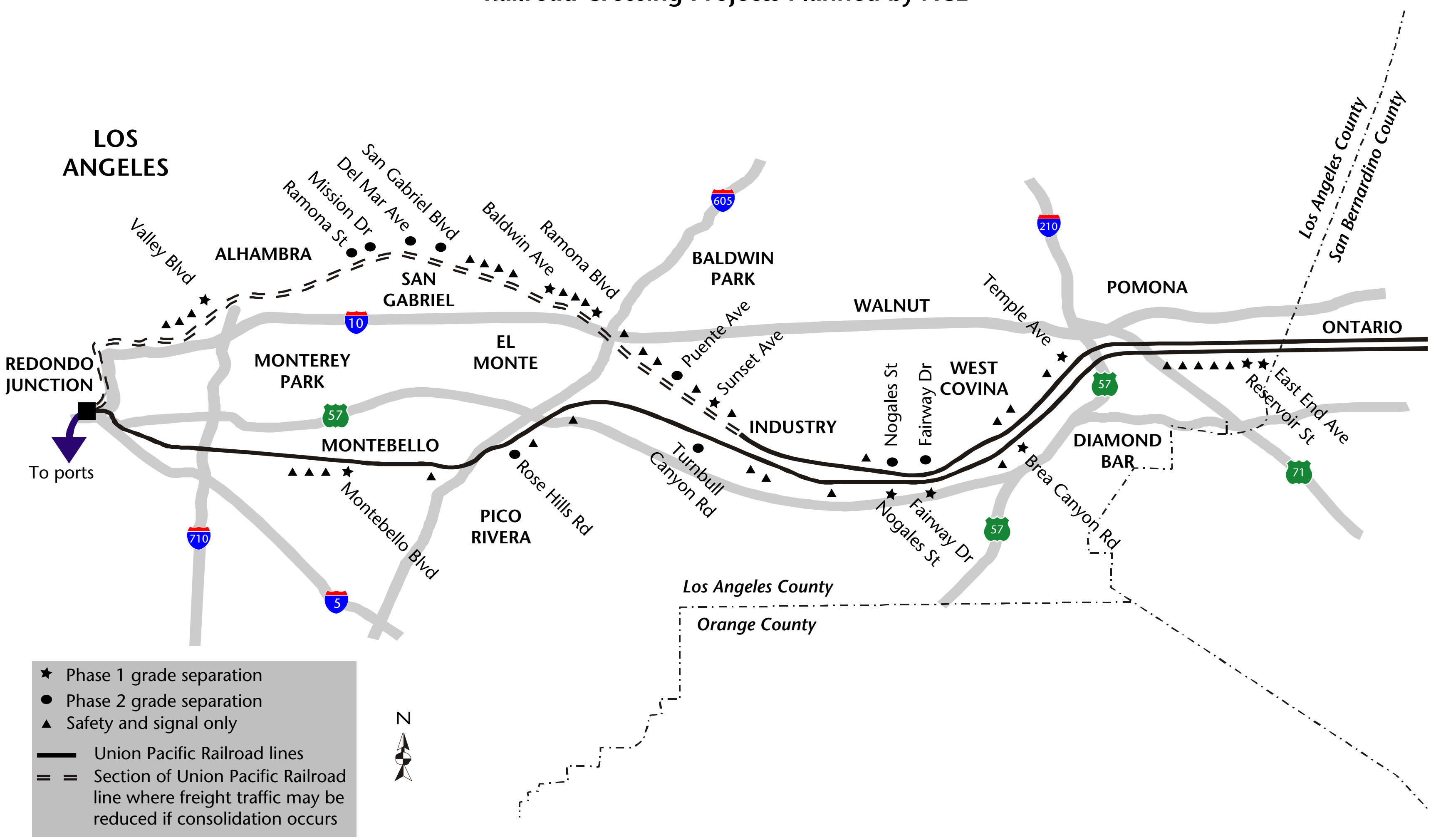
Because ACE is a special-purpose organization of limited duration, the council planned for it to maintain a minimal staff and to rely heavily on outside contractors. In May 1999, ACE hired its first employee, a chief executive officer, and in September 1999, after a competitive contract award process, it contracted with the consulting joint venture Bechtel/Korve to provide program management services. As of April 2000, ACE had a staff of six, and the consultant's program management team included five full-time and four part-time employees. Collectively, they will plan and manage the program.

The estimated cost of the program is $912 million; its estimated time for completion is eight years. Roughly $824 million, or 90 percent of the total, is budgeted for grade separation projects. Projects are planned for two separate rail lines, both run by the Union Pacific Railroad (Union Pacific) since its merger with the Southern Pacific Railroad in 1996. ACE has split the program into two phases. Phase I includes relatively inexpensive safety-and-signal and road-widening projects that will address the needs at most of the rail crossings, as well as five grade separations on the northern line and six grade separations on the southern line. This phase is set for completion in 2003 at a cost of $418 million. Phase II includes a signal project plus seven grade separations on the northern line and two grade separations on the southern line. Phase II is scheduled for completion in 2007 at a cost of $494 million. The map in Figure 1 shows the major project locations.

