



**DIVISION OF LOCAL ASSISTANCE
Office of Procedures Development**

PROCESS REVIEW #03-05

Subcontracting – Contract Compliance

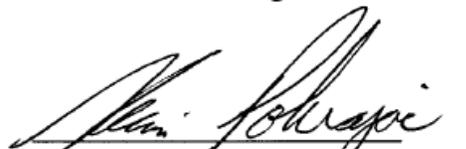
FINAL REPORT

1. Prepared By:


EUGENE SHY
Process Review Engineer

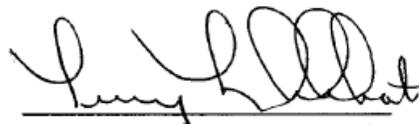
1/24/05
Date

2. Recommend Approval:


KEVIN POKRAJAC, Chief
Office of Procedures Development

1-28-05
Date

3. Approved:


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Division of Local Assistance

1/28/05
Date

I. EXECUTIVE SUMMARY

- The Process Review Team (PRT) reviewed 12 randomly selected Federal-aid projects under construction in Districts 1, 8, 10, 11, and 12. Most of the reviewed local agencies expressed satisfaction with assistance given to them by their District Local Assistance Engineer (DLAE) staff. All projects reviewed were competitively bid construction contracts (see Attachment #1) and did not include any force account work done by the local agency.

- The primary goal was to determine if the Federal requirements (FHWA Form 1273, Disclosure of Lobby Activities, Prompt Payment, etc.) and State requirements (Prevailing Wages, etc) are being included in the subcontracts. Also, if the procedures in the Local Assistance Procedures Manual (LAPM) are being followed on Federal-aid construction subcontracts. In general, with two serious exceptions, local agencies, their construction contractors, and subcontractors were in compliance. The two serious exceptions consisted of:
 - (1) One construction contractor found to be using verbal, rather than written, subcontract agreements which do not allow for the flow through provisions from the prime contract to be binding on the subcontractors.
 - (2) The majority of the subcontracts incorporated the prime contract provisions by reference including the Federal Form 1273. However, as specified in Chapter 12, Section 12.9 of the Local Assistance Procedures Manual (LAPM), 23 Code of Federal Regulations (CFR) 633.102(e), and in the wording of the Federal Form 1273 “Required Contract Provisions Federal-aid Construction Contracts”, it states in Provision “I. General” the following: “2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions”. Consequently, the Federal Form 1273 needs to be physically attached to all subcontracts.

- A secondary goal was to determine if the procedures in the LAPM regarding Disadvantaged Business Enterprise (DBE) subcontractors are helpful in administering the DBE program, preventing minor and major DBE deficiencies, and being followed. In general, the procedures are being followed and working well with only a couple of exceptions found as follows:
 - (1) On one project, one DBE subcontractor had been listed on the “DBE Information Form” and was being used but had not been include on the “List of Subcontractors”.
 - (2) On another project, the Resident Engineer did not know which subcontractors were DBE subcontractors and therefore could not have been able to determine if the DBE subcontractors were performing a “commercially useful function” on the project.

- In general, the “Objectives of Review” of the Process Review Plan were accomplished. The following are examples:
 - (1) The required flow-through prime contract provisions were incorporated, physically or by reference, into the subcontracts that were reviewed.
 - (2) No subcontractors were found on the debarred list.
 - (3) Subcontracting violations and areas of improvement have been identified.

- (4) Of the subcontracts reviewed, less than 50% physically attached the Federal Form 1273; the balance of the subcontracts included it by reference. The previous “Subcontracting – Contract Compliance Process Review #96-05” identified 5 out of 19 projects in which the Federal Form 1273 was not included in the subcontracts.
- (5) One prime contractor claimed his subcontracts were only verbal and not in writing.

II. PROCESS REVIEW CHRONOLOGY

A. Background

- This Process Review was a follow up to “Subcontracting – Contract Compliance Process Review #96-05”.
- In general, the approved “Subcontracting – Contract Compliance Process Review Plan” (Attachment #2) was followed for this Process Review.

