



THE OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

May 12, 2023

Chair Nora Vargas  
SANDAG Board of Directors

Audit Committee Chair David Zito  
SANDAG Audit Committee

Dear Chair Vargas and Audit Committee Chair Zito:

**Subject: Results – Audit ID 2022-05: Contracts and Procurement Operational and System Control Audit (Part II) for the period of July 1, 2017 to June 30, 2021**

The objective of this engagement is to audit SANDAG's management of contracts and procurement. Specific objectives are to test and evaluate if policies, procedures, and internal controls over processes exist, are being followed, and functioning effectively. Lastly, the objective includes testing contracts and procurement transactions to determine whether they are appropriate, allowable, and supported by adequate documentation.

The auditors did not perform an audit of relative financial statements or other financial data or provide an opinion regarding the financial statements in part or taken as a whole, and accordingly, will not express such an opinion.

The audit consists primarily of testing controls and testing contracts and procurement processes and transactions. The Office of the Independent Performance Auditor (OIPA) reviewed the contracts and procurement process and system controls of transactions for the period of July 1, 2017 to June 30, 2021.

The audit was performed as part of the board approved annual Audit Plan. The Audit Plan is risk based and prioritized by the level of risk to the agency. Risks are considered both in qualitative and quantitative perspectives.

The audit was conducted in accordance with the Generally Accepted Government Auditing Standards, as required by federal and state governing code and under Assembly Bill 805.

As with prior audit reports performed by the OIPA, the causes identified were primarily due to weaknesses in system controls, inadequate department systems and record management, lack of procedures, and a need for employee training, especially around procurement rules and regulations, staff roles and responsibilities around procurements and proper documenting of contracts and procurements. Additionally, auditors attributed findings due to poor planning and too vague or generalized contract language that allowed for varying levels of interpretation and manipulation contributing to numerous amendments.

In accordance with Part I of the audit, the OIPA determined that the agency awards contracts to vendors to provide various services to supplement internal staff at a significant cost to the agency.

Furthermore, in past audits, the OIPA identified a need for additional resources as part of the cause, however, it should be noted in this audit, the OIPA determined that the Contracts and Procurement department could function more effectively and efficiently with the current level of staff if the processes, procedures, departmental functions, and systems were current, clear, accurate and consistent. Therefore, auditors are not recommending additional resources, as a result of these audit findings.

The OIPA continues to work proactively with the Executive Director, Hasan Ikhata, and SANDAG staff to provide guidance and help bring improvements to system controls and strengthen policies and provide training. We will continue to support Hasan and his desire to make SANDAG more successful. However, during this review some members of management did impede the auditor's ability to obtain information by refusing to provide OIPA with unlimited unrestricted access, stating concerns of confidentiality.

Though management was reminded that in accordance with Assembly Bill No. 805 (Gonzalez 2017) the IPA shall have unlimited unrestricted access to employee, information, and to all records, documents including electric data, etc., management remained unwilling to provide direct access to the auditors. As a result, the audit was further hindered and planned testing procedures were not fully performed. Though management offered to provide data abstracted in PDF form, the records were not useful. Additionally, the system administrator, both internal and external, were unable to assist due to a lack of understanding the system and or system limitations.

In some cases, regarding matters that auditors deemed material or required further investigations, auditors referred these matters to the Independent Performance Auditor (IPA) for further investigation. Furthermore, due to the fact that the auditors determined and assessed control risk over contracts and procurement is high having identified little system controls around much of the contracts and procurement process, and the fact that auditors were unable to perform a large percentage of substantive testing and testing for procurement fraud due to the fact of numerous missing, unorganized, and/or unsupported transactions, combined with some matters that the IPA determined should be elevated to the appropriate outside oversight agencies, the IPA as required by professional and ethical auditing standards, will take the additional and appropriate necessary actions.

As noted above, since the auditors were unable to perform sufficient substantive procurement fraud testing, the auditors will not express or make statements regarding the existence or nonexistence of fraud. However, auditors can state that based on the testing that auditors were able to perform, auditors found no indication of intentional wrongdoing or fraud by staff.

Board of Directors Chair: Nora Vargas  
Audit Committee Chair: David Zito  
Contracts and Procurement Operational and System Control Audit (Part II)  
Audit ID 2022-05  
May 12, 2023

The OIPA would like to thank the Chief Executive Officer, Hasan Ikhata, and SANDAG management and staff. If you have additional questions, please contact me at (619) 595-5323 or [mary.khoshmashrab@sandag.org](mailto:mary.khoshmashrab@sandag.org).

Respectfully,

A handwritten signature in blue ink that reads "Mary E. Khoshmashrab". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

MARY E. KHOSHMAHRAB, MSBA, CFE, CPA  
Independent Performance Auditor  
Office of the Independent Performance

cc: Members of the Board of Directors  
Members of the Audit Committee  
Hasan Ikhata, Chief Executive Officer  
Ray Major, Assistant Chief Executive Officer  
John Kirk, General Counsel  
Andre Douzdjian, Chief Financial Officer  
Members of Executive Team  
OIPA Website and Files

**Enclosure:** Audit ID 2022-05: Contracts and Procurement Operational and System Control Audit (Part II)



Office of the Independent  
Performance Auditor

# CONTRACTS AND PROCUREMENT OPERATIONAL AND SYSTEM CONTROL AUDIT – PART II

AUDIT No. 2022-05

**Independent Performance Auditor, Mary Khoshmashrab, MSBA, CFE, CPA**

May 2023

Intentionally Left Blank

## TABLE OF CONTENTS

<b>FACT SHEET .....</b>	<b>5</b>
AUDIT OBJECTIVES.....	5
AUDIT FINDING HIGHLIGHTS.....	6
<b>AUDIT OBJECTIVES .....</b>	<b>19</b>
UNDERSTANDING SANDAG'S CONTRACTS AND PROCUREMENT PROGRAM.....	19
GENERAL AUDIT OBJECTIVES.....	19
PROCUREMENT FRAUD DEFINED.....	20
<b>AUDIT RESULTS.....</b>	<b>22</b>
<b>FINDING I – NONCOMPLIANCE WITH PROCUREMENT LAWS, RULES, REGULATIONS, AND INTERNAL POLICIES AND PROCESSES.....</b>	<b>22</b>
Sub-Finding 1 – Individual Evaluation Scoresheets and Notes for Solicitations Were Missing or Insufficient .....	22
Sub-Finding 2 – Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG's Equity and DBE Commitments .....	24
Sub-Finding 3 – Contract and Task Order Amendments Exceeded \$100,000 Without Board Approval.....	28
Sub-Finding 4 – Contracts, Task Orders and Amendments Were Retroactive.....	30
Sub-Finding 5 – Contracts, Task Orders and Amendments Were Missing Approval Documents.....	31
Sub-Finding 6 – Contracts, Task Orders and Amendments Were Missing Signatures...	34
Sub-Finding 7 – Inadequate Justification for Contract and Task Order Amendments...	35
Sub-Finding 8 – Missing Task Order Records.....	37
Sub-Finding 9 – Contract Has Conflicting Contract Dates with No Clear Explanation of Applicability.....	39
<b>FINDING II – HIGH AWARDS AND INCREASES DUE TO NON-COMPETED PROCUREMENTS AND EXCESSIVE AMENDMENTS.....</b>	<b>40</b>
<b>FINDING III – INVOICES ARE MISSING OR LACKING SUPPORTING DOCUMENTATION, OR ARE NOT CONSISTENT WITH THE CORRESPONDING FEE SCHEDULE.....</b>	<b>43</b>
<b>FINDING IV – ENCUMBRANCES ARE NOT RECORDED UPON AWARD/EXECUTION OF A PROCUREMENT .....</b>	<b>46</b>

FINDING V – WEAKENED INTERNAL CONTROLS DUE TO EXCESSIVE DELEGATION OF AUTHORITY GRANTED BY BOARD OF DIRECTORS (BOD) TO STAFF TO GOVERN AGENCY OVERSIGHT.....	48
FINDING VI – RETROACTIVE PROCUREMENTS BY EXECUTIVE LEADERSHIP TO RECTIFY AND PAY FOR UNAUTHORIZED WORK.....	50
FINDING VII – INEFFICIENT MONETARY AMENDMENTS OF CONTRACTS FOR NON-PERFORMANCE.....	53
FINDING VIII – CONTRACTS AWARDED FOR SERVICES THAT IN-HOUSE STAFF SHOULD BE QUALIFIED TO PERFORM.....	56
<b>BACKGROUND, SCOPE, AND METHODOLOGY.....</b>	<b>60</b>
AGENCY BACKGROUND AND CREATION OF THE OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR.....	60
SCOPE.....	61
METHODOLOGY.....	61
<b>APPENDIX A – TABLES FROM CONTRACTS AND PROCUREMENT OPERATIONAL AND SYSTEM CONTROL AUDIT – PART I.....</b>	<b>62</b>
Table 1.1.....	62
Table 1.2.....	62
Table 2.1.....	63
Table 2.2.....	63
Table 3.1.....	64
Table 3.2.....	64
<b>MANAGEMENT RESPONSE – Cover Letter.....</b>	<b>65</b>
<b>MANAGEMENT RESPONSE – Attachment 1.....</b>	<b>69</b>
<b>AUDITOR RESPONSE – Memorandum.....</b>	<b>82</b>
<b>AUDITOR RESPONSE – Attachment 1.....</b>	<b>85</b>



May 2023  
Report 2022-05

## FACT SHEET

Mary Khoshmashrab, MSBA, CFE, CPA  
Independent Performance Auditor

(619) 595-5323

[mary.khoshmashrab@sandag.org](mailto:mary.khoshmashrab@sandag.org)

### CONTRACTS AND PROCUREMENT OPERATIONAL AND SYSTEM CONTROL AUDIT (PART II)

#### AUDIT OBJECTIVES

The objective of this engagement is to audit SANDAG's management of contracts and procurement. Specific objectives are to test and evaluate if policies, procedures and internal controls over contracts and procurement exist, are being followed, and functioning effectively. Lastly, the objective includes testing system controls, contracts, and procurement transactions to determine whether they are appropriate, allowable, and supported by adequate documentation.

The auditors did not perform an audit of relative financial statements or other financial data or provide an opinion regarding the financial statements in part or taken as a whole, and accordingly, will not express such an opinion.

The audit consists primarily of testing controls and testing contracts and procurement processes and transactions. An audit does not provide assurance that auditors will become aware of all significant matters that would be disclosed in an audit.

During the audit, auditors encountered/identified several matters of concern that prevented the auditors from performing planned testing, inclusive of the following:

- Matters that required further investigation; auditors could not pursue further due to the lack of resources and time.
- Matters due to limited or nonexistent records.
- Matters due to the inconsistency and unreliability of data and documentation made available to the auditors.
- Matters due to the disorganization of files making it extremely difficult for auditors to navigate in a timely manner.
- Matters that were due to data, records and information restricted or not made available to the auditors by SANDAG staff.



AUDIT FINDING HIGHLIGHTS

**FINDING I**  
**NONCOMPLIANCE WITH PROCUREMENT LAWS, RULES, REGULATIONS,**  
**AND INTERNAL POLICIES AND PROCESSES** (p. 22-40 of Audit Report)

Auditors reviewed **2** solicitations, **3** contracts, **61** task orders, and **137** amendments<sup>1</sup>. The 2 solicitations reviewed have a combined capacity of \$379.5 million and awarded contracts to Vendors R, W, X, Z, AA, BB, CC, and DD<sup>2</sup> amongst others. The 3 contracts reviewed were of Vendors X, Z, and AA. The review of each procurement transaction necessitated locating and reviewing the executed document for each transaction as well as the approval package which, at minimum, should include the requisition form, record of negotiation (RON), and if required, an independent cost estimate (ICE) and a cost analysis. Additionally, auditors had to determine if either open competition<sup>3</sup> and/or board approval was required and locate documents that confirmed these actions occurred.

Auditors noted the following examples of noncompliance with procurement laws, rules, regulations and internal policies and processes (**Sub-Findings**). See individual Responses for each Sub-Finding below.

Why This Matters	Management Response	Auditor Response
The potential risks to SANDAG are as follows: <ul style="list-style-type: none"> <li>• Collusion between staff and leadership to award contracts to preferred vendors.</li> <li>• Collusion between staff and firms to award contracts</li> <li>• Disqualification and/or loss of funding</li> <li>• Limiting the vendors eligible for award to a specific list of on-call vendors which may lead to missed opportunities for better pricing and/or experience from other vendors that may have gained the necessary experience to be eligible for award if a new procurement was issued</li> </ul>	Management states that SANDAG complied with the pertinent and operative procurement laws, rules, regulations, and internal policies and processes. <b>(p. 3 of Management Response)</b>	OIPA disagrees. While the audit report references <i>current</i> regulations, manuals and standards, most of these were applicable to the transactions identified in the findings of the audit. For example, the <i>current</i> FTA Circular 4220.1.F cited throughout the audit, was most recently revised in 2013. <b>(p. 1 of Auditor Response)</b>
	<b>SUB-FINDING 1: Individual Evaluation Scoresheets and Notes for Solicitations Were Missing or Insufficient</b> (p. 22 of Audit Report)	
		Management states that individual evaluation scoresheets and notes for

<sup>1</sup> 15 contract amendments and 122 task order amendments

<sup>2</sup> These vendors are the same as those listed in the Audit Report Part I; see Appendix A attached herein.

<sup>3</sup> This will be discussed more in depth in section “Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG’s Equity and DBE Commitments” of this finding.

<p>instead.</p> <ul style="list-style-type: none"> <li>• Not meeting competition requirements.</li> <li>• Abuse in awards of task orders by staff</li> <li>• Contracts and task orders being regularly amended beyond \$100,000 without limitation.</li> <li>• Avoiding competition by just adding funds to existing contracts</li> <li>• Paying for unplanned and/or unauthorized costs</li> <li>• Encouraging a lack of planning to Project Managers and departments</li> <li>• Federal consequences may include:                             <ul style="list-style-type: none"> <li>○ Temporarily withholding cash payments</li> <li>○ Disallowing funds for the noncompliant activity/action</li> <li>○ Suspending or terminating the Federal award</li> <li>○ Suspension or debarment of the agency</li> <li>○ Withholding further Federal awards</li> </ul> </li> <li>• Being noncompliant when audited</li> <li>• Staff not being able to identify if processes or procedures were followed or determine history of procurement</li> <li>• Authorizing improper procurement transactions</li> <li>• Authorizing excessive and repeated amendments for the same reasons</li> <li>• Authorizing amendments that are unjustified</li> <li>• No records incomplete/cancelled transactions.</li> <li>• Conflicting dates in contracts cause confusion around validity and contract terms</li> <li>• Confusion and invalidation of</li> </ul>	<p>solicitations that the audit identified as missing were located. <b>(p. 3 of Management Response)</b></p>	<p>confirmed that not <i>all</i> individual score sheets are filed and for some of the score sheets filed, the panel member notes were missing. <b>(p. 1 of Auditor Response)</b></p>
	<p><b>SUB-FINDING 2: Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG’s Equity and DBE Commitments</b> (p. 24 of Audit Report)</p>	
	<p>Management states that the contract and task order transactions identified to not have been fully and openly competed did adhere to competition requirements in effect at the time. <b>(p. 4 of Management Response)</b></p>	<p>OIPA disagrees. While Management may have fully and openly competed to <i>initially award on-call contracts</i>, they did not adhere to all applicable competition requirements for task orders at the time, as identified in the audit report. Although the contracts that auditors reviewed were executed in 2012 and in 2016, many task orders and amendments were initiated in the 2020s, when several requirements referenced in the audit report would have been applicable.</p> <p>For example, Board Policy 16 (since 2006) requires soliciting bids in writing and awarding via a competitive procurement process for <i>services</i> that exceed \$100,000. Task orders are not exempt from this requirement. <b>(p. 1 of Auditor Response)</b></p>
	<p><b>SUB-FINDING 3: Contract and Task Order Amendments Exceeded \$100,000 Without Board Approval</b> (p. 28 of Audit Report)</p>	
<p>Management states that all project amendments exceeding \$100,000 cited in the audit to have been authorized without board approval were within the approved budget when the amendment was executed and did not require board approval. <b>(p. 4 of Management Response)</b></p>	<p>OIPA acknowledges Management’s interpretation of the board policies.</p> <p>However, as stated in the audit report, OIPA determined that both Board Policy 16 and the Procurement Manual do not clearly address the rules/limitations around amendments to contracts or task orders</p>	

<p>subsequent procurement transactions.</p>		<p>beyond the original awarded amount.</p> <p>While SANDAG is adhering to their own board policies and internal policies, the policies are concerning as they allow for Management to authorize continuous amendments to contracts as long as they are within the “project” budget, not contract budget<sup>4</sup>. This means that a contract can be initially awarded for \$1 million and later amended to \$5 million or \$10 million, as long as the amount is within the <i>approved</i> budget amount.</p> <p><b>(p. 2 of Auditor Response)</b></p>
<p><b>SUB-FINDING 4: Contracts, Task Orders and Amendments Were Retroactive</b> (p. 30 of Audit Report)</p>		
	<p>Management states that retroactive transactions are not prohibited nor disallowed and that the issuance of retroactive agreements was consistent with applicable laws, rules, regulations, and internal policies.</p> <p><b>(p. 5 of Management Response)</b></p>	<p>OIPA acknowledges that retroactive procurement transactions are not <i>explicitly</i> prohibited by laws or regulations. However, SANDAG’s own executed contracts and task orders specify the requirements/restrictions for executing and amending contracts/task orders to ensure they are <i>valid</i> and <i>effective</i>, including but not limited to the following language:</p> <ul style="list-style-type: none"> <li>• Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG.</li> <li>• Consultant is not authorized to perform services for SANDAG before the <i>latest date shown for a SANDAG signatory</i> on</li> </ul>

<sup>4</sup> A project budget is one that is identified by a CIP/OWP name and number in the annual budget report/book. A contract budget is one that is specified in the executed contract document. Project budgets are often expected to include multiple contracts, not just one.

		<p>the task order.... Work performed before the start date or after the termination of a task order or a task order amendment will be treated as non-reimbursable volunteer work by Consultant.</p> <p><i>Execution of a contract, or any other contract document, is generally defined as <i>executed</i> once all parties to the contract have <i>signed</i> the respective document.</i></p> <p><b>(p. 3 of Auditor Response)</b></p>
<p><b>SUB-FINDING 5: Contracts, Task Orders and Amendments Were Missing Approval Documents</b> (p. 31 of Audit Report)</p>		
	<p>Management states that in all but one instance, the missing approval documents identified in the audit were not required.</p> <p><b>(p. 6 of Management Response)</b></p>	<p>OIPA disagrees. While the original contracts were awarded in 2012 and 2016, many task orders identified were issued after the Procurement Manual was issued and, therefore, would still have been applicable to some of the identified transactions.</p> <p>Most of the transactions identified by OIPA were <i>not</i> time-only extensions/amendments. During the review, auditors were aware and took into consideration that time-only extensions do not require an Independent Cost Estimate or a Cost Analysis. Any transactions stated to have been missing those documents were transactions that required those forms. Furthermore, the FTA Circular 4220.1F, issued in 2013, requires SANDAG to perform a “cost analysis or price analysis in connection with every procurement action” after that date.</p> <p>OIPA is concerned that the records located by Management could not be easily located by auditors during the review in the locations initially identified by Management. It should</p>

		<p>be noted that any records that may have been stored on staff's computers, records uploaded after the auditors' review, records stored in any other folder or records misfiled or mistitled are not considered to have been made available to auditors nor appropriately stored for accurate recordkeeping or auditing purposes.</p> <p><b>(p. 4 of Auditor Response)</b></p>
<p><b>SUB-FINDING 6: Contracts, Task Orders and Amendments Were Missing Signatures</b> (p. 34 of Audit Report)</p>		
	<p>Management states that the missing signatures for some contracts, task orders, and amendments identified in the audit were not required or were provided.</p> <p><b>(p. 7 of Management Response)</b></p>	<p>OIPA acknowledges that the Delegation of Authority policy allows for certain procurement transactions to be authorized without OGC signature for low-risk transactions. However, the Delegation of Authority policy does not define low-risk transactions. No policy could be found that explains the determination of "low-risk", only that senior staff decides this.</p> <p>OIPA is concerned that Management considers the review and approval from senior staff equivalent to the review and approval from OGC, allowing senior staff authority to authorize procurement transactions, beyond time-only extensions.</p> <p><b>(p. 4 of Auditor Response)</b></p>
<p><b>SUB-FINDING 7: Inadequate Justification for Contract and Task Order Amendments</b> (p. 35 of Audit Report)</p>		
	<p>Management states that the audit assessed older task orders based on today's standards, not applicable standards at the time. Management also states that process enhancements have been made for</p>	<p>OIPA disagrees. Although the contracts reviewed were originally issued in 2012 and 2016, many task orders and amendments were executed after the Procurement Manual was issued. The Procurement</p>

	<p>justifications, including the implementation of the contract management system (CMS). <b>(p. 7 of Management Response)</b></p>	<p>Manual is clear on the Management's roles/responsibilities to document reasonings for and provide support to justify procurement transactions.</p> <p>Additionally, many of the procurement transactions identified in the audit originated in CMS and included <i>insufficient</i> justifications. The CMS system does not require justifications to be sufficient, it only requires that an entry be made in the justification field. Contracts staff are responsible for reviewing justifications to ensure sufficiency, which has not been occurring on a consistent basis. <b>(p. 5 of Auditor Response)</b></p>
<p><b>SUB-FINDING 8: Missing Task Order Records</b> (p. 37 of Audit Report)</p>		
	<p>Management states that the task order records identified as missing were either located by Management or that the task order requests were cancelled prior to execution, making the issue moot. <b>(p. 7 of Management Response)</b></p>	<p>While the OIPA acknowledges that Management either identified the missing task orders as cancelled or located them, OIPA is concerned that the official records do not accurately reflect the status of the task orders nor include the documentation to support such status. Management is responsible for maintaining accurate and complete records, which should include notes or a memo to document when a transaction has been cancelled or voided. <b>(p. 5 of Auditor Response)</b></p>
<p><b>SUB-FINDING 9: Contract Has Conflicting Contract Dates with No Clear Explanation of Applicability</b> (p. 39 of Audit Report)</p>		
	<p>Management states that SANDAG's contract templates were updated in 2018 to clarify effective dates. <b>(p. 8 of Management Response)</b></p>	<p>OIPA acknowledges that Management has updated their contract templates. <b>(p. 6 of Auditor Response)</b></p>

**FINDING II**  
**HIGH AWARDS AND INCREASES DUE TO NON-COMPETED PROCUREMENTS**  
**AND EXCESSIVE AMENDMENTS** (p. 40-43 of Audit Report)

Vendor Z<sup>5</sup> was originally awarded \$25,000,000 for On-Call Environmental Planning and Architect and Engineering Design Services. The final total contract amount increased to \$128,115,111, which is **412%** higher than originally awarded. The original solicitation for this contract was advertised for an aggregate amount of \$260,000,000, to be used between all on-call contracts awarded under the solicitation. This meant that Vendor Z was awarded, via task orders, **48%** of the original advertised amount that was to be shared amongst all the on-call firms over a period of 7 years.

