



April 14, 2010

Mike Foley
Nebraska Auditor of Public Accounts
State Capitol, Room 2303
P.O. Box 98917
Lincoln, NE 68509-8917

Dear Mr. Foley:

This letter transmits the responses from the Joint Antelope Valley Authority (JAVA) to the Attestation Review of the Joint Antelope Valley Authority and the Antelope Valley Project prepared by your office. On behalf of the JAVA partners, I wish to thank you and your staff for the time and effort given to this review. We hope you can appreciate that the partners made every effort to provide full and timely cooperation in the collection and analysis of information for your review, and that we have been thoughtful and purposeful in our responses to the findings.

JAVA's responses reflect those findings with which we are in agreement with the report's conclusions, and also note those findings where there is disagreement. Several of the recommendations in the report have already been resolved, and the others are in the process of being resolved.

The Joint Antelope Valley Authority has proven to be a successful structure and process for planning and implementing a multiple purpose project, with numerous governmental partners, diverse funding sources, and one that extends over a ten-year span of time. JAVA is completing the Antelope Valley Project as planned, building exactly what we said we would build, within the planned time frame and within the planned costs.

Sincerely,

Glenn D. Johnson, Chair
Joint Antelope Valley Authority

GDJ:gdj

RESPONSES
TO
STATE OF NEBRASKA
ATTESTATION REVIEW
OF THE
JOINT ANTELOPE VALLEY AUTHORITY
AND
THE ANTELOPE VALLEY PROJECT

APRIL 14, 2010

Below are JAVA, NDOR and UNL's responses to the Auditor of Public Accounts Attestation Review of the Joint Antelope Valley Authority and the Antelope Valley Project.

Finding 1: Antelope Valley Financial Information

Reporting Errors: There was no requirement that one central entity be responsible for the maintenance of all the accounting functions related to the Antelope Valley project. All Antelope Valley project expenditures were properly accounted for. The APA did not find any wrong doing, fraud, abuse or misappropriation of funds. Furthermore, the APA was given access to all the accounting records related to the Antelope Valley project.

Coding Errors: The revenues (deposits) were posted to the correct project but to an incorrect revenue code within the project. This has been corrected.

LPSNRD Payment: JAVA has requested and received the invoice from NRD and payment has been made.

Finding 2: Engineering and Construction Management Contracts

One Firm Provided Both Services: JAVA strongly disagrees. APA opinion is based solely on local FHWA-Nebraska opinion. JAVA, the City of Lincoln, and NDOR all support the use of a consultant from the beginning to the end of the project as is the customary and best practice in part because of the high value of knowledge and efficiency it brings to a project. Furthermore, the National FHWA rules and guidelines allow this practice.

Solicitation of Services: As agents of FHWA, NDOR approved the selection process. Sufficient documentation exists to conclude the Brooks Act was followed.

Contract Amendments: As agents of FHWA, NDOR approved these amendments.

Construction Management Audit Procedures: JAVA will complete the "Agreed Upon Procedures Engagement" for the construction management consultant.

Finding 3: Determination of Federal Highway Administration Eligible Costs

1st Bullet: The actual accounting to balance the financial responsibilities between JAVA and the USACE can't occur until the end of the entire project. The activity will be carried out in accordance with the Project Cooperation Agreement (PCA) with the USACE.

2nd Bullet: The Contractor was only paid for the work actually completed. The original estimate did not affect FHWA eligible expenditures.

3rd Bullet: Estimates are not the same as a final payment. The error referenced will be adjusted at the project's completion according to the Project Cooperation Agreement (PCA). The estimate did not affect FHWA eligible expenditures.

4th Bullet: JAVA disagrees. The \$4M reimbursement was a lump sum contribution and was not subject to the 7.76% reduction. The Nebraska Department of Roads provided a set or maximum dollar contribution for this project in the form of Train Mile Tax or Federal Rail Safety money.

5th Bullet: JAVA disagrees. JAVA and NDOR discussed and agreed how to bill these costs and the invoices were prepared and billed accordingly. NDOR's LPA Guideline Manual for Federal Aid Projects (July 2005) that was in effect at the time the invoice was prepared does not require that cumulative costs be shown on an invoice.

6th Bullet: NDOR response: NDOR disagrees. Exhibit M "Reimbursement Request" pertains to Construction related cost only, not Construction Engineering costs. Payments due the Contractor (Hawkins) were misidentified as Construction Engineering Consultant Payments, rather than as Construction Contractor payments, on JAVA's reimbursement request.