B. Methods and Responsibilities

- The “Subcontracting – Contract Compliance Process Review Plan” was approved on May 28, 2004. This plan was generally followed in four districts (#1, #8, #10, and #11) for 2, 3, 4, and 2 randomly selected local agency projects, respectively, that were all off of the NHS. In addition, one local agency project on the NHS (also on a State Highway) was reviewed in District 12 to better understand the role of Local Assistance in projects of this type (a Caltrans oversight project).
- The three phases described in the Process Review Plan were generally followed. The first phase being the spot-checking of the contract documents at each District office of the randomly selected local agency Federal-aid projects under construction. The second phase being the spot-checking of the “subcontracting” compliance documents and records at the local agency offices to ensure both the local agencies and their construction contractors were following the required “subcontracting” compliance procedures. The third phase being the spot-checking at the construction sites to ensure both the construction contractors and the local agencies are following the “subcontracting” compliance procedures at the construction site. The questionnaires used for each phase are attached as Exhibits #1 (DLAE), #2 (Local Agency), and #3 (Construction Site Monitoring) to the “Subcontracting – Contract Compliance Process Review Plan”.
- At each of the four districts with projects off the NHS, the PRT reviewed the “subcontracting” compliance portions of the local agencies’ contract administration files/documents received by the DLAE for the selected projects. The files/documents were reviewed for completeness, accuracy, and compliance in meeting Federal requirements as well as complying with the contracts and the LAPM. The files/documents were generally found to be satisfactory unless noted in this report. The DLAE’s files/documents and involvement in the one local agency project in District 12, which was on the NHS and a State Highway, was very limited since this local agency project was being constructed with Caltrans oversight.

- At each of the local agencies with projects off the NHS, the PRT reviewed the contract compliance files/documents pertaining to “subcontracting” that were not to be submitted to the DLAE but were to be retained in the project files by the local agency. In addition, the prime contractor’s typical subcontract was reviewed, whenever available, for compliance at each project job site. In District 12, since it was a Caltrans oversight project, compliance reviews of the local agency documents were being performed by Caltrans construction.

C. Review Team

The PRT met with district personnel, local agency personnel and their consultants, including the Resident Engineers, responsible for the projects under review. The composition of the Process Review Team (PRT) generally consisted of one to two members from Caltrans Division of Local Assistance, one member from the Federal Highway Administration, one or more members from Caltrans District Local Assistance Engineer’s (DLAE’s) staff as listed below:

Eugene Shy, Process Review Engineer, Caltrans
 Patrice Carroll, Civil Rights Associate Caltrans Administrator, Caltrans
 Bren George, District 8, Transportation Engineer, FHWA
 Charlie Chen, District 1, Transportation Engineer, FHWA
 Jason Deitz, District 11, Transportation Engineer, FHWA
 Robert Cady, District 12, Transportation Engineer, FHWA
 DLAE s and their staff members in each District visited, Caltrans

D. Review Schedule

- The original schedule in the Process Review Plan was not met because of delays due to higher priority work of the review team members, conflicting schedules of Caltrans, FHWA, and local agency personnel involved in the review, and end of year funding limitations.

III. PROCESS REVIEW

A. Findings, Observations, and Recommendations: “General”

Finding #1: A majority of the subcontracts between the construction prime contractors and their subcontractors, that were reviewed, incorporated the prime contract by reference and did not physically attach the Federal Form 1273. The rest of the subcontracts generally incorporated the prime contracts by reference but also physically attached the Federal Form 1273 as required by the LAPM and the CFR.

Observation #1: Chapter 12, Section 12.9 of the LAPM states that the “Federal Form 1273 is to be physically incorporated into each contract, subcontract, and subsequent lower tier subcontracts” and “the provisions may not be incorporated by reference”. It also states in 23 CFR 633.102(e) “The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and The required contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case....”. The Federal Form 1273 entitled “Required Contract Provisions Federal-aid Construction Contracts” itself states in Provision “I. General” as follows: “2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower

tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions". Since the LAPM, the CFR, and the Federal Form 1273 unequivocally state that the Federal Form 1273 is to be physically included in all subcontracts, this systemic problem must be dealt with in a very positive manner at the prime contractor level since the prime contractor is responsible for issuing subcontracts and ensuring the Federal Form 1273 is physically included in all subcontracts.

Recommendation #1:

(a) Immediate corrective action to be taken by the DLA by sending a memorandum to all DLAEs identifying this deficiency asking the DLAEs to request their local agencies to ensure that if the prime construction contractor of a Federal-aid project has currently included the required contract provisions contained in Federal Form 1273 by reference, the prime construction contractor must ensure that subcontracts, lower tier subcontracts, and purchase orders are modified to physically include the required contract provisions contained in Federal Form 1273 in order for them to continue to be eligible for Federal-aid funds.

