JLAC Hearing
March 13, 2013

6027

Analysis Fact Sheet

Requesters:	**Assemblymembers Harkey, Mansoor, Waldron, Maienschein, Bigelow, Hagman, Wagner, Wilk, Patterson, Grove, Morrell, Allen, Conway, Gorell, Gaines, Melendez, Achadjian, Nestande, Linder, and Logue**
Subject:	**California High-Speed Rail Authority—Construction Package 1**

Job No.: 2013-105
Request Date: February 13, 2013
Requested Completion Date: Not specified.

Proposed Fiscal Year 2013-14 Budget:
California High-Speed Rail Authority: $3 Billion

Scope of Request: [ ] Local [X] Regional [ ] Statewide

Other Work Within the General Area:

2011-504 *High-Speed Rail Authority Follow-Up: Although the Authority Addressed Some of Our Prior Concerns, Its Funding Situation Has Become Increasingly Risky and the Authority's Weak Oversight Persists* (January 2012)

2009-106 *High-Speed Rail Authority: It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management* (April 2010)

Estimated Cost: $295,320
Estimated Hours: 2,760

ANALYSIS OF AUDIT REQUEST
2013-105
March 13, 2013

I. AUDIT REQUEST

Assemblymembers Harkey, Mansoor, Waldron, Maienschein, Bigelow, Hagman, Wagner, Wilk, Patterson, Grove, Morrell, Allen, Conway, Gorell, Gaines, Melendez, Achadjian, Nestande, Linder, and Logue are requesting an audit of the California High-Speed Rail Authority's (Authority) oversight and management of the Construction Package 1 (CP 1)—the initial 29-mile segment between Madera and Fresno.

II. BACKGROUND

Since 1996 state law has charged the Authority with the development and implementation of intercity, high-speed rail service that is fully integrated with existing intercity rail and bus networks. As a result, when voters approved the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Proposition 1A) in November 2008, the Authority became responsible for managing up to $9 billion in bond proceeds for the planning, engineering and construction of the high-speed rail network (program). According to the state law that placed Proposition 1A on the ballot, the entire network, from Sacramento to San Diego, is intended to be completed no later than 2020. The law also mandated that nonstop service between San Francisco and Los Angeles must take no longer than two hours and 40 minutes.

The Authority has a nine-member board, appointed by the Legislature and the governor, and a core staff to support its operations and administration. Over the past several years, the Authority's cost estimates to build the program have fluctuated greatly and the timeline in which it has planned to complete the project has been extended. Concerns have been raised regarding the Authority's oversight and management of the project.

In 2009 the Joint Legislative Audit Committee asked the California State Auditor (state auditor) to assess the Authority's readiness to manage the funds authorized for the program, resulting in our April 2010 report titled *High-Speed Rail Authority: It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management,* Report 2009-106. This report concluded that the Authority had not adequately planned for the future development of the program and we made 10 recommendations to the Authority. In January 2012 the state auditor reported the results of a follow-up review concerning the efforts by the Authority to implement recommendations from our April 2010 report. The state auditor's 2012 report concluded that although the Authority had implemented some of the recommendations we made in our prior report, significant problems continue to persist.

As part of this follow-up audit, the state auditor examined the Authority's 2012 draft business plan (draft plan), released on November 1, 2011, and concluded that the program's overall financial situation had become increasingly risky, in part, because it had not provided viable funding alternatives in the event that planned federal funding does not materialize. In its 2012 draft plan, the Authority more than doubled the previous cost estimates it made in its 2009 business plan for phase one of the program, which would run from San Francisco to Los Angeles-Anaheim, from $42.6 billion to between $98.1 billion and $117.6 billion. Further, it estimated that phase one would not be fully operational until 2034, 14 years later than the Authority's 2009 business plan had indicated. We also reported that the draft plan lacked some key details about the program's costs and revenues. Additionally, we identified a number of critical, ongoing problems involving the Authority's oversight of the program, including that it was significantly understaffed and had delegated significant control to its contractors—especially the entity that manages the program. As a result, we noted that the Authority may not have the information necessary to make critical decisions about the program's future.

According to the Authority, the draft plan was the focus of several legislative hearings and, after a wide array of input and further analysis, it released a significantly revised plan in April 2012. In particular, the Authority decreased its previous cost estimates for the program to $68 billion and estimated the completion of phase one by 2028. In its revised plan, the Authority adopted a blended approach to building the program, which focuses on new high-speed infrastructure development between the State's metropolitan regions while using, to the maximum extent possible, existing regional and commuter rail systems in urban areas. The plan also specifies that cap and trade funds are available, as needed, upon appropriation as a backup revenue source.

