



Columbia River Crossing Project

April 14, 2014

In April 2013, when the Legislature decided against further funding for the Columbia River Crossing project, it requested this forensic audit. Because about \$137 million of the project's \$182 million in expenditures consisted of payments to consultants, we conducted this audit to assess two aspects of expenditure:

- did the project overpay consultants for their services?
- was the work added over time consistent with the original solicitation?

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The State Auditor's Office performed this audit at the request of Washington's **Joint Legislative Audit and Review Committee**.
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Executive Summary

The bridge carrying Interstate 5 over the Columbia River is among the oldest major bridges in the region, with components dating from 1917 and 1958. For seismic safety alone, the bridge has been deemed in need of refurbishment or replacement.

In March 2005, the Washington State Department of Transportation (WSDOT) issued a request-for-proposals, seeking consultants who could provide environmental and design services to help the project team deliver the first phase to build a new Columbia River Crossing (CRC) bridge. WSDOT served as the project lead, and was the agency responsible for paying CRC consultants, but total project costs were shared between WSDOT, its co-project sponsor Oregon Department of Transportation (ODOT) and the Federal Highway Administration (FHWA). The Federal Transit Administration (FTA) also participated in the project and planned to help fund project costs that occurred after final design.

With contracts in place in August 2005, the joint project team from WSDOT and ODOT was ready to move forward with the reviews required by the National Environmental Policy Act (NEPA) and Washington's State Environmental Policy Act (SEPA). Until the Environmental Impact Statement (EIS) has been accepted and approved in the record of decision issued by the federal agencies responsible for NEPA, a project cannot move from the planning, environmental, preliminary engineering, and design phases into the right of way and construction phases.

The CRC's environmental impact statement was published in September 2011. In December 2011, the FHWA and the FTA issued the Record of Decision. Design and various planning activities continued until 2013, when the WSDOT project team stopped all new work effective June 30, 2013, and closed the agreement effective August 31, 2013.

In September 2013, the U.S. Coast Guard issued the permit for the CRC construction described in the application that CRC staff submitted in January 2013. On March 7, 2014, the Oregon Legislature also adjourned without reinstating construction funds for the project.

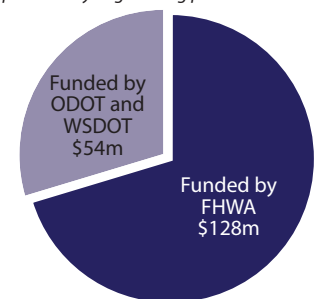
The CRC: A mega-project that relied on consultants for environmental review and preliminary engineering

According to the CRC's website (www.columbiarivercrossing.org), the replacement bridge was proposed to be a long-term comprehensive solution to problems on I-5 between Vancouver, Washington, and Portland, Oregon. The project was expected to:

- Provide travel options and an improved highway, and support jobs and economic growth
- Improve conditions in the five-mile I-5 segment between SR 500 in Vancouver and Victory Boulevard in North Portland with designs for bridge, highway, transit, bicycle and pedestrian improvements
- Help relieve congestion, improve driver safety, and provide protection in the event of an earthquake
- Improve or replace five highway interchanges that are too closely spaced, creating safer merging conditions and reducing highway congestion

Total CRC spending between May 2005-August 2013 = \$182 million

Federal contributions cover almost 70% of costs for the environmental and preliminary engineering phases



Note: WSDOT indicates the amounts in this graph exclude \$5.9 million in CRC costs incurred by ODOT. WSDOT indicates these costs did not flow through its accounting system. These costs were not examined during this audit.

- Extend light rail 2.9 miles, connecting downtown Vancouver to 52 miles of existing light rail network in Oregon
- Include a 20-foot-wide path across the Columbia River that is separated from highway traffic. Add or improve sidewalks, bike lanes and connections to transit stations.

Between May 2005 and August 2013, CRC project expenditures totaled more than \$182 million; all work ended in June 2013, except for close-out work that occurred in July and August. The \$182 million included WSDOT and ODOT payroll costs for CRC project staff, payments to other governments and environmental mitigation. Also included were WSDOT payments to CRC consultants worth \$136.7 million – or 75 percent of all costs. Because of contract supplements and additional task orders, payments to one consultant totaled \$125.2 million. As of August 2013, WSDOT was in the process of applying for its FTA full funding grant.

A timeline at **Appendix A** shows the CRC project activities and milestones during that period side-by-side with the tests we performed in the course of the audit.

Why we did this audit

As part of Washington state’s 2013-2015 transportation budget, ESSB 5024 required a forensic audit of WSDOT’s Columbia River Crossing (CRC) project because of concerns that legislators had about the use of CRC project funds. Consistent with ESSB 5024, the Joint Legislative Audit and Review Committee (JLARC) contracted with the State Auditor’s Office to conduct this forensic audit.

This forensic audit examined three areas to determine whether WSDOT overpaid for CRC consulting services, or charged for services that exceeded the contract or the scope of the original solicitation. Across all questions, we looked for any unusual or unsupported charges.

1. **Administrative costs**

Has WSDOT been directly charged for administrative staff that are indirectly charged in the overhead rate?

If WSDOT shared any administrative costs with consultants, were they shared equitably?

2. **Rates for profit, overhead and labor**

Did WSDOT overpay for consultants’ profit, overhead, or labor?

Did the rates paid and rate increases charged conform to contract rates, audited rates and typical industry rates and rate increases?

3. **Work compared to task orders and to the original solicitation**

Were contract task orders within the scope of the original solicitation?

Did work charged agree with contract task orders?

Some terms used in this report

A forensic audit looks for the potential misuse of funds.

Overhead consists of a firm’s support costs, such as accounting, payroll and human resources. It also consists of time spent preparing proposals in response to solicitations for work. It includes the utilities, insurance, facilities and other costs necessary to support the firm’s employees.

An overhead rate equals a firm’s overhead costs divided by its labor costs.

A markup typically consists of a profit that is calculated as a percentage of base operating costs.

In May 2005, WSDOT signed a \$50 million agreement with David Evans and Associates (Evans) to perform work associated with necessary environmental studies. Other contracts worth more than \$11.5 million were put in place with other consulting firms, and subsidiary contracts were arranged under the primary consultants. The project team initially anticipated this work would cost more than \$20 million; by the close of project activities in August 2013, Evans had received payments worth \$125.2 million. The small graph to the right illustrates this spending.

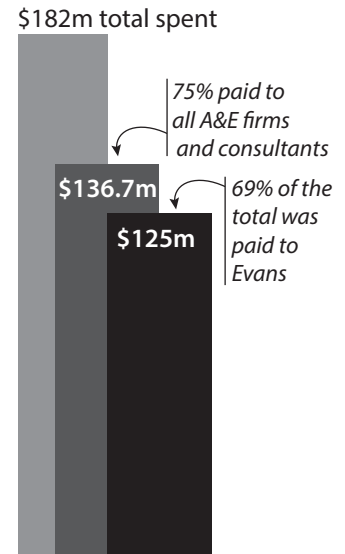
This audit focused on charges by Evans, the firm that provided most CRC consulting services from May 2005 through August 2013. Overhead made up more than half of these charges, labor made up one third, and profit made up the remainder. Where issues were identified, we expanded our work to other CRC consulting firms.

As discussed further at **Appendix C**, we also considered how some issues affected or might affect WSDOT's use of consultants on other projects. In addition, we examined project activities that took place after the record of decision accepting the EIS – between December 2011 and August 2013 – to see if the work performed was within scope of the original solicitation.

Audit authority

We conducted this audit for JLARC under the authority of ESSB 5024, and in accordance with generally accepted government auditing standards prescribed by U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. See **Appendix B** for more information about our methodology.

WSDOT's CRC spending,
May 2005-August 2013



Note: WSDOT indicates the amounts in this graph exclude \$5.9 million in CRC costs incurred by ODOT. WSDOT indicates these costs did not flow through its accounting system. These costs were not examined during this audit.

Results in brief

Our audit of the Columbia River Crossing Project did not identify any financial misconduct or abuse. With few exceptions, we found that billing rates paid to most consultants on the project agreed to contract rates and audited rates, when applicable. We did however identify opportunities to improve controls over consultant services contracts on future projects. We also identified excess and questionable costs attributable to WSDOT policies and procedures.

The following table summarizes the excess, higher-than-typical, and questionable charges identified.

A summary of issue amounts addressed in this audit

Excess or higher-than-typical costs	Recoverable	Other
Four percent markup on sub-consultant charges that over-compensated administrative costs and resulted in high profit markups		\$1,455,412
Profit markups exceeded typical 10%-12% range		\$53,242
Labor rate increases exceeded typical 5% per year		\$158,682
Labor rates exceeded contract rates	\$13,932	
Overhead rates exceeded contract rates	\$35,754	
Questionable costs		
Overhead rates exceeded audited rates		\$286,733
Payments to firms with undisclosed overhead and profit markups		\$12,300,000
Labor charges with no contract rates/missing contract rates		\$400,000
Work performed was not authorized in advance by contract		\$2,366,000
Totals	\$49,686	\$17,020,069

Note: This table excludes amounts identified in Appendix C. It also excludes \$6.26 million in task orders that potentially exceeded the scope of services described during the pre-proposal conference.

The details around these amounts are discussed below.

Administrative costs (and profit)

Administrative costs for two primary consultants were over-compensated, resulting in increased payments of \$1.455 million. Consequently, profit markups exceeded contract rates and typical markups.

In 2006, WSDOT adopted a policy that paid primary consultants a 4 percent markup on work performed by sub-consultants, which resulted in increased payments to Evans of \$1.45 million and HDR of \$4,700. The policy was proposed by the engineering community during discussions about how to respond to a court decision that struck down WSDOT's Disadvantage Business Enterprise (DBE) program.

WSDOT adopted this statewide policy without obtaining written legal advice. Its purpose was to reimburse primary consultants for the unidentified administrative costs associated with their use of sub-consultants. It was applied to new contracts and all new work associated with old contracts. The policy's markups resulted in \$1.455 million in over-compensated administrative costs for the two consultants. Consequently, Evans was paid profit markups that significantly exceeded those typically paid by WSDOT and other states. Evans' 2005 contract did not provide for these markups.

WSDOT discontinued the markup after FHWA concluded it was unjustified because it over-compensated primary consultants for administrative costs. Similarly, the FTA indicates such markups result in unwarranted profits. Appendix C discusses how this policy further affected costs on other WSDOT consulting contracts.

Rates for profit, overhead and labor

In testing the **profit markups** paid to most other CRC consultants, we found that markups charged agreed with contract rates and typical markups. However, we identified \$53,242 in excess profit markups.

Industry sources indicate you must consider a firm's overhead rate before you can determine the profit markup you are paying. Consistent with this standard, most state transportation departments typically pay a 10 percent to 12 percent consultant markup on labor and overhead. However, WSDOT typically pays a labor markup of 29 percent to 31 percent without considering a firm's overhead rate. Consequently, WSDOT paid higher-than-typical profit markups to eight firms with low overhead rates, which added \$53,242 in costs. Appendix C discusses how this practice affected more recent WSDOT contracts and real opportunities to save money.

WSDOT does not know whether it paid high profit markups to other CRC firms. For the decade ending June 2013, WSDOT approved hourly rates for small firms without knowing the labor, overhead and profit components making up those rates. As stated earlier, industry sources indicate you must know a firm's overhead rate to know the profit markups you are paying them. This practice increased the risk that WSDOT paid higher-than-typical profit markups to small firms. Payments to CRC primary consultants and sub-consultants that did not show a breakout for their hourly rates totaled \$12.3 million. If the profit markups paid to these firms exceeded a typical 10 percent to 12 percent markup by only 1 percent, the additional costs would total nearly \$120,000.

Overhead and labor rates charged over the life of the contract looked mostly reasonable for the nine firms that performed most CRC consulting work. Most overhead and labor rates charged conformed to contract rates and audited rates. Most labor rate increases were consistent with typical increases. However, one firm charged an overhead rate for one year that was partly based on costs that WSDOT's Internal Audit Department identified as unallowable. Ten firms charged overhead or labor rates that exceeded contract rates or were allowed unusual labor rate increases. These conditions resulted in nearly \$208,368 in excess labor or overhead charges, and \$286,733 in questionable overhead charges. WSDOT also lacked a contract rate table for one firm's labor charges that totaled more than \$400,000. More than \$200,000 of these charges were compared to the firm's subsequent rate table and did not exceed that table.

Work compared to task orders and to original solicitation

Most work examined was consistent with approved task orders and all task orders examined were consistent with the scope described in the original solicitation. FHWA had reviewed CRC work leading up the EIS record of decision, which was obtained in December 2011. FHWA concluded that all activities billed were preliminary design and necessary to support the EIS record of decision.

We reviewed task orders dated after the CRC received its EIS record of decision in December 2011. Most work was consistent with approved task orders, which were consistent with the original solicitation. However, more than \$2.3 million was added to two contract task orders three to 11 months after the work was performed. Unauthorized work can be unnecessary and costly. Fortunately, this work was consistent with the services described in the original solicitation. We also identified three task orders with up to \$6.26 million in work that potentially exceeded the scope described in the vendor pre-proposal conference. This scope description, which was unclear, helped vendors decide whether they would submit a proposal to WSDOT.