Additionally, auditors noted the following:

- 7 contract amendments, 3 of which were to increase the contract amount.
- A total of 38 task order amendments.
- 4 contract amendments were issued between 2 and 8 months after the contract was executed or a previous amendment to the contract was issued; thus, excessive amendments, which leads to overuse of internal resources and ineffective government practices.
- 10 task orders that required an open competed bidding process were not competitively bid.
- 14 task order amendments that exceeded \$100,000 failed to be brought to the board for the required approval. 1 additional task order amendment was valued at \$99,999, just under the required board approval amount.
- 20 task order amendments were issued between 2 and 8 months after the task order was executed or a previous amendment to the same task order was issued; thus, excessive amendments which leads to overuse of internal resources and ineffective government practices.

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG are as follows:</p> <ul style="list-style-type: none"> <li>• Inefficient use of internal staff to process multiple and repeated amendments.</li> <li>• Contracts and task orders are regularly amended without limitation.</li> <li>• Overspending</li> <li>• Not meeting competition requirements, as required by law and specific fund sources.</li> <li>• Disqualification and/or loss of funding</li> <li>• Collusion between staff to award</li> </ul>	<p>Management states that awards were appropriately competed and amended in accordance with existing policies and procedures.</p> <p><b>(p. 8 of Management Response)</b></p>	<p>OIPA acknowledges Management's interpretation of the board policies. While SANDAG is adhering to their own policies, the policies are concerning as they allow Management to authorize continuous amendments to contracts, as long as they are within the "project" budget, not contract budget. This means that a contract can be initially awarded for \$1 million and later amended to \$5 million or \$10 million without board approval, as long as the amount is</p>

<sup>5</sup> The anonymized name for the vendor is based off the tables from Part 1. The Tables from Part 1 are located in Appendix A. Any new vendors mentioned will also be anonymized.

<p>contracts to preferred consultants</p> <ul style="list-style-type: none"> <li>• Collusion between staff and firms to award contracts</li> <li>• Abuse in awards of task orders by staff</li> </ul>		<p>within the Board approved budget amount.</p> <p>While the OIPA does not contest that Vendor Z only received 6% of the task orders issued under the environmental on-call series, the OIPA is concerned that Vendor Z's original awarded amount increased by 412%, via amendments.</p> <p><b>(p. 6 of Auditor Response)</b></p>
---	--	---

**FINDING III**  
**INVOICES ARE MISSING OR LACKING SUPPORTING DOCUMENTATION,**  
**OR ARE NOT CONSISTENT WITH THE CORRESPONDING FEE SCHEDULE (p. 43-46 of Audit Report)**

Auditors judgmentally selected 15 contracts to review invoices. Of these contracts selected, **27** digital invoices<sup>6</sup> were missing from the official folder of records but were listed in the financial system (OneSolution) reports, which totaled **\$272,473**. Auditors also found **21** digital invoices in the official folder of records that were missing from the OneSolution system reports, which totaled **\$311,923**.

Auditors also judgmentally selected **86** invoices, both digital and hardcopy, totaling **\$26.6 million**. Of the 86 invoices, only **82** invoices were located and had a legible fee schedule to compare to. Additionally, of those 82 invoices that the auditors were able to locate, only 7 invoices had adequate supporting documentation and were consistent with the corresponding fee schedule, while **75** or **92%** were unsupported, in addition to the other 4 invoices that could not be located nor had a legible fee schedule to compare to.

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG are as follows:</p> <ul style="list-style-type: none"> <li>• Paying for services that are not completed</li> <li>• Paying for subpar work</li> <li>• Paying for services that are not included in the contract or task order</li> <li>• Paying for work and/or workers not approved or agreed to</li> <li>• Overpayment</li> <li>• Duplicate payments for completed work</li> <li>• Inaccurate financial reporting</li> <li>• Billing and invoice schemes</li> <li>• Fraud</li> </ul>	<p>Management states that invoices are available, supported with appropriate documentation and paid in accordance with the corresponding fee schedule.</p> <p><b>(p. 9 of Management Response)</b></p>	<p>OIPA disagrees. Auditors reviewed the folders, as identified by Management to auditors for review, and confirmed that the missing files are still not in these locations. Auditors reviewed the fee schedules for the applicable contract(s), task order(s) and amendment(s), as stated on Page 37 of the audit report.</p> <p>OIPA finds it concerning that Management believes that their invoice records are sufficiently supported and documented. Auditors found many paid invoice records where the only submitted documentation</p>

<sup>6</sup> All invoices were filed digitally after March 2020. Prior to this date, invoices were hardcopy.



		was the Request for Payment Form, and the invoice itself. <b>(p. 6 of Auditor Response)</b>
--	--	--

**FINDING IV**  
**ENCUMBRANCES ARE NOT RECORDED UPON AWARD/EXECUTION OF A PROCUREMENT** (p. 46-48 of Audit Report)

Staff does not encumber the awarded amount at the time of award or execution of each contract and/or subsequent task order or amendment. The encumbered amount in the OneSolution system was less than the value of either the contract or the total of all task orders. Government Accounting requires that the full contracted amount by fiscal year be encumbered. Encumbering obligations helps to prevent overspending of a contracted amount and is used for real-time budget tracking.

Why This Matters	Management Response	Auditor Response
The potential risks to SANDAG are as follows: <ul style="list-style-type: none"> <li>Overspending of an obligation.</li> <li>Defaulting on the obligation and not having sufficient funds to pay the obligation if funds are overspent elsewhere.</li> <li>Finance not being aware of needing to encumber funds.</li> <li>Project managers and contract analysts could authorize amendments or task orders that could exceed the available amount left in the project fund.</li> <li>Inaccurate financial reporting.</li> <li>Using the incorrect funds to pay for a project.</li> </ul>	Management states that the full value of an encumbrance does not need to be recorded at the time of contract award or execution. <b>(p. 10 of Management Response)</b>	The OIPA disagrees. Auditors identified contracts and task orders where specific amounts should have been encumbered, based on the budget for the year and/or task order awarded, but were not.  Additionally, auditors confirmed with Finance staff that, in some cases, an encumbrance is processed only once an invoice has already been received.  While OIPA acknowledges that informal procedures have been created, these procedures include the use of the CMS system and sometimes the OneSolution system, both of which have been found to be unreliable by the auditors. <b>(p. 7 of Audit Response)</b>

**FINDING V**  
**WEAKENED INTERNAL CONTROLS DUE TO EXCESSIVE DELEGATION OF AUTHORITY GRANTED BY BOARD OF DIRECTORS (BOD) TO STAFF TO GOVERN AGENCY OVERSIGHT** (p. 48-50 of Audit Report)

When SANDAG Board Policy 17 was amended in 2019, the General Counsel removed stipulations that clearly restricted bid splitting making it easier to manipulate the requirements without the Board knowledge. Removal of language from a Board Policy does not change the requirements to adhere to law, rules, regulations, or best practices.

Auditors noted the following examples of noncompliant procurement actions and transactions which conflict with proper internal controls:

- Not all procurements that required open competition were properly competed but instead management often sole sourced procurements, ignoring written policies and required laws, rules and regulations.
- Not all sole sourced procurements included required sole source justification documents.
- Contract and task order amendments were authorized without required Board approval.
- Procurements were retroactively dated.
- Procurements were missing required approval documents.
- Executed procurement documents were missing signatures.
- Justifications/reasons for amendments were inadequate or missing.
- Task orders were missing from the records.
- One contract had conflicting dates within the executed document.

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG are as follows:</p> <ul style="list-style-type: none"> <li>• Awarding agreements without required open and full competition.</li> <li>• Bid splitting</li> <li>• Losing or disqualifying for funds for not following applicable rules and regulations</li> <li>• Minimizing or removing the need for Director review for amendments encourages/allows for staff to avoid proper planning.</li> <li>• Collusion between internal staff and firms by continuing to amend contracts via Senior Contracts staff.</li> </ul>	<p>Management states that SANDAG’S Delegation of Authority granted by the Board to the Executive Director is appropriate and has not resulted in weakened controls. <b>(p. 10 of Management Response)</b></p>	<p>The OIPA disagrees. Auditors have identified examples of weakened controls throughout the audit, including but not limited to Sub-findings 3 and 6 under Finding I. Additionally, past audits conducted by the OIPA have also shown that many of SANDAG’s internal controls were either weak or nonexistent. <b>(p. 7 of Audit Response)</b></p>

**FINDING VI**  
**RETROACTIVE PROCUREMENTS BY EXECUTIVE LEADERSHIP TO RECTIFY**  
**AND PAY FOR UNAUTHORIZED WORK (p. 50-53 of Audit Report)**

Auditors noted documented discussions between SANDAG management from August 2021 that stated Human Resources (HR) had completely exhausted and exceeded the \$150,000 capacity under a contract awarded in September 2020 by not issuing required task orders to authorize work. To rectify this, the former Director and Legal counsel of Contracts (DLC) recommended issuing retroactive task orders. According to the documented discussions obtained by the auditors, HR was unaware of the process or requirements to issue task orders under an on-call contract. Additionally, Contracts staff knowingly recommended executing retroactive task orders for the work already performed, which was not originally authorized via task orders.

Furthermore, auditors obtained documented evidence where the former DLC made claims to the effect that retroactive procurements were improperly authorized as well as improper sole sources and public works procurements had occurred.

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG are as follows:</p> <ul style="list-style-type: none"> <li>• Overspending</li> <li>• Paying for unplanned and/or unauthorized costs</li> <li>• Repeated use of retroactive procurements</li> <li>• Encourages poor planning as there are no consequences and this is rectified with retroactive procurements.</li> <li>• Loss of funding</li> <li>• Federal consequences may include:                             <ul style="list-style-type: none"> <li>○ Temporarily withholding cash payments</li> <li>○ Disallowing funds for the noncompliant activity/action</li> <li>○ Suspending or terminating the Federal award</li> <li>○ Suspension or debarment of the agency</li> <li>○ Withholding further Federal awards</li> </ul> </li> </ul>	<p>Management states that the retroactive task orders identified in the audit complied with applicable procurement requirements. Additionally, Management states that this finding is based on email exchanges only.  <b>(p. 11 of Management Response)</b></p>	<p>OIPA disagrees. While retroactive procurement transactions are not explicitly prohibited by laws or regulations, SANDAG's own executed contracts and task orders specify the requirements/restrictions for executing and amending contracts/task orders to ensure they are <i>valid</i> and <i>effective</i>, prior to beginning work.</p> <p>Furthermore, auditors disagree that these transactions were approved in accordance with SANDAG's established procedures.</p> <p>Auditors verified that the retroactive transactions did, in fact, occur and are documented as retroactive in Management's contract records. In the audit report, auditors state that evidence was obtained to claim that "retroactive procurements were improperly authorized as well as were improper sole sources and public works procurements."  <b>(p. 8 of Auditor Response)</b></p>

**FINDING VII**  
**INEFFICIENT MONETARY AMENDMENTS OF CONTRACTS FOR NON-PERFORMANCE** (p. 53-56 of Audit Report)

During the review of procurement transactions, auditors identified 3 interrelated contracts for a project. Vendor AA<sup>7</sup> had amendments due to delays of one of the other contracts that Vendor AA was to manage. Overall costs of all 3 contracts combined increased. Vendor AA was responsible for project management and management of Vendor EE<sup>8</sup>, which included managing the contract schedule and budget, as well as oversight of Vendor EE's contract and performance. Vendor EE's task order (Task Order 1), that was managed by Vendor AA and was executed in 2017 to be completed by 2019, has been extended to the end of 2023 due to failure to perform. Additionally, Vendor AA's contract is a combination of fixed fee and time and materials fee schedules. Vendor AA's current contract has been amended 5 times and 3 times on

<sup>7</sup> Vendor AA was identified the Audit Report Part I, Finding VII.

<sup>8</sup> Vendor EE was not identified in the Audit Report Part I but was identified as a vendor providing services for the project.

the previously awarded task order/contract for a total of 8 amendments relating to the management of Vendor EE’s contract.

Vendor AA was awarded a total of **\$6,598,100** for project management related services for the project between a previously awarded task order/contract and a current contract for the same services. Vendor AA has been authorized to work on providing project management services for the project for over **10 years** (cost and time amendments).

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG by outsourcing the project management function include:</p> <ul style="list-style-type: none"> <li>• Taxpayer funds not being spent efficiently.</li> <li>• Overspending of funds.</li> <li>• Delays in projects for monetary gain to the project management consultant.</li> <li>• Collusion between SANDAG staff and consultants.</li> <li>• Continuing to award contracts to non-performing consultants for future or ongoing work</li> <li>• Collusion between consultants.</li> <li>• Preventing SANDAG internal staff from gaining technical knowledge and experience, allowing for continuous reliance on consultants.</li> </ul>	<p>Management states that they have already and are currently in the process of addressing delays in the delivery of the operations systems. <b>(p. 11 of Management Response)</b></p>	<p>OIPA disagrees. While efforts have been made to address delays, it is still concerning that Management was unaware of delays for at least 2 years. Vendor AA is responsible for monitoring and reporting on Vendor EE’s progress. Auditors are also concerned that recent amendments for Vendor AA’s contract still reference Vendor EE delays as the justification.</p> <p>While SANDAG’s board policies do not prohibit the identified contracting arrangements, SANDAG’s board policies do address <i>apparent</i> conflicts of interests. Auditors determined that the oversight responsibility specified in Vendor AA’s contract creates an <i>apparent</i> conflict of interest, particularly since Vendor AA appears to benefit financially from Vendor EE’s delays and/or failure(s) to perform. <b>(p. 8 of Auditor Response)</b></p>

**FINDING VIII**  
**CONTRACTS AWARDED FOR SERVICES THAT IN-HOUSE STAFF SHOULD BE QUALIFIED TO PERFORM** (p. 56-59 of Audit Report)

During a review of contracts for consulting services to Human Resources (HR) and the Office of the General Counsel (OGC), auditors identified 21 contracts for HR services, totaling \$5,644,425.00 and 93 contracts for OGC services, totaling \$35,451,003.58. Auditors identified overlap in the services from contracts awarded to consultants and the expected duties and qualifications identified in the job descriptions of internal staff. From the review of HR and OGC staff duty statements, auditors could not determine if staff expertise are in line with the job descriptions. Duty statements were sometimes vague, and the level of detail was inconsistent.

Due to records in the financial system (OneSolution) being inconsistent and unreliable, auditors could not accurately identify the amounts encumbered and/or paid for the identified contracts. Auditors were also unable to obtain salaries and benefits data via SANDAC's payroll system (Day Force) due to confidentiality concerns presented by internal staff as well as an unwillingness and lack of cooperation from some members of management, though the IPA and OIPA auditors made several attempts with management stating that OIPA has unlimited unrestricted access to all records of any type, in accordance with AB 805.

Why This Matters	Management Response	Auditor Response
<p>The potential risks to SANDAG are as follows:</p> <ul style="list-style-type: none"> <li>• Duplication of costs and overspending of taxpayer funds on overlapping services when in-house staff can perform the work.</li> <li>• Data breaches from external consultants.</li> <li>• Internal controls not being followed due to consultant standards and practices not aligning with SANDAG.</li> <li>• Highly paid staff performing project management duties.</li> <li>• Board and OIPA matters that conflict with SANDAG Management's perspective</li> </ul>	<p>Management states that the expended amount is less than the awarded amount for these contracts.</p> <p>Management also states that SANDAG staffing levels are appropriate, considering the required technical expertise and varying project needs.</p> <p><b>(p. 12 of Management Response)</b></p>	<p>The OIPA acknowledges that \$11 million was expended during the audit period under the OGC issued contracts and that \$6.5 million was for the Mid-Coast project. However, OIPA referenced the <i>awarded</i> amounts to show how much could be spent under these contracts. The fact that only \$11 million was spent during the audit period for contracts awarded by OGC just means that up to \$24.4 million is still available to be spent under these contracts.</p> <p>The OIPA acknowledges that \$4.1 million has been awarded for temporary staffing services by HR. However, if the current internal staff do not have the technical expertise needed by the agency, Management should consider hiring more permanent staff to reduce costs spent on consultants as well as retain the technical expertise in-house.</p> <p><b>(p. 9 of Auditor Response)</b></p>

Independent Performance Auditor: Mary Khoshmashrab, MSBA, CFE, CPA

Staff: Lloyd Carter, Principal-in-Charge  
 Doug D’Pete, Principal  
 Michael Ryan, Associate Auditor  
 Krystal Carranza, Associate Auditor and Quality Control  
 Christopher Delgado, Associate Auditor

## AUDIT OBJECTIVES

### UNDERSTANDING SANDAG'S CONTRACTS AND PROCUREMENT PROGRAM

As a recipient of public funds, the San Diego Association of Governments (SANDAG) is responsible for ensuring that funds are properly spent for the public purposes for which they are intended. SANDAG has a Procurement Manual to make certain that all funds are expended according to sound procurement principles and to provide uniform procurement procedures to be followed by all SANDAG personnel. It is not intended to create rights for third parties. While the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans), and other government agencies providing funds to SANDAG expect SANDAG to use its own procurement procedures to administer its projects, SANDAG must also adhere to the standards established by applicable state and federal laws, as well as the rules and regulations imposed by various funding agencies.

The procedures in the Procurement Manual are intended to ensure SANDAG is following its Board Policies and, when applicable, the FTA's Third-Party Contracting Guidance; as well as the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Uniform Guidance), as these documents establish the standards and guidelines for procurement under all federal programs.

SANDAG is responsible for ensuring full and open competition and equitable treatment of all potential sources in the procurement process. SANDAG staff is responsible for the planning, solicitation, award, and documentation of procurements. The Procurement Manual describes the steps necessary to ensure public funds are expended properly and to protect the integrity of SANDAG's procurement process.

### GENERAL AUDIT OBJECTIVES

The general objective of this engagement is to audit SANDAG's management of contracts and procurement. Specific objectives are to review policies and procedures; test and evaluate internal controls over contracts and procurement to determine whether they exist, are being followed, and functioning effectively. Lastly, objectives include testing system controls, contracts, and procurement transactions to determine whether they are appropriate, allowable, and supported by adequate documentation.

The audit consists primarily of gaining an understanding of the relevant laws, rules, and regulations; inquiries and observations from management and staff, gaining an understanding of system controls, testing controls, and a review of contracts and

procurement processes and transactions.

Two Part Audit Approach:

Part I consisted of an audit of SANDAG's system controls and operations of the contract and procurement process to ensure effective and efficient controls exist and are followed. In addition to reviewing SANDAG's contract and procurement procedures and policies, to also ensure that policies are consistent with Federal and State regulations and other applicable governing laws, rules, and regulations.

Part I of the Report is posted on OIPA's webpage and can be located at:

<https://www.sandag.org/-/media/SANDAG/Documents/PDF/about/office-of-the-independent-performance-auditor/reports-and-documents/audit-report-contracts-and-procurement-part-one.pdf>

Part II consists of the audit tests applied, and the procedures performed to verify that incurred cost records are sufficient and consist of third-party supporting documentation, and other relevant data to assess SANDAG's ability to track, obtain support with sufficient documentation, and keep adequate records of incurred costs that adhere to policies and procedures and have been accurately billed properly and sufficiently. Additionally, Part II includes a review of contractors to ensure that both parties (Contractors and SANDAG) adhered to the final contract.

The auditors did not perform an audit of relative financial statements or other financial data or provide an opinion regarding the financial statements in part or taken as a whole, and accordingly, do not express an opinion.

## PROCUREMENT FRAUD DEFINED

Procurement Fraud is any methodology or plan designed to defraud a buying activity or degrade the integrity of the acquisition process. It is also defined as "dishonestly obtaining an advantage, avoiding an obligation, or causing a loss to public property or various funds during the procurement process by public servants, contractors or any other person involved in the procurement. It can occur within or outside the Government by vendors/contractors or by federal, state, or local procurement personnel. The real cost of procurement fraud is an erosion of trust in the federal acquisition process. Vendors need to be confident that the systems designed to spend those funds is fair and equitable. Taxpayers need to be comfortable knowing government employees are performing acquisition tasks in the best interests of the government, and not their own. Procurement fraud can take many forms. From taking bribes, to bid rigging, and to unjustified sole source selection and award.

During the audit, auditors encountered/identified several matters of concern that prevented auditors from performing planned substantive testing, inclusive of the following:

- Matters that required further investigation; auditors could not pursue further due to the lack of resources and time.
- Matters due to limited or nonexistent records.
- Matters due to the inconsistency and unreliability of data and documentation made available to the auditors.
- Matters due to the disorganization of files making it extremely difficult for auditors to navigate in a timely manner.
- Matters due to data, records and information restricted or not made available to the auditors by SANDAG staff.

Due to the concerns encountered/identified above, the ability for auditors to test for procurement fraud schemes such as bid rigging, price fixing, etc. in Part II was limited and unfeasible.

During Part II of this review, it was the auditors' intention to perform test procedures on several of the contractors identified in Part I of the audit. However, the auditors faced extreme challenges with file disorganization (hard copies and electronic stored files), inconsistent placement of or completely missing documents, manipulated and changed notes due to no system controls. Additionally, due to the fact that for many contractors identified in Part I of this review, auditors identified hundreds of task orders and amendments that were unorganized, missing or not located in the designated files that staff directed auditors to review, the auditors testing abilities were limited to only a few of the higher risk contracts. As a result, auditors selected 3 of the major higher risk contracts from Part I, which lead to a review of hundreds of transactions, including task orders, amendments, notes, and other documents. Additionally, auditors did select an additional 12 contracts to perform substantive tests over invoicing and payments.

The amount of time it took the auditors to merely locate some support and/or reconcile documents to a system was extremely rigorous, time-consuming and, in many cases, impossible due to missing documents and/or missing or inaccurate system information making the process an unproductive use of staff resources. In many cases, internal documents and third party generated documents that SANDAG staff directed the auditors to were not located in the designated folders or were missing, information that should have been accessible in systems of record (OneSolution and CMS) were not.