In July 2012 the Legislature approved and the governor signed Senate Bill 1029, which appropriated more than $7 billion to the Authority for the acquisition and construction of initial portions of the program. The Authority plans to begin construction of the initial 29-mile segment between Madera and Fresno, known as CP 1, in 2013 and finish in 2017, with projected costs ranging from $1.2 billion to $1.8 billion. The Assemblymembers are concerned about the Authority's management infrastructure, oversight capabilities, contract management, and reliance on private contractors. They are requesting the audit because they believe that missteps during this early planning period could imperil the project for decades with defective construction, expensive litigation, massive cost overruns, and lengthy project delays.

III. AUDIT SCOPE AND OBJECTIVES

The audit by the California State Auditor will provide independently developed and verified information related to the California High-Speed Rail Authority's (Authority) oversight and management of contractors, subcontractors, and affiliated contractors involved in the Construction Package 1 (CP 1), and will include, but not be limited to, the following:

1. Review and evaluate the laws, rules, and regulations significant to the audit objectives.

2. Review and assess the Authority's policies, procedures, and practices relating to its vendors and contractors involved in CP 1, including how it selects vendors, and procures contractors, subcontractors, and affiliated contractors, including the design-build contractor. In addition, identify protocols the Authority uses to prevent duplication of work.

3. Determine whether the Authority's contracting practices comply with applicable laws and regulations and are effective in selecting the most qualified and economical contractors.

4. Determine whether the Authority properly identifies, addresses, and mitigates potential conflicts of interest for its staff and contractors and whether any contracts involved in CP 1 violate conflict-of-interest laws.

5. Review the Authority's internal policy for delegating to the Authority's chief executive officer (CEO) the authority to execute certain contracts and amendments to determine whether the policy is appropriate and in compliance with laws or regulations. Determine how many contracts and amendments the CEO has executed under this policy and their respective amounts and time extensions, if applicable. Also, determine whether the CEO complies with the authority delegated to him with respect to his execution of contracts and amendments.

6. Review the contracts in place and determine whether the Authority's projected costs and timelines for CP 1 are in line with the current business plan.

7. Evaluate how the Authority oversees, inspects, reviews, and approves the work of its contractors and assess the management controls in place to determine whether the controls are comparable to industry practices and ensure contractor performance and quality of work.

8. Assess the Authority's risk management practices to determine whether they adequately identify project risks and whether the Authority takes appropriate mitigation steps to ensure it protects the State to the extent possible.

9. Determine how the Authority plans to manage the right-of-way property acquisition process. Also, assess whether its land acquisition plan complies with applicable laws and conforms to industry practices.

10. Review and evaluate the Authority's tracking systems and controls over expenditures, including how it reviews and approves contractor invoices and processes payments. Determine whether the Authority has adequate systems in place for tracking expenditures and that it complies with laws and regulations.

11. Review and assess any other issues that are significant to the Authority's oversight and management of CP 1.

IV. OTHER WORK IN THE GENERAL AREA

2011-504 *High-Speed Rail Authority Follow-Up: Although the Authority Addressed Some of Our Prior Concerns, Its Funding Situation Has Become Increasingly Risky and the Authority's Weak Oversight Persists* (January 2012)

2009-106 *High-Speed Rail Authority: It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management* (April 2010)

V. RESOURCE REQUIREMENTS

We estimate that this audit would require approximately 2,760 hours of audit work at a cost of approximately $295,320 plus travel and administrative expenses and the costs related to an outside consultant, if necessary. We will conduct this audit using our existing budget authority to the extent funding is available for audits approved by the Joint Legislative Audit Committee.

VI. REQUIRED DATE OF COMPLETION

The Assembly Republican Caucus members did not request a completion date for this audit.

Elaine M. Howle

ELAINE M. HOWLE, CPA
State Auditor

California Legislature

ASSEMBLY REPUBLICAN CAUCUS

February 13, 2013

2013-105

The Honorable Adam Gray
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95814

Dear Chairman Gray:

My colleagues and I are writing to request an audit of the California High-Speed Rail Authority's oversight and management of private contractors for the initial 29-mile segment between Madera and Fresno, known as Construction Package 1 (CP 1). On January 18, 2013, five teams of design-build contractors submitted their bids for design and construction of CP 1. The Authority expects to begin construction in July, 2013 and finish in December, 2017. At a projected cost of $1.2-$1.8 billion, it will be necessary to spend up to $1.1 million every day to meet this ambitious pace.