Recommendations in brief

The audit recommends WSDOT:

- Exercise greater caution and seek legal advice when considering policies that may conflict with state law and FHWA requirements, or may increase compensation beyond what has already been contractually established
- Take steps to help WSDOT and local governments avoid paying consultants higher than typical markups
- Recover \$49,686 of the \$1.7 million in excess costs and contact FHWA to determine whether WSDOT must repay the agency for the federally funded portion of \$286,733 in questionable costs (because WSDOT policy and contract negotiations caused most of the excess and questionable costs, they are likely unrecoverable)
- Improve contracting practices so the Department can better control the work of consultants

See page 29 for a full list of our recommendations.

Introduction

Managing a design-build contract carries risks

The WSDOT-ODOT project team planned to use the design-build contract approach for the CRC bridge project. Under the design-build approach, project officials are responsible for establishing the project's performance criteria, while the contractor is responsible for designing and building the project so that it meets the criteria at the best value. When the design-build approach is used according to leading practices, project officials ensure that the contractor assumes the risk for any design features they choose to incorporate.

Following recent experiences around the reconstruction of the SR 520 bridge, WSDOT is aware of the problems that might result if the terms and conditions of a design-build contract are not carefully drafted. In that case, the design-build contractor incorporated WSDOT's nearly completed design for the pontoons needed for the floating portion of the bridge. This design proved faulty, but because WSDOT had not transferred this risk to the contractor in their contract agreement, WSDOT was responsible for the additional costs associated with post-construction modifications.

Although the CRC design is in an earlier stage, meeting calendars and correspondence show that CRC project staff had already discussed ways to avoid these risks on the CRC project.

Among a project's earliest risks is the development of the required Environmental Impact Statement.

Long before a project like the CRC can begin construction, the project team must produce and publish an assessment of the project's impact on the environment, which in turn must be accepted and approved by relevant authorities. WSDOT is familiar with the lengthy and complex process: its \$112 million I-90 Sunset Way Project also required an EIS that met NEPA requirements. Without an FHWA and FTA decision finding that these requirements have been met, a project may not move forward to construction.

To put the cost of producing an EIS in context, WSDOT reported to FHWA that 2 percent of the Sunset Way Project costs were related to necessary environmental review efforts. Together, environmental review and design costs totaled 12 percent of overall costs for Sunset Way.

The \$141.8 million spent to obtain the CRC project's EIS record of decision, and the additional \$40 million spent in part to obtain a permit from the Coast Guard, is reasonable.

The CRC completed its EIS and received the record of decision in December 2011, and was able to move from preliminary engineering into final design. Using the benchmarks above, we would expect spending on this phase of the project to fall between 2 percent and 10 percent of planned project costs. WSDOT has reported that it spent about 6.6 percent of planned project costs on the environmental review and preliminary engineering necessary to obtain its EIS record of decision on the 520 Bridge project.

Experiences of other states

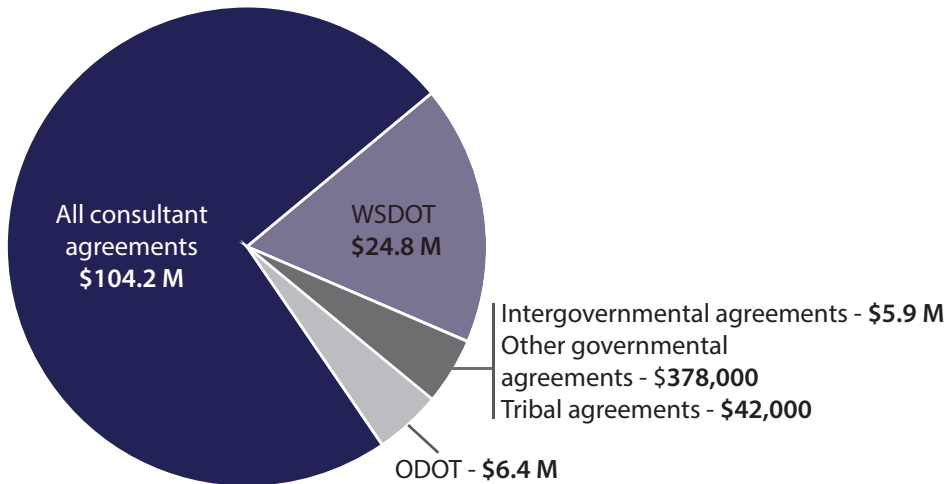
In 2008, Colorado DOT reported to the American Association of State Highway and Transportation Officials (AASHTO) that it estimates two percent of major project costs relate to NEPA.

The FHWA reported that environmental review and design combined totaled eight percent of total costs for Maryland's \$181 million US Highway 113 projects.

CRC expenditure through December 2011 totaled \$141.8 million, or 4 percent, of the \$3.5 billion in planned project costs. This amount was slightly higher because the states' governors opted to spend about \$2.5 million on expert review panels, independent review panels, and consultant support of those panels. According to the FHWA, this work was not required to meet NEPA EIS standards but it was allowable to charge it to federal grants.

Exhibit 1 shows WSDOT's break-out of the \$141.8 million by agreement type: wages and payments to the two state agencies, agreements with other governmental entities, and contracts with consultants.

Exhibit 1 Breakout of CRC costs by agreement type at EIS record of decision, December 31, 2011



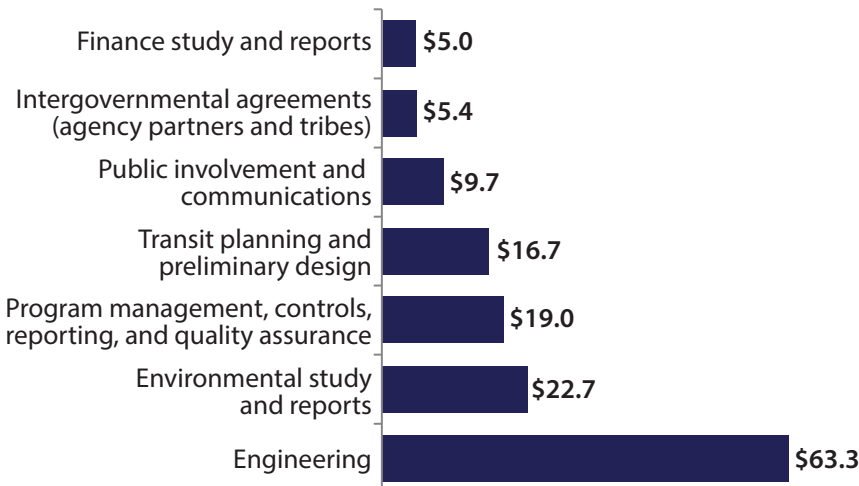
Source: Prepared by our Office using information submitted by WSDOT's Finance Director to the Secretary of Transportation in February 2012.

Almost three-quarters of spending – \$104.2 million – was paid to private companies. This includes more than \$98 million in payments to one firm, David Evans and Associates Inc. (Evans).

Exhibit 2 shows WSDOT's break-out of the \$141.8 million by functional area.

Exhibit 2 Breakout of CRC costs by functional area at EIS record of decision, December 2011

Dollars in millions



Source: Prepared by our Office using information prepared by CRC project staff in January 2012.

Total project costs at time of Coast Guard permitting

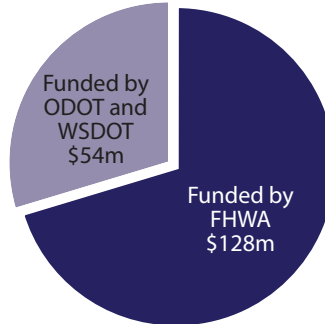
Still within 10 percent of planned project costs, in the 20 months between December 2011 and August 2013, total project costs passing through WSDOT's accounting departments had risen another \$40 million to more than \$182 million. The additional expenses were due mostly to task orders for design, setting up project controls, obtaining permits, and various other planning efforts placed by WSDOT with Evans after the record of decision was issued.

Exhibit 3 shows the proportion of funding by source for the environmental and preliminary engineering phases of the project. Appendix D shows larger task orders to the Evans contract that occurred after the record of decision.

It is important to note that as the agency tasked with making contracts with consultants and seeing that they were paid, WSDOT was responsible for all the excess costs that we identified, whether by paying consultants more than was provided for in the contract or more than benchmarks suggest was appropriate. However, these costs were shared between WSDOT, ODOT and the FHWA.

Total CRC spending between May 2005-August 2013 = \$182 million

Federal contributions cover almost 70% of costs for the environmental and preliminary engineering phases



Note: WSDOT indicates the amounts in this graph exclude \$5.9 million in CRC costs incurred by ODOT. WSDOT indicates these costs did not flow through its accounting system. These costs were not examined during this audit.

Audit results

CRC project staff paid proper attention to most vendor invoices

In addition to the audit procedures associated with the three issues that are described below, we also footed invoices, traced selected charges back to supporting receipts, and assessed whether early payment credits were passed on to WSDOT. This work examined more than \$17 million in charges that occurred largely in the first two years of the project period, when WSDOT was establishing and refining its processes and controls, and in the final months of the project period, when vendors knew the work was ending. As a result of this detailed work, we noted only minor instances where WSDOT overpaid or paid for unsupported charges. The results of this detailed testing, along with suggestions for improvements, are described at Appendix E.

Based largely on the results described below, and on those minor issues identified at Appendix E, CRC project staff did a good job scrutinizing most CRC vendor invoices.

Issue 1: Administrative costs

- **Was WSDOT charged directly for administrative staff costs that are indirectly charged in the overhead rate?** We found that WSDOT was over-charged for some administrative costs related to the management of sub-consultants by primary consulting firms, due to its own policy of paying a 4 percent markup on subcontracted work.
- **If the agency shared any administrative costs with consultants, were they equitably distributed?** The office space shared by WSDOT and Evans was equitably paid for by both parties, and was consistent with a space sharing agreement.

A WSDOT policy permitted two CRC primary consultants to overcharge for some administrative staff time.

Central to our review of consultant administrative charges to the CRC project was a markup policy, known as Policy 2006-1, which WSDOT adopted in November 2006. This policy affected contracts with two CRC primary consultants. (As discussed at Appendix C, it also affected WSDOT contracts with primary consultants on other projects.) The effect of this policy was to grant an additional 4 percent markup on sub-consultant charges billed by the primary consultant for “administrative costs,” even if the original contract did not call for such a markup. It was applied to all task orders initiated during the policy period.

Although it is a standard business practice to compensate firms according to the contract conditions, WSDOT’s 2005 contracts with the two primary CRC consultants did not provide for the 4 percent markup. WSDOT acknowledges it had no legal obligation to pay it.

The resulting markups paid to Evans totaled \$1.45 million. During the policy period, WSDOT reduced Evans’s labor markup from 31 percent to 29 percent, but this reduction offset only \$123,000 of the \$1.45 million. A second CRC primary consultant received nearly \$4,700 in such markups on \$781,000 in contract payments. See Issue 2 for a discussion on how this affected total markups paid by WSDOT.

WSDOT eventually rescinded this policy on August 16, 2009. Because its policy authorized these markups, WSDOT has not attempted to recover them.

WSDOT adopted Policy 2006-1 without written legal advice, despite its conflicts with federal cost requirements, and without necessarily achieving its stated purposes.

In 2006, members of an independent trade group, the American Council of Engineering Companies (ACEC), helped develop a WSDOT policy that would directly benefit larger firms that engage sub-consultants to perform work for the state agency. They approached WSDOT as a result of a February 2006 meeting in which a WSDOT-paid attorney encouraged large ACEC firms to lobby for markups on sub-consultants, on the grounds that it was riskier and more costly for them to use sub-consultants sourced through WSDOT's DBE program. During the meeting, two firms proposed giving primary companies a markup on all sub-consultant work. The attorney agreed to provide a report to WSDOT that recommended the Department provide such a markup.

After ACEC members researched arguments for a markup proposal and presented them to WSDOT, they went on to help WSDOT write a proposal that resulted in the adoption of a new policy by WSDOT in October 2006. This policy incorporated the ACEC's proposed markup on sub-consultant charges.

Nine months later, WSDOT revised the purpose statement of the policy. The original statement read:

"...to address appropriate compensation to prime consultants...for their efforts and cost associated with sub-consultants...The total or "true" costs, risks, oversight efforts and administration burdens to the primes of managing sub-consultants' work...have not been clearly identified... Current practices only partially compensate the prime for their costs ...through the profit or fee negotiations or...through the overhead rate."

The revised statement read:

"...the mark-ups...provide incentives for the prime consultants for their distribution of work to a broad base of sub consultants. This will help WSDOT deliver the largest transportation program in this State's history."

We identified these problems with the policy's originally stated intentions and its implementation.

- Contrary to federal cost principles, there were no records to support the policy's assertion that the consultants' administrative burdens warranted additional payment.
- Retrospectively applying the 4 percent markup to pre-existing contracts resulted in compensation that exceeded what the contract specified.
- The markup resulted in extra profit for contracted firms as administrative costs were over-compensated.

We identified these problems with the policy's revised intentions and its implementation.

- Applying the 4 percent markup to pre-existing contracts to increase the amount of work that went to subconsultants after WSDOT had selected firms based on qualifications conflicted with state and federal law.
- WSDOT did not have evidence that it had difficulty in finding architecture and engineering (A&E) firms to carry out its program after the policy ended in August 2009.

Timeline for WSDOT's Policy 2006-1.

Feb-2006 – ACEC members meet with WSDOT-paid attorney.

Mar-Jul-06 – ACEC members conduct research, then share their results with WSDOT officials.