## AUDIT RESULTS

### FINDING I – NONCOMPLIANCE WITH PROCUREMENT LAWS, RULES, REGULATIONS, AND INTERNAL POLICIES AND PROCESSES

Auditors reviewed 2 solicitations, 3 contracts, 61 task orders, and 137 amendments<sup>9</sup>. The 2 solicitations reviewed have a combined capacity of \$379.5 million and awarded contracts to Vendors R, W, X, Z, AA, BB, CC, and DD<sup>10</sup> amongst others. The 3 contracts reviewed were of Vendors X, Z, and AA. The review of each procurement transaction necessitated locating and reviewing the executed document for each transaction as well as the approval package which, at minimum, should include the requisition form, record of negotiation (RON), and if required, an independent cost estimate (ICE) and a cost analysis. Additionally, auditors had to determine if either open competition<sup>11</sup> and/or board approval was required and locate documents that confirmed these actions occurred.

Auditors noted the following examples of noncompliance with procurement laws, rules, regulations and internal policies and processes:

#### Sub-Finding 1 – Individual Evaluation Scoresheets and Notes for Solicitations Were Missing or Insufficient

During the review of the solicitations, auditors identified that the individual evaluation panel members' score sheets and notes for the Short List and Interview phases of the solicitation were missing from the digital records. Auditors only located the combined evaluation matrices and notes. Auditors later located the hard copy records of only some individual score sheets and notes. For 1 solicitation reviewed, some hard copy score sheets were missing. For both solicitations, notes were minimal or nonexistent.

The Federal Transit Administration (FTA) Circular 4220.1F, Chapter III, Section 3.d, *Record Keeping*, states that the Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed.

---

<sup>9</sup> 15 contract amendments and 122 task order amendments

<sup>10</sup> These vendors are the same as those listed in the Audit Report Part I; see Appendix A attached herein.

<sup>11</sup> This will be discussed more in depth in section "Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG's Equity and DBE Commitments" of this finding.

The Department of Transportation's (DOT's) Local Assistance Procedures Manual (LAPM), Chapter 10, Section 10.1.8, Subsection *Project Records*, states that for audit purposes, project records and documentation must be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet)

The Public Contract Code 10344(c) states that State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, a description of the methods that will be used in evaluating and scoring the proposals.

The SANDAG Procurement Manual states "SANDAG will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

- The rationale for the method of procurement: SANDAG provides the rationale it used for each procurement method by completion of the Method of Procurement Selection form or equivalent documentation, including any supplemental information to justify the selection of a particular method;
- Reasons for vendor selection or rejection: SANDAG states its reasons for vendor selection or rejection and includes a written responsibility determination for the successful vendor by completion of a Recommendation Memo;
- The basis for the contract price: SANDAG evaluates and states its justification for the contract cost or price. The justification can be detailed in the Record of Negotiation and be supported by an Independent Cost Estimate or Engineer's Estimate.

In addition, any Recommendation Memo or Board/Policy Advisory Committee agenda item requesting approval to award a third-party contract can serve as a record detailing the procurement history and should be kept in the contract file.

The SANDAG Procurement Manual also states that the procurement request will be assigned to a Contracts staff member who will be responsible for the following:

- Reviewing the procurement request for completeness, compliance with SANDAG procurement policies and procedures, and requesting missing or updated documentation from the requestor.
- Overseeing the competition and evaluation process for the procurement to ensure process and documentation requirements are followed.
- Scanning and filing the executed contract document and any supporting documentation into the Contracts Library, updating all applicable databases as appropriate, and ensuring the contract is provided to Finance for encumbrance.

The SANDAG Procurement Manual also states that evaluation committee members will evaluate and provide their individual ratings of the proposals in accordance with the criteria and procedures included in the task order solicitation. It also states that all evaluation forms should be provided to Contracts staff to be maintained in the contract file.

Contracts staff are not requesting and/or properly storing the individual score sheets from the evaluation panel. Contracts staff are also not reviewing the score sheets for completeness and/or they are not requiring that the evaluation panel complete the forms entirely with sufficient notes to support their scores.

The potential risks to SANDAG are as follows:

- Collusion between staff and leadership to award contracts to preferred vendors.
- Collusion between staff and firms to award contracts.
- Disqualification and/or loss of funding.

#### RECOMMENDATIONS:

The OIPA recommends staff:

1. Create a Standard Operating Procedure (SOP) and update procurement solicitation forms for Evaluation Panel participants to follow that explains their responsibility to complete score sheets and to provide notes that justify their scores.
2. Create a SOP and provide training to contract analysts for the solicitation processes.

#### Sub-Finding 2 – Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG’s Equity and DBE Commitments

During the review, auditors identified **36** out of 46 (**78%**) task orders that required competition were not properly competed. These 36 task orders also did not include any required sole source justification documents to authorize the task order as a sole source awarded procurement. Additionally, **2** out of the 46 task orders had a limited competition<sup>12</sup>. However, these 2 task orders did not include the required limited competition forms to authorize the task order as a limited competition.

In addition, during the review of Part I<sup>13</sup>, auditors identified where SANDAG had failed to compete contracts fully and openly. Additionally, during Part II review auditors identified 1 contract with Vendor AA where full and open competition was required but

---

<sup>12</sup> SANDAG Procurement Manual defines this as when SANDAG has such an unusual and urgent need for the property or services that it would be seriously injured unless it were permitted to limit the solicitation.

<sup>13</sup> See Audit Report Part I, finding VI and VII.

was sole sourced<sup>14</sup> thereby failing to ensure SANDAG's equity and DBE commitments were being met.

The FTA Circular 4220.1F, Chapter VI, Section 1, *Competition Required* states that the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The FTA also requires an FTA recipient to conduct all third-party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA.

The Code of Federal Regulations (CFR) 2 CFR §200.320 (c) states that there are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply: (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro purchase threshold; (2) The item is available only from a single source; (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or (5) After solicitation of a number of sources, competition is determined inadequate.

The DOT's LAPM, Chapter 10, Section 10.1.2, Subsection *Determine Type of Contract*, states that task orders must be stated in the solicitation to be issued as either (1) per geographically designated areas or (2) additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation.

The DOT's LAPM Chapter 10, Section 10.1.9, Subsection *Noncompetitive Negotiated Contracts (Sole-Source)*, states that Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

SANDAG Board Policy No. 016 (BP 16), introductory paragraph, states that if the estimated total cost of required services exceeds one hundred thousand dollars (\$100,000), the services will not be performed by another government entity, and the services are not within the category of services defined in Section 4525 of the Government Code, SANDAG must solicit bids in writing and award the work in a competitive procurement process that is in the best interest of SANDAG.

---

<sup>14</sup> This will be discussed more in depth in Finding VII.

SANDAG's BP 16, Section 5 states that noncompetitive and limited competition procurements shall only be permitted when certain conditions are met such as if part of the project will be paid by federal funds, or if no federal funds are involved, one of the following conditions are met:

- There is only one consultant capable of providing the services because the services are unique or highly specialized.
- The services should be purchased from a particular consultant in the interest of economy or efficiency as a logical follow-on to services already in progress under a competitively awarded contract.
- The cost to prepare for a competitive procurement exceeds the cost of the services.
- The services are essential to maintain research or operational continuity.
- The service is one with which staff members who will use the deliverables have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.

SANDAG's Commitment to Equity Statement states that We have an obligation to eliminate disparities and ensure that safe, healthy, accessible, and inclusive opportunities are available to everyone. The SANDAG equity action plan will inform how we plan, prioritize, fund, and build projects and programs; frame how we work with our communities; define how we recruit and develop our employees; guide our efforts to conduct unbiased research and interpret data; and set expectations for companies and stakeholders that work with us.

SANDAG's Procurement Manual states that SANDAG will maintain and make available to authorized agencies records detailing the history of a procurement. At a minimum, these records should include:

- The rationale for the method of procurement: SANDAG provides the rationale it used for each procurement method by completion of the Method of Procurement Selection form or equivalent documentation, including any supplemental information to justify the selection of the particular method;
- Reasons for vendor selection or rejection: SANDAG states its reasons for vendor selection or rejection and includes a written determination for the successful vendor by completion of a Recommendation Memo;

In addition, any Recommendation Memo or Board/Policy Advisory Committee agenda item requesting approval to award a third-party contract can serve as a record detailing the procurement history and should be kept in the contract file.

SANDAG's Procurement Manual also states that if a multiple-award on-call procurement is utilized, the on-call solicitation must identify how task orders/work orders will be issued among the on-call vendors.

There are three methods that can be used:

- Geographic distribution where the region is divided into areas defined in the solicitation and each vendor is selected to provide on-call services for the assigned area(s).
- Allocation by category of work awarded to single on-call vendors based on categories defined in the solicitation and each vendor is selected to provide on-call services for the assigned category.
- An additional competitive solicitation issued to all on-call vendors who provide the same type of service.

If a task order/work order solicitation will be used, the solicitation will be sent to all vendors within the relevant category of the on-call to allow for full and open competition. The proposal requirements and criteria that will be used to select a vendor for award of the specific task order/work order will be disclosed in the solicitation so that notice is provided to competing vendors of the selection procedures.

SANDAG's Procurement Manual also states that a limited competition procurement cannot be justified when the need to forego full and open competition is due to either a failure to plan or a lack of advance planning or due to concerns about the amount of assistance available to support the procurement (for example, expiration of federal assistance available for award).

SANDAG's Procurement Manual also states that Contracts staff should not commence a sole source unless the *Method of Procurement Selection* form indicates a sole source is appropriate and a *Sole Source Recommendation* form.

The Procurement Manual also states that Disadvantaged Business Enterprises (DBEs) and Small Businesses (SBs) should have the maximum opportunity to participate in the performance of SANDAG's procurements and contracts. SANDAG will fulfill its DBE obligations in its DBE Program by ensuring fair and full utilization of DBEs and SBs in the purchase of equipment, materials, and supplies and in the performance of contracts and subcontracts.

The Procurement Manual does not sufficiently explain when a sole source is or is not allowable. There are no clear internal policies and procedures for issuing task orders to ensure open and full competition; the options for issuing task orders do not explicitly define open and full competition as it applies to task orders. Contracts staff considers a comparison of original qualifications on file as competition for task orders. Staff is using the firm recommendation form to incorrectly claim that they are competing task orders. However, the firm recommendation form does not explain or provide the required options for awarding task orders, the form is vague and does not ensure competition is conducted prior to award.

The potential risks to SANDAG are as follows:

- Limiting the vendors eligible for award to a specific list of on-call vendors which may lead to missed opportunities for better pricing and/or experience from other vendors that may have gained the necessary experience to be eligible for award if a new procurement was issued at an earlier interval
- Not meeting competition requirements
- Collusion between staff and leadership to award contracts to preferred vendors
- Collusion between staff and firms to award contracts
- Disqualification and/or loss of funding
- Abuse in awards of task orders by staff

#### RECOMMENDATIONS:

The OIPA recommends staff:

1. Update the procurement board policies to clearly explain competition requirements for contracts and task orders. The policies should also clearly explain the options for not competing and the procedures and approvals that should be followed in those instances.
2. Ensure that SOPs around procurements clearly explain the need and requirements for competition as well as the allowed exceptions and requirements for them.

#### Sub-Finding 3 – Contract and Task Order Amendments Exceeded \$100,000 Without Board Approval

During the review, auditors identified **44** out of **122** task order amendments that did not receive required board approval for exceeding the \$100,000 combined amendment threshold. Additionally, **1** out of **122** task order amendments was valued at \$99,999.

During the audit, auditors also identified a documented conversation where contracts staff advised a project manager of a 25% amendment limit. However, it should be noted that auditors could not identify this in any policy or procedure.

SANDAG's BP 16, Section 6.4, states that the Executive Director may approve contract amendments that exceed the project budget totaling up to \$100,000 that are necessary to complete services originally contemplated subject to the limitations set forth in Section 12.2 of this policy. The Board will be notified of all such amendments. Contract amendments that will cause the project budget to be exceeded by more than \$100,000 or those contemplating a significant change in the original scope of services must be processed in accordance with the SANDAG procurement manual and policies.

SANDAG's BP 16, Section 12.2, states that the Executive Committee or Transportation

Committee or, if not practical, the Board Chair, First Vice Chair or Second Vice Chair, are hereby authorized to approve amendments that will cause the project budget to be changed in an amount exceeding \$100,000 when waiting for Board approval could potentially delay a project or increase the cost of the change. Approval of such items by the Board Chair, First Vice Chair, or Second Vice Chair, is not the preferred practice and should only be used if a regular or special meeting of an authorized legislative body is infeasible or impractical. In such an instance, the Executive Director shall notify the Board of the action at the next regular Board meeting.”

SANDAG’s BP 16 and the Procurement Manual do not clearly address the amendment rules or requirements for amendments exceeding \$100,000. The policy and manual do not clearly address cumulative amendment limitations. The policy authorizes the Executive Director to amend up to \$100,000 but the policy does not clearly explain that the combined amendment value beyond \$100,000 must receive Board approval.

The potential risks to SANDAG are as follows:

- Contracts and task orders are regularly amended beyond \$100,000 without limitation.
- Avoiding competition by just adding funds to existing contracts

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update the procurement board policies to clearly limit the amendment amount(s) allowed without both the Executive Director’s signature and to specify when Board approval is required to approve amendments.
2. Update the procurement board policies to clearly state that the amendment amount requiring board approval is cumulative of all amendments. This should also consider all other work on the same project issued under previous task orders or contracts, unless a new full and open competition has occurred for the services. This should clearly explain that exceptions to this must be analyzed by the Contracts department to ensure bid splitting is not occurring and that sufficient competition has occurred for the amounts awarded thus far.
3. Update the Procurement Manual to reflect the changes in Recommendations 1 and 2.
4. Create an SOP for contracts staff that clearly explains their role in reviewing amendments and procurement history to ensure bid splitting and avoidance of competition is not repeatedly occurring.



### Sub-Finding 4 – Contracts, Task Orders and Amendments Were Retroactive

During the review, auditors identified 17 out of 201 procurement transactions<sup>15</sup> had been inappropriately retroactively dated, where SANDAG considered the contract, task order or amendment effective prior to the procurement transaction being executed. Amendments were inappropriately dated retroactively to authorize the changes after the contract and/or task order had already expired, making them invalid when considering their execution date.

The DOT's LAPM, Chapter 10, Section 10.1.8, Subsection *Contract Amendments*, states that a consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

SANDAG's Procurement Manual states that for contracts that utilize task orders or work orders, the task order or work order is only valid while the on-call contract is still valid. Once an on-call contract expires, all task orders and work orders issued against the contract are no longer valid. Contracts staff will ensure that no task order or work order is written with a termination date that extends beyond the termination date of the on-call contract. The exception to this is contracts with an "ordering period" that extends beyond the term of the contract.

Staff did not sufficiently plan for expiring contracts or task orders nor is staff regularly tracking procurements for expiration.

The potential risks to SANDAG are as follows:

- Disqualification and/or loss of funding
- Paying for unplanned and/or unauthorized costs
- Encouraging a lack of planning to Project Managers and departments
- Federal consequences may include:
  - Temporarily withholding cash payments
  - Disallowing funds for the noncompliant activity/action
  - Suspending or terminating the Federal award
  - Suspension or debarment of the agency
  - Withholding further Federal awards

---

<sup>15</sup> 3 contracts, 61 task orders, and 137 amendments

**RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update the procurement board policies to address retroactive procurement transactions and to restrict/limit them. If allowing them, clearly limit the allowed circumstances to emergencies. The restrictions should define and specify that “poor planning” is not allowed and include examples such as departments being unaware of expiring contracts/task orders and being unaware of procurement processing timelines and requirements.
2. Create a tracking system/method for expiring contracts/task orders to ensure customer department awareness of planning needs for current and future procurements.
3. Update the Procurement Manual to follow the recommendations in Recommendation 1, as well as to limit or restrict the approval of retroactive requests if negligence occurred on the department’s behalf due to not tracking their expiring contracts and/or task orders.
4. Create a SOP for both departments and contracts staff to explain the roles, responsibilities, requirements, forms, approvals needed, and processing retroactive procurement requests.
5. Contracts department to provide training on appropriate planning efforts and expectations for project managers and customer departments. This should include tracking of contracts, monitoring of expiration dates and procurement timelines for any next steps or changes to projects.

**Sub-Finding 5 – Contracts, Task Orders and Amendments Were Missing Approval Documents**

During the review, auditors identified that the following approval documents were missing:

- 13 transactions were missing Requisition forms
- 14 transactions were missing the Independent Cost Estimate
- 76 transactions were missing Records of Negotiations
- 67 transactions were missing the Cost Analysis

The FTA Circular 4220.1F, Chapter III, Section 3.d, *Record Keeping*, states that the Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed.

The FTA Circular 4220.1F Chapter VI, Section 6, *Cost Analysis and Price Analysis*, states that the Common Grant Rules requires the recipient to perform a cost analysis or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis depends on the facts and circumstances surrounding each procurement, but as a starting point, the recipient must make independent estimates before receiving bids or proposals.

The DOT's LAPM, Chapter 10, Section 10.1.8, Subsection *Project Records* states that for audit purposes, project records and documentation must be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines).

SANDAG's Procurement Manual states that SANDAG will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

- The rationale for the method of procurement: SANDAG provides the rationale it used for each procurement method by completion of the Method of Procurement Selection form or equivalent documentation, including any supplemental information to justify the selection of the particular method;
- Selection of contract payment type: SANDAG states the reasons for selecting the contract payment type it used, such as fixed-price or specific rates of compensation by completion of the Contract Payment Type Selection Form;
- Reasons for vendor selection or rejection: SANDAG states its reasons for vendor selection or rejection and includes a written determination for the successful vendor by completion of a Recommendation Memo;
- The basis for the contract price: SANDAG evaluates and states its justification for the contract cost or price. The justification can be detailed in the Record of Negotiation and be supported by an Independent Cost Estimate or Engineer's Estimate.

In addition, any Recommendation Memo or Board/Policy Advisory Committee agenda item requesting approval to award a third-party contract can serve as a record detailing the procurement history and should be kept in the contract file.

SANDAG's Procurement Manual also states that the procurement request will be assigned to a Contracts staff member who will be responsible for the following:

- Reviewing the procurement request for completeness, compliance with SANDAG procurement policies and procedures, and requesting missing or updated documentation from the requestor.
- Routing the draft procurement request electronically for all required approvals.
- Overseeing the competition and evaluation process for the procurement to ensure process and documentation requirements are followed.
- Assisting with best and final offer (BAFO) requests and negotiation of contract terms and conditions.
- Sending the final formatted contract document to the vendor for signature before obtaining signatures at SANDAG.
- Scanning and filing the executed contract document and any supporting documentation into the Contracts Library, updating all applicable databases as appropriate, and ensuring the contract is provided to Finance for encumbrance.

Contracts staff did not consistently request, complete or properly store all approval documents for procurements. The Procurement Manual does not clearly list all documents required and the completeness required of documents to process procurements. No SOP exists that explains Contract Analyst responsibilities and step by step instructions for requests and reviewing procurement request documents. No SOP exists that explains to Project Managers how to complete documents.

The potential risks to SANDAG are as follows:

- Being noncompliant when audited
- Staff not being able to identify if processes or procedures were followed or determine history of procurement.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update the Procurement Manual to clearly explain the required forms for procurement transactions. This should include the options and how to submit their requests with the information and forms needed.
2. Create SOPs for staff on requiring forms from departments or project managers and how to review them for completeness and compliance. Procedures should include examples of properly completed forms/requests as well as improper ones.

### Sub-Finding 6 – Contracts, Task Orders and Amendments Were Missing Signatures

During the review, auditors identified **8** out of **201** transactions<sup>16</sup> that were missing the required OGC signature where the scope of work was changed.

SANDAG's Employee Handbook's Delegation of Authority Policy states that documents and transactions listed in Table I are required to have Office of General Counsel review and concurrence, except: (1) purchase orders using SANDAG standard boilerplate and are deemed by Contracts to be low risk to SANDAG; (2) amendments for time only to Task Orders; and (3) Task Orders, Task Order amendments, or Agreement amendments that have been reviewed and approved by a Senior Contracts Officer for regulatory compliance, sufficiency, and completeness, and which do not involve any of these issues:

- a. Sole source procurement
- b. Red Flagged procurement
- c. Potential cardinal change in goods or services to be provided to SANDAG as compared to solicitation
- d. Non-Brooks Act services included in a Brooks Act-covered procurement exceeding an amount that would be considered incidental in nature under applicable funding agency requirements or guidance
- e. Terms and conditions language added to boilerplate previously approved by Office of General Counsel
- f. Lower limits of insurance than those included in the procurement boilerplate or recommended by the Risk Program Manager
- g. Other issues of special risk identified by a Director

SANDAG's Procurement Manual states that the procurement request will be assigned to a Contracts staff member who will be responsible for the following:

- Routing the draft procurement request electronically for all required approvals. After review by a Senior Contracts Officer, the typical approval process includes: the Project Manager, senior/principal staff (if requested by the PM or Department Director), Director/Corridor Director, Finance, OGC and the Chief Executive Officer or a member of Senior Leadership (when required).
- Sending the final formatted contract document to the vendor for signature before obtaining signatures at SANDAG.
- Scanning and filing the executed contract document and any supporting documentation into the Contracts Library, updating all applicable databases as appropriate, and ensuring the contract is provided to Finance for encumbrance.

---

<sup>16</sup> 3 contracts, 61 task orders, and 137 amendments

Contracts staff did not ensure all required signatures were collected from internal SANDAG staff. The signatures required for the various procurement transactions is not clearly outlined in a Board Policy or the Procurement Manual. Internal controls are inadequate to ensure sufficient review and approval of procurements.

The potential risks to SANDAG are as follows:

- Awarding/authorizing improper procurement transactions.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update the Board Policy No. 017, the Employee Handbook and Procurement Manual to create more internal controls around approval and signature of procurement transactions by including the OGC in all transactions to ensure risks are mitigated.

#### **Sub-Finding 7 – Inadequate Justification for Contract and Task Order Amendments**

During the review of **137** amendments, auditors noted that the amendment justifications were either lacking, repetitive of the amendment title or included 1 of the following reasons as justification for the amendment:

- no cost time extension
- continuation of services
- delays in project

SANDAG's Procurement Manual states that SANDAG will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

- The rationale for the method of procurement: SANDAG provides the rationale it used for each procurement method by completion of the Method of Procurement Selection form or equivalent documentation, including any supplemental information to justify the selection of the particular method;
- The basis for the contract price: SANDAG evaluates and states its justification for the contract cost or price. The justification can be detailed in the Record of Negotiation and be supported by an Independent Cost Estimate or Engineer's Estimate.

