



DRAFT

FINANCE AND AUDIT COMMITTEE MEETING MINUTES

June 29, 2023

Location

**Department of Food and Agriculture Auditorium
1220 N Street
Sacramento, CA**

Webcast at:

www.hsr.ca.gov

The meeting of the California High-Speed Rail Authority (Authority) Finance and Audit Committee Meeting was called to order on June 29th at 8:30 A.M. at 1220 N Street, Sacramento, CA. The Meeting Minutes were prepared in the order items were presented during the meeting.

Committee Members Present:

Mr. Tom Richards, Committee Chair
Ms. Nancy Miller, Vice Committee Chair
Mr. Ernie Camacho, Committee Member

Staff Present:

Mr. Brian Kelly, Chief Executive Officer
Mr. Brian Annis, Chief Financial Officer
Ms. Alicia Fowler, Chief Council
Mr. Daniel Horgan, Deputy Chief Operating Officer
Mr. Britton Snipes, Board Secretary

Public Comment

An opportunity for public comment was made at the outset of the meeting.

Item #1 – February Meeting Minutes

The February 16, 2023 Meeting Minutes were moved for approval by F&A Committee Vice Chair Nancy Miller and seconded by Committee Member Ernie Camacho. The meeting minutes were approved by all members present.

Item #2 – March Meeting Minutes

The March 16, 2023 Meeting Minutes were moved for approval by F&A Committee Vice Chair Nancy Miller and seconded by Committee Member Ernie Camacho. The meeting minutes were approved by all members present.

Item #3 - Independent Peer Review – Audit Office

Chief Auditor Paula Rivera presented the results of the Independent Peer Review of the Audit Office to the F&A Committee Members.

Question:

Chair Richards asked within your team, they are interested in noting, if you assign out an auditor for a specific purpose, that auditor has experience in that area? Is that what they are doing?

Response:

Ms. Rivera responded yes, or experience with the particular audit standards or the expertise they need to perform that audit.

Question:

Chair Richards asked is that something that has been stated in the past or noted in the past?

Response:

Ms. Rivera responded it has been part of the audit standards and it has always been part of our conversation. It has just never been documented.

Question:

Chair Richards asked are there any other comments with regards to this?

Response:

Ms. Rivera responded that I am very proud of the Audit Office. They have worked really hard through the pandemic and maintained the same standards that we have always had. I am really proud of what they have been able to do.

Comment:

Chair Richards commented he also has an opportunity when this occurs both to get interviewed and to have a chance to ask questions as usual and I would say that it is true they had really glowing comments with regards to the Audit Office that you are running, and they echo our feelings about how this has been such an important part of this organization forever. Congratulations for that.

Item #4 – Fiscal Year 2023/2024 Internal Audit Plan

Chief Auditor Paula Rivera presented the Fiscal Year 2023/2024 Internal Audit Plan and Internal Quality Review to the F&A Committee Members.

Question:

Member Camacho asked for small business compliance, who do you audit?

Response:

Ms. Rivera responded we have two objectives in that audit. One objective is to identify if the reporting process is functioning as intended, so we're looking at the Authority, what information you gather, how you retain that information, and how that gets transferred into the reporting to the Feds and to the State Department of General Services. The second objective is to look at the consultants. The universe of contracts that we could look at is anybody who has the 30% small business identified in their contract and we will go and meet with them to understand, "Are you complying with the 30%? If you are not complying,

what are your good faith efforts? How have you documented what you are looking for? Is it that there are not enough firms in a particular area? Is it something that we have not thought of? Is it that this is an aspirational goal?" So, we will speak with the consultants to understand the information behind the numbers that are being reported.

Question:

Member Camacho commented, we have never met the 30% total. We have always run in 22% or 23% area. That number has remained static for several years. Does your audit show maybe that we could be doing better?