ACE has secured roughly $370 million in funding from local, state, and federal governments and from Union Pacific. It has also applied for $58 million in grants and other funding and has identified another $57 million for which it plans to apply.

FIGURE 1

Railroad Crossing Projects Planned by ACE



Note: All grade separation sites are scheduled for safety-and-signal work and some are also scheduled for road widening. A grade separation for Seventh Avenue, proposed in the feasibility study, has been completed by the City of Industry and is not shown here. For ease of reading, we have excluded the names of rail crossings where ACE has planned only safety-and-signal work, and one rail crossing slated for both road-widening and safety-and-signal work.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (committee) requested that the Bureau of State Audits perform an audit of ACE's management practices. The committee was generally interested to learn how ACE's policies and procedures are aligned to meet program goals. It placed special emphasis on a review of ACE's policies and procedures for contracting.

To assess whether ACE has identified and implemented critical steps contributing to sound planning, we reviewed the Federal Highway Administration guidelines for feasibility studies, the National Corridor Planning and Development Program requirements, the Caltrans Local Assistance Procedures Manual (Caltrans manual), and the Department of Transportation's (Caltrans) guidelines on managing highway projects. We compared these guidelines and requirements to steps included in the council's study, ACE's Project Implementation Plan, and its Project Management Guidelines and Procedures. We also reviewed program cost estimates to determine whether they were based on detailed support and included adjustments for inflation. We found that they were. We then determined the amount and firmness of various funding sources identified for the program. Finally, we reviewed Caltrans' manual and federal regulations related to environmental studies and documents and compared these to ACE's environmental work to determine whether ACE has fulfilled all requirements in this area of planning.

To determine whether ACE has developed and implemented proper contracting policies and procedures, we reviewed applicable federal and state laws, regulations, and guidelines and compared them to those in ACE's Procurement Manual and its Project Management Guidelines and Procedures. For large contracts, we reviewed ACE's requests for proposals, awards process, and contract provisions. Finally, we interviewed ACE and project management consultant staff regarding contract monitoring procedures and reviewed the monitoring activities for ACE's program management contract. ■

CHAPTER 1

Planning for the ACE Program Has Generally Been Satisfactory but May Require Adjustments if Railroad Traffic Is Consolidated

SUMMARY

The Alameda Corridor-East Construction Authority (ACE) satisfactorily planned for its construction program. Nevertheless, ACE may need to change these plans due to a potential consolidation of railroad freight traffic. ACE has effectively planned for grade separation and railroad safety projects by building upon the San Gabriel Valley Council of Governments' (council) feasibility study (study), and developing a project implementation plan and environmental documents. In addition, ACE has exceeded basic funding requirements by establishing an outreach program designed to seek public comment and support. At the same time, ACE has gained significant funding commitments from local, state, and federal governments. Although ACE's current funding does not require a rigorous cost-benefit analysis, ACE could improve its chances of obtaining future funding by comparing program costs to benefits quantified in dollars.

ACE has proposed a consolidation of railroad freight traffic that may seriously alter the assumptions on which some of the projects were based. ACE's current plan was based on Union Pacific Railroad (Union Pacific) projections of rail freight traffic on the two main rail lines crossing the San Gabriel Valley and reflects similar rates of growth in rail traffic on both lines. If the majority of rail freight traffic is consolidated to one line, the grade separations planned along the other line, which make up about 44 percent of the program's total costs, may no longer be necessary. Because of this possibility, ACE should review the current program schedule and delay any spending on potentially unnecessary grade separations until the consolidation issue is resolved.

ACE HAS ADEQUATELY ADDRESSED CRITICAL PLANNING STEPS

ACE has met critical planning requirements for its construction program. The 1997 study commissioned by the council identified a need for the program and proposed viable solutions; ACE's 1999 Project Implementation Plan outlined basic strategies and objectives necessary for satisfactory completion of the project. Detailed policy and procedure manuals and a program scheduling system give staff concrete methods for implementing the overall plan.

The 1997 study addressed key elements described in the Federal Highway Administration's guidelines for conducting feasibility studies. It identified a need for the program, discussed proposed alternatives, considered environmental constraints, and provided a funding strategy. In addition, the study provided a schedule for program completion, preliminary cost estimates, and expected benefits. The council did not, however, quantify program benefits in dollar terms and thus did not provide a complete analysis of costs and benefits. Such analyses are important because they are generally considered the most objective and credible evidence of a program's economic benefit. Although not required by ACE's current grants, this type of analysis could provide a compelling argument in favor of the program when ACE competes with other agencies for future grants.