Jul-Sept-06 – WSDOT's Consultant Services Office discusses the research; ACEC members help draft an Aug-06 proposal favoring markups, which is presented to agency executives.

Oct-06 – WSDOT adopts the proposal as Policy 2006-1, effective Nov 1, 2006.

Jun-07 – WSDOT revises Policy 2006-1.

Mar-08 – FHWA officials review the policy and send initial comments to WSDOT.

Aug-09 – FHWA finalizes review and instructs WSDOT to end the policy. WSDOT then rescinds Policy 2006-1, telling FHWA that it would not pay markup on task orders after April 2010.

Feb-11 – WSDOT pays Evans final task order markup. Markups paid to Evans after April 2010 total \$71,552.

We believe these problems occurred because WSDOT did not seek written legal advice from the Washington State Attorney General's Office before adopting a policy that offered potential conflict with state and federal requirements and existing contracts. Moreover, WSDOT officials put the policy in place despite caution expressed by its own Consultant Services Office. WSDOT did obtain informal email feedback on sub-consultant markups from an FHWA official before adopting its policy. But this informal feedback was limited and did not address all state, federal and contractual requirements. The email read:

"There is nothing from the federal side that prohibits a markup on subconsultants. We do however, have provisions against hiring preferences so let's make sure we steer away from that...I would like to get together briefly to discuss. Thanks."

Retroactively applying markup for the revised purpose of encouraging the use of sub-consultants on pre-existing CRC contracts did not achieve a benefit for WSDOT and it conflicted with state and federal requirements.

The policy's revised purpose for the markup was to encourage larger firms to use more sub-consultants on WSDOT projects. In the case of Evans, however, WSDOT paid the markup on work performed by sub-consultants that were already identified in Evans' 2005 proposal. In fact, most CRC sub-work went to regional, national and global firms that were already included in the original proposal. Paying Evans a markup on work performed by these sub-consultants increased the contract's cost without realizing the intended benefit. Markups on work performed by these original sub-consultants made up the majority of the \$1.45 million we identified.

Policy 2006-1 risked violations of state and federal law. If WSDOT had succeeded in changing Evans' use of sub-consultants, this change would have raised questions about the Department's compliance with RCW 39.80. The law, which is based on the federal Brooks Act, requires WSDOT to negotiate a fair and reasonably priced contract with the firm determined to be most qualified.

In 2009 correspondence to WSDOT about Policy 2006-1, FHWA highlighted this problem:

"...the objective of [WSDOT's] policy was to provide incentives for prime consultants for the distribution of their work to a broad base of local sub-consultants. The objective of the policy is problematic because according to the Brooks Act, A&E contracts are selected on the basis of qualification. WSDOT's policy that appears to favor or choose A&E contracts on the basis of extending work to a broad base of local consultants is in conflict with the Brooks Act."

WSDOT was already compensating primary consultants for the administrative costs that Policy 2006-1 was supposed to pay for, generating additional profits without additional work.

The original purpose for the 4 percent markup was to further reimburse primary CRC consultants such as Evans for administrative costs that were in fact already paid for by their direct charges and overhead rates. In fact, WSDOT's Internal Audit Department acknowledges a consultant's costs are either direct charged or charged indirectly through its overhead rate, which Internal Audit reviews for appropriateness before Consultant Services incorporates it into a WSDOT contract.

What the law says about awarding state A&E contracts:

"In the procurement of [A&E] services, the agency shall encourage firms... to submit ... statement of qualifications... The agency shall evaluate current statements of qualifications... and... select... the firm deemed to be the most highly qualified to provide the services required..."

Although Evans and its sub-consultants continued to direct-charge administrative staff to the CRC project during the Policy 2006-1 period, WSDOT's Internal Audit told us that not one firm submitted a reduced rate in response to the 4 percent markup. CRC staff told us they never challenged A&E firms about charges for administrative staff during this period.

Internal Audit recommended WSDOT recover the 4 percent markups discussed at Appendix C. However, WSDOT's Chief Engineer declined to do so, stating that WSDOT received full value for the services rendered.

Two federal agencies took a different position. The FTA, which co-sponsored the CRC project because of plans to incorporate light rail into the new structure, indicates that primary consultants have been over-compensated when given a profit on sub-consultant charges:

"[The] prime's management of the sub-consultant will be compensated...as the prime bills you for its subcontract management labor costs with profit [already included] in the hourly billing rates. To add another profit factor to the subcontract prices, which already include the sub-consultant's profit, results...in an unwarranted duplication of profit..."

Similarly, in its initial March 2008 review of WSDOT Policy 2006-1, FHWA wrote:

"This policy has the appearance of 'double dipping'..."

In a 2009 follow-up to its March 2008 review, FHWA wrote:

"The prime is already billing an hourly rate to supervise the sub-consultants and the administrative costs associated with the sub-consultant are recovered through the prime contractor's (primes) overhead rate. So the primes cannot be compensated twice for sub-consultant costs by receiving an additional markup in addition to the overhead rate."

As determined by FWHA, Policy 2006-1 over-compensated primary consultants for their administrative costs. This significantly increased Evans' profit, as we discuss in the following section.

WSDOT's phase-out of Policy 2006-1 took longer than the agency told FHWA it would.

FHWA's August 2009 review instructed WSDOT to discontinue Policy 2006-1 on FHWA-funded contracts. At the advice of Attorney General's Office, the Department continued to pay the markup on work related to task orders signed before August 16, 2009, the date when it finally rescinded the policy. WSDOT had told FHWA that work on these contracts would end by April 2010, but its payments to Evans included the 4 percent markup through February 2011. The continued markup added another \$71,552 to the total. Issue 2 describes how this policy significantly increased the profits WSDOT paid to Evans.

As described above, the policy resulted in WSDOT over-compensating firms for their administrative costs. Issue 2 discusses how this significantly increased the overall profits that WSDOT paid Evans. Issue 2 also describes how these profit markups compared to more typical markups.

When WSDOT shared administrative expenses with consultants, we found that costs were shared equitably

In reviewing agreements between WSDOT and Evans, and Evans invoices for CRC work, we noted the two parties shared building rental costs. Because Evans staff worked alongside WSDOT staff in the CRC building, WSDOT charged Evans monthly for the number of building spaces it used. On its monthly invoices, Evans credited WSDOT for these rent charges, which totaled more than \$3.2 million from January 2006 through July 2013. Rental agreements, CRC organizational charts and other records showing on-site Evans staff were compared to rent credits that were included with the monthly invoices. These comparisons indicate that rent credits were equitable, complete and accurate.

Issue 2: Rates for profit, overhead and labor

- Did WSDOT overpay for profit, overhead and labor? Did the rates paid and rate increases charged conform to contract rates, audited rates and typical industry rates? We found that the Policy 2006-1 allowed higher-than-typical profits to Evans. Furthermore, primary and sub-consultants with low overhead costs also made higher-than-typical profits. As discussed at Appendix C, both these issues affected costs on other contracts outside the CRC project.

Rates for overhead and labor mostly conformed to our expectations, but we found that WSDOT could not say one way or another whether 30 other companies (primary consultants and sub-consultants) made more-than-typical profit because the agency did not have necessary documentation about their labor and overhead rates. We found that labor rate increases were reasonable for most firms, but identified unusual increases at three firms.

Appendix F lists contract conditions and federal criteria that show WSDOT has authority to recover certain overpaid amounts discussed in this section of the report. The list of Recommendations on page 29 addresses the issues we found in this area.

When firms had normal overhead rates, WSDOT’s basic approach to establishing consultant profit markups was mostly in line with other state DOTs

Rather than pay a 10 percent to 12 percent profit markup on labor and overhead as is typical at other state transportation departments, WSDOT typically pays a 29 percent to 31 percent profit markup on labor alone. Both markup approaches are allowed by the FHWA.

Overhead rates for most WSDOT consultants range from 140 percent to 190 percent of labor costs. When paid to firms that have overhead rates in this range, WSDOT’s labor markup results in profits that are very close to those paid by other transportation departments.

Exhibit 4 shows the calculation we used to compare WSDOT’s markup to those typically paid by other states. The two columns on the right show that WSDOT’s labor markups closely compare to the markups on labor and overhead paid by other state transportation departments.

Exhibit 4 WSDOT’s labor markups compared to the markups on labor and overhead paid by other state Transportation Departments

	Overhead rate charged by most WSDOT consultants	Labor rate (100% of actual costs)	Combined cost base	WSDOT typical labor markup	Typical profit markup on labor and overhead	
					WSDOT	Other state DOTs
Low end	140%	100%	2.4	29 -31%	12.08- 12.92%	10- 12%
Mid-point	162.50%	100%	2.625	29 -31%	11.05 -11.81%	10- 12%
High end	190%	100%	2.9	29 -31%	10.00 -10.69%	10- 12%

Note: FHWA has approved WSDOT’s Consultant Services Manual, which allows for up to 35 percent labor markups.

Sources: The overhead rates charged by most WSDOT consultants and WSDOT’s typical labor markups were obtained from interviews and our review of numerous contract rate tables. Typical profit markups by other transportation departments were obtained from a survey conducted by Indiana DOT and from prior performance audits that examined A&E contracting practices. FTA indicates markups do not typically exceed 10 percent.

When we examined the CRC project, we found that WSDOT paid a reasonable markup to most Evans sub-consultants. These sub-consultants performed most of the CRC's consulting work: more than \$83.3 million of the \$125.2 million in work on the Evans contract was provided by these sub-consultants.

If we exclude for the moment those Evans sub-consultants who performed \$3.3 million of the \$4.3 million in work described below at Exhibit 7 and the \$11.1 million in work that is described at Exhibit 8, work performed by all other Evans sub-consultants totaled nearly \$69 million. WSDOT paid these companies a reasonable profit markup.

However, because of the over-compensated administrative costs, WSDOT paid Evans higher-than-typical profits.

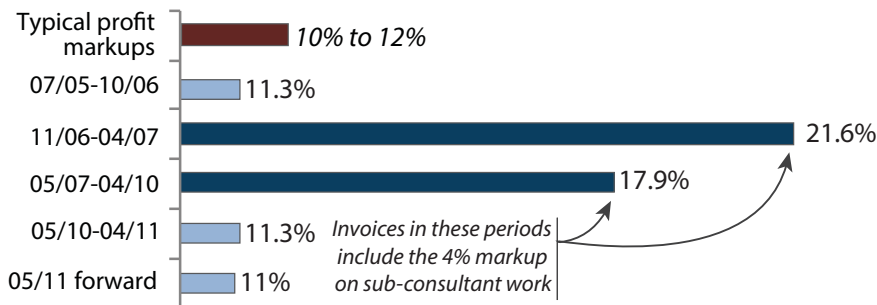
When labor markups are combined with the 4 percent markup described above, WSDOT paid Evans a combined profit on labor and overhead that ranged from 17.9 percent to 21.6 percent from November 2006 through April 2010. These rates were 5.9 percent to 9.6 percent higher than those typically paid by WSDOT and other state transportation departments, and 2.9 percent to 6.6 percent higher than FHWA's maximum recommended rate of 15 percent.

Exhibit 5 compares Evans' profits to more typical profit rates during that period.

Exhibit 5 **Evans' profit markups rose during Policy 2006-1, exceeding typical markups**

Invoices issued by Evans July 2005-May 2011

Markup rates as a percentage of labor and overhead



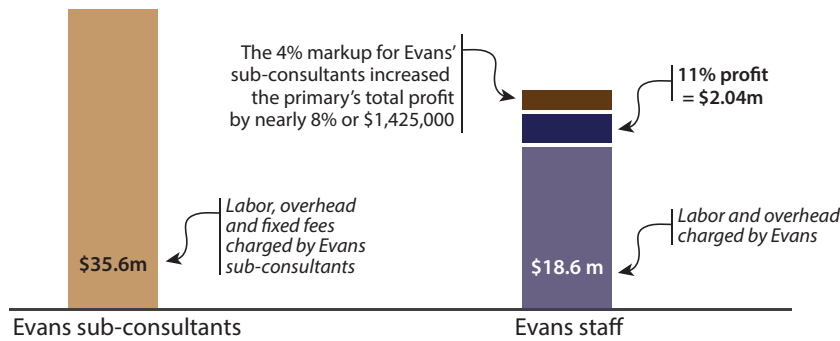
Note: Policy 2006-1 went into effect November 2006.

Source: Prepared by our Office using invoices and contract rate tables provided by WSDOT.

Exhibit 6 shows why the 4 percent markup on sub-consultant charges significantly increased Evans' overall markup. The exhibit shows that work performed by Evans' sub-consultants significantly exceeded the amount of work performed by Evans' own staff from November 2006 through April 2010. Because of this, the 4 percent markup on sub-consultant work added nearly twice that amount to the markup WSDOT paid Evans for the work its staff performed.

Exhibit 6 Because work done by Evans sub-consultants exceeded that charged by Evans staff, the 4% markup significantly increased Evans profits as primary consultant

Period of charges: November 2006 through April 2010



Source: Prepared by our Office using invoices and contract rate tables provided by WSDOT.