The Authority plans to employ four layers of private contractors for construction, oversight and management of CP 1 (see Figure 1, attached). The Design-Build (DB) contractor will be overseen by a Project and Construction Management (PCM) contractor (coalition of two firms, Harris/Wong), who will be overseen by the Program Management Team (PMT) contractor (Parsons Brinckerhoff), who is overseen concurrently by the Authority and a Program Management Oversight (PMO) contractor (T.Y. Lin). In addition, the Authority and its primary contractors are associated with at least 59 affiliates and subcontractors (see Figure 2, attached).

In previous reports (2011-504 and 2009-106), the State Auditor raised troubling concerns regarding the Authority's weak management infrastructure, inadequate oversight capabilities, poor contract management, and overreliance on private contractors. Since the release of these reports, the Legislature appropriated $8.02 billion for initial construction, and the Authority has hired a PCM contractor, issued bid specifications for the DB contractor, and defined roles and duties for all four layers of contractors in preparation for the beginning of construction. Ensuring that the Authority has proper policies, protocols, and resources in place to manage its contractors prior to breaking ground is critical for protecting passenger safety and controlling costs. Missteps during this early planning period could imperil the project for decades with defective construction, expensive litigation, massive cost overruns and lengthy project delays. An active and prominent role for the State Auditor during these crucial months could ultimately save lives and billions of taxpayer dollars.

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To the extent possible, I request that the State Auditor review and evaluate the following for all contractors, subcontractors, and affiliated contractors involved in CP 1:

1. Do the Authority's policies and protocols create clearly defined, non-redundant roles for all layers of contractors? Are all layers performing an essential role? Is there a clear reporting structure in place? Does the Authority ultimately review the work of all contractors? Does the Authority's employee-to-contractor ratio allow for sufficient oversight? Do internal accountability measures comply with best practices for comparable projects?
2. Who is responsible for inspecting the work of the DB contractor? What role does the PCM contractor play in evaluating quality of work? Does the Authority employ independent engineers to detect defective materials and/or construction? Who has the authority to reject unsafe or defective design, materials, or construction? Who assumes the costs of mitigating defective construction? Does the Authority have adequate policies and protocols in place to evaluate the contractor's quality of work *before* and *during* the time when concrete is poured? Are policies in place to ensure that independent site inspectors are truly independent? Are all inspection protocols and procedures consistent with standard practices for similar projects?
3. On January 14, 2013, the California State Public Works Board authorized the Authority to initiate acquisition of 356 parcels in Madera and Fresno Counties. Who will be responsible for managing right-of-way property acquisitions? Has the Authority hired a separate eminent domain contractor? Which entities exercise management and oversight over the eminent domain contractor? Who is responsible for performing appraisals? Does the Authority have adequate policies and procedures in place to ensure that appraisals are independent? Does the Authority's land acquisition plan comply with existing laws and best practices?
4. Does the Authority's procedure for selecting the DB contractor abide by applicable laws and best practices? What role do the PCM, PMT, and PMO contractors play in the decision-making process? What role do the subcontractors and affiliated contractors in Figure 2 play in the decision-making process? Do any members of the High-Speed Rail Peer Review Group play a role in selection of the DB contractor? Are all roles appropriate, and do they serve the state's best interest?
5. Has the Authority adequately identified project risks, and taken appropriate and reasonable steps to transfer risks to the DB contractors? Under what circumstances will the Authority be responsible for additional costs as they arise? Based on the parameters of the contract and submitted bids, do the Authority's budget and timeline projections for CP 1 remain realistic?
6. For all subcontractors and affiliated contractors, including those listed in Figure 2, does the Authority have adequate policies and protocols in place to exercise appropriate oversight? Do all entities perform a clearly defined, non-redundant role? Are all contracts and contract amendments for these entities reviewed and/or approved by the Authority? Are adequate policies in place to identify potential conflicts of interest for these entities, specifically:
   a. Does the PMT (Parsons Brinckerhoff) have an illegal conflict of interest, in violation of the Political Reform Act, in contracting with Balfour Beatty Construction Services, when both entities are divisions of the same company?
      i. [NOTE: See Government Code Sec. 82048, 82034, 87100, and 87103, California Code of Regulations Sec. 18701(a)(2), Department of Justice Conflict Memo 1 (2001): http://ag.ca.gov/conflict_interest/doj_conflict_memo_1.pdf]