Although the feasibility study provided a schedule for program completion, it did not quantify program benefits in dollars.

The 1999 Project Implementation Plan successfully built on the study by providing an updated master schedule, an implementation strategy, a description of the funding status, and project management controls to ensure that the project stays on schedule and within budget. These project management controls relate to the project's budget, work scope, cost, schedules, contracts, and reporting. ACE's plan also includes procedures for establishing quality control. In addition, ACE identified activities that are critical to ensuring that the project remains on schedule. The activities include issuing design and engineering contracts, completing geotechnical testing, and obtaining an owner-controlled insurance program to provide umbrella coverage for ACE and its contractors.

ACE adequately defined the roles and responsibilities of program managers in its Project Management Guidelines and Procedures. The guidelines define the specific responsibilities of project managers, include methods of accomplishing project tasks, establish administrative reporting procedures, set forth limits of authority and approval, establish a capital project accounting system, and discuss how to coordinate activities with other agencies.

ACE will rely heavily on contractors. However, by segmenting activities and projects within the program, it has reduced its reliance on any one contractor, thus minimizing the risks associated with contractor failure. For example, ACE issued separate contracts for environmental, disadvantaged business, and program management tasks. In addition, it divided the design needs for its near-term safety projects into three packages, which it intends to award to three separate contractors. Finally, ACE plans to hire a separate construction manager, rather than relying on its program manager to perform this function. This contractor will monitor progress at construction sites and oversee the adequacy and timeliness of the work.

ACE has also developed schedules that cover the entire scope of the project. A master project schedule provides the framework for completing various phases of the project within eight years. This schedule identifies completion dates for critical project components such as design work and right-of-way acquisition. ACE has staged projects so that nearby sites will not be under construction simultaneously, thereby limiting the effects on motor vehicle traffic. Because each grade separation project is independent of other projects, each one offers its own benefits. The program will therefore reduce traffic delays and improve air quality in proportion to the number of projects completed, even if the entire program cannot be finished because of a shortfall in funding.

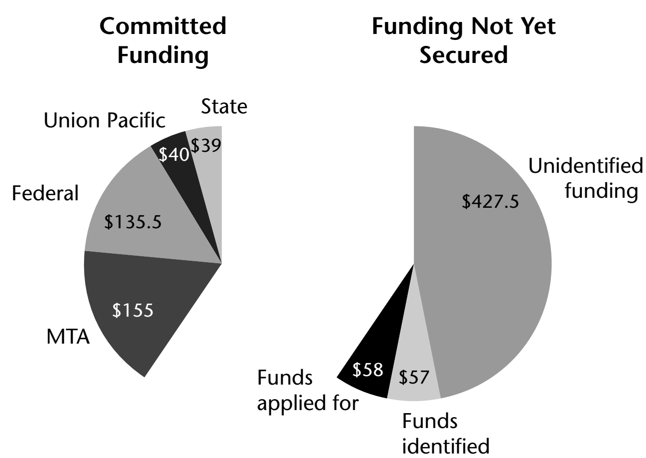
FUNDING COMMITMENTS COVER ONLY PART OF TOTAL PROGRAM COSTS

ACE has secured $370 million of the estimated $912 million needed to fund the program.

Like many construction programs in their start-up phase, ACE lacks commitments for the majority of its estimated costs. It has obtained funding commitments totaling nearly $370 million, or approximately 41 percent of its estimated program costs of $912 million, as shown in Figure 2. The Metropolitan Transportation Authority (MTA) is the largest participant, providing 17 percent of project costs, or $155 million. It is followed by the federal government, which is providing $135.5 million through its High Priority Projects Program, and the California Transportation Commission, which is supplying $39 million through its Interregional Transportation Improvement program (ITIP). In addition, under federal regulation, Union Pacific must provide 5 percent of the cost of the grade separations, or about $40 million. ACE has also applied for $58 million in Federal Highway Administration grants and state surplus funds and has identified another $57 million in grants and other funds for which it plans to apply. ACE is competing with other agencies for the pending grants and surplus funds, and therefore this funding is by no means certain. Funding sources for the remaining $427.5 million in estimated costs remain unidentified. As we mentioned earlier, ACE might improve its chances of gaining additional funding by completing a cost-benefit analysis of its program.

FIGURE 2

ACE Funding Sources (In Millions)



The California Transportation Commission has only provided ITIP funds for the southerly rail line because it views this line as the main freight corridor through the San Gabriel Valley. ACE has acknowledged this restriction by planning to use ITIP funding only for its projects on the southern line.