In addition, any Recommendation Memo or Board/Policy Advisory Committee agenda item requesting approval to award a third-party contract can serve as a record detailing the procurement history and should be kept in the contract file.

SANDAG's Procurement Manual also states that the procurement request will be assigned to a Contracts staff member who will be responsible for the following:

- Reviewing the procurement request for completeness, compliance with SANDAG procurement policies and procedures, and requesting missing or updated documentation from the requestor.
- Scanning and filing the executed contract document and any supporting documentation into the Contracts Library, updating all applicable databases as appropriate, and ensuring the contract is provided to Finance for encumbrance.

SANDAG's Procurement Manual also states that SANDAG is responsible for issuing, evaluating, and making necessary decisions involving any change to its contracts through amendments, change orders, or modifications. Contracts staff who become aware of a cardinal change should ask the Project Manager to prepare documentation supporting such an amendment. Changes and modifications will be evaluated to ensure that if they will constitute a sole source, applicable sole source documentation is prepared.

SANDAG's Procurement Manual also states that SANDAG and the vendor will need to discuss whether the work being added is outside of the range of what was competed upon in the original solicitation to determine whether the proposed change constitutes a sole source and/or cardinal change. In most cases, the appropriate test involves consideration of whether vendors in the industry to which the solicitation was advertised would have reasonably expected the work being added to be encompassed by the scope of work based on the scope of work that was originally advertised. If the situation is unclear, the Contracts staff person should consult with the DLC or the OGC for guidance.

SANDAG's Procurement Manual also states that based on the nature and extent of the work to be performed; the amount of effort involved; whether the change was originally contemplated at the time the original solicitation was issued and/or contract was entered into; or the cumulative impact on the contract's quantity, quality, costs, and delivery terms; is the change significant? Generally, a change that causes the contract value to exceed the advertised potential contract value by more than 25 percent will be considered a cardinal change.

Contracts staff did not ensure that justifications were clear and descriptive. No standards, policies or procedures exist explaining which type of amendment justifications are acceptable or not.

The potential risks to SANDAG are as follows:

- Authorizing excessive and repeated amendments for the same reasons
- Authorizing amendments that are unjustified.

**RECOMMENDATIONS:**

The OIPA recommends staff:

1. Require staff to provide detailed reasons/justifications for amendment requests.
2. Create SOPs and provide training to project managers and contract analysts to ensure amendments are reduced in frequency by ensuring that sufficient planning is being done and review of amendment requests are analyzed by contracts staff.

**Sub-Finding 8 – Missing Task Order Records**

During the review, auditors identified **8** out of **61** task orders that were missing from both SANDAG's SharePoint record system (SharePoint) and the contract management system (CMS).

The FTA Circular 4220.1F, Chapter III, Section 3.d, *Record Keeping*, states that the Common Grant Rules require the recipient to prepare and maintain adequate and readily accessible project performance and financial records, covering procurement transactions as well as other aspects of project implementation. The Common Grant Rules require the recipient to maintain these records for three years after the recipient and subrecipients, if any, have made final payment and all other pending matters are closed.

The Civil Code 1624 (b) (3) (D) states that there is sufficient evidence that a contract has been made in any of the following circumstances: There is a note, memorandum, or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

SANDAG's Procurement Manual states that SANDAG will maintain and make available to authorized agencies, records detailing the history of a procurement. At a minimum, these records should include:

- The rationale for the method of procurement: SANDAG provides the rationale it used for each procurement method by completion of the Method of Procurement Selection form or equivalent documentation, including any supplemental information to justify the selection of the particular method;
- Selection of contract payment type: SANDAG states the reasons for selecting the contract payment type it used, such as fixed-price or specific rates of compensation by completion of the Contract Payment Type Selection Form;
- Reasons for vendor selection or rejection: SANDAG states its reasons for vendor selection or rejection and includes a written determination for the successful vendor by completion of a Recommendation Memo;
- The basis for the contract price: SANDAG evaluates and states its justification for the contract cost or price. The justification can be detailed in the Record of Negotiation and be supported by an Independent Cost Estimate or Engineer's Estimate.



In addition, any Recommendation Memo or Board/Policy Advisory Committee agenda item requesting approval to award a third-party contract can serve as a record detailing the procurement history and should be kept in the contract file.

SANDAG's Procurement Manual also states that the procurement request will be assigned to a Contracts staff member who will be responsible for the following:

- Reviewing the procurement request for completeness, compliance with SANDAG procurement policies and procedures, and requesting missing or updated documentation from the requestor.
- Routing the draft procurement request electronically for all required approvals. After review by a Senior Contracts Officer, the typical approval process includes: the Project Manager, senior/principal staff (if requested by the PM or Department Director), Director/Corridor Director, Finance, OGC and the Chief Executive Officer or a member of Senior Leadership (when required). The DLC will be added to the route as a business reviewer for procurements involving sole sources, retroactive effect or ratification. For sole brand, software or hardware purchases, an additional business review may be needed, which Contracts staff will arrange.
- Overseeing the competition and evaluation process for the procurement to ensure process and documentation requirements are followed.
- Assisting with best and final offer (BAFO) requests and negotiation of contract terms and conditions.
- Sending the final formatted contract document to the vendor for signature before obtaining signatures at SANDAG.
- Scanning and filing the executed contract document and any supporting documentation into the Contracts Library, updating all applicable databases as appropriate, and ensuring the contract is provided to Finance for encumbrance.

Contracts staff did not ensure all records were properly stored. Contracts staff also did not include any memo or record that explained why the documents/record was not stored/recorded or if the task order was cancelled.

The potential risks to SANDAG are as follows:

- No records for incomplete/cancelled transactions
- Being noncompliant when audited
- Staff not being able to identify if processes or procedures were followed or determine history of procurement.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Create SOPs and provide training for contracts staff to address proper document storing and recording of procurement transactions.

2. Create SOPs for QA/QC efforts to ensure document storing and procurement transactions are properly recorded.

### Sub-Finding 9 – Contract Has Conflicting Contract Dates with No Clear Explanation of Applicability

During the review of a Vendor AA contract, auditors identified 3 different contract dates. The dates were listed in different areas of the contract and did not clearly state when one or the other applies.

- Effective dates were April 29, 2016 through April 28, 2021
- Period of Performance dates were February 15, 2016 through February 14, 2021
- Ordering Period dates were April 15, 2016 through April 14, 2021 (as clarified in Amendment 3 to the contract)

The DOT's LAPM, Chapter 10, Section 10.1.8, Subsection *Execute Contract and Issue Notice to Proceed to Consultant*, states that the Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed contracts must have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable. For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date.

California Civil Code 1653 states that "words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected."

Contract templates reference 3 different types of dates and require dates to be entered in these sections which can be conflicting and cause confusion. Dates are not defined in the contract and do not explain when they are applicable.

The potential risks to SANDAG are as follows:

- Conflicting dates in contracts cause confusion around validity and contract terms
- Can cause invalidation of subsequent procurement transactions

### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update contract templates to define the various dates specified in the contract (effective date, period of performance, and ordering period).

2. Update contract templates to ensure consistency when referring to dates and clarify when each date applies.
3. Update contract templates to ensure they explicitly define if task order terms are allowed to exceed the contract expiration date.

## FINDING II – HIGH AWARDS AND INCREASES DUE TO NON-COMPETED PROCUREMENTS AND EXCESSIVE AMENDMENTS

Vendor Z<sup>17</sup> was originally awarded \$25,000,000 for On-Call Environmental Planning and Architect and Engineering Design Services. The final total contract amount increased to \$128,115,111, which is **412%** higher than originally awarded. The original solicitation for this contract was advertised for an aggregate amount of \$260,000,000, to be used between all on-call contracts awarded under the solicitation. This meant that Vendor Z was awarded, via task orders, **48%** of the original advertised amount that was to be shared amongst all the on-call firms over a period of 7 years.

Additionally, auditors noted the following:

- **7** contract amendments, **3** of which were to increase the contract amount.
- A total of **38** task order amendments.
- **4** contract amendments were issued between 2 and 8 months after the contract was executed or a previous amendment to the contract was issued; thus, excessive amendments, which leads to overuse of internal resources and ineffective government practices.
- **10** task orders that were not competed but required competition.
- **14** task order amendments exceeded \$100,000 but did not receive the *required* board approval. **1** additional task order amendment was valued at \$99,999.
- **20** task order amendments were issued between 2 and 8 months after the task order was executed or a previous amendment to the same task order was issued.

SANDAG's Board Policy No. 041 (BP 41) states that the Board of Directors and executive management are accountable to the public. The basic elements of accountability include efficiently making optimal use of scarce resources and demonstrating accountability for the stewardship of resources placed in their care.

The FTA Circular 4220.1F, Chapter VI, Section 1, states that a recipient of Federal assistance is required to use third party procurement procedures in a manner that provides full and open competition as determined by FTA.

---

<sup>17</sup> The anonymized name for the vendor is based off the tables from Part 1. The Tables from Part 1 are located in Appendix A, attached herein. Any new vendors mentioned will also be anonymized

The 2 CFR 200.320 (c) states that a noncompetitive procurement can only be awarded if at least one of the following apply: (1) The aggregate dollar amount of the acquisition of property or services does not exceed the micro purchase threshold; (2) The item is available only from a single source; (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation; (4) The Federal awarding agency expressly authorizes a noncompetitive procurement; or (5) After solicitation, competition is determined inadequate.

The DOT's LAPM, Chapter 10, Section 10.1.2 states that task orders must be stated in the solicitation to be issued as either (1) per geographically designated areas; or (2) additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation.

SANDAG's BP 16 states that the Executive Director may approve contract amendments totaling up to \$100,000 and that contract amendments that cause the project budget to be exceeded by more than \$100,000 must follow SANDAG procurement manual and policies. Additionally, the policy states that the Executive Committee or Transportation Committee, are authorized to approve amendments that will cause the project budget to be changed in an amount exceeding \$100,000 when waiting for Board approval could potentially delay a project or increase the cost of the change.

SANDAG's BP 16 states that if the estimated total cost of required services exceeds one hundred thousand dollars (\$100,000) SANDAG must solicit bids in writing and award the work in a competitive procurement process that is in the best interest of SANDAG.

SANDAG's Procurement Manual states that if a multiple-award on-call procurement is utilized, the on-call solicitation must identify how task orders/work orders will be issued among the on-call vendors. There are three methods that can be used, including: geographic distribution, allocation by category of work, additional competitive solicitation.

SANDAG's Procurement Manual also states that the contract/task order manager should carefully track the dollar value capacity to avoid exceeding the stated maximum amount(s). Contracts staff member will verify capacity of funds and time prior to preparation of the contract or task order. Amendments or task orders issued in excess of the stated maximum time or amount set forth in the original solicitation may be treated as sole source procurements.

SANDAG's Procurement Manual also states if a task order under an on-call contract is being contemplated that will contain future stages of work such that amendments or additional task orders to the same vendor are anticipated, the On-Call Firm Recommendation form should document the competition of all phases of the work

among the on-call vendors and indicate that the vendor being recommended for the first phase of the work is the best qualified (for A&E) or the best value (for non-A&E) for all phases of the work, not just the phase to be covered by the current task order.

SANDAG's Procurement Manual also states that for project-specific contracts, contracts staff should not commence a sole source unless the *Method of Procurement Selection* form indicates a sole source is appropriate and a *Sole Source Recommendation* form is completed.

There is a lack of internal controls around amendments as Board Policies and the Procurement Manual do not clearly address limitations, restrictions, or efficiencies around amendments to contracts and task orders.

Through the review of amendments, it appears that staff is not sufficiently planning or coordinating to account for all services needed under contracts and task orders. Contract performance and amounts are not being tracked to ensure sufficient amounts are awarded and amendments are minimized.

Board Policies and the Procurement Manual do not clearly restrict or limit the use of sole source awards. These policies also do not clearly explain the requirements and procedures to compete task orders.

The potential risks to SANDAG are as follows:

- Inefficient use of internal staff to process multiple and repeated amendments.
- Contracts and task orders are regularly amended without limitation.
- Overspending
- Not meeting competition requirements, as required by law and specific fund sources.
- Disqualification and/or loss of funding
- Collusion between staff to award contracts to preferred consultants
- Collusion between staff and firms to award contracts
- Abuse in awards of task orders by staff

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Create clear policies and Standard Operating Procedures (SOP) to ensure competition is open and full as frequently as required by applicable laws, rules, and regulations.
2. Create clear policies and SOPs to ensure sole sources are limited and are thoroughly reviewed and analyzed to ensure potential risks are mitigated.

3. Create clear policies, SOPs, and provide training for project managers and contract analysts to ensure amendments are reduced in frequency. These should ensure that sufficient planning is being done and reviews of amendment requests are analyzed thoroughly.

### FINDING III – INVOICES ARE MISSING OR LACKING SUPPORTING DOCUMENTATION, OR ARE NOT CONSISTENT WITH THE CORRESPONDING FEE SCHEDULE

Auditors judgmentally selected **15** contracts to review invoices. **27** digital invoices were missing from the records but were listed in the financial system (OneSolution) reports. These 27 invoices totaled **\$272,473**. Additionally, auditors found **21** digital invoices in the records that were missing from the OneSolution system reports, which totaled **\$311,923**. Auditors confirmed with Finance staff that the OneSolution system report “captures payments and encumbrances applied to contracts.”

Auditors also judgmentally selected **86** invoices, both digital and hardcopy, totaling **\$26.6 million**. Of the 86 invoices, only **82** invoices were located and had a legible fee schedule to compare to. Additionally, of those 82 invoices that the auditors were able to locate, only **7** invoices had adequate supporting documentation and were consistent with the corresponding fee schedule, while **75** or **92%** were unsupported in addition to the other 4 invoices selected to sample that could not be located nor had a legible fee schedule to compare to.

Of the remaining **75** invoices, auditors noted the following:

- **30** invoices were missing supporting documentation of what work and/or services were performed. One invoice’s title also did not match the OneSolution system report.
- **43** invoices included supporting documentation, but the expense details did not match the fee schedules. The people and positions included in the expense details were not included in the corresponding task order or in any of the task order amendments that had been executed prior to the invoice period(s).
- **2** invoices had supporting documentation, but the corresponding agreement and task order did not outline who was authorized to work nor at what position and rate, just the total amount for each task.

The CFR, Title 48, Part 32.905 (b)(1)(iv) states that a proper invoice includes a Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed”. Part 32.905 (b)(3) states that if an invoice is not in compliance, the “designated billing office must return it within 7 days after receipt... with the reasons why it is not a proper invoice.

Governmental Accounting Standards Series, Section 2450 of Statement No.34 states that Governmental enterprises are encouraged to provide further detail of operating cash receipts and payments if the detail is considered useful.

*Caltrans' Request for Reimbursement Procedures and Invoice Supporting Documents* states that required supporting documents for operating assistance, equipment, transit facility, and preventative maintenance projects that "Original invoice from the vendor must show invoice number, date, and vehicle/maintenance costs description unit price, discount (if any), sales tax, freight/shipping charges, and total for each product or service".

The Transit and Intercity Rail Capital Program's Invoice Package Checklist states that an invoice package should include a list of itemized charges, supporting documents, a billing summary, among other items.

SANDAG's Procurement Manual, states that project managers are responsible for reviewing invoices closely for conformance to contract terms and for erroneous or fraudulent charges, reviewing the timeliness and accuracy of invoices, and ensuring vendor's billed costs are allowable and consistent with the contract terms as well as the acceptability and process of the vendor's work. Principals and managers are responsible for approving invoices review/acceptance by the project manager.

SANDAG's Procurement Manual also states that a Contracts staff member should carefully check the documents supplied by the vendor to ensure the terms indicated in a bid/proposal or invoice do not conflict with and/or attempt to supersede SANDAG's standard terms and conditions, the Standard Federal Provisions, or put the agency at risk.

SANDAG's Procurement Manual also states that progress payments should only be used if SANDAG has sufficient written documentation to substantiate the work for which payment is requested", and if "SANDAG obtains sufficient documentation to demonstrate completion of the amount of work for which progress payments are made.

SANDAG's Employee Handbook's Delegation of Authority Policy states that Principals/Managers approve all progress payments and invoices except the final one. Directors approve the final invoice of final progress payment up to Agreement limit.

The above invoicing issues are consistent with what auditors noted when meeting with project managers: itemized breakdown of work performed is not required to process invoices for payment and that required documentation submitted by vendors for payment is inconsistent. Additionally, for the invoices that do have adequate

supporting documentation, the review process must be minimal as the vast majority of invoices reviewed had expenses that were inconsistent with the corresponding fee schedule.

SANDAG's Standard Services Agreement template does not require a detailed/itemized invoice nor a progress report to be submitted as part of the invoice. The only mention of detailed/itemized invoices is under a subsection of 'Invoicing' titled "Timing of Payment".

SANDAG's Request for Payment form also does not require a detailed/itemized invoice to request or authorize payment of the invoice. Auditors could not confirm if there is a formal finance/accounts payable procedure provided to staff who submit invoices for payment.

Through interviews with staff, it was explained that invoices should be fully vetted by the project managers by the time they have gotten to Finance and that the job of Finance is to "process and pay". However, as previously stated and shown, invoices are being approved that do not include supporting documentation.

Not requiring detailed work summaries and itemized invoices increases SANDAG's risk of the following occurring:

- Paying for services that are not completed
- Paying for subpar work
- Paying for services that are not included in the contract or task order
- Overpayment
- Duplicate payments for completed work

Not conducting a thorough invoice review increases SANDAG's risk of the following occurring:

- Overpayment
- Paying for work and/or workers not approved or agreed to
- Duplicate payment for completed work

Missing invoices and not recording invoices increases SANDAG's risk of the following occurring or having occurred:

- Inaccurate financial reporting
- Billing and invoice schemes
- Fraud



**RECOMMENDATIONS:**

The OIPA recommends staff:

1. Require detailed/itemized invoices and progress reports or a detailed summary of work performed for a payment to be processed.
2. Update Request for Payment Form to explicitly require invoices to be attached.
3. Create formal procedure and training for invoice payment to include instructions/methods for verifying invoiced work is included in the contract/task order.
4. Update contract templates to require detailed/itemized invoices as well as progress reports or detailed summaries of work performed to be included with invoice.
5. Create a tracking and filing system to ensure that all received and paid invoices are recorded and filed properly.
6. Create a SOP that provides instructions on entering and processing invoices to ensure all information is entered correctly into OneSolution and/or any future financial payment system.
7. Investigate how many invoices were not captured by OneSolution and determine if financial reports were inaccurate because of any uncaptured invoices.

**FINDING IV – ENCUMBRANCES ARE NOT RECORDED UPON AWARD/EXECUTION OF A PROCUREMENT**

During the review, auditors noted that staff does not encumber the awarded amount at the time of award or execution of each contract and/or subsequent task order or amendment. The encumbered amount in OneSolution was less than the value of either the contract or the total of all task orders.

The Governmental Accounting Standards Board (GASB), Summary of Statement No. 54, states that Governments also are required to classify, and report amounts in the appropriate fund balance classifications by applying their accounting policies that determine whether restricted, committed, assigned, and unassigned amounts are considered to have been spent. Disclosure of the policies in the notes to the financial statements is required.

The U.S. Government Accountability Office (GAO), *Obligational Consequences of Federal Contracts* document, explains that for Indefinite-Delivery, Indefinite-Quantity (IDIQ) Contracts, the obligational consequences include recording minimum contract amounts and that amounts over the minimum are obligated as task or delivery orders are placed against the original contract.

SANDAG's Procurement Manual states that it is the Contract Analysts responsibility to ensure the contract is provided to Finance for encumbrance.

The California Department of General Services' State Administrative Manual, Section 8340 states that the purpose of accounting for encumbrances is to prevent the overspending of an appropriation. Encumbrances reserve a portion of an appropriation representing an obligation that has not been paid, or commitments related to unperformed contracts for goods and services. It also explains that appropriations may be encumbered via purchase orders, standard agreements, or other documents.

Some examples of best practices include:

- The Congressional Budget Office defines an obligation as legally binding commitment. It further provides an example: the Department of Defense incurs an obligation when it enters a contract to purchase equipment.
- The Department of Defense Financial Management Regulation, Volume 3, Chapter 8, explains that for open-ended contracts, an authorization to incur an obligation shall be recorded as a commitment only when the amount estimated is reasonably firm, such as at the task order level. The regulation further states that an amount shall be recorded as an obligation only when supported by documentary evidence of the transaction. An example would be an executed agreement, task order or amendment.

SANDAG's Finance staff waits for Contracts staff to upload encumbrance requests into a SharePoint folder. Once uploaded, Finance staff enters the encumbrance into the OneSolution system. Finance's process includes checking the Finance Encumbrance folder daily. However, Finance does not know when Contracts staff uploads the requests. Per Finance, urgent requests are sometimes submitted to Finance for immediate processing which are triggered by the receipt of an invoice awaiting to be paid.

Contracts staff is unaware of which staff in Finance is assigned or maintains the Finance Encumbrance folder, as this information has not been made available to them. Contracts staff has also requested a tracking log from Finance; however, no formal process or log has been received.

Finance staff do not have formal procedures to follow for encumbrance processing. After several requests, auditors have not received formal procedures for review. Additionally, Finance staff do not have a set of written requirements or process for Contracts staff to follow when submitting requests other than requiring staff to submit a request for payment form.

The CMS system does not update or integrate with the OneSolution system; therefore, the project manager and contract analyst cannot use CMS to confirm or ensure that an encumbrance was processed or entered into the OneSolution system.

The potential risks to SANDAG are as follows:

- Overspending of an obligation.
- Defaulting on the obligation and not having sufficient funds to pay the obligation if funds are overspent elsewhere.
- Finance not being aware of needing to encumber funds.
- Project managers and contract analysts could authorize amendments or task orders that could exceed the available amount left in the project fund.
- Inaccurate financial reporting.
- Using the incorrect funds to pay for a project.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Create SOPs that clearly identify both the Contracts department's and Finance department's role and responsibilities for encumbering, as well as step by step instructions for each department. These should include timelines when steps should occur.
2. Provide regular training to each department on their assigned roles, responsibilities, and procedures.
3. Create a streamlined process where both departments are communicating regularly on updates or changes to the encumbrance process and ensuring that their procedures align.
4. Create a process and tracking system/method, inclusive of both the Contracts and Finance departments, for internal controls to ensure all encumbrances are processed upon execution of a contract, task order or amendment.