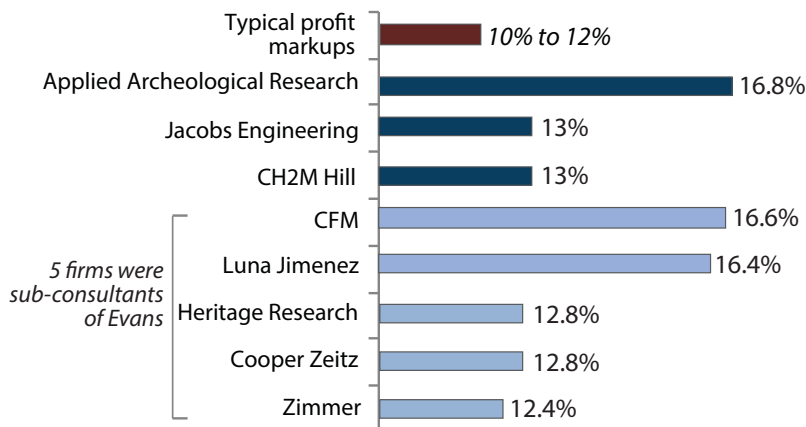
CRC consulting firms with low overhead rates also made higher-than-typical profits

For firms with overhead rates below 140 percent, a typical WSDOT labor markup of 29 percent results in overall profit markups that exceed 12 percent. However, WSDOT may also pay a labor markup that is as high as 35 percent. For low overhead firms, this would result in an even higher profit rate.

Exhibit 7 shows the profit markups paid to three CRC primary consultants and five Evans sub-consultants compared to a typical markup. The exhibit also shows that WSDOT paid three of these firms a profit rate that exceeded the FHWA's maximum recommended rate of 15 percent. WSDOT paid these eight low-overhead firms \$4.3 million: \$53,242 more than if it had paid a 12 percent markup, and \$88,920 more than if it had paid at the 11 percent midpoint of the typical markup range.

Exhibit 7 WSDOT paid primary and sub-consultants with low overhead rates higher-than-typical profit markups

Markup rates as a percentage of labor and overhead



Source: Prepared by our Office using invoices and contract rate tables provided by WSDOT.

We also found that WSDOT paid excessive profits to non-CRC project consultants

The problem of excessive profits paid to primary consultants by WSDOT during the period when Policy 2006-1 was in force is not limited to the CRC project. Separate from the issue of Policy 2006-1 markups, we also found higher than typical profits at non-CRC firms with low overhead rates.

Both issues are discussed in more detail in Appendix C.

While overhead rates mostly conformed to contract and Internal Audit rates, we found some exceptions that led to overpayments or questionable payments

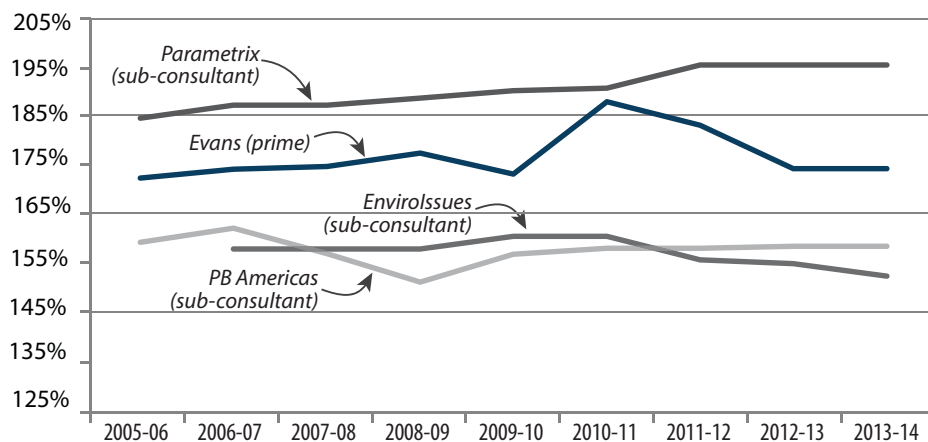
Overhead made up more than half of the \$136.7 million in CRC consultant charges: roughly \$71 million. We examined overhead rates charged by firms that performed most CRC consulting work to see if these charges for a consultant’s overhead conformed to the contract rate and to the audited rate.

We found that most overhead charges for the firms that did most CRC consulting work conformed to contract rates and audited rates, and were fairly stable from year to year. However, as discussed further below, we did find excessive payments totaling \$35,754 and questionable payments totaling \$286,773.

The changes in contract overhead rates for the largest prime and the largest three subs are shown in Exhibit 8. The exhibit shows that overhead rates were fairly stable over the contract period.

Exhibit 8 Changes in overhead rates for the largest primary consultant and the three largest sub-consultants

Overhead shown as a percentage of labor cost; May 2005-August 2013



Source: Prepared by our Office using contract rate tables provided by WSDOT.

However, we found instances when overhead rates paid to Evans and four Evans sub-consultants exceeded contract rates, or the audited rate if the contract rate was missing. Consequently, WSDOT overpaid these five firms by \$35,754, a sum which includes a small amount of excess profits.

We also found one instance where WSDOT agreed to consultant compensation that did not meet federal requirements. All firms – primary or sub-consultant – are required to give WSDOT Internal Audit the cost-details behind their overhead rates. When rates have been audited by a CPA firm or a federal granting agency, firms must also submit these audits. Internal Audit reviews these materials to approve

the overhead rates that firms may charge the Department. In some instances, WSDOT may approve a reduced rate if the submitted rate included unallowable costs such as luxury vehicles or profit-based bonuses. The Consultant Services Office uses the overhead rates approved by Internal Audit when it negotiates the contract rates that firms must use when they bill for contracted services.

In the case of another Evans sub-consultant, Internal Audit had reduced the requested rate by nearly 30 percent because it was partly based on bonuses that did not qualify as an allowable cost per the federal requirements shown at Appendix F. Internal Audit communicated the lower rate to both the sub-consultant and the Consultant Services Office, but Consultant Services incorporated the higher rate into the contract. Although compensation to this firm totaled an additional \$286,773 more than it would have at the lower rate, it is possible this firm would have refused to work on the project at a loss had WSDOT not agreed to pay the higher rate. Before the following year's rate table was negotiated, this firm had responded to WSDOT's feedback and corrected its bonus practices. Its new overhead rate, which was now based on allowable bonus costs, was very similar to the rate that was previously submitted. WSDOT is unlikely to recover these amounts as it agreed to pay the higher rate. But it may nonetheless need to repay these amounts to FHWA.

WSDOT also lacks records to show the overhead, labor and profit rates charged by more than 30 CRC primary consultants and sub-consultants. These firms were paid a total of \$12.3 million.

In 2009, the FHWA Inspector General indicated that audits of DBE firms' overhead rates are critical to protect taxpayer funds. Similarly, industry sources indicate that knowing a firm's overhead rate is necessary to knowing its profit rate. Consistent with these sources, WSDOT's contract with Evans required that all Evans sub-consultants submit hourly rate tables that showed the labor, overhead and profit rates for each position.

We identified \$11.1 million in payments to Evans sub-consultants and \$1.2 million in payments to smaller CRC primary consultants whose hourly rate tables did not comply with this contract condition. WSDOT did not require detailed cost and profit breakouts for smaller firms, and consequently, it does not know what overhead, labor or profit rate it paid these firms. If the profit markups paid to these firms exceeded a typical 12 percent markup by only 1 percent, the additional costs would total \$120,000. WSDOT acknowledges it may have overpaid for this work.

Correcting the problem. WSDOT and FHWA recognized this problem during the summer of 2013. WSDOT now requires all firms to provide hourly rate tables that show the labor, overhead and profit rates for each position.

While labor rate increases were reasonable for most firms, we found three with unusual rate increases exceeding typical industry increases

Labor made up a third of the \$136.7 million in CRC consulting charges, or about \$47.8 million.

Firms that work for WSDOT submit a rate or rate-range for each position that is expected to work on a WSDOT contract. Historically, firms resubmitted these rates or rate-ranges annually for each contract. WSDOT’s Consultant Services Office told us that they review a firm’s proposed rates in relation to its historical rates to verify they are fair and reasonable before approving them. Once agreed, the Consultant Services Office indicates that WSDOT must pay a firm’s actual labor rates up to the not-to-exceed rate that has been approved on the firm’s contract rate tables. Though WSDOT did not cap its consultants’ increases in hourly labor rates from one year to the next, those state transportation departments we surveyed that do so typically cap them at no more than 5 percent annually.

We examined the increases in labor rates charged by firms that performed most of the CRC consulting work. When we compared them to the typical 5 percent annual increase, we found labor rate increases for Evans and other firms that did most CRC consulting work looked reasonable. However, rate increases across all staff positions at two Evans sub-consultants exceeded the typical 5 percent increase as illustrated in Exhibit 9, at right.

We found that payments to the air, noise and vibration consultant at the higher rates totaled \$172,487, \$6,139 more than if the firm’s rate increases had been approved at five percent. Payments to the archeological firm at the higher rates totaled \$2.4 million, \$152,543 more than if this firm’s rate increases had been approved at 5 percent.

A third Evans sub-consultant showed unusual increases in the not-to-exceed (NTE) rate for 10 of its senior positions in one of the eight years it worked on the CRC. The rate increase for senior managers at this firm exceeded 23 percent in one year. In this case, the risk of excessively high billing was not fully realized. The 23 percent rate increase had little impact on contract costs because most of the managers in these positions were paid towards the middle of the compensation range, and charged few hours to the project.

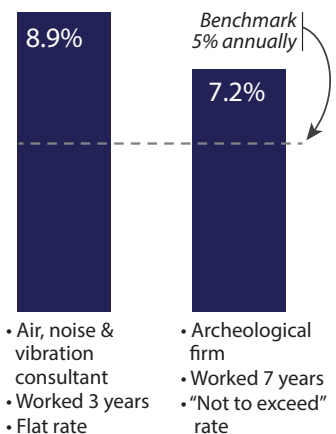
We were also told that WSDOT had been agreeing to high rate increases for years. The Consultant Services Office indicated staff would bring high increases to the attention of executive management, but they were always told to approve them.

The hourly rates WSDOT paid Evans and Evans sub-consultants mostly agreed with approved contract rate tables

For a report issued in March 2012, WSDOT Internal Audit reviewed rates charged by four Evans sub-consultants from July 1, 2009, through June 30, 2011. With minor exceptions, it noted that rates reviewed mostly agreed with the approved contract rates. We focused our testing on the rates charged by Evans and those Evans sub-consultants that performed most CRC consulting work, and found similar results. CRC controls to review firms’ labor rates charged were rigorous. Consequently, most rates tested agreed with approved contract rates. We did find, however, that rates charged for some positions exceeded contract rates, increasing CRC costs by \$13,932.

In addition, WSDOT lacked a contract rate table for one firm’s labor charges that totaled approximately \$400,000. More than \$200,000 of these charges were compared to the firm’s subsequent rate table and did not exceed that table.

Exhibit 9 Annual rate increases at two Evans sub-consultants topped the typical 5% increase
Average across all positions



Source: Prepared by our Office using contract rate tables provided by WSDOT.

Correcting the problem. WSDOT’s Consultant Services Office indicated that the agency’s executive management decided in September 2012 it would no longer allow annual increases to a firm’s contracted labor rates.

Issue 3: Task orders compared to the original solicitation

- **Were contract task orders examined within the scope of the original solicitation?** We found all work examined was within the scope of the original solicitation. However, we identified three task orders totaling \$6.26 million that contained work that potentially exceeded the scope described during the vendor pre-proposal conference. Disparity in scope descriptions may have reduced vendor interest in this work because these descriptions help consultants decide whether to submit proposals when work is solicited.
- **Did work charged agree with contract task orders?** We found that, overall, work performed agreed with the task orders issued. We found amendments to two task orders worth \$2.3 million were signed after the work had been delivered, as well as instances of poor control over task orders.

The scope of work described in the original solicitation was to perform design and environmental review services to help WSDOT/ODOT obtain EIS approval for the CRC project. To answer our questions, we reviewed Evans contract task orders that were dated after WSDOT received its approval in late 2011, and charges for environmental justice that occurred during the first two years of the CRC project. We focused on whether (1) task orders exceeded the scope of the original solicitation, (2) work exceeded the task order scope or FHWA requirements, and (3) whether task order deliverables were clearly defined.

Environmental justice work did not exceed scope description in the original solicitation, contract task orders, or FHWA requirements.

To satisfy requirements known broadly as environmental justice, FHWA requires state transportation departments whose projects are subject to the National Environmental Protection Act to perform outreach in poor, minority or disadvantaged communities that are affected by the project. We found that \$267,420 in work characterized as environmental justice on the consultant progress reports was consistent with the original solicitation, contract task orders and FHWA requirements.

Task orders examined were consistent with the solicitation and the request for qualifications.

FHWA had reviewed CRC work leading up the EIS record of decision, which was obtained in December 2011. FHWA concluded that all activities billed were preliminary design and necessary to support the EIS record of decision. CRC payments to Evans increased from \$98 million in December 2011 to \$125 million as of August 2013. The tasks orders that contributed to this \$27 million difference have been summarized at Appendix D. We reviewed all task order work performed by Evans after the EIS record of decision was issued. We performed additional research to better understand these task orders, which initially appeared to exceed the scope described in the original solicitation.

WSDOT's original solicitation stated that the Department was seeking interested

firms for environmental and design services to help it deliver the environmental review phase for the CRC project. **Appendix G** provides a complete discussion of the environmental review phase, the NEPA documentation phase, and the nature of the EIS record of decision. As WSDOT's original solicitation referred to the project description contained in the Request for Qualifications, we compared task orders dated after the EIS record of decision to that description, which is summarized in the box below (**emphasis added**).

