

OFFICE OF THE CITY AUDITOR

City and County of Honolulu
State of Hawai'i



Audit of the Department of Transportation Services' Honolulu High-Capacity Transit Corridor Project Contracts

A Report to the
Mayor
and the
City Council of
Honolulu

Report No. 09-02
October 2009

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Submitted by

THE CITY AUDITOR
CITY AND COUNTY
OF HONOLULU
STATE OF HAWAII

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Foreword

This is a report of our Audit of the Department of Transportation Services' Honolulu High-Capacity Transit Corridor Project Contracts. The audit was conducted pursuant to the authority of the Office of the City Auditor (OCA) as provided in the Revised Charter of Honolulu. The city auditor has determined that this audit was warranted due to concerns expressed by the Honolulu City Council regarding contracts between the Department of Transportation Services, InfraConsult and PB Americas Inc. for certain technical and professional services for the Honolulu High-Capacity Transit Corridor Project.

We wish to acknowledge the cooperation and assistance of the staff and management of the Department of Transportation Services and others who we contacted during this audit.

Leslie I. Tanaka, CPA
City Auditor

EXECUTIVE SUMMARY

Audit of the Department of Transportation Services' Honolulu High-Capacity Transit Corridor Project Contracts

Report No. 09-02, October 2009

This audit was conducted pursuant to the authority of the Office of the City Auditor (OCA) as provided in the Revised Charter of Honolulu. This audit is included in OCA's proposed work program for FY2008-2009, which was communicated to the mayor and the Honolulu City Council in June 2008. The city auditor has determined that this audit is warranted due to concerns expressed by the city council regarding contracts between the Department of Transportation Services, InfraConsult and PB Americas Inc. for certain technical and professional services for the Honolulu High-Capacity Transit Corridor Project.

Background

The Honolulu High-Capacity Transit Corridor Project, also known as Honolulu Rail Transit, is a 20-mile elevated rail line planned to connect West O'ahu with downtown Honolulu and Ala Moana. The proposed route of Honolulu Rail Transit is designed to connect where people live with the areas where most people work, shop and attend school. This audit focused on whether consultants have met the terms and conditions for the following contracts:

- Contract No. F54306—Requiring the drafting and reporting of the *Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS)*,
- Contract No. SC-DTS-0700001—Requiring the development of the *Preliminary Engineering and Final Environmental Impact Statement (PE/EIS)*, and
- Contract No. F65107—*Project Management Support Services* for the Preliminary Engineering/Environmental Impact Statement for the Honolulu High-Capacity Transit Corridor Project.

Summary of Findings

Finding 1: All Three Rail Transit Contracts Complied with Procurement Requirements. However, DTS-RTD Needs to Improve Its Documentation of the Basis for Its Procurement Decisions to Improve Transparency.

- The guiding principle of procurement practices is full and open competition, according to the Federal Transit Administration (FTA). The primary purpose of full and open competition is to obtain the best quality and service at minimum cost. The secondary purposes are to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate in public business to every potential offeror.
- We found that all three contracts were procured in compliance with federal, state and local requirements. We also found that the division addressed deficiencies with respect to 14 elements specific to the City and County of Honolulu, found during the FTA's Procurement System Review. Recommended corrective actions consisted of amending procedures in four elements, establishing or developing procedures in seven elements, and establishing management controls in six elements.
- However, the division needs to improve its documentation of the basis for its procurement decisions. Specifically:
 - The Record of Procurement for the Alternatives Analysis contract contained insufficient evidence of the basis for the contract price, as recommended by the FTA Best Practices Procurement Manual. In addition, the procurement record contained no Record of Negotiation. Instead, the Record of Procurement contains a handwritten cost estimate performed by the division administrator prior to procurement that did not adequately cite sources of information. DTS has since established policies addressing these issues based on FTA's procurement system review.
 - For the same contract, the selection committee changed its own procedure for evaluating Past Experience after receiving proposals. Instead of the originally planned interviews with previous clients, committee members' personal experience with the proposers was deemed as sufficient bases for their evaluation. While the committee had the leeway to do so, the decision to base its evaluation more on personal perceptions and less on independent

information than originally planned undermines the integrity of the process and reinforces perceptions that the city's procurement decisions are predetermined.

- Citing insufficient review time, the Department of Budget and Fiscal Services cancelled the original Request for Proposals for the Project Management Consultant. Instead of the typical 30- to 60-day review, DTS gave BFS Purchasing Division one to two days to review this RFP, with the expectation that addenda could be issued for minor changes. Upon closer inspection, BFS found that there were too many inconsistencies, insurance issues and too few required documents approved and in place, leading to the cancellation. Thus, the department's focus on meeting the administration's project goals, without taking into account the consideration of the amount of time needed for adequate BFS review, undermined its own goal of timely project completion, and temporarily resulted in confusion among potential proposers regarding the viability of the project. In addition, this incident reinforced perceptions that proper oversight can be sacrificed to meet administration deadlines. To its credit, both departments have improved their processes since then to facilitate procurement reviews.