#### **FINDING V – WEAKENED INTERNAL CONTROLS DUE TO EXCESSIVE DELEGATION OF AUTHORITY GRANTED BY BOARD OF DIRECTORS (BOD) TO STAFF TO GOVERN AGENCY OVERSIGHT**

Auditors noted the following examples of noncompliant procurement actions and transactions which conflict with proper internal controls:

- Not all procurements that required competition being competed but being sole sourced instead.
- Not all sole sourced procurements include sole source justification documents.
- Contract and task order amendments being authorized without required Board approval.
- Procurements being retroactively dated.
- Procurements missing required approval documents.
- Executed procurement documents missing signatures.
- Justifications/Reasons for amendments being inadequate or missing.

- Task orders missing from the records.
- 1 contract having conflicting dates within the executed document.

SANDAG's BP 41 states that in accordance with COSO standards and as approved by the BOD, that internal control is a process, effected by the Board of Directors, management, and other personnel, designed to provide reasonable assurance of financial accountability. It also states that the SANDAG management team and staff are responsible for fostering adequate internal controls to achieve accountability.

As of 2019, in accordance with the updated and approved Board Policy No. 017 (BP 17), the Executive Director (ED) is authorized to approve procurement transactions repeatedly up to \$300,000 per project and per fiscal year; thereby weakening SANDAG's system controls by delegating the board's governing oversight responsibilities to Management.

The previous version of BP 17 limited the ED to enter into agreements not currently in the budget for an amount of \$100,000 per transaction, not to be used multiple times on the same budget line item or contract, and within the overall annual budget. This previous version clearly restricted bid splitting.

Staff authorizes and transfers continuation of services to new task orders and/or contracts. These new transactions often appear as new projects and the history of previous amounts spent or the amount of time spent is not generally tracked or passed onto the new contract or task order. This allows for improperly following the restrictions of the board policies.

Additionally, as per SANDAG's current Employee Handbook's Delegation of Authority Policy, the Executive Director has authorized staff to approve procurement transactions as follows:

- Allows Senior Contracts staff to approve *unlimited* 30-day time extensions, without Director level review and approval.
- Allows Senior Contracts staff to approve *unlimited* time extensions, without Director level review and approval, for contracts that have prior competition. However, we have identified that procurements are often classified as competed, where true competition did not occur, only comparisons.
- Allows Senior Contracts staff to final review and sign non-retroactive amendments less than \$100,000, as long as Executive level staff or a Director has completed an initial review and no substantive changes have been made after.
- Allows, but does require, Senior Contracts staff to issue stop work notifications to contractors when a contract is about to expire.

- Allows task orders, task order amendments, and contract amendments to avoid Office of the General Counsel review if they are reviewed by a Senior Contracts Officer and not sole source procurements. However, we have identified that procurements are often classified as competed, where true competition did not occur, and should have been classified as sole sourced procurements.

The potential risks to SANDAG are as follows:

- Awarding agreements without required open and full competition.
- Bid splitting
- Losing or disqualifying for funds for not following applicable rules and regulations
- Minimizing or removing the need for Director review for amendments encourages/allows for staff to avoid proper planning.
- Collusion between internal staff and firms by continuing to amend contracts via Senior Contracts staff.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update Board Policy No. 017 to clearly restrict bid splitting.
2. Update Board Policy No. 017 to limit the Executive Director's authority on approving agreements to only allow emergencies and/or urgent need procurements. Both "emergencies" and "urgent need" should be clearly defined and in accordance with applicable laws and reducing the delegated authority back to \$100,000, bringing balance of governing oversight back to the board where it should be.
3. Update the Delegation of Authority by Executive Director Policy to align with the recommended changes to Board Policy No. 017 and current Board Policy No. 041 by creating more internal controls to include clearly limited parameters around contract amendments and task orders by including the OGC and/or Finance department(s) in all transactions to ensure risks are mitigated.
4. Update the Procurement Manual to restrict and/or clearly limit procurement transactions and actions that conflict with proper internal controls, to include the examples referenced as observations in this finding.

#### **FINDING VI – RETROACTIVE PROCUREMENTS BY EXECUTIVE LEADERSHIP TO RECTIFY AND PAY FOR UNAUTHORIZED WORK**

During the review of retroactive procurements, auditors identified a documented discussion between a former Director and Legal Counsel of Contracts (DLC) and the Office of the General Counsel (OGC) regarding unauthorized retroactive and sole source procurements. The discussions identified from August 2021 stated that HR had completely exhausted and exceeded the \$150,000 capacity limit under a contract awarded in September by not formally authorizing work to be performed via task

orders. To rectify this, the former DLC recommended issuing retroactive task orders and amendments and advised that both the Records of Negotiation (RONs) and the Independent Cost Estimates (ICEs) would be required. The former DLC also recommended issuing a new solicitation (RFP) as soon as possible.

After further review, auditors identified documented discussions between HR and Contracts staff explaining that HR was unaware of the process or requirements to issue task orders (TOs) under a TO contract. In these discussions, Contracts staff recommended executing retroactive TOs for the work already performed, which was not originally formally authorized.

During the review of retroactive transactions, auditors identified the following inappropriate retroactive procurements:

- 3 procurements transactions, including a contract, were all executed retroactively. The contract and task order were executed in October 2015, while the task order amendment was executed in November 2021, approximately 8 months after both the contract and task order had already expired.
- 4 separate task order transactions for Legal Services, were executed retroactively on different dates. The transactions were created and executed in CMS several months after their *retroactive* effective dates. Neither transaction included a RON on file. The included ICEs were created months after the effective date of the task order. Based on the historical notes on the solicitation, the contracts were for continuation of services from previous contracts.

Auditors obtained evidence where the former DLC claimed that retroactive procurements were improperly authorized as well as were improper sole sources and public works procurements.

The DOT's LAPM, Chapter 10, Section 10.1.8, Subsection Contract Amendments, states that all contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement.

SANDAG's Procurement Manual states that once an on-call contract expires, all task orders and work orders issued against the contract are no longer valid.

SANDAG's current Standard Services Agreement template states that a Consultant shall not commence performance of work or services until this Agreement has been approved by SANDAG, and notification to proceed has been issued by SANDAG. No payment will be made prior to approval or for any work performed prior to approval of this Agreement. Additionally, for contracts where task orders are going to be issued, a Task Order is of no force or effect until returned to SANDAG and signed by an

authorized representative of SANDAG. No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by SANDAG.

SANDAG's current Task Order (Non A&E) template states that a Consultant shall not incur costs related to this Task Order until after approval of the funding is granted and the SANDAG Project Manager has authorized the Consultant to begin work on the Project.

While SANDAG does have some policies that address retroactive requests, the controls are weak and are as follows:

- The procurement-related Board Policies do not address retroactive requests at all.
- The Procurement Manual does not define or address how retroactive contract, amendment or task order requests are handled by Contracts staff. It only mentions whose role or responsibility is affected by these requests.
- The Employee Handbook's Delegation of Authority policy defines retroactive effect and who is restricted from approval but does not explain the procedures or requirements for processing these requests.

Additionally, Contracts staff and agency staff at all levels of approval are unfamiliar or untrained with the regulations and consequences around processing retroactive procurements and, therefore, staff recommend and continue to avoid proper planning.

The potential risks to SANDAG are as follows:

- Overspending
- Paying for unplanned and/or unauthorized costs
- Repeated use of retroactive procurements
- Encourages poor planning as there are no consequences and this is rectified with retroactive procurements.
- Loss of funding
- Federal consequences may include:
  - Temporarily withholding cash payments
  - Disallowing funds for the noncompliant activity/action
  - Suspending or terminating the Federal award
  - Suspension or debarment of the agency
  - Withholding further Federal awards

**RECOMMENDATIONS:**

The OIPA recommends staff:

1. Update the procurement board policies to address retroactive procurement transactions and to restrict/limit them. If allowing them, clearly limit the allowed circumstances to emergencies. The restrictions should clearly define “poor planning”, specify that it is not allowed, and should include examples such as departments being unaware of expiring contracts/task orders, departments being unaware of procurement processing timelines and requirements and department lack of succession planning when loss of staff occurs.
2. Create a tracking system/method for expiring contracts/task orders to ensure awareness of planning needs for current and future procurements.
3. Update the Procurement Manual to follow Recommendation 1 of this finding.
4. Create a SOP for staff to explain the roles, responsibilities, requirements, forms, and approvals needed for all procurement transactions including retroactive procurement requests.
5. Provide training on procurement planning to include appropriate efforts and expectations for project managers to include tracking of contracts, monitoring of expiration dates, and procurement timelines to follow for any next steps or changes to projects.
6. Provide training to departments and project managers to ensure understanding of on-call contracts and processes to award task orders.

**FINDING VII – INEFFICIENT MONETARY AMENDMENTS OF CONTRACTS FOR NON-PERFORMANCE**

During the review of procurement transactions, auditors identified 3 interrelated contracts for a project. Vendor AA<sup>18</sup> had amendments due to delays of one of the other contracts that Vendor AA was to manage. Overall costs of all 3 contracts combined increased. Vendor AA was responsible for project management and management of Vendor EE<sup>19</sup>, which included managing the contract schedule and budget, as well as oversight of Vendor EE's contract and performance. Vendor EE's task order (Task Order 1 – system build out), that was managed by Vendor AA and was executed in 2017 to be completed by 2019, has been extended to the end of 2023 due to failure to perform. Additionally, Vendor AA's contract is a combination of fixed-fee and time and materials fee schedules. Vendor AA's current contract has been amended 5 times and 3 times on the previously awarded task order/contract for a total of 8 amendments relating to the management of Vendor EE's contract.

---

<sup>18</sup> Vendor AA was identified the Audit Report Part I, Finding VII.

<sup>19</sup> Vendor EE was not identified in the Audit Report Part I, but was identified as a vendor providing services for the Project.



Vendor AA was awarded a total of **\$6,598,100** for project management related services for the project between a previously awarded task order/contract and a current contract for the same services. Vendor AA has been authorized to work on providing project management services for the project for over **10 years** (cost and time amendments).

The 23 CFR §172.5 (c)(12) & (13), state that local agencies are required to monitor the consultant's work and compliance with the terms, conditions, and specifications of the contract and prepare the consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services.

The 23 CFR §172.9(d)(2), states that the contracting agency shall prepare an evaluation summarizing the consultant's performance on a contract. The performance evaluation should include, but not be limited to, an assessment of the timely completion of work, adherence to contract scope and budget, and quality of the work conducted.

California Public Contract Code (PCC) 10369 (b), states that each agency shall evaluate the performance of the contractor doing work for the contract awarded to report on: whether the work/services were completed as specified in the contract and reasons and amounts for cost overruns or delays in completions, whether quality standards specified were met, whether the contractor fulfilled all requirements of the contract, ways the contractor did not fulfill the requirements, contractor performance difficulty factors, and how the contract results/findings will be utilized to meet agency goals.

The DOT's LAPM, Chapter 10, Sub-section 10.1.8., Administer the Contract, states that the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget, and terms of the contract.

SANDAG's BP 16, section 7.1 states that a consultant is eligible for award of service contracts by SANDAG so long as the contract in question does not create an actual, potential, or apparent conflict of interest. A prohibited conflict of interest exists when because of other activities, relationships, or contracts, a firm is or may be unable to render impartial, objective assistance or advice to SANDAG; or a firm's objectivity in performing the contract work is or might be otherwise impaired; or where a firm would receive an unfair competitive advantage.

Vendor AA's executed Contract No. 1<sup>20</sup> states that the Consultant acknowledges that timely performance is an important element of the Agreement. Accordingly, the

---

<sup>20</sup> Contract numbers have been anonymized.

Consultant shall put forth its best efforts to complete its services in accordance with the agreed-upon schedule.

Vendor AA's executed Contract No. 2 states that the Consultant's performance will be evaluated by SANDAG. A copy of the final consultant evaluation will be sent to Consultant. The evaluation, together with any responsive comments that may be sent to SANDAG by Consultant, shall be retained by SANDAG. Interim or yearly evaluations may also be performed by SANDAG.

SANDAG utilizes outside consultants to perform project management duties instead of internal staff to perform project management and oversight functions. SANDAG staff serves only as the intermediary between SANDAG leadership and Vendor AA to provide performance updates and process procurement transactions for changes to the contract(s). Staff did not perform performance evaluations upon completion or termination of task orders.

The use of consultants to perform project management duties creates a dependency on consultants to ensure another consultant is performing in accordance with their contract. Meanwhile, the Vendor EE contract is active, Vendor AA's contract must also be extended, and funds added to ensure continuity of project management services. A conflict of interest exists here as Vendor AA has a financial incentive to allow delays and recommend extensions to Vendor EE's contract.

The potential risks to SANDAG by outsourcing the project management function include:

- Taxpayer funds not being spent efficiently.
- Overspending of funds.
- Delays in projects for monetary gain to the project management consultant.
- Collusion between SANDAG staff and consultants.
- Continuing to award contracts to non-performing consultants for future or ongoing work
- Collusion between consultants.
- Preventing SANDAG internal staff from gaining technical knowledge and experience, allowing for continuous reliance on consultants.

#### **RECOMMENDATIONS:**

The OIPA recommends staff:

1. Require performance evaluations of consultants upon completion or termination of a contract and/or task order.
2. Create SOPs for project management roles that clearly explain responsibilities to ensure projects are being completed on time and in an efficient manner. This

should include assessing and documenting the consultant's completion of deliverables, milestones, and whether they meet the contract requirements and agency needs or not.

3. Create policies and SOPs that clearly explain allowed justification for amendments. These procedures should include examples of both allowable and non-allowable justifications.
4. Require that amendment requests include thorough justification details. Also require that contract analysts ensure they are reviewing and analyzing whether justifications are allowable.
5. Create a SOP for contract analysts that clearly explains how to review amendment requests and procurement history to ensure amendments are justified, to identify excessive amendments, to identify potential bid splitting, avoidance of competition, non-performing consultants, and conflicts of interest.

#### FINDING VIII – CONTRACTS AWARDED FOR SERVICES THAT IN-HOUSE STAFF SHOULD BE QUALIFIED TO PERFORM

Due to records in the OneSolution system being inconsistent and unreliable, auditors could not accurately identify the amounts encumbered and/or paid for the identified contracts. Auditors were also unable to obtain salaries and benefits data via SANDAG's payroll system (Day Force) due to confidentiality concerns presented by internal staff as well as an unwillingness and lack of cooperation from some members of management, though the IPA and OIPA auditors made several attempts with management stating that OIPA has unlimited unrestricted access to all records of any type, in accordance with AB 805.

During a review of contracts for consulting services to Human Resources (HR) and consulting services to the Office of the General Counsel (OGC), auditors identified **21** contracts for HR services and **93** contracts for OGC services for the audit period. The awarded amount for HR consulting services was **\$5,644,425.00** and the amount for OGC consulting services was **\$35,451,003.58**.

Auditors identified overlap in the services from contracts awarded to consultants and the expected duties and qualifications identified in the job descriptions of internal staff.

Auditors reviewed the top **10** HR contracts with the largest awarded dollar amounts and identified the following:

- 7 staffing and recruitment service contracts, of which 3 were concurrently active and expired at the same time, only to be replaced by 4 new concurrent contracts.
- 1 contract for employee training services.

- 1 contract for classification and compensation services.
- 1 contract for strategic plan & organizational assessment.

Comparison of HR Staff Duties to HR Consultant Contracts	
HR Staff Job Duties From Classification Specifications	Scope of Work Descriptions From HR Consultant Contracts
Coordinate and participate in recruitment and staffing activities...Participate in the review of employment applications; assist with determining candidates to be interviewed...coordinate and conduct panel interviews...prepare compensation recommendations to Executive Team members; extend and negotiate job offers.	Consultant will source and recommend appropriately qualified, experienced, and available candidates for the assignment, who fall within the hourly rate range agreed upon, and who have the capacity to perform the assignment to the fullest capacity.
Knowledge of organizational and management principles and practices involved in strategic planning, resource allocation, leadership technique, and coordination of people and resources.	Consultant will develop a comprehensive roadmap and implementation plan to align the organization with a strategy. This will incorporate all best-practice reviews, assessments, recommendations to track performance, and measures developed during the strategic planning and organizational assessment process.
Maintain the SANDAG classification program; review and update existing classification specifications; research, develop, and recommend new classifications and/or the reclassification of positions or employees; develop, implement, maintain a position control system.	Review the SANDAG Classification Program Manual and provide recommendations for modifications and updates to ensure the program reflects agency staffing practices. Assist with the review and update of classification specifications for existing job families/positions.

Auditors reviewed the top 10 legal contracts with the largest capacity dollar amounts and identified the following:

- 2 consecutive on-call contracts for condemnation and eminent domain.
- 3 contracts related to the Otay Mesa port of entry SR-11 project. 2 of which were consecutive on-call contracts, and 1 class-action settlement.
- 2 consecutive on-call contracts for environmental law services.
- 3 consecutive on-call contracts for public finance legal services. 2 of which were active concurrently.

Comparison of OGC Staff Duties to OGC Consultant Contracts	
OGC Staff Job Duties From Classification Specifications	Scope of Work Descriptions From OGC Consultant Contracts
Draft ordinances, real property documents, releases, contracts, and other legal documents that bind or obligate SANDAG.	Advise and assist staff in review and preparation of property-related documents.
Knowledge of advanced principles and applications of civil and administrative law applicable to SANDAG operations, government finance, parliamentary procedures, and other legal proceedings.	Legal assistance with the public finance aspects of financing the projects using projected toll revenues...And interpretation and application of...other public finance programs.

Advanced legal principles, practices, and procedures relating to administrative, contract, insurance, real property, transportation, transit, land use, environmental, and construction matters particularly as applied to public agencies.	Consultant shall advise and assist staff as necessary in review and preparation of environmental documents...as well as any other state, federal, or local law or regulation related to the planning and implementation of SANDAG projects, including, but not limited to, transit, highway, and active transportation projects, regional planning projects..
Represent SANDAG directly or through the supervision of outside counsel in legal proceedings before courts, arbitrators, administrative agencies, and boards; conduct complex legal research, prepare pleadings, briefs, motions, court orders, legal opinions, and other court documents; appear in court; negotiate with other parties.	Consultant may be asked to provide defense or advocacy services on behalf of SANDAG of the Project. Consultant may oversee litigation, including complex discovery, bench and jury trials, writs, and administrative proceedings. Represent SANDAG as counsel of record and advise and assist staff with issues relating to the tender of claim for insurance coverage and defense.
Provide legal guidance on public agency contracting and procurement processes ensuring contracts and agreements are consistent with federal, state, and/or local funding agency requirements and are written in a manner that protects the interests of SANDAG.	Advise and assist staff with specifications, contracts, and invitation for bids preparations.

From the review of HR and OGC staff duty statements, auditors could not determine if staff expertise are in line with the job descriptions. Duty statements were sometimes vague, and the level of detail was inconsistent.

The GAO's *Opportunities for Oversight and Improved Use of Taxpayer Funds Testimony* document states that no government should waste its taxpayers' money, whether we are operating during a period of budget surpluses or deficits. Further, it is important for everyone to recognize that waste, fraud, abuse, and mismanagement are not victimless activities. Resources are not unlimited, and when they are diverted for inappropriate, illegal, inefficient, or ineffective purposes, both taxpayers and legitimate program beneficiaries are cheated.

SANDAG's Board Policy No. 041 (BP 41) states that the Board of Directors and executive management are accountable to the public. The basic elements of accountability include efficiently making optimal use of scarce resources and demonstrating accountability for the stewardship of resources placed in their care.

SANDAG utilizes outside consultants to perform work that in-house staff should be qualified to perform, in accordance with their classification specifications. SANDAG staff act as project managers when contracts are awarded to consultants.

The potential risks to SANDAG are as follows:

- Duplication of costs and overspending of taxpayer funds on overlapping services when in-house staff can perform the work.

- Data breaches from external consultants.
- Internal controls not being followed due to consultant standards and practices not aligning with SANDAG.
- Highly paid staff performing project management duties.
- Board and OIPA matters that conflict with SANDAG Management's perspective.

**RECOMMENDATIONS:**

The OIPA recommends staff:

1. Conduct an analysis to determine if additional staff is needed to perform common legal and/or HR services, which could ensure a cost saving to the agency.
2. Provide training to ensure OGC staff is qualified to meet SANDAG's needs and the requirements of their classification specification. Training should include environmental, construction, employment, public finance, contracts, intergovernmental, binational relations, and toll operations.
3. Consider reducing in-house legal staff down to one or two attorney's and move to outsourcing only. This would further support independence, from a legal perspective, around the Board, Management and OIPA matters.
4. Provide training to ensure HR staff is qualified to meet SANDAG's needs and the requirements of their classification specification. Training should include staff recruitment, strategic planning and organizational assessment, classification and compensation, and employee training.
5. Recruit and hire staff that is qualified based on the applicable classification specification and can meet the needs of SANDAG.
6. Provide leadership training to address analyzing internal capacity/experience versus external expertise to mitigate overspending on consultants, identifying training needs for staff based on continuous agency needs, and improving efficiency around project performance and avoiding potential delays.

## BACKGROUND, SCOPE, AND METHODOLOGY

### AGENCY BACKGROUND AND CREATION OF THE OFFICE OF THE INDEPENDENT PERFORMANCE AUDITOR

Founded in 1980, San Diego Association of Governments (SANDAG) was created by local governments as a long-range planning agency within the San Diego County government as a state-authorized joint powers authority. Currently SANDAG is defined by the State Controller's Office as an Independent Special District. This public agency serves as the forum for regional decision-making. The agency builds consensus; makes strategic plans for the region; obtains and allocates resources; plans, engineers, and builds public transportation; conducts criminal justice research; and provides information on a broad range of topics pertinent to the region's quality of life.

SANDAG is governed by a Board of Directors composed of mayors, council members, and county supervisors from each of the region's 18 cities and County. Supplementing these voting members are advisory member representatives from Imperial County, the U.S. Department of Defense, California Department of Transportation, Metropolitan Transit System, North County Transit District, San Diego County Water Authority, San Diego Unified Port District, San Diego Regional Airport Authority, Southern California Tribal Chairmen's Association, and Mexico.