WSDOT's Request for Qualifications (RFQ) was referenced in the original solicitation. It contained work and project descriptions that provided for environmental review and preliminary engineering work.

Two items provided the option to significantly broaden this work:

- The first stage of the agreement is to perform preliminary design and NEPA environmental documentation. **At the option of the WSDOT/ODOT project team, additional design work, and one [set of plans, specifications and estimates] as well as on-call services through the completion of the construction may be added.**
- Work performed...may include full responsibility for: project delivery and organization strategy development and implementation, project management, environmental vision and strategy development and implementation, project preliminary design, design management and staff support, and other services as needed... **At the option of the...project team, additional assignments may be added.** The [project team] may choose to [include in the] agreement the more detailed preliminary [project] design work... **based on future funding and schedule requirements.**

We determined that all work fell within scope described in the original solicitation.

A lack of clarity during the pre-proposal conference may have reduced vendor interest in CRC work.

An unclear description of the CRC work being solicited during the vendor pre-proposal conference may have reduced vendor interest in that work.

Three Evans task orders were potentially inconsistent with work described during the pre-proposal conference.

Vendor pre-proposal conferences provide clarifications to interested consultants on the scope of work. In the CRC vendor pre-proposal conference, WSDOT appears to have potentially indicated that the winning proposer's design work would be limited to what was necessary for a normal EIS process and that the winning proposer would not be allowed to develop the design-build contracts. Exhibit 10 shows an extract of the transcribed meeting notes (yellow highlight indicates auditor's emphasis).

Exhibit 10 Pre-proposal meeting notes, March 3, 2005

8 One item that has become quite a topic -- and
9 that's any preclusion. At this point in time we're not
10 going to put out any preclusion until we have a little
11 further investigation.

12 However, our interpretation at this time, as
13 far as preclusion, is that as long as a consultant comes
14 on board and completes the EIS and doesn't do any further
15 work and they wish to go work for a design/build
16 partnership or any other type of partnership, that's
17 acceptable.

18 However, if they place the EIS -- and, as you
19 see, we have other work possible -- and they sign on to
20 do that work, there will be a preclusion in any of our
21 scopes of work for them.

22 For example, the scope of work could be
23 actually putting together a design/build contract or some
24 further design work that -- that brings us up to a -- you
25 know, a lot more finished design in the project versus a

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MEETING 3/3/2005

13

1 normal EIS process.

2 If we do make any other interpretations, we
3 will get it back to all of you as soon as possible.

We compared all task orders awarded after December 2011 to the scope described in the 2005 vendor pre-proposal conference. Three task orders below contain work that potentially exceeded the scope described by WSDOT during the conference.

1. Task Order AR (awarded to Evans for \$3.7 million) included design services that potentially exceeded the scope described in the vendor pre-proposal conference.

Task Order AR authorized the following work on June 21, 2012 (emphasis added):

“The purpose of this “Early Transit” work scope is to [resolve] key project issues identified [through] the 30% engineering phase and to advance design toward the Full Funding Grant Agreement (FFGA) Transit submittal in 2013. Work includes:

Investigation and resolution of Value Engineering (VB) alternatives,

Development of the definition of the 4 Major Transit Packages (OR Transit, WA transit, Transit Systems and the Transit P&R’s),

Advancing design as practicable...”

2. Task Order AV was awarded to Evans for \$560,309 to help establish contract scopes for various CRC project elements, which potentially conflicts with scope described in the pre-proposal conference.

In the 2005 pre-proposal conference, WSDOT’s comments may have suggested that the winning proposer would be precluded from preparing post-EIS construction contracts. Task Order AV indicates Evans performed such work. It states in part:

“...the work to be provided by the CONSULTANT in support of the STATE’s effort to develop multiple contract packages as part of the Columbia River Crossing Initial Construction Program...will include project definition and the development of scopes of work for Design-Build (DB), Design-Bid-Build (DBB) or General Contractor/ Construction Management (GC/CM) contracts...the CONSULTANT shall develop the scope of work required to support the STATE with the development of a...

... Design-Build (DB) contract for the River Crossing Project, with limits from approximately Fourth Plain Boulevard to Hayden Island...

...Design-Bid-Build (DBB) contract[s] for the Mainland Connector [and] the Oregon Transit Project

...Design-furnish-Install (DFI) contract for the Transit Systems Project...

...Design-Build (DB) contract for the Washington Park and Ride Project...

...Design-Bid-Build (DBB) contract for the Tolling Facilities Project... the Marine Drive Project...the Steel Bridge Modification Project...[and] the Interstate Bridge Demolition...”

3. Task Order AY was awarded to Evans for nearly \$2 million. Work included the preparation of contract documents, which was potentially precluded per the pre-proposal conference.

The task order authorized Evans to assist the CRC project team in its procurement, evaluation and eventual management of a design-bid contractor. However, some of this \$2 million was awarded to prepare design-build contract documents.

The modest amount of work that was advertised and a lack of clarity during the pre-proposal conference may have reduced the number of firms that submitted proposals

As to how clearly it described the preclusions, WSDOT indicates it was still familiarizing itself with design-build contracts in 2005. However, WSDOT indicates it knew that conflicts of interest existed for firms who performed EIS work and participated on the design-build project team. WSDOT indicates because Evans performed the EIS work and could not participate on the design-build team, it was the perfect pick to help the Department prepare the design-build contract documents and perform the additional design necessary for those documents.

The \$6.26 million paid for these three task orders is significant to the original solicitation for work that was described as exceeding \$20 million. Although uncertainty about funding likely contributed to the \$20 million that was cited in the solicitation, the amount may have reduced vendor interest in the work.

To encourage more proposals, it is important to clearly describe the work being solicited. The State Administrative and Accounting Manual in place at the time, issued by the Office of Financial Management, stated that solicitation advertisements and requests for qualifications should clearly describe the scope of work to enable potential bidders to make an informed decision about whether to respond. It further stated the pre-proposal conference should allow potential bidders to seek the clarifications needed to make this decision.

If firms misunderstood the opportunities for additional CRC design and contract development work that would occur after EIS approval, this may have further reduced their interest in the work.

For two task orders, WSDOT added budget and scope after Evans had performed the work.

WSDOT increased the Y9245 budget for task orders AH and AV by more than \$2.3 million – after Evans had already done the work.

Exhibit A, Attachment 1, to WSDOT agreement Y9245 did not allow Evans to perform any work that exceeded the existing contract until there was a written task order amendment signed by both parties that described that work and the price to be paid for it. Attachment 1 required this signed amendment before WSDOT could provide Evans with notice to proceed with work.

When vendors charge for work that is not specified in the task order, the vendor has charged for unauthorized work. In a 2005 review, FHWA wrote the following about local government projects in Washington that were funded by FHWA and WSDOT:

“Many of the Local Agency consultant agreements had expired while work was still active on the project and payments were still being made.”

To address this, FHWA recommended WSDOT develop a local government project checklist that included a review of the agreement expiration date.

Charges to task orders AH and AV included unauthorized work

Agreement Y9245's task order AH authorized Evans to assist CRC staff with its environmental impact statement. Forty-six amendments, totaling \$17.3 million, were added to the original \$15.8 million task order. Amendment 36 made up \$2.07 million of the \$17.3 million. The amendment gave Evans notice to proceed on July 12, 2012, for work performed from July 31, 2011, through March 31, 2012. The amendment extended the contract period from September 30, 2011, to March 31, 2012.

The same conditions occurred with \$296,000 in work charged to task order AV. This work was performed after WSDOT informally approved it by email on March 2012 but before the Department supplied a signed task order.

Unauthorized work can be unnecessary, costly and inconsistent with intended scope of services. Effective contract monitoring ensures consultants do not perform or charge unauthorized work outside of the contract scope.

Better defining task order AU deliverables may have given WSDOT greater control over costs

OFM's State Administration and Accounting Manual, WSDOT's Consultant Services Manual, and ODOT training materials all contain criteria for contract deliverables. These sources indicate that deliverables should be clear and specific enough to facilitate effective monitoring. Deliverables should clearly define "what" and "how much" work is being purchased, establish an expectation of what the completed deliverable will look like and how it serves the contract objectives as a whole. Specificity is necessary to hold the consultant accountable for delivering the work product negotiated in a timely manner, and to ensure an agency does not pay for work not included in the contract or for deliverables that do not meet contractual requirements .

Some task order AU deliverables were not well-defined.

The timing, nature and cost associated with some objectives and deliverables were admittedly unpredictable and difficult to define. Here is one example:

- The CONSULTANT shall...assist in responding to public requests...

However, task order AU also included project objectives and deliverables that could have been better defined. Here are two examples :

- The CONSULTANT shall provide communications planning. Activities may include developing annual communication plans for the entire PROJECT...
 - o 4.2a - Communication plans (Deliverable # added as identified).
- Activities may include creating media plans...

With amendments, task order AU increased from \$4.6 million to \$7.3 million. Charges to AU totaled \$6.7 million through July 2013. By better defining its deliverables, WSDOT may have been able to better control some of this work.

Recommendations

Where we recommend recovery of funds, please see our criteria in **Appendix F**.

We recommend that the Washington State Department of Transportation:

1. Recover \$13,932 in labor charges that exceeded contract rates.
2. Recover \$35,754 in overhead that was mistakenly paid to Evans and four Evans sub-consultants. Work with FHWA to determine whether it is necessary to repay the federally funded portion of the \$286,733 in questionable overhead charged by a fifth Evans sub-consultant.
3. Limit consultant markups to those specified in the contract.
4. Seek written legal advice when considering policies that may conflict with state and FHWA requirements and existing contracts.
5. Pay consultants only once for administrative costs – and only for costs that are fully documented and consistent with FHWA and contract requirements.
6. Revise the standardized template used by Consultant Services Office to negotiate markups so it requires consideration of a firm's overhead rate. Negotiate markups for *all firms* that are in line with the 10 percent to 12 percent labor and overhead markup that is typically paid by WSDOT and other state transportation departments, or document why a larger markup is warranted. Revise the Local Agency Guidelines used by local governments to manage consultant contracts as discussed at **Appendix E**.

FWHA indicates these recommendations do not conflict with FHWA rules and would help WSDOT control project costs.

7. To increase the likelihood of receiving more than one proposal, we recommend WSDOT ensure its solicitations, pre-proposal conference comments, and requests for qualifications consistently describe the full scope of work.
8. To assure it has more control over the work it pays for, we recommend WSDOT:
 - Contractually authorize all future work before the consultant or its subs perform it. This practice will enable WSDOT to effectively control the nature, cost and extent of the work performed.
 - Similar to FHWA's recommendation, use an invoice review checklist that includes verifying work charged has been authorized by task order.
9. Better define task order deliverables. This will improve WSDOT's effectiveness in holding its consultants accountable for completing qualifying deliverables on time and on budget.

Agency Response



Washington State Department of Transportation

Lynn Peterson
Secretary of Transportation

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310 Maple Park Avenue S.E.
P.O. Box 47300
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360-705-7000
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April 9, 2014

The Honorable Troy Kelley
Washington State Auditor
3200 Capital Boulevard
P.O. Box 40021
Olympia, WA 98504-0021

Dear Mr. Kelley:

Thank you for the opportunity to respond to the Audit of the *Columbia River Crossing Project* (CRC). We reviewed the report and have provided our formal response below.

We appreciate that the audit did not identify any financial misconduct or abuse. That's an important finding in that the audit covered 8 years of expenditures from 2005 to 2013, totaling over \$188 million.

We appreciate that the audit points out several process improvement opportunities that will be helpful as we strive for continuous improvement in our department policies and procedures. We are pleased to note that we have already taken action on some of the opportunities identified. Remaining recommendations will be examined closely to seek opportunities to update current policies, to ensure continued compliance with laws and regulations.

We also appreciate the suggestion that we look into options for recovering the \$49,686 excess costs and will act on these findings as outlined in the action steps below.

An audit of this scale required providing an extensive amount of documentation and staff time for the auditors to gather sufficient evidence. The Department's ability to do this in a responsive manner is further evidence of its transparency and accountability.

The Honorable Troy Kelley
April 9, 2014
Page 2 of 2

The Department appreciates the work of the State Auditor as well as its recognition that many aspects of the CRC project went well. WSDOT takes audits of its processes and programs seriously and have included Action Steps below for each recommendation. Some recommendations will help future projects be more streamlined and reduce costs, some were implemented years before the audit began, while others will have to be studied further to ensure they produce the desired benefit for their cost.

Sincerely,



Cam Gilmour
Deputy Secretary of Transportation

CG: jd

cc: John Woolley, JLARC
Chuck Pfeil, SAO
Jan Jutte, SAO
Chris Cortines, SAO
David Schumacher, OFM
Tammy Firkins, Results Washington
Lynn Peterson, WSDOT
Linea Laird, WSDOT
Keith Metcalf, WSDOT
Amy Arnis, WSDOT
Nancy Boyd, WSDOT
Kyle McKeon, WSDOT
Erik Jonson, WSDOT
Lars Erickson, WSDOT
Steve McKerney, WSDOT
Jeri Sivertson, WSDOT

**OFFICIAL STATE CABINET AGENCY RESPONSE TO THE AUDIT OF THE
COLUMBIA RIVER CROSSING PROJECT**



APRIL 9, 2014

This management response to the audit report received on March 28, 2014, is provided by the Washington State Department of Transportation.

Recommendation 1: Recover \$13,932 in labor charges that exceeded contract rates.