ENVIRONMENTAL WORK HAS NOT REVEALED SIGNIFICANT IMPACTS BUT MUST STILL BE REVIEWED AND APPROVED

ACE is on track to complete required environmental documents for projects under its administration that are scheduled for design work in July 2000. It has produced individual documents for the safety-and-signal, road-widening, and grade separation projects, along with technical reports that apply to the overall program. This work includes studies of how the projects will affect air quality and motor vehicle traffic, and whether they will require property relocations and hazardous materials cleanup. Some of this work has revealed the need for mitigation to reduce environmental impacts. For instance, ACE has identified special precautions its contractors must take during construction to reduce dust and exhaust fumes caused by their work. It also plans to use best management practices to avoid soil erosion that could pollute water supplies.

Based on its studies, ACE believes the environmental impact of its projects will not be significant. It has therefore characterized its projects as needing categorical exclusions or environmental assessments, a level of environmental clearance requiring less analysis and public involvement than environmental impact reports. ACE has submitted many of its environmental documents to the California Department of Transportation (Caltrans) and is waiting for Caltrans to determine whether it agrees with the conclusions that ACE reached. Ultimately, the Federal Highway Administration must approve environmental clearance for road-widening and grade separation projects. ACE cannot start final design work for such projects until it receives environmental clearance.

Although federal regulations do not usually require public hearings for projects that do not require environmental impact reports, ACE has made a point of seeking the input of local governments and the public. It has been particularly receptive to suggestions made by the cities affected. This has led ACE to make major changes in the design concept for particular grade separations. For example, the City of Industry requested that an elevated track project be scaled back, but that one of two remaining grade separations be moved up in the schedule. It reasoned that completing a scaled-back project earlier in the program would be preferable to completing a larger project at the end of the program. ACE adopted the suggestion in its project implementation plan. The City of Industry also expressed concern that an elevated track near a residential district would cause significant problems with noise and impaired aesthetics. ACE is currently in the process of considering less-intrusive grade separations for this area.

ACE has made major changes to several grade separation projects based on input from neighboring cities.

ACE has also undertaken a public outreach program. So far, ACE's staff and its environmental consultant have held meetings with government officials, businesses, and residents in cities along the rail corridor. The consultant has recorded the public comments and will summarize them at the conclusion of the first round of meetings, expected in mid-May 2000. ACE plans to use these summaries to update its environmental documents as necessary. In addition, it will give the comments and summaries to design consultants before they begin their work on individual projects. As design progresses, ACE plans to gain further comments through more public meetings.

RAILROAD CONSOLIDATION COULD ELIMINATE THE NEED FOR SOME GRADE SEPARATIONS

Based on a request by ACE, Union Pacific has undertaken a simulation study to determine the feasibility of consolidating freight traffic from a portion of its northern line to its southern line. Union Pacific is undertaking the study despite prior statements that it intended to maintain a steady ratio of freight traffic on the two main rail lines crossing the San Gabriel Valley. Union Pacific plans to make a decision regarding ACE's request by July 2000. A partial freight consolidation to the southern line could greatly reduce traffic delays at grade crossings on a portion of the northern line, eliminating the need for many of the grade separations that ACE has planned on that line. The cost of all the grade separations along the portion of the northern line track where traffic congestion could be reduced total $397 million, or 44 percent of the total program costs. Figure 1 in the Introduction shows those grade separations.

Consolidation of railroad freight traffic might reduce the need for up to $397 million in grade separations, but will likely entail other costs.

Although building fewer grade separations would obviously lower the total cost of the ACE program, a rail freight consolidation would incur other related costs that would partially offset any savings. Prime among these would be the cost of expanding capacity on the southern rail line to accommodate the extra rail traffic. According to ACE, Union Pacific has indicated that it will look to ACE to finance the costs of such capital improvements as additional track and widened bridges. In addition, extra rail traffic on the southern line may increase motor vehicle traffic delays at rail crossings not currently scheduled for grade separations, making new grade separations necessary. Finally, increased rail traffic on this line could have other environmental impacts, such as increased noise, that would call for mitigation. Nevertheless, ACE believes that freight consolidation is worth considering.

Given the potential for railroad freight consolidation, ACE must soon consider the effect that such consolidation might have on its near-term activities. One of the projects ACE has planned and one being managed by the city of Los Angeles located on the northern line are set to begin work close to the time that the railroad expects to complete its consolidation simulation study in July 2000. Specifically, design of the Ramona Boulevard grade separation is scheduled to begin in fall 2000, while the Valley Boulevard grade separation is already under way, according to its original funding timetable. The Valley Boulevard project is included in the ACE construction program and is fully funded by the MTA as part of its 17 percent matching commitment to ACE, but the project is administered by the city of Los Angeles. We estimate that work scheduled for the Ramona Boulevard and Valley Boulevard projects between April 2000 and March 2001 will cost a total of $5 million.