(b) Permanent corrective action by revision of the "Resident Engineer's Construction Contract Administration Checklist" (Exhibit 15-B of the LAPM) to include a "checklist item" for the Resident Engineer to check that he/she has reviewed the existing subcontracts issued by the prime contractor after award and verified that the required Federal Form 1273 provisions have been physically included.

(c) Recommend, by separate action, that FHWA research and determine if 23 CFR 633.102(e) can be changed to allow the Federal Form 1273 to be incorporated by reference into subcontracts. Incorporation of the Federal Form 1273 by reference into subcontracts, as contrasted to the physical inclusion, appears to provide the same level of subcontractor compliance with the Federal requirements and this change would result in a cost reduction to local agencies and the Federal-aid Program.

B. Findings, Observations, and Recommendations: "District and Local Agency Specific"

District 1:

Finding #1: Copies of two standard subcontract forms, the first from the American Institute of Architects (AIA) and the second which appears to be from the Associated General Contractors (AGC), were in use and provided to the PRE team by the construction contractors in District 1.

Observation #1: Both standard subcontract forms incorporate the contract documents (this includes the Federal EEO provisions) by reference and appear to be adequate for subcontracts to Federal-aid projects except one did not physically attach the Federal Form 1273. One of the standard subcontract forms, which appeared to be from the AGC, attached the Section 14 Federal Requirements (this includes the Federal Form 1273 with the EEO requirements) as an Exhibit B to the subcontract.

Recommendation #1: Same as Recommendation #1 in A. **Findings, Observations, and Recommendations: "General"**

District 8:

Finding #1: A subcontract between the construction prime contractor, and one subcontractor, was reviewed at the job site of Federal-aid Project No. RPSTPL-5401 (xxx), City. The

subcontract incorporated the prime contract by reference and did not physically attach the Federal Form 1273.

Observation #1: The Federal Form 1273 must be physically attached to each subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #2: The standard subcontract used by the construction prime contractor, and its subcontractors for Federal-aid Project No. DE-0007(XXX), City, was reviewed to ensure the Federal and State flow through provisions were contained in the standard subcontract.

Observation #2: The review by the PRT of the standard subcontract revealed that all of the Prime Contract Documents were incorporated by reference into the standard subcontract being used by all subcontractors on the project.

Recommendation #2: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #3: The construction prime contractor, for Federal-aid Project No. BRLKS 5457(XXX), City, failed to list one subcontractor under its “List of Subcontractors” but did list the subcontractor on the “DBE Information Form, Exhibit 15-G”.

Observation #3: Caltrans Standard Specifications and California State law requires that all subcontractors performing more than ½ of 1% of the contract value or \$10,000, whichever is higher, be listed as a subcontractor with the bid. In addition, the “DBE Information Form, Exhibit 15-G” in the LAPM specifies that *“Names of the First Tier Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the “List of Subcontractors” submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.”* Consequently, this form is very clear that the DBE subcontractors are also to be included on the “List of Subcontractors” submitted with the bid. However, research into Caltrans legal opinions regarding the identification of a subcontractor on “DBE Information Form, Exhibit 15-G”, but not on the “List of Subcontractors” revealed that this was not considered non-responsive provided both the “List of Subcontractors” and the “DBE Information Form, Exhibit 15-G” were submitted with the bid, which was what did happen for this contract.

Recommendation #3: The DLAE to recommend to the City that they emphasize at their pre-bid meetings that all subcontractors must be included on the “List of Subcontractors” whether DBE subcontractors or not. Secondly, the DLAE should ensure that the City is using the latest “DBE Information Form, Exhibit 15-G” which specifies that *“Names of the First Tier Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the “List of Subcontractors” submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.”* in the solicitation of their Federal-aid construction contracts.

Finding #4: The construction prime contractor for Federal-aid Project No. BRLKS 5457(XXX), City, when asked for a typical copy of the subcontract with its subcontractors stated all of the subcontracts for the project were verbal and not in writing.

Observation #4: The Resident Engineer was present and did not object, or state it was contrary to the contract specifications, when the construction prime contractor stated all subcontracts were verbal and not in writing. However, certain Federal and State contract provisions are to flow through into the subcontracts that would mean that subcontracts must be in writing. In addition, Provision 8-1.01 “Subcontracting” of the Caltrans Standard Specifications, which the City uses, more implicitly states that subcontracts are to be in writing by statements such as “Subcontracts

shall include provisions....”. Verbal subcontracts do not allow the Federal and State prime contract provisions to flow through and be enforced, consequently the work performed by the subcontractors without a written compliant subcontract is considered ineligible for Federal-aid and a major project deficiency unless remedied.