- While all three procurements met the technical requirements to waive the recommended minimum of three bids prior to contract negotiations, the outcome of receiving less than three bids for three consecutive contracts increased public uncertainty as to whether the city has obtained the best value for these contracts. In addition, this could be an indication that existing minimum advertising requirements may be insufficient for a project of this size and complexity. Aside from advertising, another issue that contributed to the low number of bids is the perception of favoritism among potential bidders. Two engineering firms we interviewed expressed frustration that the city's previous contract awards to PB Americas over the past 12 years seem to have placed the company in a favored position with respect to future contracts. Indeed, one of the factors reviewers were asked to consider was whether the firm will have a project office in Honolulu. While this factor does not explicitly prevent other firms from submitting bids, this has the effect of diminishing the chances of companies other than PB Americas with the same technical capabilities, but who would have incurred additional expense to build a greater

presence in Honolulu, possibly having to increase their bids as a result. Two engineering firms we interviewed stated that they were discouraged from bidding on future projects as a result of their experiences with the city's procurement process. The FTA Best Practices Procurement Manual states that competitive advantage by virtue of experience, expertise or more efficient operations may not necessarily be unfair. However, the low number of bids shows that DTS-RTD could benefit from an assessment of the sufficiency of advertising for this project, and whether factors considered within certain procurement criteria limit the city's ability to attract a greater number of bids.

Finding 2: DTS-RTD Complies with Contract Requirements, but Needs to Improve Monitoring and to Develop Detailed Guidelines to Increase Accountability.

- The Alternatives Analysis contract complied with requirements and had clearly identified deliverables that matched contract payments.
- Both the InfraConsult and PB Americas contracts complied with requirements and invoice charges matched appropriate cost categories.
- However, all three contracts remain vulnerable to exceeding maximum payable amounts:
 - Amendments to the Alternatives Analysis (AA) contract resulted in the addition of 26 deliverables and \$346,000 to the original contract.
 - The AA contract remained open despite substantial completion of contract deliverables.
 - The InfraConsult contract retains an option to establish an additional Allowance for Extra Work after \$1 million for the same purpose had already been used.
 - PB Americas did not secure required approvals before submitting an invoice for 13 employees who had provided at least 507 hours of work.
 - Invoices from subcontractors who were paid a monthly lump sum under the InfraConsult and PB Americas

contracts contained little or no information regarding the work performed for that period.

Recommendations and Response

The Department of Transportation Services-Rapid Transit Division should:

- a. Continue to encourage fair and open procurement by remaining vigilant in following existing procurement policies and regulations.
- b. Within the official Record of Procurement, sufficiently document the sources of information for contract cost estimates prior to procurement and a memorandum or summary of contract negotiations and final contract cost.
- c. Convey support for proper oversight by all agencies involved by providing outside agencies with timely and complete submissions for review.
- d. For future large or complex procurements, consider outreach through diverse media through market communication networks such as trade associations, to increase competition and encourage additional qualified firms to submit bids.
- e. Improve documentation of reasons for contract negotiations and awards to increase transparency and accountability.
- f. Direct the contractor to submit any remaining deliverables and close the Alternatives Analysis contract to ensure that maximum costs are not exceeded.
- g. Develop guidelines for providing supporting documentation of the work performed to verify the contract-related tasks to invoices submitted by subcontractors who are paid in lump sum amounts.
- h. Specify the terms under which a future Allowance for Extra Work would be established, the basis for the Allowance amount, and the approval process to be used.
- i. Withhold approval of invoices for payment until the contractor has met applicable contract requirements, including the development of pertinent policies and procedures, to ensure the proper expenditure of city funds.

In its response, DTS generally agreed with our recommendations to continue compliance with contract administration regulations, and to provide more detailed documentation within its contract files. DTS agreed with five of our recommendations, pointing out areas in which improvements had already begun, such as providing agencies with timely and complete submissions for review, providing greater detail in the development of cost estimates and expanded efforts to encourage competition in contract solicitations. The department's response also provided some clarifying information, and changes were made to the final report where they were appropriate.

DTS disagreed with four of our recommendations; of these, two of the disagreements appeared to be not with the recommendations themselves, but with our assessment of their possible ramifications. One was our recommendation to close the Alternatives Analysis contract so as not to exceed maximum contract costs. DTS argued that because this is a firm-fixed-price contract, cost overruns are not possible without the approval of the city. However, the department reported processing a request to the consultant to complete the deliverables due to the city, which is in line with our recommendation as a step toward closing the contract. We contend that any contract that remains open is vulnerable to additional costs.