Response:

Ms. Rivera responded we are going to look to see if we can identify why we are not meeting those numbers. There is a possibility that the records are poor and we cannot know why. Until we talk to the prime consultants to understand why, we will not know. That is our next step. We have done our interviews; we have developed our understanding of what that process should be. Starting in August we will be working with the firms to understand what efforts they are putting forth to meet those goals.

Comment:

Chair Richards commented this has always been a major concern of this Committee and the Board. What Director Camacho has indicated has consistently been at, mostly in the last couple of years or so, 22% to 23%. Nobody has ever suggested we should be giving up on it. What we are concerned about is, is it beyond our grasp? And if it is not, how do we increase the performance? It is critically important for the project and certainly for the direction of the Board and the efforts of management. I assume that we are going to report out that portion of your Audit Report also so we can have a better understanding. If you have comments or suggestions that you want to identify to us, is it a goal that we cannot meet or, if it is not, can we do a better job at it? We are hoping that we can do a better job at it. It is embarrassing that we are sitting at the same level. I know that we have always talked about that we have expectations that that number will go up substantially as a result of the ramping up of construction, so I am looking forward to that report coming back to the Board.

Question:

Vice Chair Miller asked if our goal is more ambitious than other state departments, correct?

Response:

Ms. Rivera responded yes.

Question:

Vice Chair Miller asked how ambitious are we? What do other state departments do?

Response:

Ms. Rivera responded the state requirement from the Department of General Services is 25% commitment to small business for state funds. The federal funds requirement is 10% for disadvantaged business enterprises. The state requirement for disabled veteran business enterprises is 3%. There has been a fair amount of misunderstanding and our Small Business Program is working very hard to clarify the program, clarify what the goals mean, what the expectations are. One is commitments, one is expenditures, state funds, federal funds. There is an awful lot that goes into that.

Question:

Vice Chair Miller asked in this area I know we are always trying to meet that 30%, but there are always variations like that 3%, the 10%. I would like it to be broken out (and maybe you are doing that already) in those different areas. I know when I have attended our Small Business Committee that there is a lot of interest and enthusiasm given that our goal is so much higher than other state departments, which is great. That we have not met it, I understand, because I think the state has a hard time sometimes meeting those goals. But I think that it is incumbent upon us to really find out where we can do a better job to meet those goals. It is a goal and we have done fairly well to meet that 23%. I think in other state departments I work with it is usually around 15% to 10%. I think we are doing a good job there, but it would be nice to do better.

Comment:

Mr. Kelly commented that this is ongoing activity that we are doing with the Business Advisory Council (BAC) and our small business partners. That council has expanded its universe of people on it and we are working with them now on how we report out these numbers. One thing that is important to realize is that when we just throw out a 30% goal, that it does not align well with what state and federal standards are. Federal and state standards based on the dollars in a contract, none of them have that kind of requirement, and the reporting is different at the state level and at the federal level. What we are trying to do is align how we report to be in line with what normal contracting procedures are. For the Board, for professional services contracts, most of our A&E contracts, we are at around the 30% number. It is the larger dollar value construction contracts that we are behind. That has always been the case. We have done some things to improve that. That number has improved slightly over the years. But that 30% is a tough number for those three contracts that are in place. As we go forward, we will examine how to do more, we do more engagement with small business broadly now than we used to do. Our small business group is working with the BAC on aligning more consistently our reporting of these objectives with what state and federal law requires. I think it is important for the Board to understand there are differences. When we just say 30% it really breaks down beyond that. It also depends on whether you are talking about state dollars or federal dollars, so it is just a different thing.

Question:

Chair Richards asked Mr. Kelly, can we get a breakout of that report which shows the percentages?