Recommendation 2: Recover \$35,754 in overhead that was mistakenly paid to Evans and four Evans sub-consultants. Work with FHWA to determine whether it is necessary to repay the federally funded portion of the \$286,733 in questionable overhead charged by a fifth Evans sub-consultant.

Recommendation 3: Limit consultant markups to those specified in the contract.

Action Steps and Time Frame:

- The Department will review the records from the audit, work with the David Evans and Associates representatives, and recover excess amounts as appropriate and as allowed by the terms of the agreement for the CRC project.
- The Department will confer with FHWA regarding the Department's payment of the \$286,733 in overhead that the Auditor has questioned.
- We expect to complete these actions by October 31, 2014

Recommendation 4: Seek legal written advice when considering policies that may conflict with state and FHWA requirements and existing contracts.

Action Steps and Time Frame:

- The Department has a thorough process in place for vetting new policies, including updates to its manuals for use internal and external to the agency.

Recommendation 5: Pay consultants only once for administrative costs – and only for costs that are fully documented and consistent with FHWA and contract requirements.

Action Steps and Time Frame:

- The Department has controls in place to pay for costs allowed under agreement. The costs referred to here are addressed above under recommendation 4.

Recommendation 6: Revise the standardized template used by Consultant Services Office to negotiate markups so it requires consideration of a firm's overhead rate.

Negotiate markups for *all firms* that are in line with the 10 percent to 12 percent labor and overhead markup that is typically paid by WSDOT and other state transportation departments, or document why a larger markup is warranted. Revise the Local Agency Guidelines used by local governments to manage consultant contracts as discussed at Appendix E. FHWA indicates these recommendations do not conflict with FHWA rules and would help WSDOT control project costs.

Action Steps and Time Frame:

- The Department's Consultant Services Office will work with Washington's FHWA Division Office to determine what changes would be appropriate for its template regarding profit negotiation with Architectural & Engineering firms.
- We expect to complete this action by October 31, 2014

Recommendation 7: To increase the likelihood of receiving more than one proposal, we recommend WSDOT ensure its solicitations, pre-proposal conference comments, and requests for qualifications consistently describe the full scope of work.

Action Steps and Time Frame:

- The Department will consider what additional guidance it may issue to its staff participating in pre-proposal conferences, including what guidance is currently available.
- We expect to complete this action by October 31, 2014

Recommendation 8: To assure it has more control over the work it pays for, we recommend WSDOT:

- Contractually authorize all future work before the consultant or its subs perform it. This practice will enable WSDOT to effectively control the nature, cost and extent of the work performed.
- Similar to FHWA's recommendation, use an invoice review checklist that includes verifying work charged has been authorized by task order.

Action Steps and Time Frame:

- The Department's Consultant Services Office will work with Washington's FHWA Division Office to determine what changes would be appropriate for its Consultant Services Manual to address this issue.
- We expect to complete this action by October 31, 2014

Recommendation 9: Better define task order deliverables. This will improve WSDOT's effectiveness in holding its consultants accountable for completing qualifying deliverables on time and on budget.

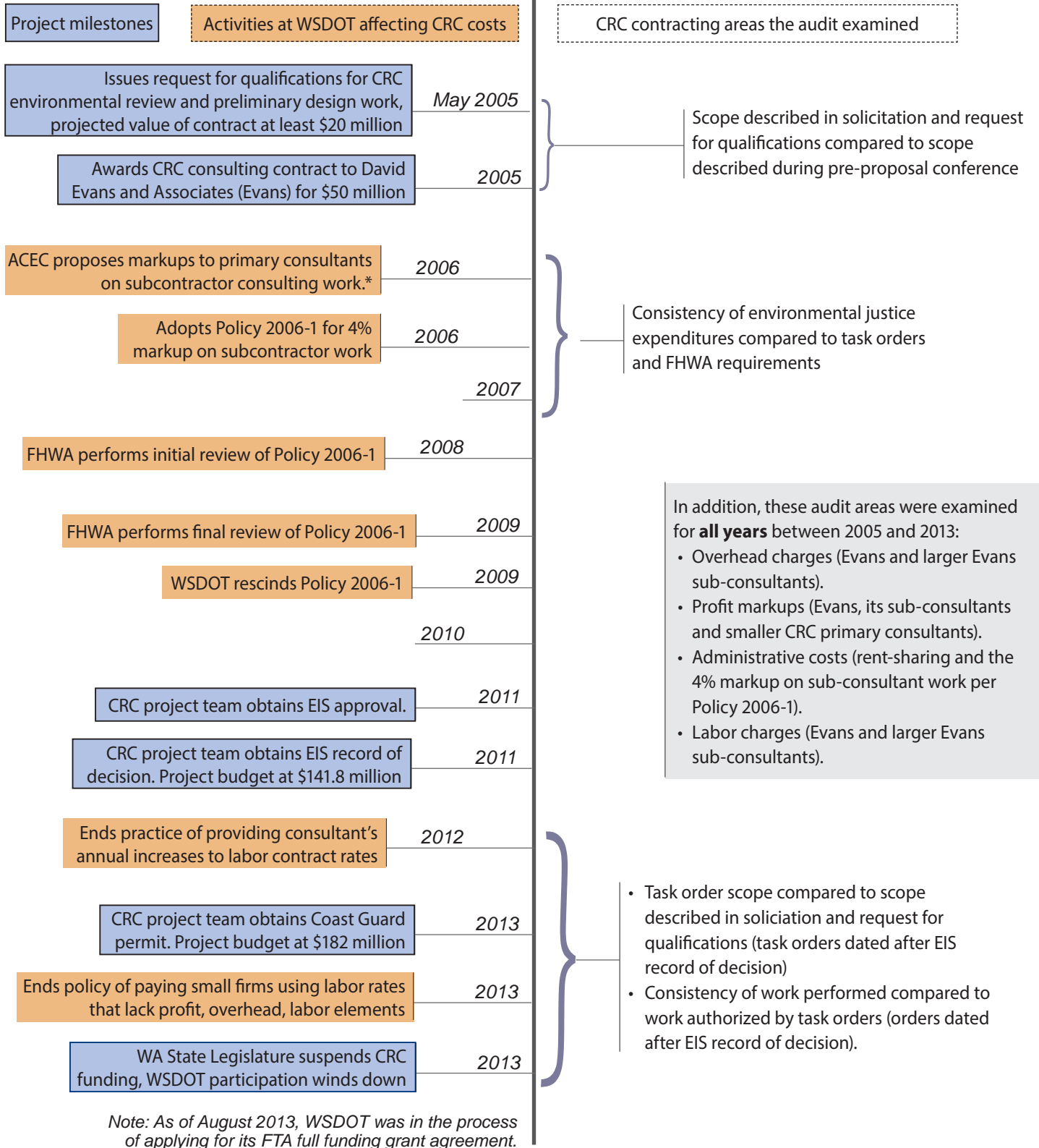
Action Steps and Time Frame:

- The Department's Consultant Services Office will work with Washington's FHWA Division Office to determine what changes would be appropriate for its Consultant Services Manual to address this issue.
- We expect to complete this action by October 31, 2014

Appendix A: Timeline

Overview of Columbia River Crossing project timeline and audit work performed

Timeline: February 2005 through August 2013



* See detailed timeline for Policy 2006-1 on page 13

Appendix B: Audit Methodology

We conducted this audit for JLARC under the authority of ESSB 5024, and in accordance with generally accepted government auditing standards prescribed by U.S. Government Accountability Office. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Our planning and understanding was obtained from reviews, interviews or surveys of these sources:

- Original vendor solicitation, RFQ and pre-proposal conference minutes for the largest CRC consulting contract
- CRC audits prepared by FHWA, WSDOT Internal Audit and other external parties.
- CPA audits of CRC consultant's overhead rates
- Internal Audit's reviews of CRC consultants' overhead rates.
- FHWA reviews of WSDOT policies and practices that affected CRC costs.
- Interviews of FHWA officials
- CRC project staff responsible for reviewing and approving CRC invoices.
- WSDOT policies for reviewing and approving A&E invoices
- WSDOT policies for payment of markups to consulting firms
- WSDOT's Consultant Services Manual
- Interviews of staff from WSDOT's Consultant Services Office and Internal Audit Department
- Correspondence between WSDOT and FHWA concerning CRC project requirements
- Surveys of other state transportation departments to determine typical labor rate increases and profit markups
- Contract terms, task orders and rate tables for firms who worked on the CRC project

Our testing focused on areas of risks, which we identified by reviewing those sources above. Our testing included:

- Comparing WSDOT contracting practices to those used by other state departments of transportation.
- Comparing paid labor, profit and overhead rates to contract provisions and audited rates.
- Comparing CRC consultants' profit markups and labor rates increases to those typically paid by WSDOT and other state transportation departments.
- Assessing past WSDOT markup practices affecting the CRC project against FHWA and FTA criteria.
- Comparing rent credits on consultant invoices for CRC building space to rental agreements.
- Recalculating invoice charges as they would have been if different policies and procedures had been in place. Recalculations sometimes focused on specific vendors or time periods based on risks identified via our planning procedures above.
- Comparing invoice charges to contract task orders.
- Comparing contract task orders to the original vendor solicitation and pre-proposal conference
- Discussing our preliminary results with WSDOT and FHWA staff. Affirming or revising our results accordingly.

Appendix C: Excessive Profits Paid to non-CRC Consultants

Issues 1 and 2 discuss how certain policies and procedures affected profit markups paid to CRC firms. This appendix discusses how the policy affected non-CRC firms and projects.

Policy 2006-1 led to excessive profits paid to consultants on other WSDOT projects

In addition to the \$1.455 million in markups questioned at Issue 1, WSDOT Internal Audit also questioned \$658,000 in such markups paid to two non-CRC consultants because they were not authorized by contract. However, the policy's actual impact is likely larger.

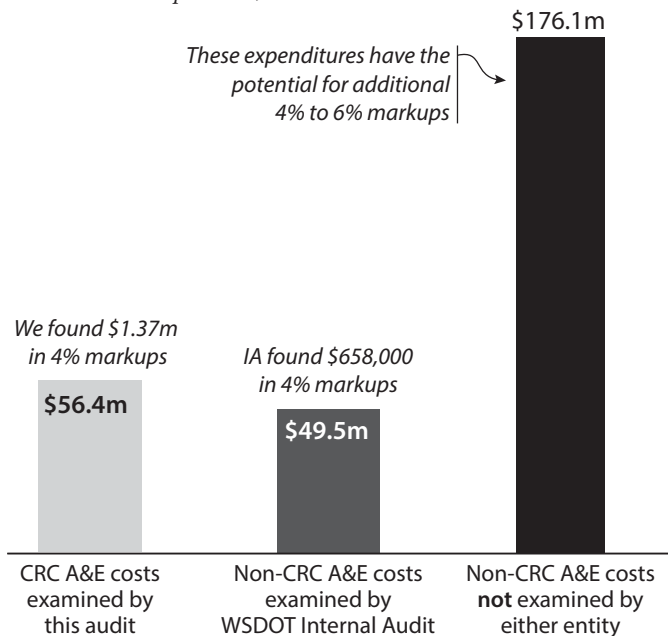
WSDOT's 2006 strategic plan indicates that payments to engineering firms totaled nearly \$157 million for the two years ending June 30, 2006. Policy 2006-01 was in effect for 2.8 years from November 2006 through August 2009. However, WSDOT indicated to FHWA in 2008 that it planned to continue paying the 4 percent markup through at least April 2010 on tasks and work orders that were started before the policy was rescinded in August 2009. If WSDOT continued to spend nearly \$80 million per year on A&E firms, payments to these firms during these 3.5 years would total approximately \$282 million.

As Exhibit A suggests, the 4 percent markup policy likely cost WSDOT more than \$2.1 million as the markups identified by SAO and WSDOT Internal Audit were found on only \$105.9 million of our initially estimated \$282 million in A&E services paid for during the Policy 2006-1 period.

However, payments to A&E firms during the 3.5 year period are likely higher than the \$282 million.

