



Office of the Chief Internal Auditor

Audit Report

*South Carolina Department of Transportation's
Enhancement Program
(A10-003)*

June 10, 2010

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**Office of the Chief Internal Auditor
Audit of SCDOT Transportation Enhancement Program**

June 10, 2010

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Transmittal Letter



OFFICE OF THE CHIEF INTERNAL AUDITOR

October 14, 2010

Commission of the South Carolina Department of Transportation

The Honorable Lawrence K. Grooms, Chairman
South Carolina Senate Transportation Committee

The Honorable Hugh K. Leatherman, Sr., Chairman
South Carolina Senate Finance Committee

The Honorable Phillip D. Owens, Chairman
South Carolina House Education and Public Works Committee

The Honorable Daniel T. Cooper, Chairman
South Carolina House Ways and Means Committee

Dear Gentlemen:

The Office of the Chief Internal Auditor has completed our compliance audit of the SCDOT Transportation Enhancement Program as of June 10, 2010. In accordance with Section 57-1-360, we are transmitting to you this report on our compliance audit.

We conducted this compliance audit in accordance with generally accepted governmental auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Please don't hesitate to contact us if you have any questions or comments.

Respectfully submitted,

Robert W. Wilkes, Jr., CPA
Chief Internal Auditor

Executive Summary

EXECUTIVE SUMMARY

Since 1992 the Transportation Enhancement Program has provided local governments with the opportunity to partner with the South Carolina Department of Transportation (SCDOT) to enhance their communities. Local governments may use enhancement funds to perform “non-traditional” transportation projects, such as bicycle and pedestrian facilities and landscaping and scenic beautification. The Transportation Enhancement funds are allocated by SCDOT but provided through the federal Safe, Accountable, Flexible, Efficient Transportation Equity Act. The program may reimburse or provide up to 80% of the allowable expenditures for an approved project. Local Public Agencies (LPA) must provide at least 20% or the remaining costs of their enhancement project. Transportation Enhancement Funds are segmented into statewide enhancement funds and funds allocated to the State’s ten Metropolitan Planning Organizations (MPO’s). MPOs Policy Committees determine how their allocated enhancement funds are distributed among the projects in their metropolitan planning areas. SCDOT has an Enhancement Coordinator that handles the receipt and processing of Transportation Enhancement projects. If an LPA’s project is determined to be eligible for funding and the LPA decides to self-administer the project, it must undergo a qualifications process by the Local Public Agency Administration (LPAA) office.

The Office of the Chief Internal Auditor (OCIA) reviewed SCDOT’s Transportation Enhancement program to determine the agency’s compliance with applicable laws and regulation as well as its adherence to audit findings and recommendations prepared by the Federal Highway Administration (FHWA) and Scott McElveen, L.L.P. We conducted this audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We evaluated the processes and internal controls of the Enhancement Office and the LPAA. Our objectives were as follows:

- ❖ Evaluate the procedures in place for determining the initial eligibility and technical review of proposed LPA projects.
- ❖ Ensure the projects selected for funding were properly authorized before being awarded.
- ❖ Evaluate SCDOT's level of adherence to newly implemented procedures of qualifying LPAs to self-administer projects and ensure there are adequate controls in place for SCDOT to make a proper qualification determination that is in compliance with program and federal regulations.
- ❖ Evaluate the existence and adequacy of monitoring mechanisms utilized by the Enhancement Office and the LPAA.

We conducted reviews of the processes involved in each functional area, interviewed employees, selected samples, and performed tests of controls. We have developed nine recommendations related to process flows and controls within the department that are listed below:

- We recommend checking the Transportation Improvement Program (TIP) upon receipt of an application to ensure the project requested for funding is included.

- We recommend a quality control mechanism be implemented in the Enhancement Office to ensure all necessary documents are included in the file.
- We recommend the Enhancement Office establish a procedure for submitting projects to the Commission for approval.
- We recommend enhancement program management re-evaluate its position on the use of in-kind services.
- We recommend SCDOT require the LPAs to submit a copy of their current budget or other funding information at the time the application is submitted.
- We recommend a quality control mechanism be used in the LPAA office to ensure the proper concurrences are listed in the project files before the LPA is approved to self-administer a project.
- We recommend the procurement and financial review be enhanced.
- We recommend the LPAA office check the General Services Administration's (GSA) excluded parties list to ensure both the consultants and the contractors utilized by the LPA are not included on the list.
- We recommend SCDOT implement FHWA's recommendation concerning the inclusion of catch-all statements in the LPA participation agreements.

The findings and recommendations will be discussed in greater detail in the Audit Findings and Recommendations section of the report.

Audit Findings and Recommendations

The Office of the Chief Internal Auditor performed a compliance audit of SCDOT's Transportation Enhancement Program. This audit included examining the processes followed by both the Enhancement Office and the newly created LPAA office. The scope of our audit was limited to Transportation Enhancement projects performed under the new procedures implemented in March 2009.

Scott McElveen, L.L.P. conducted a financial audit in FY2007 and FY2008 and found that there was a lack of proper oversight and administration of the locally administered projects, specifically enhancement projects. The audit findings also indicated that LPAs were not made aware of the funding source and Catalog of Federal Domestic Assistance (CFDA) number associated with the grant award.

