

OCIA Audit Finding & Recommendations for Updated Responses

Enhancement/LPAA

6/10/2010

Finding:

Finding 1: During our review, we found one MPO that does not list the individual enhancement projects in its TIP. One of the applications for funding provided by this MPO clearly states that it is not listed in the Transportation Improvement Program.

Recommendation:

Recommendation 1: We recommend checking the TIP upon receipt of an application to ensure the project requested for funding is included. We further encourage SCDOT staff to inform the identified MPO of the need to list information related to its enhancement projects in its TIP.

June 2010 Response:

The LPAO concurs with the recommendation that upon receipt of an enhancement application, the enhancement office will check to ensure the project requested for funding is included in the MPO's TIP. Further, the Department's planning staff is currently communicating to MPOs of the need to ensure enhancement projects are correctly identified in their respective TIPs.

April 2015 Updated Response:

The LPAO (Local Program Administration Office) concurs with the recommendation that upon receipt of a Transportation Alternative Program (TAP) application, the LPAO will check to ensure the project requested for funding is included in the MPO's TIP. Further, the Department's planning staff has communicated to MPOs of the need to ensure TAP projects are correctly identified in their respective TIPs. This descriptive material is to include project name, description of project type, termini, cost, year of funding, etc. The planning staff has asked all MPOs to ensure a copy of the revised TIP reflecting these changes accompany the project application when submitted to SCDOT. Staff in the LPAO is currently checking upon receipt of an MPO application that the project requested is included in their TIP. Correspondence was sent to each MPO on August 10, 2010 requesting each MPO comply with those items listed in the above recommendation.

Finding:

Finding 2- There were instances where evidence of an FHWA eligibility determination or the Commission approval was missing from project files. After being provided evidence to support that proper approval was obtained, we determined that the omissions were a result of filing errors.

Recommendation:

Recommendation 2- We recommend a quality control mechanism be implemented to ensure all necessary documents are included in the project files.

June 2010 Response:

The LPAO agrees with the recommendation that a quality control mechanism be implemented such as a checklist to ensure all necessary documents are included in the project files. This mechanism has been developed and is presently being implemented for all active projects.

April 2015 Updated Response:

Staff in the LPAO developed a checklist ensuring that a quality control mechanism was implemented ensuring documentation is included in project files. Staff is currently using this checklist for all active projects.

Finding:

Finding 3- After reviewing the files and interviewing the Enhancement Coordinator, we found that no formal procedure or policy exists for determining when a project will be submitted for Commission approval under the Statewide Enhancement Program. While a project cannot be awarded without Commission approval, not having an established policy or timeframe for seeking approval may unnecessarily lengthen the overall processing time for a project.

Recommendation:

Recommendation 3- We recommend that the Enhancement Office establish a procedure such as every month, two months, or every quarter for project submission to the Commission for approval.

June 2010 Response:

At the request of the Secretary of Transportation's Office, the LPAO will provide the number and types of eligible enhancement projects that have been submitted to SCDOT for Commission approval. The Secretary's Office will determine based on the scope of the Commission agenda if project submission is warranted at that time.

April 2015 Updated Response:

The Local Program Office works directly with the Commission Chairman of the Transportation Alternatives Committee to determine if project submissions are warranted. Typically, projects are submitted to the full Commission in January and July of each year.

Finding:

Finding 4- In the files we selected for testing, we found an instance where an LPA wanted to utilize in-kind services instead of cash for a match to enhancement funds. The applicant did not elaborate on what would be used as in-kind services, and this information was not caught during the preliminary eligibility review. Because of the intensive documentation requirements involved with documenting the in-kind services, SCDOT encourages the use of a cash match over the in-kind services. If a LPA is unable to provide the cash match upfront, the office will work with the LPA to develop a plan for cash payment.