When we inquired about the scheduling for these projects, ACE's chief executive officer stated that if a freight consolidation is in fact promising, he will recommend to local officials and his board that work be deferred on the Ramona Boulevard project. He also indicated that he plans to contact the city of Los Angeles to inform them that the railroad may consolidate freight traffic to the southern line. He stated that the Valley Boulevard project is not under ACE's administration, but that he believes it may warrant grade separation even if a freight consolidation occurs, to eliminate motor vehicle traffic delays created by a nearby freight switching yard. The chief executive officer further stated that he had heard that the Valley Boulevard project was not close to construction so that it was unlikely that major spending would occur before Union Pacific reached a conclusion on the feasibility of consolidating freight traffic. However, when we inquired with the MTA about whether the Valley Boulevard project was behind schedule, we were told that funding for the first phase of the project had actually been accelerated, indicating that work may be ahead of schedule.

If Union Pacific finds that railroad freight consolidation is feasible, ACE will have to take immediate steps that will affect the program in both the short- and long-term. First, it will have to suspend all planned activities along the northern rail line until it can determine the likely effect of freight consolidation. Second, it will have to estimate this effect. For example, if Union Pacific proposes to decrease freight traffic on the northern line by 80 percent, ACE would probably find that its revised estimate of traffic delays would no longer warrant many of its planned

If freight consolidation is deemed feasible, ACE will need to take immediate steps that will affect the program.

projects along this line. If, however, Union Pacific proposes decreasing freight traffic on this route by only 10 percent, ACE would probably find that most, if not all, of its planned projects are still needed. Third, ACE will have to calculate any additional costs associated with consolidation, such as railway improvements and environmental mitigation activities, and compare these to the cost savings from planned projects that can be eliminated. To determine additional costs, ACE will have to negotiate with Union Pacific concerning the portion of railroad improvement costs that ACE will finance. ACE will also have to revisit its environmental analyses of the program and determine the affects of freight consolidation and identify necessary mitigations. At the same time, ACE will have to determine whether funds earmarked for northern line projects can be shifted to new or existing projects on the southern line and if other financing for new projects is feasible. Finally, based on all of these factors, it will have to decide whether or not to pursue the rail freight consolidation option.

RECOMMENDATIONS

To improve its competitive position when applying for future funding, ACE should consider quantifying expected program benefits in dollars and comparing them to estimated costs.

To avoid spending money on projects whose benefits may be vastly reduced by rail freight consolidation, ACE should delay activities planned for a portion of the northern rail line until Union Pacific makes a decision about the feasibility of consolidation and ACE can weigh the effects on the program. ACE should also keep the city of Los Angeles informed as to the status of its ongoing railroad consolidation discussions. ■

CHAPTER 2

Contracting Policies and Implementation Are Generally Adequate, but Several Changes Would Strengthen Oversight and Assure Compliance With Regulations

SUMMARY

The Alameda Corridor-East Construction Authority (ACE) has generally adopted and implemented policies and procedures that assure the proper awarding and monitoring of contracts. Moreover, external government agencies, such as the California Department of Transportation (Caltrans) and the Metropolitan Transportation Authority (MTA), provide added oversight of large contracts and certain expenditures. Nevertheless, one of ACE's contract award policies expands upon state and federal regulations, another conflicts with federal regulations, and a third requires clarification. In addition, ACE's conflict-of-interest code may not adequately cover all persons who sit on its contractor selection committees. When we began our audit, ACE's contracting policies included a provision that put at risk cost reimbursement from local, state, and federal agencies by allowing contractors to start work before final contract approval. Finally, ACE failed to commit to writing changes in the scope of a consultant contract, a violation of contract provisions and good management practices.

CONTRACT AWARD POLICIES ARE GENERALLY ADEQUATE, BUT SOME POLICIES SHOULD BE REVISED OR ELIMINATED

ACE's contract award policies generally comply with the Caltrans Local Assistance Procedures Manual (Caltrans manual). This manual summarizes relevant federal and state laws and regulations and is the basic reference used by local agencies receiving federal or state funding for transportation programs. For instance, ACE policies require the use of a request-for-proposals process to solicit offers for professional or technical services worth more than $25,000 from competing contractors. In addition, requests for proposals must be advertised, must identify the factors to be evaluated in awarding the contract, and must allow contractors a minimum of 20 days to respond.

ACE has expanded the conditions for noncompetitive contracting beyond those allowed in regulations.