SANDAG currently has approximately 450 employees. The agency's program budget for fiscal year 2022-23 was \$1.04 billion. This budget includes \$52.1 million in projected costs for the overall work program, \$76.9 million for regional operations, and the annual portion of the capital program is projected to be \$470.9 million, of which \$215 million will be passed through to Caltrans District 11 and local agencies. The SANDAG financial outlook is tied to the health of the regional, state, national, and global economy. Economic performance can impact sales tax receipts and other sources of revenue that the agency depends on to carry out its projects and programs. Sales tax-based revenues such as Transportation Development Act and TransNet are a significant source of funding for both the Capital Program and the Overall Work Program (OWP).

On January 1, 2018, a new California Assembly Bill ([AB 805](#)) required the creation of the SANDAG Audit Committee, and an independent performance auditor (IPA) position. The Audit Committee is responsible for making recommendations to the SANDAG Board of Directors regarding the hiring and oversight of the work of the SANDAG independent performance auditor, the SANDAG annual audit plan, the external financial auditors for SANDAG, and internal control guidelines for the agency. The Audit Committee also is responsible for monitoring the implementation of any corrective actions arising from the audits. Prior to the creation of the Audit Committee and IPA,

SANDAG had only 1.5 full-time equivalent internal audit positions reporting directly to management.

## SCOPE

The OIPA audited the processes and procedures for the period of July 1, 2017 to June 30, 2021.

## METHODOLOGY

The audit of internal controls was performed. The audit consists primarily of testing controls and testing contracts and procurement processes and transactions. Procedures included testing and evaluating if policies, procedures and internal controls over contracts and procurement exist, are being followed, functioning effectively, and determining whether procurement transactions are appropriate, allowable and supported by adequate documentation.

Additionally, auditors followed procedures in accordance with SAS No. 122 and with SAS No. 99 that included performing a brainstorming session regarding potential fraud as it relates to the audit and document the process.

The substantive audit procedures (dual testing) consisted of an examination of the evidence that supports the recording, authorizing, and approving; reviewing and reporting; and the monitoring and maintenance processes and procedures relevant to the audit. The examination entailed testing, on a sample basis, a portion of the population of transactions and the controls around the process.

Auditors' consideration of audit risk and materiality is a matter of professional judgment. There are quantitative and qualitative elements to consider when establishing a materiality factor, including risk of fact and appearance.



## APPENDIX A – TABLES FROM CONTRACTS AND PROCUREMENT OPERATIONAL AND SYSTEM CONTROL AUDIT – PART I

Table 1.1

CONTRACTORS WITH 10 HIGHEST PERCENTAGE CHANGE BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (No Blanks or On-call)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	Difference	% Change	Vendor Type
Vendor A	\$4,529,303	\$25,333,445	\$20,804,142	459%	Services
Vendor B	2,848,800	11,187,910	8,339,110	293%	Construction
Vendor C	1,000,000	2,084,312	1,084,312	108%	Construction
Vendor D	1,350,340	2,702,605	1,352,265	100%	Services
Vendor E	2,887,873	5,095,629	2,207,756	76%	Services
Vendor F	9,646,701	16,925,950	7,279,249	75%	Services
Vendor G	1,096,164	1,861,245	765,080	70%	Services
Vendor H	1,200,000	2,000,000	800,000	67%	Services
Vendor I	15,881,019	26,302,039	10,421,019	66%	Services
Vendor J	7,467,530	12,162,981	4,695,451	63%	Services

Table 1.2

CONTRACTORS WITH 10 HIGHEST DOLLAR DIFFERENCES BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (No Blanks or On-call)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	Difference	% Change	Vendor Type
Vendor A	\$4,529,303	\$25,333,445	\$20,804,142	459%	Services
Vendor I	15,881,019	\$26,302,039	10,421,019	66%	Services
Vendor B	2,848,800	11,187,910	8,339,110	293%	Construction
Vendor F	9,646,701	16,925,950	7,279,249	75%	Services
Vendor K	26,337,660	33,305,001	6,967,340	26%	Public Agency
Vendor L	39,914,596	46,720,603	6,806,006	17%	Construction
Vendor M	58,071,354	63,907,698	5,836,344	10%	Public Agency
Vendor N	11,142,611	16,221,470	5,078,859	46%	Construction
Vendor J	7,467,530	12,162,981	4,695,451	63%	Services
Vendor O	29,864,686	32,788,499	2,923,813	10%	Construction

Table 2.1

CONTRACTORS WITH 10 HIGHEST PERCENTAGE CHANGE BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (On-call)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	\$ Difference	% Change	Vendor Type
Vendor P	\$1,289,810	\$10,289,100	\$8,999,290	<b>698%</b>	Services
Vendor Q	6,657,981	15,140,577	8,482,596	<b>127%</b>	Services
Vendor R	31,713,659	63,245,356	31,531,696	<b>99%</b>	Services
Vendor S	1,311,000	2,606,000	1,295,000	<b>99%</b>	Services
Vendor T	2,194,935	4,347,559	2,152,625	<b>98%</b>	Services
Vendor U	33,483,362	59,959,958	26,476,596	<b>79%</b>	Services
Vendor V	8,168,701	13,356,401	5,187,700	<b>64%</b>	Services
Vendor W	9,098,295	14,545,304	5,447,009	<b>60%</b>	Services
Vendor X	35,390,247	56,538,676	21,148,429	<b>60%</b>	Services
Vendor Y	5,234,852	7,821,560	2,586,708	<b>49%</b>	Services

Table 2.2

CONTRACTORS WITH 10 HIGHEST DOLLAR DIFFERENCES BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (On-call)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	Difference	% Change	Vendor Type
Vendor Z	\$140,307,107	\$204,290,405	<b>\$63,983,298</b>	46%	Services
Vendor R	31,713,659	63,245,356	<b>31,531,696</b>	99%	Services
Vendor AA	57,076,879	84,561,618	<b>27,484,739</b>	48%	Services
Vendor U	33,483,362	59,959,958	<b>26,476,596</b>	79%	Services
Vendor X	35,390,247	56,538,676	<b>21,148,429</b>	60%	Services
Vendor BB	37,337,211	52,205,418	<b>14,868,207</b>	40%	Services
Vendor CC	62,759,209	75,508,508	<b>12,749,298</b>	20%	Services
Vendor DD	28,646,269	39,906,977	<b>11,260,707</b>	39%	Services
Vendor P	1,289,810	10,289,100	<b>8,999,290</b>	698%	Services
Vendor Q	6,657,981	15,140,577	<b>8,482,596</b>	127%	Services

Table 3.1

CONTRACTORS WITH 10 HIGHEST PERCENTAGE CHANGE BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (On-Call and Non-On-Call Combined)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	\$ Difference	% Change	Vendor Type
Vendor P	\$1,289,810	\$10,289,100	\$8,999,290	<b>698%</b>	Services
Vendor A	4,529,303	25,333,445	20,804,142	<b>459%</b>	Services
Vendor B	2,848,800	11,187,910	8,339,110	<b>293%</b>	Construction
Vendor D	1,350,340	2,702,605	1,352,265	<b>100%</b>	Services
Vendor R	31,713,659	63,245,356	31,531,696	<b>99%</b>	Services
Vendor T	2,194,935	4,347,559	2,152,625	<b>98%</b>	Services
Vendor Q	10,422,638	19,884,304	9,461,666	<b>91%</b>	Services
Vendor U	33,483,362	59,959,958	26,476,596	<b>79%</b>	Services
Vendor E	2,887,873	5,095,629	2,207,756	<b>76%</b>	Services
Vendor F	9,646,701	16,925,950	7,279,249	<b>75%</b>	Services

Table 3.2

CONTRACTORS WITH 10 HIGHEST DOLLAR DIFFERENCES BETWEEN ORIGINAL AND CURRENT AMOUNTS AWARDED (On-Call and Non-On-Call Combined)					
Vendor	Original Amount Awarded (All Contracts Combined)	Current Amount Awarded (All Contracts Combined)	Difference	% Change	Vendor Type
Vendor Z	\$140,307,107	\$204,290,405	<b>\$63,983,298</b>	46%	Services
Vendor R	31,713,659	63,245,356	<b>31,531,696</b>	99%	Services
Vendor AA	58,166,991	88,015,358	<b>29,848,367</b>	51%	Services
Vendor U	33,483,362	59,959,958	<b>26,476,596</b>	79%	Services
Vendor X	35,396,122	56,538,676	<b>21,142,554</b>	60%	Services
Vendor A	4,529,303	25,333,445	<b>20,804,142</b>	459%	Services
Vendor BB	44,400,092	59,268,299	<b>14,868,207</b>	40%	Services
Vendor CC	62,759,209	75,508,508	<b>12,749,298</b>	20%	Services
Vendor DD	28,816,904	40,077,611	<b>11,260,707</b>	39%	Services
Vendor I	15,881,019	26,302,039	<b>10,421,019</b>	66%	Services

## MANAGEMENT RESPONSE – Cover Letter



April 12, 2023

TO: Mary Khoshmashrab, Independent Performance Auditor

FROM: Hasan Ikhata, Chief Executive Officer

SUBJECT: Management Response to the OIPA Contracts and Procurement Operational and System Control Audit (Part II)

The SANDAG Management Team appreciates the opportunity to respond to the Draft Office of the Independent Performance Auditor (OIPA) Contracts and Procurement Operational and System Control Audit (Part II) for the period of July 1, 2017 to June 30, 2021.

As Chief Executive Officer, I have worked with the Board to set the tone that SANDAG welcomes and seeks out opportunities for continuous improvement, that the public expects and deserves operational excellence, and that SANDAG Management values the rigorous evaluation of programs and operations conducted via various audits and reviews. The perspectives, findings, and recommendations that emerge from each of these efforts fuels the agency's commitment to ongoing enhancements and business optimization and supports the goal of becoming a world-class organization.

Part I of the Contracts audit was completed in October 2022. Management agreed with all findings as well as the proposed recommendations that focused on ensuring the agency has effective policies, procedures, and processes in place; capable and proficient staff who are aware of their roles, responsibilities, and performance expectations; and a robust technology solution that improves efficiency and supports recordkeeping, reporting, and controls. As part of its response to the Part I of the audit, Management noted that a more comprehensive work plan, beyond the proposed actions recommended by OIPA, was warranted to fully address the organizational and systemic issues that impact the overall effectiveness of the agency's contracts and procurement function. As explained further below and in the attached Action Plan (Attachment 2), this workplan, referred to as the Procurement Program Optimization Initiative, will incorporate recommendations from both Parts I and II of the audit and is in development.

#### **Addressing Matters of Concern Noted in the Audit**

We are pleased that OIPA concludes that "the auditors found no indication of intentional wrongdoing or fraud by staff." We would like to address that the report states that information was not available to OIPA for OIPA to perform "a large percentage of substantive testing and testing for procurement fraud." Management believes it fully cooperated with OIPA throughout the audit, and worked to provide access to all systems, documents, and records as requested. As noted below, where access to the agency's complete payroll system was

requested management worked in good faith with the auditor team to find a solution that provided all needed records while protecting sensitive personal information unrelated to the audit scope.

After receiving the draft report, Management was concerned when it learned that certain records could not be found. Management asked for OIPA's assistance in identifying these records, and the auditors met with SANDAG staff to provide specific details about which records they had been unable to locate. Using this information, Management has since verified the existence of most of the 'missing' documents and welcomes the opportunity to provide copies to OIPA and the Board.

Management acknowledges the high volume of documentation the agency maintains with respect to procurement, contract administration, and accounting and other functions, as well as the need for improved data and record management systems. Management also appreciates the challenge the auditors encountered in locating all records they were seeking to perform the audit, and offers the following background information to illustrate the complexities:

- The audit period was defined as July 1, 2017 through June 30, 2021, and included a review of all contracts that were open and active at any time in that five-year period, including all supporting documents and related financial transactions. Based on this parameter, hard copies of documents from over a decade ago (2011-2012) were requested, making retrieval difficult and cumbersome.
- With respect to solicitation and contract records that were requested: these are maintained in the three different systems that SANDAG has used at different points over the last 10+ years, making identifying specific records, and extracting them when applicable, a complicated task.
- With respect to financial records that were requested: these are maintained in yet another digital system (OneSolution) or stored in hard-copy format. Management recognizes the difficult nature of the search function within OneSolution which may have contributed to difficulty finding records.

Again, Management can appreciate that searching for records within multiple different file storage systems is extremely cumbersome during an audit. Consolidating all agency documents into a single system of record is one of Management's priority business objectives to ensure future audits can be performed efficiently.

As a second matter, there are at least two sections in the audit report where OIPA has contended a lack of cooperation from Management regarding access to payroll records and states this impacted OIPA's ability to effectively conduct the audit. Management notes that OIPA did not explicitly request "salaries and benefits data." Rather, OIPA requested "read only access to all timesheet and payroll data" which would have provided OIPA staff with personally identifiable information of employees, including social security numbers, dates of birth, home addresses, bank account details, etc. as well as other information that employees expect SANDAG to maintain with the appropriate levels of security and confidentiality, such as beneficiary designations, wage garnishments, life insurance documentation, etc.

Management responded to the request while always working to fully comply with the requirements set forth in AB 805, which states the Auditor may request access to information “regarding powers, duties, activities, organization, property, financial transactions, contracts, and methods of business required to conduct an audit or otherwise perform audit duties” while also upholding Management’s responsibility to protect the privacy rights of current and former employees. Management suggested alternate ways to fulfil the request without improperly disclosing confidential information. OIPA staff accepted this approach and the requested information was made available. To the extent that salary or benefit data were not adequately accessed by OIPA staff, management stands ready to provide any specific data that is needed to fully undertake the scope of the Contracts and Procurement Audit.

### **Initiatives are Underway to Strengthen Procurement and Contracting Functions**

Management’s response to Part I of the Contracts audit outlined several actions that SANDAG is proactively taking, many of which will directly and positively impact the agency’s procurement and contracting functions. These commitments are part of the Strategic Initiatives adopted in early 2022 and underway today. Through this work, SANDAG is actively responding to the monumental shift in the external business environment that has occurred in recent years coupled with the increased expectation for rapid advancement of regional programs and projects. Throughout the agency, departments and teams have set goals aimed at modernizing and transforming business practices – a continuation of work that has been relentlessly pursued for at least five years.

Management recognizes the extent to which procurement and contract administration functions are essential to SANDAG’s success. To illustrate, the agency’s FY 2022 Budget was approximately \$1.04 billion. Of this, \$320 million in work was awarded to consultants and contractors via more than 1,000 contract transactions. To ensure SANDAG has the internal infrastructure and capacity to support the agency’s ongoing procurement needs, three significant improvement projects are planned and/or underway. These include:

- Implementation of an Enterprise Resources Planning (ERP) system to support all core business operations and create a single, consolidated “system of record” for budget, financial, contracts, payroll, human resources, and other related functions.
- Hiring a Director of Contracts and Procurement Services to transform SANDAG’s overall approach to using consultants and contractors.
- Launching the Procurement Program Optimization Initiative (PPOI) that will include an assessment of all facets of SANDAG’s procurement and contract administration functions, coupled with implementation of policy, process, and procedure improvements.

Management recently committed to providing regular progress updates to the Board regarding the Strategic Initiatives; these reports will summarize the achievement of key milestones and/or completion of internal program and process improvement initiatives.

**Conclusion**

Management has reviewed the draft audit and has prepared the attached Management Response (Attachment 1) and Proposed Action Plan (Attachment 2). The Management Response provides information about each of the audit findings, with the goal of providing additional information to OIPA, as well as assisting the Audit Committee and Board in evaluating the audit's findings and recommendations.

On behalf of the SANDAG Management Team, this agency is committed to strengthening policies and controls, implementing process and procedural changes, and continuously evaluating and improving programs and business practices throughout the organization. Management's commitment to do so is articulated in the attached Draft Management Action Plan. Several of the proposed actions tie largely to implementation of the ERP system, which will completely overhaul the agency's budget, financial, contracts, personnel, and other related systems and create a single 'system of record.' Others will be considered and addressed as part of the Procurement Program Optimization Initiative, which will first examine and then implement a series of improvements to the methods used for acquiring goods and services and managing consultant resources.

Please contact me with any questions regarding the information provided in response to the audit.

Sincerely,



HASAN IKHRATA  
Chief Executive Officer

**Attachments:**

1. Management Response to Audit Findings
2. Draft Management Action Plan for Part I and Part II of the Contracts Audit

cc: Ray Major, Deputy CEO, Business Operations  
Andre Douzjian, Chief Financial Officer  
John Kirk, General Counsel  
Melissa Coffelt, Senior Director of Organization Effectiveness  
Kelly Mikhail, Manager of Contracts and Procurement Services  
Select members of SANDAG's Executive Team  
OIPA Staff

# MANAGEMENT RESPONSE – Attachment 1

Attachment 1



## MANAGEMENT RESPONSE

OIPA Contracts and Procurement Operational and System  
Control Audit (Part II) for the period July 1, 2017 to June 30, 2021

April 12, 2023

### Introductory Remarks

The SANDAG Management Team appreciates the opportunity to respond to the draft of the Office of the Independent Performance Auditor (OIPA) Contracts and Procurement Operational and System Control Audit (Part II) and hopes that the information provided may help to address any outstanding questions and inform its final report.

SANDAG continuously evaluates its organizational structure, its operations and procedures, and its overall effectiveness to best serve the residents of the San Diego region, the agency's Board of Directors, and its stakeholders. Since 2017, the agency has taken bold and coordinated actions to restore and ensure SANDAG's integrity, reliability, accuracy, accountability, and transparency. Many of the Audit's findings are consistent with issues that our team identified through these previous efforts and have been superseded by new practices. In fact, more than 140 process improvements and efforts have been implemented in the past few years to drive the agency's continuous improvement.

The sweeping changes at the SANDAG core—its people, processes, and technology—had their genesis in three plans: the 7-Point Data Accuracy & Modeling Work Plan (2017), broader agencywide Plan of Excellence (2018), and the Agency Strategic Plan Framework (2021). These plans served as comprehensive responses to both internal and external recommendations and demonstrates the agency's ability to adapt to a rapidly changing technological, funding, and regulatory environment, especially since 2020, when the COVID-19 pandemic created a structural shift in how businesses operate. The improvements also exhibit how SANDAG has enhanced and augmented its systems and procedures as part of its continued evolution from planning agency to designer, builder, and operator in the region's transportation infrastructure. While many of the three plans' objectives have already been achieved as of early 2023, there is always more to be done and Management fully agrees with the need to continuously improve policies, controls, and procedures.

While the audit broadly cites a number of rules and regulations, in many instances these authorities did not apply to the transactions at issue. The following report provides additional information and context to clarify how policies and procedures were followed based on the applicable years of rules and regulations. For example, while we were not able to provide



unrestricted access to the entire payroll system, Management offered other ways to provide all required information that did not improperly disclose private employee information, including social security numbers, dates of birth, home addresses, and bank account details, as well as other information that employees expect SANDAG to maintain with the appropriate levels of security and confidentiality, such as beneficiary designations, wage garnishments, life insurance documentation, etc. Management suggested alternate ways to fulfil the request without improperly disclosing confidential information. OIPA staff accepted this approach and the requested information was made available.

A separate Audit Action Plan has been prepared with management's responses to the recommendations from both Part I and Part II of the audit. Several of the recommendations are already in process, and will be achieved in conjunction with Management's implementation of an Enterprise Resource Planning (ERP) system. Also, many of the recommendations will be considered as part of an already-ongoing comprehensive Procurement Program Optimization Initiative that will examine all aspects of the agency's procurement and contracting functions.

In addition, Management appreciates that OIPA agreed to meet with SANDAG to assist in locating documents identified as missing that might have been misfiled, and to help understand the findings in the audit so that a meaningful response and action plan could be developed.

Management has reviewed the results of the audit, including the recommendations offered by OIPA, and has responded below to the findings. Please note that this Response does not contain a rebuttal for every statement in the audit report. Instead, Management has put forth additional information to assist the Audit Committee and Board of Directors (Board) in evaluating the findings and recommendations from OIPA. Management also wishes to establish that, even if it does not agree with portions of the audit or the way some elements are described, it is supportive and appreciative of many of the recommendations to the extent they provide opportunities for enhancements to SANDAG's business operations.

A separate Audit Action Plan has been prepared with management's responses to the recommendations from both Part I and Part II of the audit. Several of the recommendations are already in process, and will be achieved in conjunction with Management's implementation of an Enterprise Resource Planning (ERP) system. Also, many of the recommendations will be considered as part of an already-ongoing comprehensive Procurement Program Optimization Initiative that will examine all aspects of the agency's procurement and contracting functions, not just the recommendations from the audit.

The remainder of this document provides information responsive to each of the findings in the audit.

## MANAGEMENT RESPONSE TO AUDIT FINDINGS

### **Response to Finding I:** (see pages 16-33 of Draft Audit Report)

SANDAG Complied with the Pertinent and Operative Procurement Laws, Rules, Regulations, and Internal Policies and Processes

SANDAG manages a contracts and procurement function that spans across over 60 distinct funding sources, each with its own unique and evolving procurement regulations and requirements. Applicable procedures and standards are consistently changing to achieve operational improvements and ensure compliance with new laws. While OIPA broadly cites various regulations, manuals, and standards throughout the audit, it often references *current* versions of regulations, manuals, and standards that were *not* in effect at the time of transaction execution.<sup>1</sup> Going forward, SANDAG will seek to reference applicable policies and recommendations in the upcoming ERP system so it can be seen in a procurement file which procedures were in effect at the time of contract award.

### Response to Sub-finding I: (see pages 16-18 of Draft Audit Report)

Individual evaluation scoresheets and notes for solicitations that the audit identified as missing were located.

Management does not dispute that OIPA was unable to find certain evaluation scoresheets, nor that OIPA finds some of the scoresheet documentation to be "insufficient." Management notes that the records identified as "missing" by OIPA are from solicitations conducted in 2011 and 2016, respectively; these have since been located. The documents were later found within the hard-copy file storage systems used at the time of the solicitations.

Since 2016, SANDAG has implemented significant improvements to procurement documentation standards, as well as record-keeping practices, including moving from a paper system to an electronic system. Further improvements to records management will be realized through the ERP.

---

<sup>1</sup> To support this finding, OIPA reviewed transactions with execution dates that span from 2012 to 2021. OIPA reviewed 2 solicitations (one advertised in 2011, and another in 2016), and selected 3 "master on-call" contracts awarded from these solicitations. OIPA then reviewed 61 tasks orders issued under these master on-call contracts, and the amendments to those task orders (137 amendments).

Response to Sub-finding 2: (see pages 18-22 of Draft Audit Report)

The identified transactions adhered to competition requirements in effect at the time.