Recommendation:

Recommendation 4- We recommend Enhancement program management re-evaluate its position on the use of in-kind services. Program personnel should ensure that the documentation requirement for in-kind services is communicated to interested parties. A packet of information could be created and made available on the website to instruct the LPA of the level of detail that must be maintained to document the use of in-kind services. We also recommend that the Enhancement Office practice greater diligence to ensure needed items are requested and vague plans are elaborated on upon the initial receipt of the application. The use of in-kind services needs to receive prior SCDOT approval and be documented in the official project file. If SCDOT decides not to allow in-kind services, then it should communicate its position to the LPAs via the website and National Transportation Enhancements Clearinghouse.

June 2010 Response:

We recommend Enhancement program management re-evaluate its position on the use of in-kind services. Program personnel should ensure that the documentation requirement for in-kind services is communicated to interested parties. A packet of information could be created and made available on the website to instruct the LPA of the level of detail that must be maintained to document the use of in-kind services. We also recommend that the Enhancement Office practice greater diligence to ensure needed items are requested and vague plans are elaborated on upon the initial receipt of the application. The use of in-kind services needs to receive prior SCDOT approval and be documented in the official project file. If SCDOT decides not to allow in-kind services, then it should communicate its position to the LPAs via the website and National Transportation Enhancements Clearinghouse.

April 2015 Updated Response:

The LPAO concurs with the recommendation that the program website be updated to communicate in-kind match requirements to the interested governmental entities. Furthermore, the LPAO agrees with the recommendation to carefully review information contained within the application ensuring the types of in-kind services are fully detailed for review and approvals documented more clearly. The application instructions (pages 2 and 9) shown on the Transportation Alternatives Program website have been updated to more effectively communicate in-kind match requirements. When an application is submitted by an LPA, staff reviews all information ensuring the types of in-kind services are fully detailed for review and approvals documented more clearly.

Finding:

Finding 5- During our review of files, we found four instances where it took longer than 30 days for matching funds to be received by SCDOT. Per the Enhancement Coordinator, the only penalty to an LPA for SCDOT not receiving matching funds within the 30 day time frame is that SCDOT will not begin construction for the project. Even though this is true, SCDOT will incur costs associated with conducting preliminary work prior to receiving the LPA's matching funds.

Recommendation:

Recommendation 5- We recommend SCDOT require the LPAs to submit copies of their current budget or other funding information with the applications to ensure matching funds are readily available before financial participation agreements are signed.

June 2010 Response:

The LPAO will carefully review the governmental entity's application to ensure the specific funding source is delineated ensuring matching funds are readily available to be submitted to SCDOT upon receipt of an invoice from the department's accounting office.

April 2015 Updated Response:

The LPAO will carefully review the governmental entity's application to ensure the specific funding source is delineated ensuring matching funds are readily available to be submitted to SCDOT upon receipt of an invoice from the department's accounting office.

Finding:

Finding 6- We reviewed several LPAA office project files. The project files contained items such as the application, applicant evaluation form, program action request, and the participation agreement. The file also included assessments from various areas in the agency including Procurement, Contract Assurance, and the RPGs about various aspects of the LPA and its experience. Based upon the assessments, the LPAA staff makes a decision on the overall approval or denial of an applicant. Some files reviewed contained a memorandum to file summarizing all actions relative to the applicant. The memorandum to file gave a sound basis for the overall LPA self-administration decision.

Recommendation:

Recommendation 6 - We recommend a quality control mechanism be implemented in the LPAA office to ensure all needed information is included in the files before certain milestones, such as the issuance of an approval letter, have been reached. Utilizing the memorandum to file to summarize qualification information would serve this purpose.

June 2010 Response:

The LPAO agrees with the recommendation that a quality control mechanism be accomplished such as a memorandum to file summarizing qualification information to ensure all necessary documents are included in the project files. A memorandum to file is now being placed into each active project file accomplishing this goal.

April 2015 Updated Response:

The LPAO agrees with the recommendation that a quality control mechanism be accomplished such as a memorandum to file summarizing qualification information to ensure all necessary documents are included in the project files. A memorandum to file is now being placed into each active project file accomplishing this goal.

Finding:

Finding 7- Upon receipt of an LPA application requesting self-administration, the LPAA office staff disseminates parts of the application to specific program areas for evaluation of the LPA's experience with administering federal projects, financial capability, procurement procedures, and past SCDOT experience. In some of the files we reviewed, the procurement evaluation was a one line statement that said the code looks fine.