Exhibit A Non-CRC consultant costs were also affected by Policy 2006-1's 4% markup

November 2006-April 2010; dollars in millions



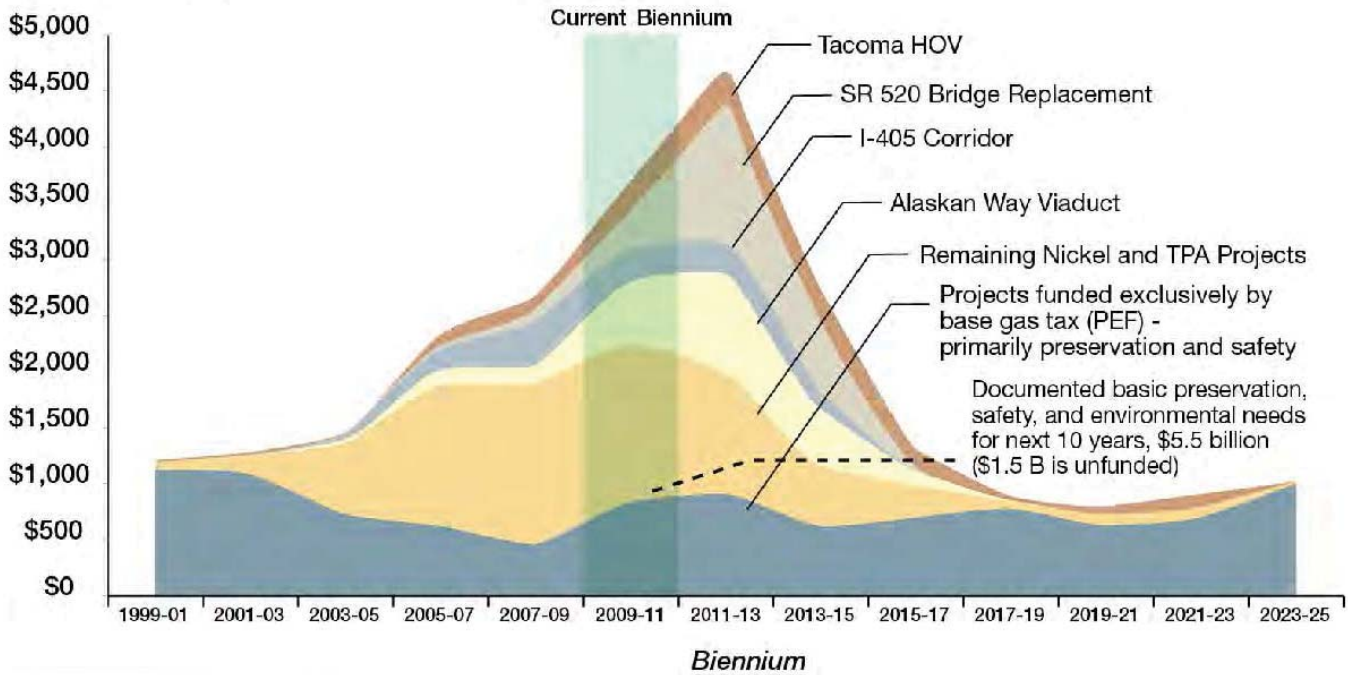
*Note: The \$1.37 million we found in CRC markups is discussed in full at Issue 1.
Source: Prepared by our Office using WSDOT Internal Audit reports, invoices and vendor payment information provided by WSDOT.*

As seen in Exhibit B, WSDOT's highway construction program grew significantly from June 2006 to August 2009 and into 2010 as WSDOT continued to pay consultants the 4 percent markup on task and work orders started before November 2006. Secondly, while WSDOT's consultant utilization rate in the design and environmental area averaged around 40 percent for the two years ending June 2006, it grew to 54 percent by February 2011.

Exhibit B WSDOT's construction activity before/during/after Policy 2006-1

All funds from the 2003 and 2005 gas tax increases - committed

Dollars in Millions



Source: Method of Delivery Review - Creating a sustainable engineering and technical workforce at WSDOT for the 21st century, February 15, 2011 presentation to the Washington State Transportation Commission.

Lastly, the policy also authorized a separate 2 percent markup on work performed by Disadvantaged Business Enterprises (DBE). The markup on DBE work was consistent with the 2007-2009 Strategic Plan for the Office of Minority and Women Businesses and the Governor's July 2006 Supplier Diversity Initiative. In responses to the decline in DBE firms participating in state contracts following the 2005 court decision discussed at Issue 1, both recommended the use of inclusion strategies in state contracting.

As with the 4 percent markup, FHWA described the 2 percent markup as an unsupported cost that over-compensated primes for their administrative costs. WSDOT did not pay this 2 percent markup on CRC contracts. Consultant Services indicates it only knows of one instance where WSDOT paid it.

Following its 2008 review of WSDOT Policy 2006-1, FHWA asked WSDOT to provide a list of projects that were subject to it. WSDOT promised to do so by July 2009. However, neither WSDOT nor FHWA have such a list. WSDOT also lacks estimates or tallies that assessed the comprehensive cost this policy had on WSDOT's capital program.

WSDOT recently paid low-overhead firms \$467,000 more in profits than it would have had it limited those markups to a typical 10 percent to 12 percent.

Issue 2 discusses how CRC firms with low overhead rates made higher-than-typical profits. This same condition existed for firms that worked on other projects.

WSDOT identified 42 such firms, with 2012 or 2013 rate tables that indicate overhead rates at less than 140 percent. WSDOT indicates it paid these firms \$65.4 million from January 2012 through September 2013. Half of these firms had an overhead rate of less than 120 percent. Assuming WSDOT paid these firms the low end of its typical 29 percent to 31 percent markup on labor, it would have paid approximately \$467,000 more than if it paid a typical 12 percent profit markup on labor and overhead .

WSDOT's participation in FHWA's new Safe Harbor Program

WSDOT and nine other state transportation departments are partnering with FHWA in a new Safe Harbor Program. This program allows new, small and disadvantaged firms to charge a 110 percent overhead rate without having to submit an audited overhead calculation. These firms do have to meet other federal conditions that are applicable to overhead rates charged to federal grants.

This program was initiated in July 2013 to reduce the burden on new, small and disadvantaged firms. It will remain in effect through June 2016. If WSDOT pays the Safe Harbor firms the same 29 percent to 31 percent labor markup that it pays most firms, Safe Harbor firms will receive higher-than-typical profits.

For example, a Safe Harbor firm with an overhead rate of 110 percent, paid a 29 percent markup on its labor, will realize a 13.8 percent profit on its labor and overhead. This exceeds a typical 10 percent to 12 percent markup. If paid a 35 percent labor markup, this firm would realize a 16.8 percent profit rate.

Additional guidance by the Consulting Services Office could prevent excessive markups to low-overhead firms

WSDOT will continue to pay higher-than-average profits to low-overhead firms if it does not adjust the markups it pays low-overhead firms. One likely solution resides in a spreadsheet prepared by WSDOT's Consulting Services Office, which is used to establish an appropriate fixed fee. When using this spreadsheet, project managers consider project size, project duration, the extent of subcontracting, risk, and other factors. The firm's overhead rate could be added as one more consideration.

Appendix D: Sizable Evans Task Orders after December 2011

This list sets out some of the larger task orders to the Evans contract that occurred after the CRC project received its Record of Decision in December 2011. Payments to Evans at the time of the decision totaled \$98 million. As of August 2013, WSDOT payments to Evans had increased by \$27 million.

A review of the task orders helps explain that increase. The amounts in this table consist of the original task order award. We have selectively added the larger amendments discussed in this report.

Task order	Task order amount	Scope of work – task orders greater than \$250,000
AH, Amendments 36 -38	\$2,100,000	Increased contract price to coordinate meetings necessary to obtain EIS Record of Decision. Amendments were approved three to eleven months after services were rendered and after the EIS record of decision was received. Discussed at Issue 3 in the body of the report.
AI	\$451,000	Review, prepare and provide information for use by the Independent Review Panel/not design work.
AK	\$322,000	Additional support for implementing a Panel of Experts to review the constructability of the CRC/help with a value engineering/cost-validation exercise.
AM	\$317,000	Provide support for drilled shaft and driven piling project.
AO	\$280,000	Investigate, prepare and analyze a conceptual design to achieve the highest bridge clearance possible.
AQ	\$259,000	Update conceptual construction staging drawings/Update conceptual construction schedule/Develop new structural design criteria [and] geotechnical design criteria.
AR	\$3,700,000	Perform early transit work to resolve key project issues identified through the 30% engineering phase to advance design toward the full funding agreement, including resolution of VE alternatives, advancing design as practicable.
AS	\$1,460,000	Help prepare federal, state and local permit materials for the permit process, agency meetings to accommodate the permitting process, environmental support of the communications team, site assessments and required Section 106 mitigation.
AT	\$264,000	Help establish path to obtain Section 9 Coast Guard Design Permit.
AU	\$4,600,000	For financial planning, project controls, outreach and communication and support for Integrated Project Sponsor's Council.
AU, Total amendments	\$2,700,000	Highway engineering survey, mapping, geotechnical engineering, work to draft quality assurance manual and quality control plan, added time and budget. Discussed at Issue 3 in the body of the report.
AV	\$853,000	Help WSDOT establish contract scopes for various CRC project elements.
AV, Amendment 2	-\$290,000	Reduction in work.
AW	\$2,578,000	Design modifications attributable to levees, bank protections, and interior drainage/may include some design.
AX	\$581,000	Conduct navigation design work to help the state obtain design approval from the US Army Corps of Engineers and to assist with the design layout for temporary navigation lanes .
AY	\$1,900,000	The task order was awarded to assist the CRC project team in its procurement, evaluation and eventual management of a design-bid contractor. However, some of this 2\$ million was awarded to prepare design-build contract documents.
BA	\$1,030,000	Design drawings, construction estimates, schedules and naratives for bridge removal, mainland connector, marine driver interchange, park and ride garages, transit systems, and Dany River Mitigation.
Total	\$23,105,000	.

Appendix E: Opportunities for WSDOT to Improve Management of Consulting Contracts

Improving controls over contracts

CRC staff did not interview consultants' on-site staff to check the positions, titles and salaries charged per invoices.

Section V.5 of the master contract provided WSDOT with the authority to conduct interviews of Evans staff to provide a means of verifying the accuracy of the billed salary costs. However, WSDOT never conducted such interviews. WSDOT did approve the hourly rates for each consultant position, and assured the hourly rates it paid for these positions did not exceed these approved rates. But without these interviews, WSDOT was less likely to know whether firms were billing staff-persons at positions that resulted in overstated rates.

Some contract rate tables did not include the agreement number or the periods covered by those rate tables. Some task orders did not contain the signature date

We reviewed Evans task orders that occurred after WSDOT/ODOT obtained EIS approval. We also reviewed rate tables for Evans, all its sub-consultants and other CRC primary consultants. That review identified:

- Contract rate tables for smaller firms that did not reference an agreement number
- Contract rate tables for smaller firms that did not reference the period covered by the tables
- Evans task orders that were approved but lacked the approval date.

Contract rate tables establish the maximum hourly rates that consultants can charge WSDOT. When periods and agreement numbers are missing, it is possible to confuse the rate table for one contract or contract period with another, thereby increasing the risk that WSDOT may not recognize overcharges by consultants. As contract conditions change, it is critical that the contract specify the date those conditions take effect. When these dates are not specified, there is a greater risk that WSDOT may experience disputes with its consultants. Moreover, WSDOT is at greater risk of over-compensating consultants or compensating them for work that has not been approved.

WSDOT based a \$165,947 progress payment on an Evans sub-consultant's costs-to-date. While eventually reconciled and repaid, WSDOT initially overpaid \$32,606.

This work was performed under a lump sum task order. Section H.1.1 of WSDOT's Consultant Services Manual allows for progress payments on lump sum contracts, but the method for paying them must be specified in the agreement.

"Progress payments can be made according to percentage of work complete or on a monthly basis. Agreement as to how often and on what basis the consultant will receive payment will be...detailed in the agreement."

The task order and email between WSDOT and the vendor indicate payments were based on the time, materials and other costs incurred. In this case, two service charges were paid based on costs-to-date which were not corrected and reconciled until the following month, when WSDOT obtained a credit for the excess amounts paid.

Sub-consultant's services covered by progress payment

Records submitted for a \$30,080 line item that rolled into the \$165,947 progress payment showed actual costs totaled \$20,394.

Secondary sub-consultant's service charges covered by progress payment

Records submitted for a \$52,500 line item that rolled into the \$165,947 progress payment for indicates the work cost only \$29,580.

Minor excess and unsupported charges may indicate opportunities to improve invoice reviews

Consultant charges contained these minor questionable costs:

- On-time payment discounts that were available to three Evans sub-consultants were not made available to WSDOT. As there was no documentation to show Evans' sub-consultants had not taken these discounts, WSDOT may have been overcharged by \$1,781.
- One Evans sub-consultant paid cash incentive awards of \$75 each to 35 people participating in focus groups, a total of \$2,625. There was no participant list to support this expenditure. When CRC project staff we spoke to asked for this list, they were told that participant anonymity and confidentiality is a standard practice for the research profession and the names could not be released.
- Invoices submitted by a third consultant contained footing errors that resulted in \$193 in overcharges.

Improving guidance to local governments

WSDOT paid a city \$300,000 for a four-firm design contest but did not provide guidance. Contestant compensation was established before the city conducted unadvertised solicitations.

WSDOT entered into a \$300,000 contract with a southwest Washington city to procure design concepts for a connector. With WSDOT's knowledge but without its guidance, the city contracted with a consultant to administer a four-firm contest to come up with the best design concept. These contracts gave WSDOT ownership of the design concepts. Contrary to the competition requirements in state law, the city did not publish an announcement to solicit statements of qualifications for this work. Instead, the consultant contacted seven firms by phone.

From the contract proceeds, each of four contestants was paid a \$50,000 honorarium. Normally, firms submit their own cost proposals before they meet with state or local governments to negotiate. However, the city established the \$50,000 honorarium before it solicited interested firms or met to negotiate with them. The remaining \$100,000 went mostly to the consultant who administered the contest, with a small amount going to the panel that selected the winning contestant.

By establishing the amount of compensation before the city solicited interested firms or met to negotiate with them, the city gave up the possibility these firms may have agreed to work for less. City officials indicate the amount of the honorarium was established partly on the consultant's familiarity with similar contests working for the National Parks. City officials further indicate they wanted to pick from a mix of good ideas and they wanted the public to participate in that selection. City officials believe this procurement approach met both of these objectives.