Response:

Mr. Kelly responded yes. We have used it in F&A before, in terms of where are on that, but we can do a breakout through the Small Business Group. They have the data on the differences between the professional services contracts versus the construction contracts as well as where we are on federal standards versus state standards. Just to give you an example of a difference, if it is federal dollars only on a contract, the standard for business that are not disabled but are disadvantages is 10% or something like that. At CalTrans if there is a single federal dollar on a contract, their standard is the federal standard. They are at 17%, which is crushing the 10%, but it is not 30%. We really do have to go through, what are the standards based on the dollars in the contract? How are we reporting it? What is the best way to make the 30% standard work? And we are working on that. We can provide to the Board where we are in the different types of contracts and I think it would be useful.

Item #5 – Audit Report by Chief Auditor

Chief Auditor Paula Rivera presented the Program Schedule Management Audit Report to the F&A Committee Meeting Members.

Question (Program Schedule Management Audit Report):

Chair Richards asked has your office audited this before?

Response:

Ms. Rivera responded no. This is the first time we looked at the Program Schedule process.

Comment:

Chair Richards commented I suspect it is long overdue and it is also important. I was just concerned about the last paragraph on page three and its implications and not only how we necessarily got here but making sure that we make the appropriate improvements.

Response:

Ms. Rivera responded that the mitigation efforts for that are that there was an extended period for the RDP contract staff, which is an overlap with the new PDS contract staff, so they have mitigated the risk. As with lots of things in the Authority, we have good people doing the right things, but it is not documented. There was no plan, we were not following the plan, but we have good people who are doing the right things.

Question:

Vice Chair Miller asked what are the program schedule elements outside the construction packages? Right-of-way? Are we talking pre-development activities or budget schedule or?

Response:

Ms. Rivera responded it is the schedule that extends past the three construction packages: track and systems, rolling stock, those things that are happening in the future. When we interviewed people to understand the change process we heard lots about collaboration, lots of meetings, lots of discussion, lots of really good processes happening, they just are not documented. So, they rely on the good people who are working in those positions right now. We are recommending that there is a process and a procedure for how those elements outside of the design-build contracts are managed within the schedule.

Comment:

Mr. Kelly commented just to be clear here, we have a master schedule for all of the elements we were working on. It is articulated through the Project Update Report but it also relates to all the things we are doing on upcoming procurements to advance track work and other things as we complete the three construction items. It involves completing the environmental documents and all of the things to ultimately get to an operational service by the end of the decade, which is our objective. We have a master schedule that our PMO Office handles. I think the issue here is are written procedures up-to-date, so if there is staff turnover, or other things, everybody who comes in is on the same page for how we move these things forward. I think in response to the audit, the Project Schedule Office is updating those procedures to include those.

Chief Auditor Paula Rivera presented the Pre-award Results to the F&A Committee Meeting Members.

Question (Pre-Award Results):

Chair Richards asked how are [proposed costs] supported? Is there a manual or how do we determine what is supported?

Response:

Ms. Rivera for the proposed hourly rates we look at payroll. For the indirect cost rates, we look at an indirect cost schedule that identifies their direct labor and all of their indirect costs and we look to see that there are only allowable costs included in those rates, that the PPP loans have been properly accounted for, that they do not have alcoholic beverages, sports tickets, those sorts of entertainment things that are unallowable costs. In my opinion, they are very valuable, because sometimes for the smaller firms it is their first interaction with a government contract. The questions that we are asking in this pre-award, granted, are very condensed and usually a three- or four-week process, but it is very similar to what they would have to produce in an audit. So, it gives them an idea of the type of documentation they need to maintain, the type of questions they need to be prepared to answer, and it sets us on the right path that for our first year of a contract, we are confident that the costs are supported.

Question:

Member Camacho asked some of the smaller firms, if they have never been audited before, do they operate on a provisional rate?

Response:

Ms. Rivera responded occasionally but not often. We had maybe two or three this year that had just started operations in November or February. In that case we do not have a full year of cost data to be able to evaluate an indirect rate. The federal regulations allow for a price analysis, so we will look to see the prices that they have been invoicing on other government contracts for similar work.

Question:

Member Camacho asked as in a Safe Harbor Rate?