Despite the general adequacy of ACE's contract award policies, we found three instances in which ACE should change or clarify these policies to ensure adequate competition. First, ACE has expanded the circumstances under which noncompetitive procurements of goods or services are allowed beyond those permitted in federal and state regulations. Federal and state regulations generally allow noncompetitive procurements in the following cases: (1) when only one responsible source of supply is available, (2) when there is an unusual or compelling urgency, or (3) when the public's interest would not be served by competitive procurement. In contrast, ACE allows for noncompetitive procurements in the following situations:

- An emergency situation, as defined in ACE's Emergency Procedures, exists.
- Only one responsible source of supply is available.
- ACE's need is of a unique and compelling urgency.
- The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary to ensure standardization of equipment and interchangeability of parts.
- The goods are for testing or experimental purposes.

We asked ACE's senior project manager why the policy for noncompetitive procurements was broader than that presented in federal and state regulations. He told us that ACE would only make noncompetitive procurements where the ultimate owner of improvements, either Union Pacific Railroad (Union Pacific) or the cities, require ACE to buy from a specific vendor for purposes of standardization. If the broader policy is therefore designed to allow for situations where only one responsible source of supply is available, we believe that the three additional circumstances shown in the policy are unnecessary and will only create confusion. If the broader policy is meant to provide for situations where more than one responsible source of supply is available, but selection is limited to one vendor, it conflicts with state and federal regulations. Noncompetitive procurements should rarely occur, and when they do they should be limited to those circumstances contained in federal and state regulations. Otherwise, ACE may not receive the highest quality of goods and services at the lowest cost. Moreover, ACE risks losing federal funding if procurements are subsequently determined to violate regulations.

Second, ACE requires that a construction contractor have appropriate state licenses when it submits its contract proposal. In contrast, the Caltrans manual specifies that agencies can require state licensure only at the time of contract award. This requirement stems from a federal regulation designed to ensure that out-of-state contractors are not unfairly barred from competition. Although this policy conflicts with regulations, it has not had an adverse effect on ACE's largest contract selections. Specifically, since the project has not yet reached its construction phase, ACE has not barred any construction contractors from submitting proposals based on this requirement.

ACE's policy for rejecting selection committee recommendations is unclear.

Third, ACE should clarify its policy governing selection committee recommendations to the board of directors (board) for the awarding of contracts. The existing policy permits the board to reject the selection committee's recommendation and return it to the committee for further consideration and resubmission to the board. However, the current policy does not require that the board indicate what criteria it used to reject the recommendation, so that the selection committee can reconsider only those areas the board found unacceptable. Since the selection committee has an important role in ensuring a fair and competitive process, it is important that the board limit and clearly define the terms under which it returns a recommendation for further consideration.

In addition, we found that ACE's conflict-of-interest code may not adequately cover all persons involved in making or influencing significant agency decisions. ACE's code covers its board members, its staff, and certain employees of its project management consultant team, but does not include all persons sitting on its contract selection committees. Committee members include persons from outside ACE, such as representatives from cities, Caltrans, and the Metropolitan Transit Development Board of San Diego. According to ACE's Conflict-of-Interest and Disclosure Code, board members, employees, and consultants who participate in making construction authority decisions that could foreseeably have a material effect on their own financial interests should fall under its conflict-of-interest code and should file statements of economic interest. Likewise, an opinion issued by the Fair Political Practices Commission states that all persons on committees that have made recommendations affecting the final outcome of an agency's decision over an extended period of time should be included in the agency's conflict-of-interest code. We believe that ACE's selection committees should be viewed as part of a system that has historically had and will have a significant effect on decision making. Persons participating in this system should therefore be included in the conflict-of-interest code.

ACE does not require nonemployees on its contract selection committees to disclose economic interests they may have.

Instead of including selection committee members within its conflict-of-interest code, ACE distributes a letter to committee members that discusses conflict-of-interest standards in general and requires members to sign a copy of the letter and return it to ACE at the first meeting of the selection committee. Although this letter provides some guidance for situations in which conflicts may arise, it does not require that selection committee members publicly disclose any economic interests they have that could pose conflicts. Since the contract award process relies to a significant extent on the recommendations of committee members, it is imperative that ACE assure that decisions made by each member are free of real or perceived conflicts of interest, to protect itself from future criticism by unsuccessful contract bidders.

Finally, ACE adopted a contracting policy that would have allowed contractors to begin work before the final contract was signed if ACE's chief executive officer believed the contract negotiations would be successfully concluded and if it was important that the start of work not be delayed. In these cases, the policy authorized the chief executive officer to give a contractor a Notice to Proceed, permitting the contractor to begin work before the contract had been executed. This policy contradicted the Caltrans manual, which prohibits reimbursement for work performed before a contract is signed. After we informed ACE that this policy could put its federal and state reimbursements at risk, ACE revised the policy to state that contractors will not be authorized to start work until a contract has been fully executed.