7th Bullet: JAVA agrees. Communication regarding obligated FHWA funds should be improved. Since November 19, 2009, monthly coordination meetings have been held with all parties to address this issue. JAVA did maintain a balance of obligated FHWA funds.

Finding 4: NDOR Responsibilities

1st Bullet: JAVA Response: JAVA has previously requested reimbursement for this money.
NDOR response: While NDOR agrees that it may appear that \$532,929 has been underpaid to the City; we believe that when the required retention and any other reconciling payments generated as a result of the final audit are made, the final payments will be correct. Those funds are dedicated to the Lincoln/Lancaster County MPO and cannot be expended on other state projects.

2nd Bullet: NDOR Response: The actual accounting and resolution to balance the financial responsibilities among the parties cannot occur until the end of the entire project and will be carried out in accordance with the Project Cooperation Agreement (PCA).

3rd Bullet: NDOR response: During the subject time period, NDOR reviewed change orders and contract modifications but did not have in place a policy requiring that they be signed by NDOR's Project Representative. Beginning in September 2008, NDOR established the policy of having the change orders and contract modifications reviewed and signed by the NDOR representative.

4th Bullet: NDOR Response: The agreement between NDOR and the City of Lincoln spell out that the City is responsible for establishing the agreement with the railroad, and it is contained in the bid proposal. The records of any utility agreements are kept by the City of Lincoln.

5th Bullet: NDOR response: Lacking reference to specific documents tested, we are unable to respond to the \$536 discrepancy.

Finding 5: Land Acquisition Overpayment

Overpayments, 1st Bullet: JAVA disagrees. This is not an overpayment. Offer was based on reviewed amount as required by federal and state regulations. Review appraiser indicated fixtures were not included in the value of the real property; and therefore, needed to be added to the final cost.

Overpayments, 2nd Bullet: JAVA disagrees. This is not an overpayment. Offer was based on reviewed amount as required by federal and state regulations. Review appraiser indicated fixtures were not included in the value of the real property; and therefore, were needed to be added to the final cost.

Noncompliance with Regulations, 1st Bullet: JAVA disagrees. The appraisal in question (Property #8) by APA was an appraisal requested by the City Attorney's office for use in litigation and not the appraisal utilized for negotiations as that appraisal was in the files of the Real Estate Division. In regards to Property #1, an opportunity was given to the owner to accompany the appraiser on his inspection. The appraiser failed to note it in his appraisal.

Noncompliance with Regulations, 2nd Bullet: The owner was provided with an acquisition brochure which explains the eminent domain proceedings. All negotiations were done with owner's attorney present. Owner's attorney stated they were well aware of the eminent domain process, and owner requested the matter be taken to court.

Surplus Property, 1st Bullet: JAVA disagrees. Surplus property designations were done in accordance with JAVA resolutions. The value of the property was determined from the appraisals used when the property was acquired. The plans indicated only a portion of the property was needed for the project thus the remainder was surplus.

Surplus Property, 2nd Bullet: JAVA disagrees. Surplus property designations were done in accordance with JAVA resolutions. JAVA Resolution 06-1109-04 and Resolution 07-0913-07 allowed it to be conveyed outside the surplus process. The plans indicated only a portion of the property was needed for the project thus the remainder was surplus.

Surplus Property, 3rd Bullet: JAVA disagrees. The property sold for \$90,500, not \$76,783. The value was based on the appraisals of the land when acquired with a reduction for the value of easements retained for the City, NRD and other utilities.

Finding 6: Relocation Assistance Payments

Questionable Payments: JAVA disagrees with APA's interpretation of the Regulations. Most of the payments are eligible under the regulations. The remaining payments were deemed eligible at JAVA's discretion to minimize hardships on the persons/businesses being relocated.

Other Issues, 1st Bullet: Claimant was uncooperative in signing claim forms so this was the only way JAVA could ensure timely payments to the vendors. Claimant needed lodging and storage. Payments were approved to avoid inconvenience to the claimant.

Other Issues, 2nd Bullet: JAVA agrees. Owner owes for the 2005 real estate taxes. JAVA could not withhold the back taxes from a subsequent relocation payment due to a change in the interpretation of the regulations. JAVA's only recourse to recover the monies owed is by going to court.

Other Issues, 3rd Bullet: Owner appealed determination of business eligibility under Federal Reg. 24.10(b). Appeal board determined the owner was entitled to business relocation which was approved under E.O. 73559. At that point, JAVA was required to consider the property as a business and reimburse any business reestablishment expenses.