b. Does the above contract violate the prohibition against "self-dealing" in public contracting [Government Code Sec. 1090-1099]?
   i. [NOTE: see *Hub City Solid Waste Services, Inc. v. City of Compton* (2010) 186 Cal.App.4th 1114, 1124-1125; *California Housing Financing Agency v. Hanover* (2007) 148 Cal.App.4th 682; *Campagna v. City of Sanger* (1996) 42 Cal.App.4th 533; *People v. Gnass* (2002) 101 Cal.App.4th 1271; *Schaefer v. Berinstein* (1956) 140 Cal.App.2d 278, 291; *Terry v. Bender* (1956) 143 Cal.App.2d 198, 206-207; 70 Ops.Cal.Atty.Gen. 271 (1987), 46 Ops.Cal.Atty.Gen 74 (1965)]
c. Does the above contract violate the prohibition against "follow-on contracts" [Public Contract Code Sec. 10365.5]?
d. What are the remedies and consequences for potential violation of any of the above provisions?

7. On September 11, 2012, the Authority's Board approved Resolution #HSR12-24, authorizing the Chief Executive Officer to prepare and execute contracts up to $5 million, and to execute contract amendments and time extensions on all contracts up to specified limits, without prior Board approval. Authority staff is required to "periodically" provide the Board with a list of all new or amended contracts greater than $10,000. The Resolution also specifically excludes contracts with the CEO's previous employer (the PMT contractor, Parsons Brinckerhoff).
   a. Since the approval of this Resolution, how many new contracts or contract amendments have been executed under the CEO's delegated authority? Do all contract and contract amendment amounts abide by applicable limits?
   b. Have summaries of all new contracts and contract amendments greater than $10,000 been provided to the Board "periodically," as required by the Resolution? How do internal policies define "periodically?"
   c. How many new contracts or contract amendments less than $10,000 have been executed under the CEO's delegated authority?
   d. Have all procurements under this policy been conducted in accordance with all applicable federal and state laws, regulations, and policies, and in compliance with all applicable grant agreement requirements?
   e. If the CEO's delegated authority excludes contracts with his former employer, who reviews and approves PMT contracts and contract amendments? Does this adequately mitigate the conflict of interest identified by the Board?
   f. Does the Authority have adequate oversight and management policies and protocols in place to ensure sufficient review of contracts and contract amendments?
8. Does the Authority have adequate systems and controls in place for reviewing and verifying invoices from each layer of private contractors? Does the Authority have adequate systems in place for tracking expenditures?
9. Does the Authority adequately address and mitigate potential conflicts of interest for staff and contractors?
10. Pursuant to SB 1029 (Budget), approved by the Legislature on July, 6, 2012:
   a. Has the Authority developed an accountability plan, consistent with Executive Order S-02-07? Does this plan establish adequate criteria governing the expenditure of funds, and include detailed project descriptions and associated costs?
   b. Has the Authority contracted with the Office of State Audits and Evaluations for ongoing monitoring of expenditures?

Thank you for your consideration of this request. Should you have any questions or would like additional information, please do not hesitate to contact me at (916) 319-2073 or Daniel Ballon in the Assembly Republican Caucus Office of Policy at (916) 319-3900.