In 2008, FHWA conducted a *Process Review of SCDOT's Procedures for Administration and Oversight of Federal-aid Projects Delegated to Local Public Agencies* (National Program Review) and found a number of weaknesses related to managing federally funded projects. Among the weaknesses were findings concerning inadequate documentation of SCDOT approvals as required in the executed participation agreements, insufficient certification process for LPAs, and inadequate monitoring of participation agreement requirements. Also, the review team identified opportunities for SCDOT to improve its LPA oversight process by recommending improvements in the current tracking of LPA federal-aid projects and consolidation of LPA project records within SCDOT.

While Congress mandated that states fund transportation enhancements activities as part of their Surface Transportation Program (STP), Congress left the majority of decision making about how states should implement the enhancement program to the states. States, using citizen and local input, have tremendous flexibility in managing their enhancement programs. The policy of the SCDOT enhancement program focuses on and allows funding for pedestrian facilities, bicycle facilities, and landscaping and scenic beautification. The typical local match for an enhancement project is 20%, and the maximum project award for a statewide enhancement project is \$400,000. The Enhancement Office is responsible for the receipt and tracking of all applications for enhancement funding and is the initial point of contact for LPAs seeking Transportation Enhancement funding. The Enhancement Coordinator is responsible for obtaining Commission approval, FHWA eligibility, and technical reviews by SCDOT. The Enhancement Coordinator also ensures the Financial Participation Agreement (FPA) is executed and matching funds have been obtained for SCDOT administered projects. Once matching funds have been obtained, the Regional Production Group (RPG) is notified to proceed with right of way and construction activities on the project.

When an LPA requests to self-administer a project, the application and other information is submitted to the LPAA for a qualification determination. If the LPA is not approved to self-administer the project, the file may be transferred back to the Enhancement Office so a financial participation agreement can be prepared. SCDOT will then begin the process of designing the project and preparing for construction activities.

At the time of the FHWA review, the Enhancement Office was located under Finance and Administration. The program has since been moved to Engineering. The newly created LPAA

office is also located under Engineering. The Enhancement Office and the LPAA office are managed by two different people but ultimately report to one manager. Some of the enhancement procedures, such as application cycles, the level of technical reviews, and the level of interaction with the RPG have changed and are still evolving. The LPAA office has been in existence for a little more than one year and is continuously improving. The LPAA office realizes the importance of training for both its staff and LPA recipients that are seeking to self-administer their projects. The offices have taken advantage of technology by making enhancement project applications, instructions, eligibility requirements, and needed forms available on the internet. The office also utilizes a document management system to house applications, certification, program action requests, and other pertinent project information in a central location.

Finding 1

For FY2010, the Statewide Enhancement Program was allocated six million in funding and the Metropolitan Planning Organizations (MPOs) were allocated four million for projects in their areas. The projects for the statewide funds must be approved by the Commission. Projects funded through the use of MPO allocation are selected by their planning committee, and concurrence is given by the Commissioner for the same district of that MPO.

The application for enhancement funding lists several questions; including “Is the project located in the MPO boundary,” and “Is the project listed in a MPO’s Transportation Improvement Program (TIP)?” This information is not always verified by the Enhancement Coordinator before the application is sent to FHWA to determine project eligibility. The MPO TIPs are reviewed by the Program Managers (PM) in the RPGs at a different stage in the process, but there appears to be a lack of clarity by some PMs as to whether projects must be listed in the TIPs. Enhancement project funding is recorded in a lump sum amount on SCDOT’s STIP. Through discussions with the SCDOT planning office, we were informed that when the decision was made to include only a lump sum amount for enhancement projects in the STIP, the MPOs were expected to individually list their enhancement projects in their TIP.

According to 49 USC 53, “Each project in the TIP shall include sufficient descriptive material (such as type of work, termini, length and other similar factors) to identify the project or phase of the project...A TIP developed under this subsection for a metropolitan area shall include the projects within the area that are proposed for funding under this chapter and chapter 1 of title 23,” (this includes transportation enhancement activities). 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 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.

Finding 2

We reviewed and tested information in the project files maintained by the Enhancement Office and found the overall quality of the files to be good. The office has implemented controls to ensure adequate levels of reviews are performed to determine project eligibility. However, 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 2

We recommend a quality control mechanism be implemented to ensure all necessary documents are included in the project files. The quality control function could possibly be implemented by creating a checklist to verify all documents are included in the files.

Finding 3

Prior to the FHWA audit of SCDOT's enhancement program, the Enhancement Office used an application cycle. The office announced the grant funds and set a due date for receiving project applications for funding. Then, the office utilized a checklist to rate the projects, and the projects were submitted to the Commission for approval. Currently, applications are being received year round, and technical reviews and the FHWA eligibility determination are being conducted as the applications are received. We were informed that there is no real consideration being given to returning to the application cycle. Furthermore, 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. While this may not affect SCDOT, it does affect LPAs that are awaiting the approval, start, and completion of their enhancement project.

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.