OIPA states that contracts and task orders were not “fully and openly competed and were also not documented as sole source procurement transactions, which conflicts with SANDAG’s Equity and DBE commitments.”

The agreements identified by OIPA complied with the applicable requirements in place at the time of execution. The task orders OIPA identified as deficient were associated with master on-call contracts awarded in 2012 and 2016, and were not subject to the requirements in the current version of the Procurement Manual. Back in 2012 and again in 2016, the full and open competition was conducted at the master on-call contract level, and no secondary task order competition was required to award work under the task order, consistent with funding agency requirements at the time. Since no secondary task order competition was required, no sole source justifications or limited competition forms were required. In subsequent years, as Caltrans and other funding agencies updated guidance and provided SANDAG with feedback on best practices relating to advertising on-call contracts and pre-qualified consultant lists, SANDAG implemented the necessary procedural changes and corresponding process improvements.

OIPA concluded that one contract, which was sole-sourced, required full and open competition. However, the sole source process in effect at the time of the transaction was followed; a signed Sole Source Justification form with facts supporting the justification is available in the contract file.

As to SANDAG’s DBE and Equity commitments, the requirements do not depend on whether a contract or task order results from a full competition, limited competition, or sole source, and DBE goals are often achieved at the sub-consultant level. Each transaction is analyzed to ensure that the appropriate DBE and small business (SB) requirements are included and that the appropriate percentage of work is available to be performed by disadvantaged and small businesses. Management notes that the audit does not identify any violations of DBE or equity commitments.

We are proud that the SANDAG DBE program was regarded as “exceptional” during the 2022 FTA Review and is also being used by Caltrans as a model for the state.

Response to Sub-finding 3: (see pages 22-23 of Draft Audit Report)

OIPA states that contract and task order amendments that exceeded \$100,000 required Board approval, but did not appear to analyze whether the contract amendments were within the applicable project budget.

Under policies approved by the Board, the CEO has the authority to approve a contract amendment regardless of amount if it is within the total project budget authorized by the Board.

Staff research found that all project amendments cited in the audit were within the approved budget when the amendment was executed.

OIPA states that contract and task order amendments with a value or combined amendment value of more than \$100,000 were issued without Board approval. But amendments that are within the Board-approved project budget or within the Executive Director's delegated authority to make limited budget amendments are authorized. This does not appear to have been analyzed in the audit. SANDAG's implementing legislation<sup>2</sup> specifically allows that "any and all executive, administrative and ministerial power may be delegated and redelegated by the board...." It further directs that "[a]dministrative authority for the consolidated agency shall be vested in the office of the executive director, subject to the direction and policies of the consolidated agency as approved by the Board." The Board has provided this direction via its adopted Bylaws and Board Policies to "establish the authority granted by the Board of Directors to the Executive Director" and "provide[] the Executive Director with authority to delegate functions he or she has been delegated by the Board to SANDAG staff."<sup>3</sup>

The Board is responsible for approving project budgets, and does so in one of two ways: as part of the Annual Program Budget, or as a one-off Budget Amendment brought to the Board on an as-needed basis. Once a project budget is approved, the Board grants the Executive Director, or his/her designee, authority to implement the budget, including entering into agreements within the approved project budget, as well as those that exceed the approved project budget by up to \$300,000.<sup>4</sup> (See, Board Policy No. 016 (Procurement of Services), paragraph 6.4, and Board Policy No. 017 (Delegation of Authority), paragraphs 1 and 4.1.)

Response to Sub-finding 4: (see pages 23-25 of Draft Audit Report)

The issuance of retroactive agreements was consistent with applicable procurement laws, rules, regulations, and internal policies.

OIPA noted 17 transactions<sup>5</sup> as retroactive in the audit report but did not explain how retroactive agreements support the finding of "noncompliance" with procurement laws, rules, regulations, or internal policies. Retroactive transactions are not prohibited by federal or state law or regulations,<sup>6</sup> nor are they disallowed under SANDAG's procurement policies.

---

<sup>2</sup> See, *Public Utilities Code sections 132351.1, subd. (c) and 132355.*

<sup>3</sup> See, *SANDAG Bylaws, Article III, § 2(a) and Board Policy No. 017.*

<sup>4</sup> *The amounts in Board Policy Nos. 016 and 017 were increased from \$100,000 to \$300,000 by the Board of Directors on June 11, 2021 and January 25, 2019, respectively.*

<sup>5</sup> *Three of the transactions were not retroactive.*

<sup>6</sup> *To support its finding, OIPA primarily relied on the current version of the California Department of Transportation (DOT) Local Assistance Procedures Manual (LAPM), which applies only to certain Caltrans*

While Management agrees that the use of retroactive procurements is not a best practice in all situations, it does have limited applicability and must be used only sparingly with consideration of appropriate funding sources. During the audit period, program improvements have been implemented, including mechanisms for tracking expiration dates, and additional requirements in obtaining approvals,<sup>7</sup> to minimize the use of retroactive amendments.

Response to Sub-finding 5: (see pages 25-27 of Draft Audit Report)

The audit identifies some transactions as missing approval documents, although in all but one instance these documents were not required.

OIPA states that “13 transactions were missing requisition forms; 14 transactions were missing Independent Cost Estimates; 71 transactions were missing Records of Negotiations; and 61 transactions were missing a Cost Analysis.” However, OIPA cites to the current version of the Procurement Manual, but the transactions were associated with master on-call contracts awarded in 2012 and 2016, and were not subject to the requirements in the current version of the Procurement Manual.

The majority of the transactions in this sub-finding were time-only extensions involving no change to the scope or value of the awarded contract. Time-only extensions do not (and never have) require an ICE, a Record of Negotiation, or a Cost Analysis because there is no monetary change in the amendment. Management verified that 88% of the forms OIPA identified as missing were not required. Management located 12% of the forms in the legacy digital procurement files. Out of the 159 forms OIPA identified as missing, one Record of Negotiation was required, but not found (for a task order executed in 2012), which management agrees is a deficiency.

The implementation of the Contract Management System (CMS) in 2019-2020 improved the documentation of agreement approvals. SANDAG has also improved templates and forms, and made revisions to the standards set forth in the current version of the Procurement Manual.

---

*administered grant programs; it does not apply to every contract transaction SANDAG performs. Notably, the LAPM does not prohibit the use of retroactive amendments; it clarifies that reimbursement is not allowed for subsequent costs on a contract if the amendment is retroactive. OIPA's noted transactions were processed and approved within SANDAG's established procedures and in a manner consistent with the applicable funding agency requirements.*

*<sup>7</sup> SANDAG's current process for obtaining retroactive approval is comprehensive and deters retroactive amendments. The project manager must provide a memorandum stating the reason there is a need for the retroactive amendment, certifying the funding source, and providing ways in which they will prevent it from happening again. The retroactive request must then be approved by the Director and Manager of Contracts and Procurement Services.*

Response to Sub-finding 6: (see pages 27-28 of Draft Audit Report)

The audit identifies some contracts, task orders, and amendments as missing signatures, although in all instances these signatures were not required or were provided.

OIPA identified 8 (out of the reviewed 201) transactions as missing signatures by the Office of General Counsel (OGC) to support a finding that “contracts, task orders, and amendments were missing signatures.”

The administrative Delegation of Authority by the Executive Director policy allows a Director, in limited low-risk situations, to approve task orders/task order amendments issued under a master contract and reviewed by a Senior Contracts and Procurement Analyst, without signature by OGC. There was one instance of the 8 identified by OIPA where OGC’s signature was required, and Management research showed that it was in fact signed by OGC. The remaining 7 transactions met the criteria for Director approval without concurrence by OGC.

Response to Sub-finding 7: (see pages 28-30 of Draft Audit Report)

SANDAG has made process enhancements for documentation of justifications for task order amendments, and the contracts reviewed in the audit predate these improvements for documenting justifications for task order amendments.

The audit assessed older task orders based on today’s standards, and not standards in place when they were generated. OIPA cites to SANDAG’s current version of the Procurement Manual to find that justifications for contract and task order amendments were “inadequate.” The records OIPA identified as inadequate were associated with master on-call contracts awarded in 2012 and 2016. However, this does not reflect current standards that SANDAG uses today and have been improved over time.

When reflecting on past processes that are no longer in place, Management concurs that the justifications supporting historical contract and task order amendments were not as robust as they are today. This issue had been identified several years ago and was corrected when the CMS was implemented in 2019-2020, along with revisions to templates, forms, and expectations set forth in the updated Procurement Manual.

Response to Sub-finding 8: (see pages 30-32 of Draft Audit Report)

The task order records identified as missing were either located by Management or the task order requests were cancelled prior to execution, making the issue moot.

OIPA states that 8 out of 61 task orders were missing from SANDAG’s electronic SharePoint site and/or CMS. Management verified that 7 of the 8 task orders OIPA identified as missing were never issued; the transactions were cancelled prior to execution. Management located the one other task order that OIPA states was missing in the legacy digital procurement file system; policies and procedures being used at the time did not require documentation when a task order request was cancelled prior to execution, unlike SANDAG’s current standards. All 8 “transactions” occurred prior to

implementation of the CMS in 2019-2020; this tool has improved the agency's ability to track cancelled transactions.

Response to Sub-finding 9: (see pages 32-33 of Draft Audit Report)

SANDAG's contract templates were updated in 2018 to clarify effective dates.

OIPA found that one contract, executed in 2016, had "conflicting contract dates with no clear explanation of applicability." Management agrees with the finding, and identified this problem and subsequently resolved this issue in 2018 by updating the standard agreement templates to clarify the effective dates of the agreements. The audit report does not include any findings related to conflicting dates in contract documents since these improvements were implemented.

**Response to Finding II:** (see pages 33-36 of Draft Audit Report)

Awards were Appropriately Competed and Amended in Accordance with Existing Policies and Procedures

OIPA primarily focuses on one on-call agreement for environmental planning and architect and engineering design services to find that "high awards and increases [were] due to non-competed-procurements and excessive amendments." Management identified no wrongdoing; the amendments were issued based on a legitimate business need – namely, to pay for environmental and engineering services for the Mid-Coast Corridor Transit (a \$2.17 billion project). The magnitude of the total award to Vendor Z reflects the size and complexity of the project work assigned and the need to both award that work incrementally – as all funds including competitive grants for the project had not yet been secured -- and to maintain design and other professional continuity on the project; it does not reflect a failure of any procurement processes or violations of Board policies.

The master Architectural and Engineering (A&E) and environmental on-call contract utilized for the referenced procurement was competitively procured. Task orders issued under this master A&E on-call contract, which was executed more than 13 years ago, were issued in accordance with the applicable requirements at the time and in accordance with the Brooks Act, which requires selection of the most qualified firm based upon their competency, qualifications, and experience rather than by price.

Management believes that the value of award and number of amendments processed in association with the referenced master on-call contract were not excessive. Vendor Z, as identified in the audit, received only 6% of the total number of task orders issued across the entire A&E and environmental on-call series (13 task orders out of 211), which included 14 other consulting firms. While Vendor Z did in fact receive \$128,1551,111 out of the total on-call capacity

for that series, the referenced contract was utilized to execute, among other tasks, environmental clearance and multiple phases of design for the Mid-Coast Project.<sup>8</sup>

The amendments identified did not require Board approval, under policies approved by the Board. (See Management's Response to Finding I, sub-finding 3.)

**Response to Finding III:** (see pages 36-39 of Draft Audit Report)

Invoices are Available, Supported with Appropriate Documentation and Paid In Accordance with the Corresponding Fee Schedule

Management has located each OneSolution record (SANDAG's digital financial system) and invoice that OPIA has noted as missing and will make them available to OIPA. As such, staff has verified that all invoices and payments have been recorded in SANDAG's financial system.

Management believes that invoiced amounts were consistent with the applicable fee schedule. Fee schedules for individual contracts are updated throughout the life of the contract to account for pre-negotiated cost escalations and changes to consultant staff and corresponding experience levels. Fee schedule changes are reviewed by contracts and finance staff to ensure that each is appropriate and in compliance with the terms of the agreement. OIPA's review appears to be limited to the initial fee schedule and does not account for allowable changes that occurred throughout the contract term.

Management differs that invoices lack supporting documentation. SANDAG has long-standing practices with respect to preparation, approval, and submittal of invoices for payment. This process includes multiple levels of review, starting with the project manager and followed by the Director who, via their approval, confirm they have reviewed the invoice for accuracy and that the goods/services being paid for are within the scope of the underlying agreement, if applicable. The invoice and supporting documentation is attached to each request for payment; the type of supporting documentation varies based on the nature of the goods or services supplied and may include consultant and sub-consultant timesheets, invoices for reimbursable expenses, and recoverable overhead costs (if allowable under the terms of the agreement.) Finance staff use a check list to ensure requests for payment include the appropriate supporting documentation prior to issuance of any payment.

---

<sup>8</sup> OIPA also lists a number of potential risks associated with this finding, including "[d]isqualification and/or loss of funding." However, as this project received a Federal Transit Administration Full Funding Grant Agreement for \$1 billion and a TIFIA loan for \$537 million, extensive federal oversight was exercised over the project. Documentation for expenses on the project eligible for federal reimbursement, including all expenditures under the referenced contract, was submitted to the FTA and their Project Management Oversight Consultant for review and approval and all expenditures were deemed fair and appropriate.



**Response to Finding IV:** (see pages 39-41 of Draft Audit Report)

The Full Value of an Encumbrance does not Need to be Recorded at the Time of Contract Award or Execution

OIPA states that SANDAG does not encumber the awarded amount at the time of execution of each contract and/or subsequent task order or amendment; the finding assumes that SANDAG is obligated to pay the full contract capacity for services at the time of the executed procurement.

An “encumbrance” represents the amount anticipated to be utilized to pay for goods or services under an awarded contract. Encumbrances are established when a contract or task order is executed and are limited to the funds available in the current fiscal year. A contract that spans over several years will not be fully encumbered in year one of the contract; the full value of an encumbrance may span across multiple budget years. As a result, actual encumbrances at any given time may be less than the full contract capacity since full capacity may never be used. This is reflected in SANDAG’s agreement language that provides that SANDAG is not obligated to pay the consultants the full contract award amount; rather, the consultant is paid no more than the agreed upon amount in the executed contract or task order.

Management notes that there are informal procedures for encumbrance processing. Finance and contracts staff have established guidelines, resources and procedures regarding the use of encumbrances, which are available in the Contracts Resource Library. The encumbrance process is currently being reassessed as part of implementation of the ERP system. Management agrees that SANDAG’s this process is complicated and needs to be revised.

**Response to Finding V:** (see pages 42-44 of Draft Audit Report)

SANDAG’S Delegation of Authority Granted by the Board to the Executive Director Is Appropriate and has Not Resulted in Weakened Controls

OIPA states that SANDAG has “weakened internal controls due to ‘excessive delegation’ of authority, granted by the Board to staff....”

As explained in Management’s response to Finding I, sub-finding 3, the Board’s delegation policies are appropriate; they are authorized by statute and implemented through the Board’s formal direction following open and public discussion. Board Policy No. 017, paragraph 4.1, authorizes the Executive Director to “[e]nter into agreements not currently incorporated in the budget and make other modifications to the budget in an amount up to \$300,000 per project per fiscal year so long as the overall annual budget remains in balance. This authority shall refresh in the event the Board of Directors or Policy Advisory Committee authorizes further modifications to a capital project budget within the same fiscal year or a new annual budget has been approved by the Board.” The current threshold was initiated at the Executive Committee meeting on December 7, 2018, at request of then-Chair Terry Sinnott. At the meeting, then-Chair Sinnott explained the revision to the Board policy would provide “flexibility to respond quickly to agency needs and opportunities when they arise where the time necessary for Board approval may not be practical.” He further explained: “To maintain public

transparency, any action taken under this authority would be reported out to the Board as a delegated action.”

Delegations of the Executive Director’s authority to senior-level staff to approve certain limited procurement transactions is authorized by SANDAG’s enabling legislation. This delegation takes into account the relative risks of each individual transaction as well as the experience level of the designated staff member, while also balancing the needs of the agency against the volume of transactions that occur on a daily basis

Management addresses other elements of this authority in Finding I.

**Response to Finding VI:** (see pages 44-46 of Draft Audit Report)

The Retroactive Task Orders Identified in the Audit Complied with Applicable Procurement Requirements

OIPA states that retroactive procurements by Executive Leadership were issued to “rectify and pay for unauthorized work.”

Management concurs that a prior lack of controls allowed a procurement error where a contract was issued without any follow-on task order authorizing work under the contract. Staff believed that the task orders had been issued and began working with the consultants. Once this error was discovered, staff considered how best to address the situation in order to issue the required task order after the work had begun. The task order was issued retroactively consistent with all terms of the completed procurement.

In its response to Finding I, sub-finding 4, Management explains that while retroactive transactions should be sparingly used, they are not prohibited by federal or state regulations, nor are they disallowed under SANDAG’s procurement policies. OIPA’s finding is based only on email exchanges without supporting evidence from primary information sources (e.g. agreement transactions, financial records, etc.). Management has reviewed records related to this finding and has confirmed that the transactions were processed and approved in accordance with SANDAG’s established procedures and in a manner consistent with the applicable funding agency requirements. After this event, Management implemented new practices to limit future occurrences of this issue.

**Response to Finding VII:** (see pages 46-49 of Draft Audit Report)

Management is in the Process of Addressing Delays in the Delivery of Toll Operations Systems

OIPA cites to one issue that involved delay in the delivery of toll operations systems to make a finding of “inefficient monetary amendments of contracts for non-performance.” Management agrees that the delivery of services for toll operations systems were delayed, and that oversight of the project was lacking in many respects allowing the delay to continue leading to multiple contract extensions with the project management consultant.

In 2017, SANDAG contracted with two toll vendors, one for the roadside, another for the back-office, to design, build, implement, and operate the systems. At that time, SANDAG also contracted with a team of toll industry consultants to provide project management technical services. When both vendors experienced significant delays, SANDAG took steps to reserve its legal rights while working with the vendors to ensure that the toll operating services were not impaired. SANDAG will continue to work towards a resolution with these vendors. SANDAG anticipates the contract work will be completed in 2023.

As part of resolving this issue, SANDAG hired a new Director of Regional Transportation Services in 2022 - a highly qualified individual who has roadway and systems implementation experience. The Director has established project goals, and expectations for consultant performance, to reach implementation of these systems in an expedited manner..

The audit does not appear to assess the sufficiency of the work performed by the technical consultant or the oversight by SANDAG project staff, but improperly concludes that the technical consultant has committed wrongdoing as a result of an implied conflict of interest. Contracting arrangements of this type are not prohibited by the Board's adopted policies. Decisions to extend or amend another consultant's contract are not made by technical consultants; they are made by SANDAG project managers with Director approval in accordance with the policies established by the Board.

**Response to Finding VIII:** (see pages 49-52 of Draft Audit Report)

SANDAG Staffing Levels Are Appropriate Considering Both Required Technical Expertise and Varying Project Needs

OIPA reviewed the contracts awarded by the OGC and Human Resources (HR) departments during the audit period and determined "contracts were awarded for services that in-house staff should be qualified to perform."

Consultants, contractors, and vendors are utilized broadly across most SANDAG departments to access expertise in niche areas and where it does not make sense to hire staff for needs that are not ongoing. Some overlap between employee knowledge and experience and the work performed by consultants is essential to ensure staff can appropriately supervise and evaluate the work of outside resources. In addition, the appropriate use of employees, as is the case in the OGC and HR departments, is a fiscally responsible decision in that it reduces costs that would otherwise be associated with outsourcing work to high-paid consultants.

In the Audit, OIPA stated the amount *awarded* during the audit period to show overspending on outside resources, but the amount awarded does not reflect *actual expenses*. To illustrate this point, the total awarded (maximum) amount for contracts issued by OGC was approximately \$35.4 million, but the actual amount expended during the audit period was approximately \$11 million. Of the total amount expended, approximately \$6.5 million was attributable to the Mid-Coast Project, that required substantial legal resources.

OIPA states that contracts for temporary staffing services duplicated work typically performed by the HR department. OIPA identifies 7 staffing and recruitment contracts that are for temporary staffing services used to support departments throughout the entire agency; these contracts account for approximately \$4.1 million (or 73%) of the \$5,644,425 amount awarded as noted in the audit report.

These contracts are used to quickly access staff for short-term, limited assignments, most often when a regular employee is on an extended leave of absence, while a vacant position is being recruited, or to support a special project. Most expenses related to temporary staff are paid for using salary savings. SANDAG regularly uses temporary staff and maintains a list of qualified firms to supply staffing resources on an on-call, as needed basis, for several departments including accounting, payroll, IT, customer service, general administration, etc.

In addition, many of the consultant resources used by HR are engaged in projects that require or benefit from independence (e.g. executive search services for Board-appointed positions), impartiality (e.g. conduct market salary studies that result in compensation program recommendations), or other technical expertise that internal staff do not have (e.g. conducting actuarial analyses for the agency's OPEB trust account). Several of the contracts are for training services – ensuring SANDAG staff have access to classes, workshops, and other programs that support professional development.

In sum, this finding and the associated recommendations do not fully consider the operational needs of the agency and are outside the scope of the audit objectives.

## AUDITOR RESPONSE – Memorandum



## MEMORANDUM

May 12, 2023

**TO:** Audit Committee and Board of Directors

**FROM:** Mary Khoshmashrab, Independent Performance Auditor

**SUBJECT:** Auditor Response to Management Response (dated April 12, 2023), OIPA Contracts and Procurement Audit (Part II)

The Office of the Independent Performance Auditor (OIPA) appreciates Management's diligence and efforts to address the findings stated in the Draft Report that was emailed on March 16, 2023. The OIPA has reviewed the Management Response to the findings and has provided feedback that is contained in this memo as well as in the official *Auditor Response to Management Response* attached.

**Auditor Response to Addressing Matters of Concern Noted in the Audit**

Although the OIPA received most of the documentation and access requested, there were several examples where that was not the case, including but not limited to:

- An *updated* vendor file, which was requested multiple times in Part I of the audit and again in Part II.
- Access to *all* digital invoice folders, upon original request. Auditors became aware very late into the audit of a missing invoice folder, not originally made accessible to the auditors.
- Access to the payroll system, which never became accessible to the auditors.