Other Issues, 4th Bullet: JAVA did approve the claims and documentation was available in the files of the consultant.

Other Issues, 5th Bullet: JAVA did approve the claims and final relocation report was available in the files of the consultant.

Other Issues, 6th Bullet: JAVA did approve the claim and documentation was available in the files of the consultant. On the other claim, JAVA received verbal approval from the NDOR.

Other Issues, 7th Bullet: JAVA did approve the claims and documentation was available in the files of the consultant.

Finding 7: Value of Donated Land

The original estimate included other associated costs. The appraised values were certified land appraisals. If necessary, adjustments will be made in the FY 08/09 financial statements prior to their issuance.

Finding 8: Wages and Overhead Charged to JAVA:

Engineering Department, 1st Bullet: JAVA disagrees that it was overbilled. The appropriate overhead rate was used.

Engineering Department, 2nd Bullet: Since the City is part of JAVA, resolving this miscalculation would produce no financial impact to the City or JAVA.

Engineering Department, 3rd Bullet: A system error caused the overbilling, but JAVA has been reimbursed.

Engineering Department, 5th Bullet: The City will comply with the appropriate Federal Acquisition Regulations (FAR).

Engineering Department, 6th Bullet: The overall cost to the project is the same regardless of how time was recorded. The current project manager charges actual time worked to each project.

Urban Development Department: The City's Urban Development Department has completed a review of the annual overhead rate calculation and has revised the overhead rate to reflect actual costs including fringe benefits. Credit will be given during the current fiscal year to correct the past charges.

Finding 9: Internal Control Issues

FHWA Reimbursement Requests, 1st Bullet:

(1) BNSF was paid only for work they completed.

(2) The contractor pay applications did not identify the contractor's name; however, the cover sheet attached to the invoice did contain the name.

FHWA Reimbursement Requests, 2nd Bullet: LPA Guidelines Manual in effect at the time did not require the work authorization date be included on the invoice. In the future, the requirements of the LPA Guidelines Manual in place at the time of invoicing will be followed.

FHWA Reimbursement Requests, 3rd Bullet:

(1) JAVA disagrees. The timesheets were signed by the employee's Supervisor. Responsible Charge certification is a new requirement and did not exist in this time period. Furthermore, there is no current requirement that the Responsible Charge has to sign timesheets.

(2) The date of the invoice being referred to is unknown. If the invoice was dated prior to May 2009, the Responsible Charge certification did not exist. In the future, the requirements of the LPA Guidelines Manual in place at the time of invoicing will be followed.

(3) JAVA disagrees. The invoices were approved by the City Engineer. Responsible Charge certification did not exist at that time.

Expenditure Testing, 1st Bullet: The Antelope Valley Project Manager reviewed the labor charges and they were usual and customary for BNSF. The invoiced charges related to this finding accounted for \$84,034.54 of the \$724,253.00.

Expenditure Testing, 2nd Bullet: This expenditure was requisitioned through purchasing. The actual purchase order identified the project to be charged and had the proper approvals.

Expenditure Testing, 3rd Bullet: Parsons Brinkerhoff has made corrections and will reimburse JAVA \$205.69.

Expenditure Testing, 4th Bullet: JAVA disagrees. Of the \$589.00, \$587.06 were direct expenses not specifically identified in the cost proposal but are eligible expenses. The remaining \$1.94 that exceeded contract rates is being reimbursed by Parsons Brinkerhoff.

Expenditure Testing, 5th Bullet: JAVA will be reimbursed \$185.00 by the subconsultant.

Expenditure Testing, 6th Bullet: JAVA disagrees. The \$2 fee for profit is correct but the subconsultant incorrectly charged to the wrong task. The subconsultant is revising the invoice to show the correct task.

Finding 10: UNL Accounting of Transactions

UNL Response: UNL properly recorded the purchase of the Textron property in the University's financial accounting system. It was recorded as a capitalized asset.

Finding 11: FHWA Construction Change Order Review

NDOR and JAVA Response: During the subject time period, NDOR reviewed change order and contract modifications but did not have in place a policy requiring that they be signed by NDOR's Project Representative. Beginning in September 2008, NDOR established the policy of having the change order and contract modifications reviewed and signed by the NDOR representative.

NDOR audited 3 of the 4 projects noted, and no deficiencies were found. JAVA and NDOR will review the FHWA findings and continue to work with FHWA to ensure correct procedures and Federal regulations are followed for future projects.