Make sure local governments know that profits on "financial cost of capital money" (FCCM) fees are prohibited

Known as the financial cost of capital money, firms often charge an imputed interest rate on the cost of their buildings. FCCM fees typically total less than 1 percent of labor costs. Although federal law restrict transportation departments from paying a profit on a firm's FCCM charges, WSDOT's Local Agency Guidelines, written to help local governments manage their A&E contracts, do not inform local governments of this restriction.

Make sure local governments know that unless overhead rate is considered, paying a fixed fee on labor can result in high profit markups

WSDOT's Local Agency Guidelines indicates that local governments cannot pay more than a 15 percent markup on labor and overhead or a 35 percent fixed fee on labor. However, the LAG guidelines does not indicate that for very low overhead firms, the use of a fixed rate on labor may result in a profit on labor and overhead that exceeds 15 percent.

We recommend WSDOT:

- Rigorously scrutinize all consultant invoices and supporting cost records to make sure it does not overpay on time and materials based progress payments.
- Recover \$192 in overcharges related to invoice footing errors and any other consulting charges that have not been fully supported. See the criteria for this recovery at Appendix C.
- Continue to use contract terms that allow it to conduct interviews of consultant staff so it can verify the accuracy of billed salary costs. Exercise that authority to better ensure it does not overpay for the work it purchases.
- To reduce the risk of overcharges by consultants:
 - ◻ Date all task orders.
 - ◻ Require that all rate tables reference the agreement number and the fiscal period covered by the rate table.
- If WSDOT plans to fund cities for design contests in the future, provide cities with the necessary guidance in its Local Agency Guidelines. That guidance should speak to the legal requirements that cities must follow when using WSDOT funds to pay for such contests. These requirements are contained in RCW 39.80 and include:
 - ◻ Publicly advertising for statements of qualifications
 - ◻ Negotiating contract prices with the firm or firms that are selected based on the statements of qualifications
- Revise its Local Agency Guidelines to inform local governments:
 - ◻ Not to pay profits on a consultant's FCCM fee.
 - ◻ For firms with overhead rates of less than 140 percent, how to best calculate the profit markups it pays those firms. Instead of paying low overhead firms a typical 29 percent to 31 percent fixed fee on labor, WSDOT should advise local governments pay them a much lower fixed fee that results in an overall 10 percent to 12 percent profit markup on salary and overhead.

Appendix F: Contract Conditions and Federal Criteria Allowing WSDOT to Seek Recovery

Selected contract language

Section V of WSDOT's CRC contract with Evans (Agreement #Y9245) contains this payment provision:

The CONSULTANT shall conform to all applicable portions of 48 CFR Part 31.

Section V.2 of WSDOT's CRC contract with Evans indicates that direct non-salary costs will be reimbursed at the actual cost to the consultant in accordance with 48 CFR Part 31.

Sections V.6 and V.7 of WSDOT's contract indicate:

- A post audit may be performed on this agreement. The need for a post audit will be determined by the STATE External Audit Office...
- ...Final payment shall not...be a bar to any claims that the STATE may have against the CONSULTANT or to any remedies the STATE may pursue with respect to such claims...

The payment of any billing will not constitute agreement as to the appropriateness of any item and at the time of final audit, all required adjustments will be made and reflected in a final payment. In the event that such final audit reveals an overpayment to the CONSULTANT, the CONSULTANT will refund such overpayments to the state within thirty (30) days of notice of overpayment...The CONSULTANT has twenty (20) days after receipt of the final post audit to begin the appeal process to the STATE for audit findings.

Selected text from 48 CFR, Part 31

Title 48 CFR Part 31, Section 31,201-2 (d) reads:

- A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

Title 48 CFR Part 31, Section 31,201-5 reads:

- The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund.

Additional federal criteria and guidance

The *Unified Audit and Accounting Guide for Audits of Architectural and Engineering Services* was produced by the American Association of State Highway Transportation Officials with the assistance of FHWA. It provides this guidance regarding consultant charges to government contracts.

(View the entire guide online at: www.audit.transportation.org/Documents/UAAG-3%20FINAL.pdf)

1.3—Other Defined Terms...Allowable Cost

Depending on the nature of specific cost items, allowable costs may either be billed directly to contracts or included as overhead costs; however, FAR 31.201-2 provides that a cost is an allowable charge to a Government contract only if the cost is...not prohibited by any of the FAR Subpart 31.2 cost principles.

7.11—Bonus and Incentive Pay Plans

[Reference: FAR 31.205-6(f) (1), FAR 31.205-6(a)(6)(ii)(B)]

Payments made under bonus and incentive-pay plans frequently represent a large portion of the total compensation costs claimed by consultants. To be allowable charges against Government contracts, bonus payments must be allocable to Government contracts, reasonable in amount, and must not represent a distribution of profits to owners. FAR 31.205-6(f)(1) further specifies that bonus payments are allowable, provided the:

Awards are paid or accrued under an agreement entered into in good faith between the contractor [consultant] and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor [consultant] so consistently as to imply, in effect, an agreement to make such payment; and . . .[basis] for the award is supported.

FAR 31.205-6(a)(6)(ii)(B) states that for owners of closely-held firms, allowable bonus amounts may not represent a distribution of profits. Accordingly, there must be clear distinctions of the various portions of total compensation; specifically, which portion is a true bonus based on stated objectives and which portion is a profit distribution.

A. Bonus Plans

Typically, bonus plans are applicable to a broad class of employees. Some plans include eligibility for all employees, while others limit eligibility to professional and management staff. Individual participation may be based on the productivity of an individual, team, overall company, or some combination of these factors. Bonuses may be based on a percentage of an employee's base salary, or alternatively may be issued as lump sum distributions, based on the available pool of money to be distributed.

B. Profit-Distribution Plans

By contrast, profit-distribution plans involve a distribution of net earnings to owners. Individual distributions are based on partners' capital account balances, level of partnership (e.g., junior versus senior partner), number of owned shares, or some other factor linked to ownership.

2.5—[The A&E Firm's] Roles and Responsibilities

A. [The A&E Firm's] Responsibilities

[The A&E Firm] bears the sole responsibility for identifying, segregating, and removing unallowable costs from all billings to Government contracts. This requirement applies to direct costs, indirect costs, and any cost proposals that are submitted for Government contracts. In establishing a sufficient internal control system, the engineering consultant must train accounting staff, including payables clerks and staff members responsible for preparing project billings, in the FAR Subpart 31.2 cost principles so that unallowable cost items can be identified, segregated, and disallowed as transactions occur.

Appendix G: Environmental Background Information

The Environmental Review Phase, the National Environmental Policy Act and Environmental Impact Statement process background

To better understand what makes up the environmental review phase, NEPA and EIS requirements, we examined publications by FHWA and Congressional Research Services (CRS).

CRS indicates the environmental review phase is distinct from other project phases, including final design:

As a condition of receiving [FHWA] funds, a [state transportation department] must meet certain standards and requirements applicable to...every stage of project development... those stages generally include initial project planning, preliminary design/engineering and environmental review, final design and rights-of-way acquisition, construction, and facility operation and maintenance.

CRS describes the environmental review phase as follows:

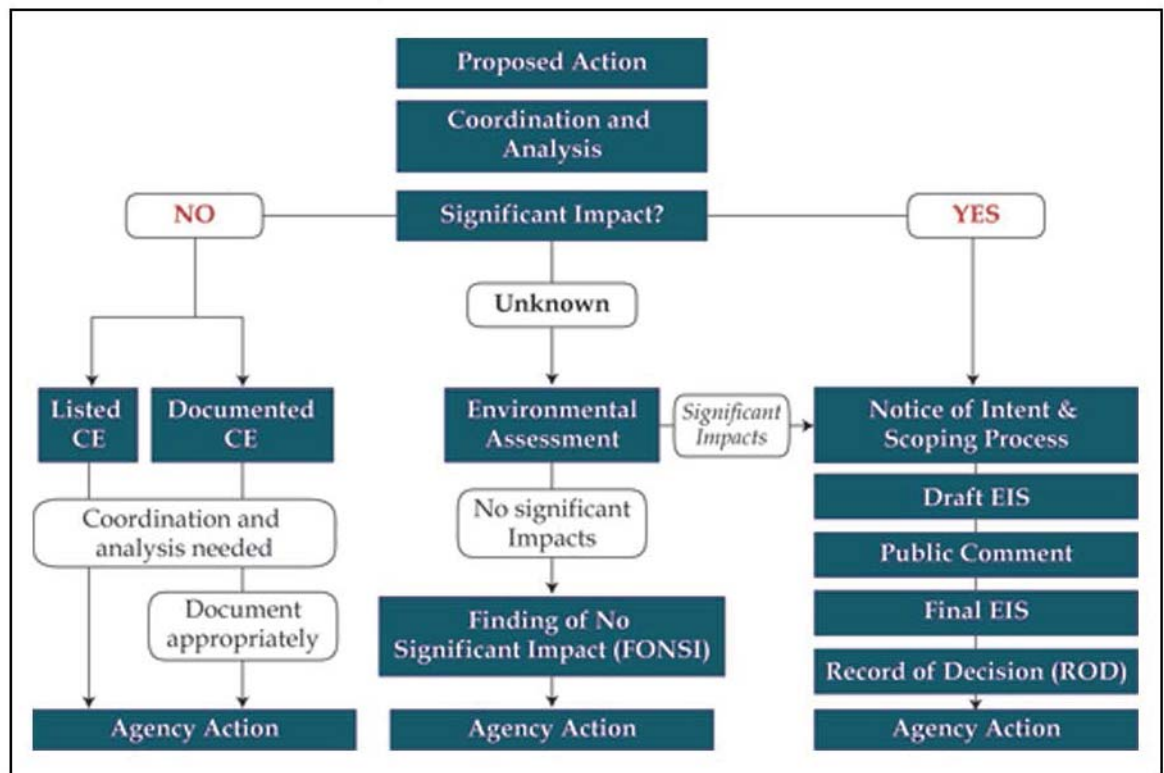
The environmental review process... involves processes necessary to demonstrate compliance with a potentially wide array of requirements applicable to projects approved under the Federal-aid Highways program. Broadly, for federally funded highway projects, it involves two separate, but related processes—preparing appropriate documentation required under NEPA; and identifying and demonstrating compliance with any additional state, tribal, or federal environmental requirements applicable to that project.

The CRC project required an Environmental Impact Statement that met the requirements of the National Environmental Policy Act. According to Congressional Research Services:

NEPA has two primary aims—to require federal agencies to consider the environmental impacts of a project and to give the public a meaningful opportunity to learn about and comment on the proposed project before a final decision is made.

The NEPA documentation and decision-making process is shown in Exhibit C. As the CRC project has significant environmental impacts, it follows the process on right side of the diagram.

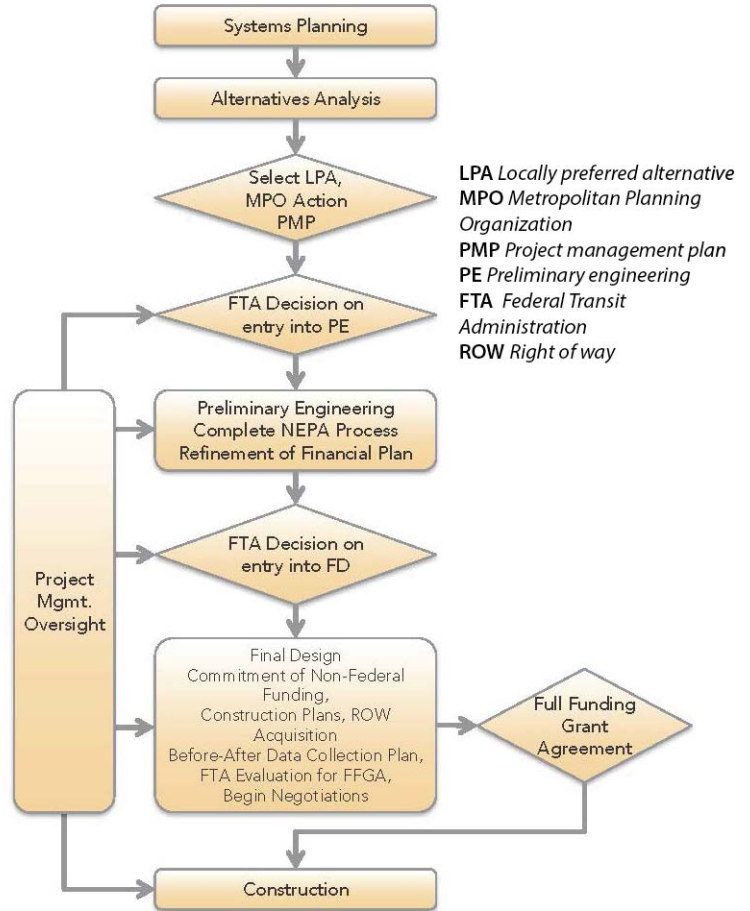
Exhibit C NEPA documentation and the decision-making process



Source: FHWA guidance document, *Integrating Road Safety into NEPA Analysis: A Primer for Safety and Environmental Professionals*, in the "FHWA Environmental Toolkit," available at http://www.environment.fhwa.dot.gov/projdev/pd6rs_primer_sec2.asp.

Exhibit D shows the planning and project development process. It refers to the design work necessary to complete the NEPA EIS process as preliminary engineering. As a rule of thumb, FHWA indicates this preliminary engineering ends when the design work is 30 percent complete.

Exhibit D **Planning and project development process, showing how preliminary engineering feeds the NEPA EIS**



Source: FTA slide show titled "New Starts Project Development Process"