Recommendation #4: Unless the prime construction contractor is able to produce written subcontracts, Federal-aid payments must be withdrawn by the DLAE from the portion of the construction contract performed by Federal-aid ineligible subcontractors, and the DLAE to notify the City that “the prime contractor’s failure to have subcontracts in writing with its subcontractors” is a contractor performance deficiency that should be included in the prime contractor’s “Final Performance Evaluation”.

District 10:

Finding #1: The subcontract being used by the prime construction contractor for Project No. STPLZ 5059(xxx), City, was provided to the PRT for their review.

Observation #1: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for all its subcontracts. The required flow through provisions from the prime contract were included in this standard subcontract either by reference, or (some) by being physically inserted. The subcontract was considered to be in compliance with the LAPM requirements except the Federal Form 1273 was referenced and not physically attached to the subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**.

Finding #2: The subcontract being used by the prime construction contractor for Project No. STPL 5929(xxx), County, was provided to the PRT for their review.

Observation #2: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for all its subcontracts. The required flow through provisions from the prime contract were stated in this standard subcontract either by reference or being physically attached. Federal Form 1273 was physically attached to the subcontract.

Recommendation #2: No action required.

District 11:

Finding #1: On Federal-aid Project No. BRLNS-5004 (xxx), City; a copy of the subcontract between the prime contractor, and the subcontractor, was provided to the Process Review Team for their review.

Observation #1: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for its subcontractors. All of the required flow through provisions from the prime contract were included in this standard subcontract either by reference or being physically inserted. The subcontract was considered to be in compliance with the LAPM requirements other than the Federal Form 1273 was referenced and not physically attached to the subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #2: On Federal-aid Project No. BRLNS-5004 (xxx), City; the local agency’s Resident Engineer (RE)/staff was not able to identify DBE subcontractors or DBE suppliers involved in

the job, nor were they tracking work done by or amounts paid to DBE subcontractors and suppliers of the contract.

Observation #2: Each local agency's DBE Program stipulates "The RE will insure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations". Other DBE Program requirements are mentioned in the recommendation below.

Recommendation #2: The DLAE to alert the City that reoccurrence of the foregoing deficiency could lead to permanent withdrawal of Federal-aid funds on future projects. Also the DLAE should ensure that on future Federal-aid projects, the City's RE staff has knowledge: (a) of what items of work each DBE is performing, (b) that the contractor is maintaining records of each first tier subcontractor, of the name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company, and (c) of the date of payment and the total dollar figure paid to each of these firms by the contractor.

IV. PROCESS REVIEW CONCLUSIONS

- It was found that the majority of the Federal-aid construction prime contractors incorporate the provisions of the prime contract into its subcontracts by reference including the Federal Section 14 and the Federal Form 1273.
- One Federal-aid construction prime contractor claimed that all of its sub-contracts were verbal which would make the subcontract portion of that contract become Federal-aid ineligible.
- The DLAE in District 11 needs to ensure, by training or otherwise, that the City Resident Engineer's staff is fully cognizant of all of the DBE subcontractor requirements and the tools to be used during the administering of a Federal-aid construction contract.

I. EXECUTIVE SUMMARY

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C. Review Team

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 Charlie Chen, District 1, Transportation Engineer, FHWA
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 Robert Cady, District 12, Transportation Engineer, FHWA
 DLAE s and their staff members in each District visited, Caltrans

D. Review Schedule

- The original schedule in the Process Review Plan was not met because of delays due to higher priority work of the review team members, conflicting schedules of Caltrans, FHWA, and local agency personnel involved in the review, and end of year funding limitations.

III. PROCESS REVIEW

A. Findings, Observations, and Recommendations: “General”

Finding #1: A majority of the subcontracts between the construction prime contractors and their subcontractors, that were reviewed, incorporated the prime contract by reference and did not physically attach the Federal Form 1273. The rest of the subcontracts generally incorporated the prime contracts by reference but also physically attached the Federal Form 1273 as required by the LAPM and the CFR.