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. “[In-kind services] are the value of non-cash contributions provided by non-Federal third parties. [In-kind services] may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to [a] project or program,” (43 CFR Section 12.902). We were informed that at the initial scoping meeting, the Program Manager would gather needed information about the proposed in-kind services. This, however, is after the technical reviews, FHWA eligibility, and Commission approval have been obtained. According to FHWA guidance, States may allow the value of in-kind, non-cash, contributions of materials, services,

and land to be credited toward the non-Federal match of a transportation enhancement project. 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 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. Prior knowledge of this information may allow LPAs to secure other financing as a match before applying for Transportation Enhancement funds.

Finding 5

When an LPA completes an application for Transportation Enhancement funding, it is to list the amount and the name of the source of its matching funds. The LPA is instructed to remit its matching funds within 30 days from the date on SCDOT's invoice. 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 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.

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. However, the majority of the files we reviewed for testing did not

include this type of summarization. We also found instances in which qualification documents were not included in the project files. While we feel confident that all necessary qualification evaluations have been conducted, documentation is extremely important especially as it relates to federally-funded projects.

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. This memo would also aid anyone reviewing the files to clearly understand how an approval or denial decision regarding self-administration was derived.

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. According to the LPAA Administer, the program areas are allowed approximately two weeks to perform the evaluation. The LPAA office does a good job of requesting a resume and other pertinent information to evaluate the experience of the person who will oversee the federal project. It is also improving its process to determine an LPA's past SCDOT experience by using the LPA Project Evaluation Review Form as a tool for the PM, Resident Construction Engineers (RCEs), etc., to evaluate the performance of the LPA. The comments provided on this form will be factored into the decision to allow self-administration when the LPA applies for funds in the future. SCDOT's Procurement department reviews the LPA's procurement manual and based upon the review, informs the LPAA office of items in the local procurement code that are in contrast to the state procurement code. 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 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.

Finding 8

According to 49 CFR Part 18.35, “Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." GSA maintains a list of persons, firms, and entities that have been debarred or suspended from receiving federal funds. In the federal-aid construction contracts with contractors, SCDOT lists required provisions, one of which is a provision concerning debarment and suspension. These provisions are also required to be in the contracts between LPAs and their contractors. 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 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.

Finding 9

In the FY2008 audit performed by Scott McElveen, L.L.P., the audit report documented that LPAs were not informed of appropriate CFDA numbers for the funding source of the grants they were receiving. The Transportation Enhancement Participation Agreements have since been revised to include this information. 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 compared the language in a Participation Agreement from March 2010 to the language in the Participation Agreement of a project from FHWA’s review and found the responsibilities have been better defined between the department and the participant. We however 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 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.

Department Response



South Carolina
Department of Transportation

MEMORANDUM

TO: Robert W. Wilkes Jr., Chief Internal Auditor
FROM: John V. Walsh, P.E., Deputy Secretary for Engineering
DATE: August 25, 2010
RE: Transportation Enhancement Program Administration Audit

The Local Program Administration Office (LPAO) is in receipt of the recently completed Transportation Enhancement Program Administration audit from the Office of the Chief Internal Auditor (OCIA). The objective of the audit was to review the operations of the enhancement program and its support departments to ascertain if their operations are compliant with those applicable sections of the S.C. Code of Laws.

The OCIA audit revealed nine findings along with their recommendations for corrective action. The following is the response to these recommendations.

OCIA Recommendation One:

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.

Response to OCIA Recommendation One:

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. This descriptive material is to include project name, description of project type, termini, cost, year of funding, etc. The planning staff is also asking all MPOs to ensure a copy of the revised TIP reflecting these changes accompany the enhancement project application when submitted to SCDOT.

OCIA Recommendation Two:

We recommend a quality control mechanism be implemented to ensure all necessary documents are included in the project files. The quality control function could possibly be implemented by creating a checklist to verify all documents are included in the files.

Response to OCIA Recommendation Two:

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.



OCIA Recommendation Three:

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.

Response to OCIA Recommendation Three:

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.

OCIA Recommendation Four:

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 Local Public Agency (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. Prior knowledge of this information may allow LPAs to secure other financing as a match before applying for Transportation Enhancement funds.

Response to OCIA Recommendation Four:

The LPAO concurs with the recommendation that the transportation enhancement 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.

OCIA Recommendation Five:

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.

Response to OCIA Recommendation Five:

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.

OCIA Recommendation Six:

We recommend a quality control mechanism be implemented in the Local Public Agency Administrator's (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. This memo would also aid anyone reviewing the files to clearly understand how an approval or denial decision regarding self-administration was derived.

Response to OCIA Recommendation Six:

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.

OCIA Recommendation Seven:

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.

Response to OCIA Recommendation Seven:

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.

OCIA Recommendation Eight:

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

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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.

Response to OCIA Recommendation Eight:

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.

OCIA Recommendation Nine:

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.

Response to OCIA Recommendation Nine:

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.

HJC:thw

cc: H. B. Limehouse Jr., Secretary of Transportation
Ron Patton, Chief Engineer for Planning, Location, and Design
Brian W. Keys, Assistant Chief Engineer for Planning, Location, and Design