Response:

Ms. Rivera responded the Federal Railroad Administration does not have a Safe Harbor Rate. It is not something that the Authority is authorized to use. CalTrans does. Federal Highways has a Safe Harbor program and they have delegated the management of Safe Harbor to CalTrans.

Question:

Chair Richards asked can you tell us what a Safe Harbor Rate is?

Response:

Ms. Rivera responded a Safe Harbor Rate is something that is designed to be used in the first three years. If a business is just starting up, it is a rate of 120% that they can use as a substitute overhead rate until they have cost data and a financial management system that can support that rate. There are times that a Safe Harbor Rate can be helpful, but there are also times when it disadvantages them. Sometimes small firms have high upfront costs in those first years and not as much direct labor, so they are not able to recover all of the costs that they are incurring in those first couple years with a Safe Harbor Rate. It is beneficial while you develop the expertise and get advisors and put a system in place, but it is not one-size-fits-all. We try to work with each firm and whatever situation they have. If they do not have any cost data, we will look at prices they have been charging to other government contracts. If they have a part year, we will look to see if that is representative and we will use that. If they have three years of information but it has fluctuated widely, we can average those indirect rates for something that would likely be more

representative of what is going to happen. The Authority contracts are based on actual costs, at least these contracts, and every year their indirect rate gets to be resubmitted. So, at CalTrans if you are using a Safe Harbor Rate in the first year of a contract, some of those contracts are specified hourly rates so you are locked into that rate for three years. The Authority contracts are a little bit different in that each year an indirect rate is calculated and then it is incorporated into the following year's invoicing.

Question:

Vice Chair Miller asked for this whole issue that we were talking about before, the 30%, for some of the small businesses which, typically, that group falls into, it is difficult for them to sometimes understand what is going to be needed in terms of reporting. Do you ever make presentations to the BAC about what information you are looking for? Because I do know, in the meetings that I have attended, that that is a recurring issue where they talk about being audited or having to provide information that they are not quite set up to handle.

Response:

Ms. Rivera responded yes. What we have started doing is making presentations to individual contracts, like for the PDS contracts they offered to all of their subs, not just the small business subs, a training session where we went through the type of things that they need to maintain and accumulate for an audit. We are trying to set them up to succeed as opposed to coming in nine years later.

Question:

Vice Chair Miller asked and you do this in pre-bid, pre-award type informational meetings?

Response:

Ms. Rivera responded the presentation to the BAC is every couple years. These presentations we make for a specific contract are after it is executed.

Question:

Vice Chair Miller commented just because we are trying to increase our percentage here, and I do know that sentiment has been expressed at the BAC, which is for small businesses sometimes the cost of a state contract is that all of these reporting requirements are daunting to them. The easier we can make it, the more likely they are to bid, so maybe in your audit you are doing just ask that question.

Comment:

Mr. Kelly commented the work you do at the BAC you described as post-audit but just to be very clear, the four reviews that are here in front of the Board are Pre-award.

Item #6 – F&A Committee Chairperson's Remarks, Initiatives, and Updates

Chief Executive Officer Brian Kelly presented an update on the Inspector General selection. There were no questions from the Committee for Mr. Kelly.

Item #7 – Executive Summary by Chief Financial Officer

Chief Financial Officer Brian Annis presented the Financial Report Executive Summary to the F&A Committee Members.

Question (Cash Management Report):

Chair Richards asked are all these funds that we have sitting in some sort of account that we could be drawing interest or anything on?

Response:

Mr. Annis responded yes, we do on Prop 1A. Cap-and-Trade is a shared account. We did receive some interest on Cap-and-Trade when there was budget action seven or eight years ago and some was loaned to the general fund, but we do not tend to receive regular interest on Cap-and-Trade because that is a shared fund.

Question:

Chair Richards asked do we have a record of how much interest we have earned anywhere?