CONTRACTS AWARDED FOR THE ACE PROGRAM HAVE FOLLOWED ESTABLISHED PROCEDURES AND HAVE BEEN REVISED ACCORDING TO EXTERNAL RECOMMENDATIONS

Since 1996, the San Gabriel Valley Council of Governments (council) has executed 9 contracts and ACE has executed another 4 contracts related to the construction program, all for consulting work. We reviewed the 3 largest of these 13 contracts, 1 contract executed by the council and 2 executed by ACE, and found that both the council and ACE adhered to proper award procedures. For example, the process for obtaining project management services included a detailed request for proposals, sufficient advertising, selection based on published criteria, and adequate contract terms. ACE reviewed proposals from 6 firms and awarded the contract to the highest-rated contractor, Bechtel/Korve.

ACE amended its standard provisions for consulting contracts in response to the recommendations of a Caltrans audit.

Following requirements in the Caltrans manual, ACE requested that Caltrans conduct an audit of the Bechtel/Korve contract. At the time of our fieldwork, Caltrans provided this service for consulting contracts exceeding $75,000. The purpose of the audit was to alert ACE to any potential problems relative to the provisions contained in the contract, the cost/price proposal, and the contractor's cost-accounting system. Caltrans' results were basically positive, although its auditors found some deficiencies. For example, the contract included no provisions setting a ceiling on the amount of the contract or requiring ACE's approval of the use of subcontractors; it included a cost-plus-a-percentage-of-cost fee structure prohibited by federal regulation; and it contained some relatively small cost items that were either unallowable or unwarranted. ACE corrected these deficiencies with the Bechtel/Korve contract and incorporated Caltrans' recommendations in its standard provisions for future consulting contracts.

The MTA will provide another form of external control over project expenditures. For example, a memorandum of understanding between ACE and the MTA states that ACE must submit quarterly progress and expense reports. The MTA reviews, approves, and reconciles these reports to the budget before it reimburses the funds. In addition, the MTA has the authority to conduct audits of the project as needed to ensure that ACE is using MTA grant funds appropriately as defined in the scope of work. The MTA is currently in the process of conducting two administrative audits of ACE's subcontractors, with findings to be issued by the end of May 2000.

CONTRACT MONITORING POLICIES ARE GENERALLY SOUND, BUT ACE MUST BETTER ABIDE BY ITS CHANGE ORDER POLICY

ACE's contract monitoring policies and procedures are basically sound. They require that contractors provide detailed schedules for task completion, monthly progress reports, and detailed invoices; that contracts include specific deliverables; and that ACE project managers review contractor deliverables, progress reports, and invoices. For example, ACE has used industry standards to segment the construction program into logical components. By adopting such standards, ACE will require contractors to provide details on the staff, equipment, and materials to be used during the design and construction of its projects. ACE will use this information in conjunction with contractor-provided activity schedules to track the progress of program components. It will also use the information to develop what is called a critical path plan that schedules the project, coordinates the work, and monitors and analyzes progress to identify potential schedule delays. ACE will update the automated schedule using progress reports and information gained from weekly status meetings with contractors.

To determine whether ACE follows its monitoring policies and procedures, we reviewed ACE's monitoring of its project management consultant, Bechtel/Korve. During the first six months of the contract, we found that ACE monitored consultant progress by holding weekly status meetings, maintaining a listing of deliverables due during the phase and those received, and reviewing invoices. However, during this period, neither ACE nor Bechtel/Korve developed a detailed schedule for when contract tasks and deliverables were to be completed. Instead, ACE accepted contract deliverables, mostly made up of draft reports and policies, by reviewing the deliverables, returning them to the consultant for revision, and filing them after modifications were completed. In a few cases, ACE formally accepted deliverables, as witnessed by the approval of ACE's board. ACE has since improved its monitoring in this area. Specifically, during the next six-month scope of work that began February 4, 2000, Bechtel/Korve gave ACE a detailed schedule indicating expected completion dates for specific deliverables.

As it begins to contract for design and construction services, ACE must assure that all changes in the scope of work be in writing.

As the agency and its program management consultant monitor the progress of a project, they may become aware of a need for changes in the contractor's scope of work. ACE included a provision in the Bechtel/Korve contract stating that it would not compensate the consultant for any services in addition to those listed in the scope of work unless ACE authorized the services in writing. In December 1999, however, ACE and Bechtel/Korve verbally agreed to change the scope of services to include one new task and one redefined task, reallocating about 900 hours, or 8 percent of the contracted hours, from old to new tasks. Although the change was relatively small in this case and did not add to the time or cost of the original contract provisions, it is essential for ACE to properly control the change order process as it begins to contract for design and construction services. Without written and signed change order agreements, even for changes involving no additional time or cost, ACE opens itself up to misunderstandings with its contractors and reduces its chances for receiving all the services it expects.