Observation #1: Chapter 12, Section 12.9 of the LAPM states that the “Federal Form 1273 is to be physically incorporated into each contract, subcontract, and subsequent lower tier subcontracts” and “the provisions may not be incorporated by reference”. It also states in 23 CFR 633.102(e) “The contractor shall insert in each subcontract, except as excluded by law or regulation, the required contract provisions contained in Form FHWA-1273 and The required contract provisions of Form FHWA-1273 shall not be incorporated by reference in any case....”. The Federal Form 1273 entitled “Required Contract Provisions Federal-aid Construction Contracts” itself states in Provision “I. General” as follows: “2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower

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Recommendation #1:

(a) Immediate corrective action to be taken by the DLA by sending a memorandum to all DLAEs identifying this deficiency asking the DLAEs to request their local agencies to ensure that if the prime construction contractor of a Federal-aid project has currently included the required contract provisions contained in Federal Form 1273 by reference, the prime construction contractor must ensure that subcontracts, lower tier subcontracts, and purchase orders are modified to physically include the required contract provisions contained in Federal Form 1273 in order for them to continue to be eligible for Federal-aid funds.

(b) Permanent corrective action by revision of the "Resident Engineer's Construction Contract Administration Checklist" (Exhibit 15-B of the LAPM) to include a "checklist item" for the Resident Engineer to check that he/she has reviewed the existing subcontracts issued by the prime contractor after award and verified that the required Federal Form 1273 provisions have been physically included.

(c) Recommend, by separate action, that FHWA research and determine if 23 CFR 633.102(e) can be changed to allow the Federal Form 1273 to be incorporated by reference into subcontracts. Incorporation of the Federal Form 1273 by reference into subcontracts, as contrasted to the physical inclusion, appears to provide the same level of subcontractor compliance with the Federal requirements and this change would result in a cost reduction to local agencies and the Federal-aid Program.

B. Findings, Observations, and Recommendations: "District and Local Agency Specific"

District 1:

Finding #1: Copies of two standard subcontract forms, the first from the American Institute of Architects (AIA) and the second which appears to be from the Associated General Contractors (AGC), were in use and provided to the PRE team by the construction contractors in District 1.

Observation #1: Both standard subcontract forms incorporate the contract documents (this includes the Federal EEO provisions) by reference and appear to be adequate for subcontracts to Federal-aid projects except one did not physically attach the Federal Form 1273. One of the standard subcontract forms, which appeared to be from the AGC, attached the Section 14 Federal Requirements (this includes the Federal Form 1273 with the EEO requirements) as an Exhibit B to the subcontract.

Recommendation #1: Same as Recommendation #1 in A. **Findings, Observations, and Recommendations: "General"**

District 8:

Finding #1: A subcontract between the construction prime contractor, and one subcontractor, was reviewed at the job site of Federal-aid Project No. RPSTPL-5401 (xxx), City. The

subcontract incorporated the prime contract by reference and did not physically attach the Federal Form 1273.

Observation #1: The Federal Form 1273 must be physically attached to each subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #2: The standard subcontract used by the construction prime contractor, and its subcontractors for Federal-aid Project No. DE-0007(xxx), City, was reviewed to ensure the Federal and State flow through provisions were contained in the standard subcontract.

Observation #2: The review by the PRT of the standard subcontract revealed that all of the Prime Contract Documents were incorporated by reference into the standard subcontract being used by all subcontractors on the project.

Recommendation #2: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #3: The construction prime contractor, for Federal-aid Project No. BRLKS 5457(xxx), City, failed to list one subcontractor under its “List of Subcontractors” but did list the subcontractor on the “DBE Information Form, Exhibit 15-G”.

Observation #3: Caltrans Standard Specifications and California State law requires that all subcontractors performing more than ½ of 1% of the contract value or \$10,000, whichever is higher, be listed as a subcontractor with the bid. In addition, the “DBE Information Form, Exhibit 15-G” in the LAPM specifies that *“Names of the First Tier Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the “List of Subcontractors” submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.”* Consequently, this form is very clear that the DBE subcontractors are also to be included on the “List of Subcontractors” submitted with the bid. However, research into Caltrans legal opinions regarding the identification of a subcontractor on “DBE Information Form, Exhibit 15-G”, but not on the “List of Subcontractors” revealed that this was not considered non-responsive provided both the “List of Subcontractors” and the “DBE Information Form, Exhibit 15-G” were submitted with the bid, which was what did happen for this contract.

Recommendation #3: The DLAE to recommend to the City that they emphasize at their pre-bid meetings that all subcontractors must be included on the “List of Subcontractors” whether DBE subcontractors or not. Secondly, the DLAE should ensure that the City is using the latest “DBE Information Form, Exhibit 15-G” which specifies that *“Names of the First Tier Subcontractors and their respective item(s) of work listed above shall be consistent with the names and items of work in the “List of Subcontractors” submitted with your bid pursuant to the Subcontractors Listing Law and the Special Provisions.”* in the solicitation of their Federal-aid construction contracts.