Response:

Mr. Annis responded that is in the Cap-and-Trade monies and a fund called the Greenhouse Gas Reduction Fund that is in the California Air Resources Board budget. In the budget documents, there is a fund condition where they do list the interest overall, but nothing specific is attributed to High-Speed Rail from that.

Comment:

Chair Richards commented I have never heard you say that we got a certain number of dollars from interest.

Response:

Mr. Annis responded my understanding is we do receive interest on Prop 1A, but it does not add to the \$9 billion that ultimately the voters approved for Prop 1A expenditures for High-Speed Rail. It just changes the mix of where the dollars come from. So, we got that \$5 million or so from the General Fund loan in interest. That was a net gain for us. But other than that, interest is not in the end helping us.

Question (Federal Grant Summary):

Chair Richards asked about the plan regarding the solar and battery systems? I think it is pretty exciting and I am happy to hear about it, but I do not think we know much about it. Are we talking about putting solar farms on excess properties that we purchased?

Response:

Mr. Kelly responded we did a large land management assessment some time ago that our sustainability and planning folks spearheaded and now with our real property folks. We have sufficient right-of-way in places for solar panel installation and, by incorporating that with some battery storage technology, we can to the maximum extent possible be as self-sustaining as possible with train operations and then provide some relief from the peak, especially in the summer, on demand for electricity in the valley. It is an ability for us to be a bit more self-sustaining. I think the magnitude of the solar power that we would bring in is sufficient to actually run the train system, suggesting that would only use the grid when needed, but that will depend on real-world factors that are going on as we get there. That is the process and the program, to try to put that together. This energy grant that came to our attention was a grant for entities that do things to relieve some pressure on grids and so we think that is what we are doing. So, that has been our program. Meg and Dennis of Real Property are heading that up. I would be happy to have them come before the Board and do a presentation.

Question:

Chair Richards asked I think it is great information. I do not know the magnitude and I do not know what the cost might be. If we do that as a government agency and you have all these federal tax credits which we really cannot use, are we not able to sell those tax credits into the marketplace?

Response:

Mr. Kelly responded I do not know the answer to that right now it is something to look at and report back on. The other thing is we can use so much off-grid power that we would be avoiding a lot of cost.

Question:

Chair Richards asked do you think that is something that, rather than to put the pressure on the near term, that that could be added to the workshop agenda just to get an idea?

Response:

Mr. Kelly responded absolutely.

Item #8 – Central Valley Update by Deputy Chief Operating Officer

Deputy Chief Operating Officer Daniel Horgan presented the Central Valley Status Report to the F&A Committee Members.

Question (Construction Progress):

Chair Richards asked these have remained flat for the last several months. Is it primarily the result of weather? Or does it just happen to be in the schedule of the project itself?

Response:

Mr. Horgan responded primarily the schedule.

Question:

Chair Richards asked so it is not reflecting delays in it, the schedule is just a bit beyond where we are?

Response:

Mr. Horgan responded yes, but we have had some impact on the CP2-3 area for flooding.

Comment (Project Development Schedule):

Mr. Kelly commented that is one of the two remaining environmental documents we have to complete. While Mr. Horgan's description of where we are is right, I just want to reiterate for the Board that our intention is to finalize and release the final draft for that segment by December of this year.

Question:

Chair Richards asked and that is for the federal requirements for the grant?

Response:

Mr. Kelly responded yes.

Comment:

Mr. Kelly commented again, I just want the Board members to know the flow of this stuff because there is a lot going on. So, he talked about where we are environmentally. We have that first one wrapping in December of 2023. On this, these are the two design extensions for the Merced and Bakersfield

extensions. The work with Stantec and HNTB on these is scheduled to get to that 30% design also by the end of the year. So, we are progressing. As we do that, we will develop a right-of-way acquisition plan and a utility identification plan for relocating the utilities.

Having no further business, the meeting was adjourned at 9:32 A.M.

The Authority additionally posts on its website a link to a recording of the F&A meeting, which detail the discussion, questions, and answers from the meeting.