RECOMMENDATIONS

To ensure competitive contracting, ACE should make the following clarifications and changes to its policies and procedures:

- Revise its policies regarding noncompetitive procurement to mirror those contained in federal and state regulations.
- Require construction contractors to provide evidence of appropriate licenses only upon contract award.
- Clarify its policy to require the board, when it rejects the recommendations made by its selection committees, to specify those aspects of the original evaluations that it found deficient.
- Amend its conflict-of-interest code to state that members of contractor selection committees be required to disclose economic interests in the same manner as ACE employees.

To ensure that contractors complete all elements of scopes of work, ACE should write out detailed descriptions for all changes in scope, including any agreed-to deliverables. Both parties should sign these change orders.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the scope section of this report.

Respectfully submitted,

Mary P Noble

MARY P. NOBLE
Acting State Auditor

Date: May 10, 2000

Staff: Doug Cordiner, Audit Principal
Jim Sandberg-Larsen, CPA
Theresa Gartner, CPA
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Agency's comments provided as text only.

Alameda Corridor-East Construction Authority
3871 East Colorado Boulevard, Suite 100
Pasadena, CA 91107

April 28, 2000

Ms. Mary P. Noble
Acting State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Noble:

On behalf of the Alameda Corridor-East Construction Authority, I am providing comments on your draft audit report on the management practices of our agency.

First, I want to commend the State Auditor's office for a thorough and professional job the team did on this audit. Your staff has done its best to understand our project and how we are organizing to implement it. In light of the thoroughness of your audit, we are encouraged by the positive findings included in your report and the relatively few and straightforward recommendations for improvements on our part.

As to the recommendations contained in the report for the most part we agree with them. Once the report is public we will present it to our Board of Directors with a suggested response to each recommendation. There are three areas that the audit report focuses on that we believe we should comment on at this point, however.

Delaying Project Elements While Awaiting Rail Freight Consolidation Studies - The report recommends delaying elements of the project whose justification may be diminished by a consolidation of Union Pacific Railroad (UPRR) freight traffic until a consolidation study now in process is completed. As we've shared with the audit staff, the ACE Construction Authority, it's parent agency the San Gabriel Valley Council of Governments, and the Southern California Association of Governments have proposed freight consolidation of varying degrees on many occasions over the last five years. On each occasion, the UPRR dismissed consolidation over capacity and future traffic growth concerns. Notwithstanding this history, as the report indicates, we have raised the matter once again with the UPRR and they are currently considering it. Unfortunately, even if the railroad's response is neutral-to-positive, it will leave many unanswered questions as to whether such a plan offers net benefits. The report acknowledges unknowns about the public cost for necessary railroad capacity expansion, sources of funding for those improvements, the impacts of consolidation and costs to mitigate them. Simply stopping work on certain elements of the project in the face of such major uncertainties may not be the best approach for the Authority to take. Nevertheless, the point raised in the report is valid and the Authority will have to continue to weigh its options as it moves forward.

<u>Revised Policies on Noncompetitive Procurement</u> - The report states that the Authority's policies permitting non-competitive procurement in certain circumstances expand on federal and state regulations and should be restricted to cover fewer circumstances. We believe the provision in our policies questioned by the report are explicitly permitted by the Federal Acquisition Regulations and not prohibited by state regulations. The provisions were included in our policy in anticipation of the Authority being required by the UPRR or local jurisdictions (the ultimate owners and maintainers of the improvements) to install specific materials or equipment for standardization purposes. In any event, if the Authority finds a non-competitive procurement necessary to meet these specific railroad or city requirements, it will seek advance guidance from the appropriate funding authorities.

<u>Expanding our Conflict of Interest Code to Cover Technical Evaluation Committee (TEC) Members from Outside Public Agencies</u> - The report states that our current practice requiring TEC members from other public agencies to certify compliance with conflict of interest regulations does not go far enough to protect against real or perceived improprieties. We are more than willing to address the deficiency in our existing certification process cited in the report, though we are not sure the specific recommendation to cover employees of other public agencies under our Conflict of Interest is the most effective way of doing so. As we have indicated to your staff, our TECs are formed separately for individual procurements, vary in membership from procurement to procurement and typically are only in existence for 1-2 months. Conversely, our economic disclosure policy (which is governed by the County of Los Angeles) is oriented around annual filings of Board members, employees and consultants who have longstanding, ongoing involvement in the organization. I will review your recommendations with my Board and will use their guidance along with your recommendations to develop some additional procedures to address your concerns.

In conclusion, the ACE Construction Authority appreciates the constructive comments included in the audit. Please feel free to contact me should you have any questions regarding this matter.

Sincerely,

(Signed by: Rick Richmond)

Rick Richmond
Cheif Executive Officer

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press