Sincerely,

Diane Harkey
Assemblymember, 73rd District

Scott Wilk
Assemblymember, 38th District

Allan Mansoor
Assemblymember, 74th District

Jim Patterson
Assemblymember, 23rd District

Marie Waldron
Assemblymember, 75th District

Shannon Grove
Assemblymember, 34th District

Brian Maienschein
Assemblymember, 77th District

Mike Morrell
Assemblymember, 40th District

Franklin Bigelow
Assemblymember, 5th District

Travis Allen
Assemblymember, 72nd District

Curt Hagman
Assemblymember, 55th District

Connie Conway
Assemblymember, 26th District

Donald Wagner
Assemblymember, 68th district

Jeff Gorell
Assemblymember, 44th District

Beth Gaines
Assemblymember, 6th District

Brian Nestande
Assemblymember, 42nd District

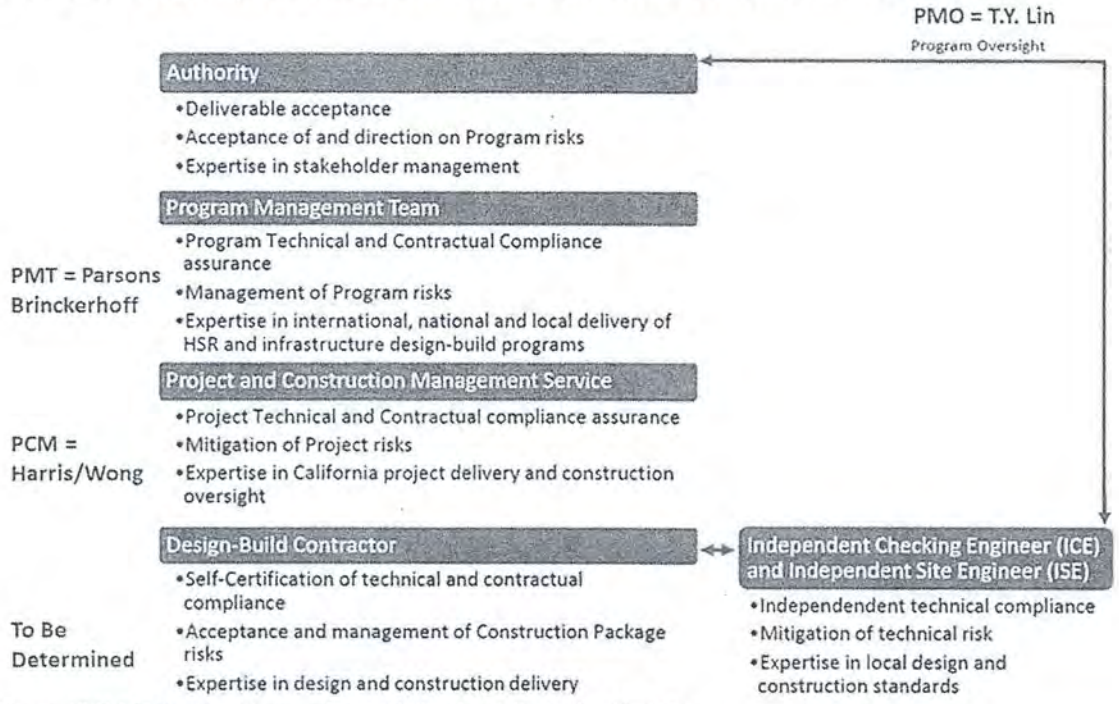
Melissa Melendez
Assemblymember, 67th District

Eric Linder
Assemblymember, 60th District

Katcho Achadjian
Assemblymember, 35th District

Dan Logue
Assemblymember, 3rd District

Figure 1. High-Speed Rail Authority and Contractor Responsibilities



Source: CEO Jeff Morales, Memorandum to HSRA Board, September 11, 2012.

Figure 2. Subcontractors and Affiliated Contractors

Firms on PMT	Firms on Fresno to Bakersfield RC
Parsons Brinckerhoff	URS
The Solis Group	Hatch Mott MacDonald
Pat Padilla and Associates	Arup
Cordoba Corporation	Anchor Engineering
SC Solutions, Inc.	Applied Earthworks
Turner Engineering Corporation	ATS Consulting
Cambridge Systematics	Bender Rosenthal Inc.
All Transit Consultants LLC	CSU, Stanislaus (Brian Cypher, PhD)
Simpson Gumpertz & Heger	Gene Tackett Consulting
Paragon Partners	J.R. Conkey & Associates
Balfour Beatty	JRP Historical Consulting
Technical Advisory	Mara Feeney & Associates
Spectrum Consult Leslie Rifkin	Minner, Stinnett, Koo & Agbayani
The Next Generation	Paleo Resource Consultants
Julia Sankey	Sierra Testing Labs
Gil Mallery	Signet Testing Labs
David Dubbink	The Forhan Company
John Diener	VBN Architects
Firms on Merced to Fresno RC	Villines Group
AECOM	William Kanemoto & Associates
Bender Rosenthal Inc.	Roberts Environmental & Conservation Planning, LLC
CH2MHill	Vibro Acoustics Consultants
CirclePoint	**Firms on PMOC**
Critigen	TY Lin
INOCSA	Auriga Corporation
EDAW	**Other Authority Consultants**
HMMH	KPMG
Parus	Nossaman LLP
Parikh	Ogilvy
Lynch	Valerie Martinez and Associates (VMA)
Psomas	**Key Stakeholder Firms**
O'Dell Engineering	Zimmer Gunsul Frasca (ZGF)
Cross Spectrum Acoustics	

Source: RFP #HSR 11-16, Table 3.