The LPAs most recent audited financial statements are submitted to Contract Assurance to determine if the LPA appears to be financially capable of performing the project. Although Contract Assurance is diligent with the LPA information it is provided, it lacks the information to ensure the LPA has a system in place that can adequately identify, track, and segregate costs.

Recommendation:

Recommendation 7- Because of the significance of following appropriate procurement procedures when using federal funds to procure consultants and contractors, we recommend the procurement review be enhanced to not only include a review of the procurement manual but also its application of the procurement procedures in prior projects. We further recommend Contract Assurance expand its review to include a review of the LPAs cost accounting system and an assessment of their ability to maintain internal control over its federal award. Because the LPAA office is evolving and trying to improve its current processes, it may want to evaluate and consider training its staff to conduct these qualification evaluations in the LPAA office as opposed to sending the procurement and contracting concurrences to the various program areas.

June 2010 Response:

SCDOT staff in the procurement office and the contract assurance office provides needed guidance to the LPAA during the qualification evaluation review process. The LPAA office has determined utilizing the knowledge, skills, and abilities of the staff in these other offices is a wise use of resources and to duplicate these skills in an attempt to self-perform these evaluations would not be prudent. The amount of time it takes for an evaluation review to be finalized is within an acceptable time frame for the LPAA office to complete its evaluation. As recommended, the contract assurance office will expand its review to include a review of the LPA's cost accounting system and an assessment of their ability to maintain internal control over its federal award. However, there presently exists numerous checks and balances within the LPA procedures relating to consultant and contractor procurement that an enhancement of the procurement office review is not warranted.

April 2015 Updated Response:

SCDOT staff in the procurement office and the Contract Assurance office provides needed guidance to the LPAA during the qualification evaluation review process. The LPAA office has determined utilizing the knowledge, skills, and abilities of the staff in these other offices is a wise use of resources and to duplicate these skills in an attempt to self-perform these evaluations would not be prudent. The amount of time it takes for an evaluation review to be

finalized is within an acceptable time frame for the LPAA office to complete its evaluation. As recommended, the contract assurance office has expanded its review to include a review of the LPA's cost accounting system and an assessment of their ability to maintain internal control over its federal award. However, there presently exists numerous checks and balances within the LPA procedures relating to consultant and contractor procurement so that an enhancement of the procurement office review is not warranted. The contract assurance office performs a review of the results of annual independent audits of each LPA to determine if the organization has appropriate cost accounting systems and internal controls in place to properly manage awards from the SCDOT. The majority of these audits are performed in accordance with Government Auditing Standards, which require the independent auditor to report on the effectiveness of internal controls over financial reporting and on compliance with laws, regulations, and provisions of contracts or grant agreements. The contract assurance office obtains additional information from the LPA as necessary to assess their ability to manage the award.

Finding:

Finding 8- We discussed debarment with LPAA staff to see if someone in the office checks GSA's excluded parties list, and they were not aware of this requirement. We also consulted with the Director of Contracts and Special Projects and found that the director was aware of the list but did not think it applied to architectural and engineering consultants. According to our research of the Federal Acquisition Regulations (FAR), FHWA guidance material, and the FHWA division office, the debarment rule applies to both construction contractors and consultants.

Recommendation:

Recommendation 8- We recommend that upon receipt of the LPA Contract Concurrence Request Form and the LPA Construction Award Concurrence Request Form, the LPAA office check the GSA excluded parties list to ensure both the consultants and the construction contractors utilized by the LPA are not on the list. SCDOT should also check the GSA excluded parties list to ensure the consultants and the construction contractors utilized for the SCDOT administered enhancement projects are not on the list. SCDOT and the LPAA office should check their current consultants and construction contractors to ensure they are not debarred and establish a policy that requires checking the list periodically. We further recommend that the LPA/Consultant Basic Agreement be modified to include the provision related to debarment as found in 23 CFR 633 Subpart A.