OIPA is pleased to hear that most of the missing records were confirmed to exist. However, we are concerned that these records could not be easily located in the locations initially identified by Management to auditors, including the hard copy contracts library, the SharePoint contracts library, and the CMS system. Any records that may have been stored on staff's assigned laptops/computers, records that were uploaded after the auditors reviewed these folders, records that were stored in any other folder (such as working folders) or were misfiled or mistitled are not considered to have been made available to auditors and/or are not considered to be appropriately stored for accurate recordkeeping or auditing purposes.

OIPA recognizes the high volume of documentation the agency is required to maintain, just as all public agencies are required to do so - and which many successfully do. SANDAG is not the exception.

- While OIPA recognizes the difficulty of maintaining records over the course of a

Memo  
Auditor Response  
to Management Response  
May 12, 2023

decade, there is still a concern that records were missing, unfiled, or misfiled. This further demonstrates that the agency has consistently been unsuccessful in being able to create and ensure the use of properly controlled processes for record storage and management for at least the past decade.

- While locating and extracting records from three different systems is complicated, it is concerning that staff have been unable to create successful processes to migrate all, or most, documents into one system up to this point in time. Auditors found that records were often mixed between two systems, with no notes, memos, or index documents in either system to identify or specify where all other records were stored to avoid confusion.
- While using a separate system (OneSolution) to identify financial records may also be difficult, auditors, again, found it concerning that records were missing from that system as well, particularly when following the instructions provided by Management to locate financial records.

To be clear, regarding the auditor's request for access to the agency's payroll system, auditors were not given access to what was requested. While Management made efforts to provide OIPA with *alternate access* to payroll records, it is important to note that the OIPA had *only* accepted the *attempt* for alternate access to the requested data. The OIPA later determined that such access did not provide the specific data needed in a format appropriate for auditing purposes.

In their response to the audit, Management has taken AB 805 out of context when stating that they complied with the law by only citing part of the law. However, Assembly Bill 805 *completely* states:

*"The independent performance auditor shall have authority to conduct or to cause to be conducted performance audits of all departments, offices, boards, activities, agencies, and programs of the consolidated agency.... All officers and employees of **the consolidated agency shall furnish to the auditor unrestricted access to employees, information, and records, including electronic data, within their custody** regarding powers, duties, activities, organization, property, financial transactions, contracts, and methods of business required to conduct an audit or otherwise perform audit duties. It is also the duty of any consolidated agency officer, employee, or agent to **fully cooperate** with the auditor, and to make **full disclosure** of all pertinent information."*

In accordance with AB 805, auditors should have been granted *unrestricted access* while conducting the audit, which did not occur. Management stated that they were attempting to protect the privacy rights of current and former employees. Auditors are regularly provided access to confidential and sensitive information and are obligated to protect privacy rights when handling such information and data, just as HR and Finance staff do. Furthermore, the OIPA's workpapers are confidential and are only viewed in the case of a Public Records Act request, which is conducted and reviewed by our in-house attorneys, who should also be aware of how to handle confidential records. In OIPA's experience, any such confidential or sensitive information is redacted, prior to public release.

Memo  
Auditor Response  
to Management Response  
May 12, 2023

**Auditor Conclusion**

The OIPA appreciates Management's willingness to seek out opportunities for continuous improvement to achieve the highest level of operational effectiveness possible for the agency and overall public good.

Please contact me with any questions regarding the information provided in this letter or in the *Auditor Response to Management Response to the Audit Findings*.

Sincerely,



MARY KHOSHMAHRAB, MSBA, CFE, CPA  
Independent Performance Auditor, Office of the Independent Performance Auditor

Attachments:

1. Auditor Response to Management Response to Audit Findings

cc: OIPA File  
OIPA Webpage

## AUDITOR RESPONSE – Attachment 1

**AUDITOR RESPONSE  
TO MANAGEMENT RESPONSE  
TO AUDIT FINDINGS**

OIPA Contracts and Procurement Audit (Part II)

May 12, 2023

The OIPA has provided an **Auditor Response** to Management's response for each individual finding and sub-finding.

**FINDING I: NONCOMPLIANCE WITH PROCUREMENT LAWS, RULES, REGULATIONS, AND INTERNAL POLICIES AND PROCESSES** (pages 16-33 of Audit Report)

Management Response: (page 3 of Management Response to Audit Findings)

Management states that SANDAG complied with the pertinent and operative procurement laws, rules, regulations, and internal policies and processes.

**Auditor Response:**

The OIPA disagrees. While the audit report references *current* regulations, manuals and standards, most of these were applicable to the transactions identified in the findings of the audit. For example, the *current* FTA Circular 4220.1.F cited throughout the audit was most recently revised in 2013.

**SUB-FINDING 1: Individual Evaluation Scoresheets and Notes for Solicitations Were Missing or Insufficient** (pages 16-18 of Audit Report)

Management Response: (page 3 of Management Response to Audit Findings)

Management states that individual evaluation scoresheets and notes for solicitations that the audit identified as missing were located.

**Auditor Response:**

The OIPA disagrees. OIPA is in current possession of the original hard-copy records and has confirmed that not *all* individual score sheets are filed and for some of the score sheets provided, no notes were provided by that panel member.

**SUB-FINDING 2: Contracts and Task Orders Were Not Fully and Openly Competed and Were Also Not Documented as Sole Source Procurement Transactions, which Conflicts with SANDAG's Equity and DBE Commitments** (pages 18-22 of Audit Report)

Management Response: (page 4 of Management Response to Audit Findings)

Management states that the contract and task order transactions identified to not have been fully and openly competed did adhere to competition requirements in effect at the time.



**Auditor Response:**

The OIPA disagrees. While Management may have fully and openly competed to *initially* award the on-call contracts, they did not adhere to all applicable competition requirements for task orders at the time, as identified in the audit report. Although the contracts that auditors reviewed were executed in 2012 and in 2016, many task orders and task order amendments were initiated in the 2020s, when several requirements, including SANDAG's Procurement Manual, mentioned in the audit report would have been applicable. Some examples include:

- SANDAG's Board Policy 16, as amended in December 2006, states that if the *required services* costs exceed \$100,000, SANDAG must solicit bids in writing and award the work in a competitive procurement process.
- SANDAG's Board Policy 16 also states the conditions in which noncompetitive and limited competition procurements are permitted; most of the task orders that OIPA identified as not being competed were not *permitted* under these requirements.

SUB-FINDING 3: Contract and Task Order Amendments Exceeded \$100,000 Without Board Approval (pages 22-23 of Audit Report)

**Management Response:** (page 4 of Management Response to Audit Findings)

Management states that all project amendments exceeding \$100,000 cited in the audit to have been authorized without board approval were within the approved budget when the amendment was executed and did not require board approval.

**Auditor Response:**

The OIPA acknowledges Management's interpretation of the board policies. After further review, the OIPA has confirmed that Board Policy 16 and 17 address amendments to contracts that would exceed the *project budget* and not the actual amount awarded in a contract. However, as stated in the audit report, the OIPA determined that both Board Policy 16 and the Procurement Manual do not clearly address the rules or limitations around amendments to contracts or task orders beyond the original awarded amount. The only guidance that the OIPA could find that addresses approval of amendments is the internal Delegation of Authority policy, which allows Directors to authorize any and all amendments up to the approved budgeted amount.

While SANDAG is adhering to their own board policies and internal policies, the policies are concerning as they allow for Management to authorize continuous amendments to contracts as long as they are within the "project" budget, not the contract budget or amount. This means that a contract can be initially awarded for \$1 million and later amended to \$5 million or \$10 million, as long as the amount is within the *approved* budget amount. It should be noted that, in many cases, a project budget is anticipated to be used for various contracts, not just one. Oftentimes, this is why a *project budget* is approved for a high dollar value, not for the use of amending/increasing a contract.

**SUB-FINDING 4: Contracts, Task Orders and Amendments Were Retroactive (pages 23-25 of Audit Report)**

**Management Response:** (page 5 of Management Response to Audit Findings)

Management states that retroactive transactions are not prohibited by laws or regulations nor disallowed by SANDAG's policies. Management also states that the issuance of retroactive agreements was consistent with applicable procurement laws, rules, regulations, and internal policies.

**Auditor Response:**

The OIPA acknowledges that retroactive procurement transactions are not *explicitly* prohibited by laws or regulations. However, SANDAG's own executed contracts and task orders specify the requirements/restrictions for executing and amending contracts/task orders to ensure they are *valid* and *effective*, including but not limited to the following language:

- Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG.
- No expenditures are authorized on a project and work shall not commence until a Task Order for that project has been executed by SANDAG.
- Any Task Order or Amendment issued under this Agreement is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.
- The start date (Notice to Proceed) of a Task Order shall be the latest date of a SANDAG signature on the Task Order, which must have previously been signed by the Consultant. Work performed before the start date or after the termination date of a Task Order or Task Order Amendment shall be performed at Consultant's risk.
- Consultant is not authorized to perform services for SANDAG before the effective date of each Task Order or beyond the termination date set forth in each Task Order.
- Any Task Order or Amendment issued under this Agreement is of no force or effect until returned to SANDAG and signed by an authorized representative of SANDAG.
- Consultant is not authorized to perform services for SANDAG before the latest date shown for a SANDAG signatory on the task order... work performed before the start date or after the termination of a task order or a task order amendment will be treated as non-reimbursable volunteer work by Consultant.

To clarify, *execution* of a contract, or any other contract document, is generally defined as *executed* once all parties to the contract have *signed* the respective document.

**SUB-FINDING 5: Contracts, Task Orders and Amendments Were Missing Approval Documents (pages 25-27 of Audit Report)**

**Management Response:** (page 6 of Management Response to Audit Findings)

Management states that in all but one instance, the missing approval documents identified in the audit were not required.

**Auditor Response:**

The OIPA disagrees. While the original contracts were awarded in 2012 and 2016, many task orders identified were issued after the Procurement Manual was issued, therefore, those requirements would still have been applicable to some of the identified transactions.

Most of the transactions identified by OIPA were *not* time-only extensions or amendments. During the review, auditors were aware and took into consideration that time-only extensions do not require an Independent Cost Estimate or a Cost Analysis. Any transactions stated to have been missing an Independent Cost Estimate or Cost Analysis were confirmed to be transactions that required those forms, such as a task order or task order amendment, including scope of work changes and/or cost changes. Furthermore, the most recent revision of the FTA Circular 4220.1F was issued March 18, 2013, meaning that SANDAG was required to perform a "cost analysis or price analysis in connection with every procurement action, including contract modifications" after that date.

For the records claimed to have been located by Management, OIPA is concerned that these records could not be easily located in the locations initially identified by Management to auditors, including the hard copy contracts library, the SharePoint contracts library, and the CMS system. It should be noted that any records that may have been stored on staff's assigned laptops/computers, records uploaded after the auditors' review, records stored in any other folder (such as working folders) or records misfiled or mistitled are not considered to have been made available to auditors nor are considered to be appropriately stored for accurate recordkeeping or auditing purposes.

**SUB-FINDING 6: Contracts, Task Orders and Amendments Were Missing Signatures (pages 27-28 of Audit Report)**

**Management Response:** (page 7 of Management Response to Audit Findings)

Management states that the missing signatures for some contracts, task orders, and amendments identified in the audit were not required or were provided.

**Auditor Response:**

The OIPA acknowledges that the Delegation of Authority policy allows for certain procurement transactions to be authorized without Office of the General Counsel (OGC) signature for low-risk transactions. However, the Delegation of Authority policy does not define "low-risk" transactions, nor was a separate administrative policy found that explains how low-risk is determined by Management. The Delegation of Authority policy only states that low-risk transactions are determined by the Senior Director of

Organization Effectiveness, the Manager of Contracts & Procurement Services or a Senior Contracts Officer.

OIPA is concerned that Management considers the approval of senior staff equivalent to the approval of OGC and allows for procurement transactions to be authorized without OGC approval, beyond time-only extensions.

**SUB-FINDING 7: Inadequate Justification for Contract and Task Order Amendments** (pages 28-30 of Audit Report)

Management Response: (page 7 of Management Response to Audit Findings)

Management states that the audit assessed older task orders based on today's standards, not the applicable standards at the time. Management also states that SANDAG has made process enhancements for documentation of justifications for task order amendments, including correcting the issues through the implementation of the Contract Management System (CMS).

**Auditor Response:**

The OIPA disagrees. Although the contracts reviewed were originally issued in 2012 and 2016, many task orders and task order amendments were executed after the Procurement Manual was issued. The Procurement Manual is very clear on the roles and responsibilities of Management to document reasonings for and provide support to justify procurement transactions.

Additionally, many of the procurement transactions identified in the audit originated in CMS and included *insufficient* justifications. The CMS system does not require that justifications be sufficient, it only requires that an entry be made in the justification field. Contracts staff are responsible for reviewing justifications to ensure completeness and sufficiency, which has not been occurring on a consistent basis.

**SUB-FINDING 8: Missing Task Order Records** (pages 30-32 of Audit Report)

Management Response: (page 7 of Management Response to Audit Findings)

Management states that the task order records identified as missing were either located by Management or that the task order requests were cancelled prior to execution, making the issue moot.

**Auditor Response:**

While the OIPA acknowledges that Management either identified the missing task orders as cancelled or located them, the OIPA is concerned that the official records do not accurately reflect the status of the task orders nor include the documentation to support such status. Management is responsible for maintaining accurate and complete records, which include notes or a memo to document when a transaction has been cancelled or voided. As demonstrated, such recordkeeping is important for auditing purposes.

**SUB-FINDING 9: Contract Has Conflicting Contract Dates with No Clear Explanation of Applicability** (pages 32-33 of Audit Report)

**Management Response:** (page 8 of Management Response to Audit Findings)  
Management states that SANDAC's contract templates were updated in 2018 to clarify effective dates.

**Auditor Response:**

The OIPA acknowledges that Management has updated their contract templates.

**FINDING II: HIGH AWARDS AND INCREASES DUE TO NON-COMPETED PROCUREMENTS AND EXCESSIVE AMENDMENTS** (pages 33-36 of Audit Report)

**Management Response:** (page 8 of Management Response to Audit Findings)  
Management states that awards were appropriately competed and amended in accordance with existing policies and procedures.

**Auditor Response:**

The OIPA acknowledges Management's interpretation of the board policies. As further explained in Finding 1, Sub-finding 3, while SANDAG is adhering to their own board and internal policies, the policies are concerning as they allow Management to authorize continuous amendments to contracts, as long as they are within the "project" budget, not contract budget. This means that a contract can be initially awarded for \$1 million and later amended to \$5 million or \$10 million without board approval, as long as the amount is within the Board approved budget amount.

While the OIPA does not contest that Vendor Z only received 6% of the task orders issued under the environmental master on-call series, the OIPA is concerned with the amount awarded to Vendor Z via amendments to the agreement and task orders. As stated in the audit report, Vendor Z's total contract amount increased by 412% than originally awarded.

**FINDING III: INVOICES ARE MISSING OR LACKING SUPPORTING DOCUMENTATION, OR ARE NOT CONSISTENT WITH THE CORRESPONDING FEE SCHEDULE** (pages 36-39 of Audit Report)

**Management Response:** (page 9 of Management Response to Audit Findings)  
Management states that invoices are available, supported with appropriate documentation and paid in accordance with the corresponding fee schedule.

**Auditor Response:**

The OIPA disagrees. Auditors reviewed the folders, as initially identified by Management to auditors for review, and confirmed that the missing files are still not in these locations. Auditors reviewed the fee schedules for the applicable contract(s), task order(s) and task order amendment(s), as stated on Page 37 of the audit report. To further clarify, Personnel Request Forms (PRF) could not be used to verify changes to fee schedules due to the sheer volume and generic file naming, making them impossible to navigate in a timely manner. This is not only an issue for the auditors in this audit but also for project managers when verifying invoices.

The OIPA finds it concerning that Management believes that their invoice records are sufficiently supported and documented. Simply having long-standing practices and multiple reviews does not automatically mean such practices are accurate or compliant with applicable laws and/or best practices. Auditors found many records of invoices paid where the only submitted documentation was the Request for Payment Form and the invoice itself.

**FINDING IV: ENCUMBRANCES ARE NOT RECORDED UPON AWARD/EXECUTION OF A PROCUREMENT** (pages 39-41 of Audit Report)

Management Response: (page 10 of Management Response to Audit Findings)

Management states that the *full value* of an *encumbrance* does not need to be recorded at the time of contract award or execution.

**Auditor Response:**

The OIPA disagrees. Auditors identified contracts and task orders where specific amounts should have been encumbered, based on the budget for the year and/or task order awarded, but were not.

Additionally, auditors confirmed with Finance staff that, in some cases, an invoice is received and invoice processing is initiated prior to an encumbrance being entered into the financial system.

While OIPA acknowledges that informal procedures have been created, these procedures include the use of the CMS system and sometimes the financial system (OneSolution), both of which have been found to be unreliable by the auditors.

**FINDING V: WEAKENED INTERNAL CONTROLS DUE TO EXCESSIVE DELEGATION OF AUTHORITY GRANTED BY BOARD OF DIRECTORS (BOD) TO STAFF TO GOVERN AGENCY OVERSIGHT** (pages 42-44 of Audit Report)

Management Response: (page 10 of Management Response to Audit Findings)

Management states that SANDAG'S Delegation of Authority, granted by the Board to the Executive Director, is appropriate and has not resulted in weakened controls.

**Auditor Response:**

The OIPA disagrees. Auditors have identified examples of weakened controls throughout the audit, including but not limited to the following:

- As explained in Finding 1, Sub-finding 3, while SANDAG may adhere to their own board policies and internal policies, the policies are concerning as they allow for Management to authorize continuous amendments to contracts as long as they are within the "project" budget, not contract budget. This means that a contract can be initially awarded for \$1 million and later amended to \$5 million or \$10 million, as long as the amount is within the approved budget amount.
- As explained in Finding 1, Sub-finding 6, OIPA is concerned that Management considers the approval of Senior staff equivalent to the approval of OGC and allows for

procurement transactions to be authorized without OGC approval, beyond time-only extensions.

Additionally, past audits conducted by the OIPA have shown that many of SANDAG's internal controls were either weak or nonexistent.

**FINDING VI: RETROACTIVE PROCUREMENTS BY EXECUTIVE LEADERSHIP TO RECTIFY AND PAY FOR UNAUTHORIZED WORK** (pages 44-46 of Audit Report)

Management Response: (page 11 of Management Response to Audit Findings)

Management states that the retroactive task orders identified in the audit complied with applicable procurement requirements. Additionally, Management states that this finding is based on email exchanges only.

Auditor Response:

The OIPA disagrees. Furthermore, and as explained in Finding 1, Sub-finding 4, the OIPA acknowledges that retroactive procurement transactions are not *explicitly* prohibited by laws or regulations. However, SANDAG's own executed contracts and task orders, including those identified in this finding, specify the requirements/restrictions for executing and amending contracts/task orders to ensure they are valid and effective prior to beginning work, including but not limited to the following language:

- Should Consultant perform work for SANDAG in advance of issuance of a fully executed Task Order for such work, Consultant shall be performing the work as an unpaid helper for SANDAG.

Furthermore, auditors disagree with the assertion that these transactions were approved in accordance with SANDAG's established procedures. On page 44 of the audit report, auditors state that we "obtained evidence where the former DLC claimed that retroactive procurements were improperly authorized as well as were improper sole sources and public works procurements." This evidence specifically identifies the laws and regulations that SANDAG was not complying with (2 CFR 200.319, 2 CFR 200.320, Labor Code §1773, PCC §100 et seq.) and states that these laws are meant to protect public funds, ensure transparency in processes for the public and bidders/proposers, and ensure entities have an opportunity to compete for awards of public funds on a level competitive playing field.

To clarify, this finding is not based only on email exchanges. Auditors reviewed and verified that the retroactive transactions identified did, in fact, occur and are documented as retroactive in Management's contract records.

**FINDING VII: INEFFICIENT MONETARY AMENDMENTS OF CONTRACTS FOR NON-PERFORMANCE** (pages 46-49 of Audit Report)

Management Response: (page 11 of Management Response to Audit Findings)

Management states that they have already and are currently in the process of addressing delays in the delivery of the Toll Operations systems.

**Auditor Response:**

The OIPA disagrees. While the OIPA acknowledges that some efforts have been made to address delays since 2019, via a cure notice to Vendor EE, it is still concerning that Management and/or Vendor AA were unaware of delays caused by Vendor EE for the first 2 years of the contract. Vendor AA is responsible for monitoring Vendor EE's work and providing regular reports to Management, as stated in their contract requirements. Auditors are also concerned that amendments for Vendor AA's contract have been issued, as recent as 2022, where the justifications still state that Vendor EE "had not met its contractual commitment."

Additionally, Vendor AA's Contract No. 2, as stated in the audit report, states that the Consultant's performance will be evaluated by SANDAG, shall be retained by SANDAG and that interim or yearly evaluations may also be performed by SANDAG. Auditors could not locate records of any evaluations for the Consultant's performance for this project, including the task order under Vendor AA's previous contract for these same services.

Furthermore, auditors acknowledge that while SANDAG's board policies do not prohibit the identified contracting arrangements, SANDAG's board policies do address *apparent* conflicts of interests. Auditors have determined that the oversight responsibility specified in Vendor AA's contract creates an *apparent* conflict of interest, particularly since Vendor AA appears to benefit financially from Vendor EE's delays and/or failure(s) to perform.

**FINDING VIII: CONTRACTS AWARDED FOR SERVICES THAT IN-HOUSE STAFF SHOULD BE QUALIFIED TO PERFORM** (pages 49-52 of Audit Report)

**Management Response:** (page 12 of Management Response to Audit Findings)

Management states that the expended amount is less than the awarded amount for these contracts. Management also states that SANDAG staffing levels are appropriate, considering the required technical expertise and varying project needs.

**Auditor Response:**

The OIPA acknowledges that \$11 million was expended during the audit period under the OGC issued contracts. The OIPA also acknowledges that of the \$11 million expended, \$6.5 million was attributable to the Mid-Coast project. However, OIPA referenced the *awarded* amounts to show how much *could* be spent under these contracts. The fact that only \$11 million was spent during the audit period for contracts awarded by OGC just means that up to \$24.4 million is still available to be spent under these contracts.

The OIPA acknowledges that \$4.1 million has been awarded for temporary staffing services by Human Resources (HR). However, if the current internal staff do not have the technical expertise needed by the agency, Management should consider hiring more permanent staff to reduce costs spent on consultants as well as retain the technical expertise in-house.

Auditors conducted an analysis of consultant services authorized via *contracts*, which required an analysis of the agency needs. Since most of the OGC and HR issued contracts were for consulting services that appeared to overlap with standard staff roles and responsibilities, this was well within the scope of the audit.