Finding #4: The construction prime contractor for Federal-aid Project No. BRLKS 5457(xxx), City, when asked for a typical copy of the subcontract with its subcontractors stated all of the subcontracts for the project were verbal and not in writing.

Observation #4: The Resident Engineer was present and did not object, or state it was contrary to the contract specifications, when the construction prime contractor stated all subcontracts were verbal and not in writing. However, certain Federal and State contract provisions are to flow through into the subcontracts that would mean that subcontracts must be in writing. In addition, Provision 8-1.01 “Subcontracting” of the Caltrans Standard Specifications, which the City uses, more implicitly states that subcontracts are to be in writing by statements such as “Subcontracts

shall include provisions....”. Verbal subcontracts do not allow the Federal and State prime contract provisions to flow through and be enforced, consequently the work performed by the subcontractors without a written compliant subcontract is considered ineligible for Federal-aid and a major project deficiency unless remedied.

Recommendation #4: Unless the prime construction contractor is able to produce written subcontracts, Federal-aid payments must be withdrawn by the DLAE from the portion of the construction contract performed by Federal-aid ineligible subcontractors, and the DLAE to notify the City that “the prime contractor’s failure to have subcontracts in writing with its subcontractors” is a contractor performance deficiency that should be included in the prime contractor’s “Final Performance Evaluation”.

District 10:

Finding #1: The subcontract being used by the prime construction contractor for Project No. STPLZ 5059(xxx), City, was provided to the PRT for their review.

Observation #1: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for all its subcontracts. The required flow through provisions from the prime contract were included in this standard subcontract either by reference, or (some) by being physically inserted. The subcontract was considered to be in compliance with the LAPM requirements except the Federal Form 1273 was referenced and not physically attached to the subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**.

Finding #2: The subcontract being used by the prime construction contractor for Project No. STPL 5929(xxx), County, was provided to the PRT for their review.

Observation #2: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for all its subcontracts. The required flow through provisions from the prime contract were stated in this standard subcontract either by reference or being physically attached. Federal Form 1273 was physically attached to the subcontract.

Recommendation #2: No action required.

District 11:

Finding #1: On Federal-aid Project No. BRLNS-5004 (xxx), City; a copy of the subcontract between the prime contractor, and the subcontractor, was provided to the Process Review Team for their review.

Observation #1: An examination of the subcontract revealed it was a standard subcontract (no form name given on the subcontract) used by the prime contractor for its subcontractors. All of the required flow through provisions from the prime contract were included in this standard subcontract either by reference or being physically inserted. The subcontract was considered to be in compliance with the LAPM requirements other than the Federal Form 1273 was referenced and not physically attached to the subcontract.

Recommendation #1: Same as Recommendation #1 in **A. Findings, Observations, and Recommendations: “General”**

Finding #2: On Federal-aid Project No. BRLNS-5004 (xxx), City; the local agency’s Resident Engineer (RE)/staff was not able to identify DBE subcontractors or DBE suppliers involved in

the job, nor were they tracking work done by or amounts paid to DBE subcontractors and suppliers of the contract.

Observation #2: Each local agency's DBE Program stipulates "The RE will insure that the RE's staff (inspectors) know what items of work each DBE is responsible for performing. Inspectors will notify the RE immediately of apparent violations". Other DBE Program requirements are mentioned in the recommendation below.

Recommendation #2: The DLAE to alert the City that reoccurrence of the foregoing deficiency could lead to permanent withdrawal of Federal-aid funds on future projects. Also the DLAE should ensure that on future Federal-aid projects, the City's RE staff has knowledge: (a) of what items of work each DBE is performing, (b) that the contractor is maintaining records of each first tier subcontractor, of the name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials and DBE trucking company, and (c) of the date of payment and the total dollar figure paid to each of these firms by the contractor.

IV. PROCESS REVIEW CONCLUSIONS

- It was found that the majority of the Federal-aid construction prime contractors incorporate the provisions of the prime contract into its subcontracts by reference including the Federal Section 14 and the Federal Form 1273.
- One Federal-aid construction prime contractor claimed that all of its sub-contracts were verbal which would make the subcontract portion of that contract become Federal-aid ineligible.
- The DLAE in District 11 needs to ensure, by training or otherwise, that the City Resident Engineer's staff is fully cognizant of all of the DBE subcontractor requirements and the tools to be used during the administering of a Federal-aid construction contract.