June 2010 Response:

The LPA office has discussed the recommendation relating to review of the Excluded Parties List System with SCDOT's Contracts office of the Legal Division and the Director of Construction's office. Both offices have agreed to review the website as a part of their review and approval process for both the consultants and the construction contractors. The LPAA office is in the process of checking their current consultants and construction contractors to ensure they are not debarred as recommended. The LPA Consultant Basic Agreement has been revised on the Consultant Certification page to include a new letter "D" stating the provisions related to debarment found in 23 CFR 633 Subpart A.

April 2015 Updated Response:

The LPA office has discussed the recommendation relating to review of the Excluded Parties List System with SCDOT's Contracts office of the Legal Division and the Director of Construction's office. Both offices have agreed to review the website as a part of their review and approval process for both the consultants and the construction contractors. The LPA Consultant Basic Agreement has been revised on the Consultant Certification page to include a new letter "D" stating the provisions related to debarment found in 23 CFR 633 Subpart A. Staff in the LPAA office has finalized the review of their current consultants and construction contractors on the Excluded Parties List System to ensure they are not debarred.

Finding:

Finding 9- In the 2008 National Program Review report of the LPA projects, it states that the Participation Agreement includes a "catch-all" statement that requires the local agency to conform to all State, Federal, and local laws, rules, regulations, and ordinances. Also, the report indicated that SCDOT needs to avoid the use of "catch-all" statements pertaining to laws, rules, and regulations. We found sections such as Section IV "hh" and Section IX "e" that still contained the "catch-all" statements. Section IV "hh" states, "the participant will perform all project services in accordance with...applicable sections of the Department/FHWA Stewardship and Oversight Plan dated November 2007".

Recommendation:

Recommendation 9- We recommend the department implement the recommendation made by FHWA concerning the "catch-all" statements in the LPA Participation Agreements. The "catch-all" phrases should be replaced by applicable sections of 23 CFR, 49 CFR, the FAR, and FHWA guidance information. Language in the Participation Agreement relating to the SCDOT and FHWA Stewardship Agreement should include a reference to the applicable sections of the document for which SCDOT has delegated its authority as opposed to a generic reference to the entire agreement.

June 2010 Response:

The LPA office, upon receipt of the 2008 National Program Review (NPR) report, set up meetings and discussions with representatives from both FHWA and the Contracts area of SCDOT's Legal Division. The additional language noted in the recommendation was developed and agreed to by the parties as satisfying the exceptions noted in the NPR report. It should be noted that "catch-all" statements are a recognized and common practice in the agreement development as a protection to the SCDOT, State, and Federal Government. A statement such as, "The contract is to be interpreted under the laws of the State of South Carolina" (see Section XI) is certainly a "catch-all" but saves the listing of all statutes and amendments that would pertain to the various services included in the contract. This same principle holds true when referenced to the LPA Procedures and Department/FHWA Stewardship and Oversight Plan. Also, the LPA Agreement, as drafted, is a global agreement subject to modifications to address the specific scope of services and other requirements for individual projects. The LPA Office considers the finding to have been addressed to the satisfaction of FHWA; however, should

FHWA reconsider their position and notify the LPA office appropriate revisions to the agreement will be made.

April 2015 Updated Response:

The LPA Office, upon receipt of the 2008 National Program Review (NPR) report, set up meetings and discussions with representatives from both FHWA and the Contracts area of SCDOT's Legal Division. The additional language noted in the recommendation was developed and agreed to by the parties as satisfying the exceptions noted in the NPR report. It should be noted that "catch-all" statements are a recognized and common practice in the agreement development as a protection to the SCDOT, State and Federal Government. A statement such as, "The Contract is to be interpreted under the laws of the State of South Carolina" (see Section XI) is certainly a "catch-all" but saves the listing of all statutes and amendments that would pertain to the various services included in the contract. This same principle holds true when referenced to the LPA Procedures and Department/FHWA Stewardship and Oversight Plan. Also, the LPA Agreement, as drafted, is a global agreement subject to modifications to address the specific scope of services and other requirements for individual projects. The LPA Office considers the finding to have been addressed to the satisfaction of FHWA; however, should FHWA reconsider their position and notify the LPA office, appropriate revisions to the agreement will be made.