The department also disagreed with our recommendation to withhold approval of invoices for payment until the contractor has met applicable contract requirements. This recommendation was based on an invoice submitted for work performed by contractor staff who had not been pre-approved, as required within the contract. In the course of following up on this incident, we discovered that the contract already contained a provision for the contractor to develop procedures addressing this situation. This procedure was not in place at the time the invoice was submitted. Thus, this one incident touched upon two contract provisions that were not followed. While DTS disagreed that having a procedure in place would have prevented this incident, the department did report hiring an accountant to audit contractor invoices, who has been instrumental in requiring resubmission of invoices. Thus, the department implemented a more stringent invoice review process after this incident occurred, indicating that the department essentially agrees with the spirit of our recommendation.

Another disagreement was with our recommendation to develop guidelines for providing supporting documentation of the work performed by subcontractors for its primary contractor. DTS

argued that subcontractors do not have direct contractual relationships with the city. However, our recommendation was based on the fact that some subcontractors charging a monthly lump sum provided one-line descriptions, while others provided more details that provided a basic idea of what services were provided for that particular period. We contend that the city could benefit from obtaining more information from its contractors regarding the work that its subcontractors perform.

The department also disagreed with our recommendation that the department specify the terms under which a future Allowance for Extra Work would be established, the basis for the allowance amount, and the approval process to be used. This recommendation was based on the department's practice of specifying a \$1 million Allowance for Extra Work in the original contract, then redistributing this amount through a contract amendment. However, instead of deleting this allowance in the amended contract, the option of establishing another Allowance for Extra Work was created, without a specified dollar limit, as in the original contract, nor any upfront guidelines regarding appropriate uses, aside from initiating another contract amendment. Our recommendation would address this inconsistency and send the message to all stakeholders that an Allowance for Extra Work is not tantamount to a blank check. We believe that justifiable increases in contract amounts can be made within previously set guidelines.

The department disagreed with our statement that its Record of Procurement for the Alternatives Analysis contract did not follow the best practices for documenting the basis for contract costs and subsequent negotiations. However, we noted in the report that while this information was indeed within the record, this portion consisted of a handwritten calculation by the DTS-RTD administrator, with no supporting documentation regarding its sources. Thus, we could not determine the basis for this information without asking the DTS administrator. In contrast, as we stated in the report, the FTA's Best Practices Procurement Manual states that:

A well documented file speaks for itself, without need of interpretation from the contract administrator. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries.

Regarding our discussion on pages 30-33 regarding a change in procedures during the selection process, the department states

that we implied that a change in criteria had taken place, that this change was completely allowable and therefore did not diminish the integrity of the procurement process. We acknowledged that the committee had the leeway to make the change in the procedure it used under a specific criterion. However, we noted that, if the committee members wanted to include their personal experiences with proposers, this should have been added to existing procedures, rather than used as a replacement for a previously agreed upon procedure. When faced with a situation where procurement decisions could be perceived as the result of contractors' personal relationships with selection committee members, we contend that those responsible for such a selection should err on the side of incorporating more sources of information in their decision-making, rather than less.

The department takes issue with our reporting of statements made by firms who stated that they were discouraged from bidding on future projects as a result of its experience with the city's procurement process. We reported these statements to convey that this negative perception exists, and that such perceptions have a real impact on the number of bids that the city receives, which could then impact the city's ability to receive competitive bids. We contend that the views of prospective offerors are valuable to all stakeholders when evaluating the procurement process. We maintain that the department could benefit from examining its practices to assess possible ways of combating this perception.

The department objects to our mentioning the fact that one firm was awarded two out of the three contracts, and another firm consisted of the same firm's former employees. This information is well-known, easily substantiated with publicly available sources, and would have been a serious omission if it was not mentioned as part of the report. Our conclusion brings together facts that contribute to a particular public perception, and end with the statement that because such perceptions exist, DTS-RTD needs to be scrupulous with its documentation. We are encouraged that, as the DTS director stated in his response, this is a noble goal to which the department will aspire.

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Chapter 1

Introduction

The audit is being conducted pursuant to the authority of the Office of the City Auditor (OCA) as provided in the Revised Charter of Honolulu. This audit is included in OCA's proposed work program for FY2008-2009, which was communicated to the mayor and Honolulu City Council in June 2008. The city auditor has determined that this audit is warranted due to concerns expressed by the city council regarding contracts between the Department of Transportation Services and PB Americas Inc. for certain technical and professional services for the Honolulu High-Capacity Transit Corridor Project. In a March 17, 2008 letter to our office, council members requested an audit to determine if consultants have met the terms and conditions for the following contracts:

- Contract No. F54306—Requiring the drafting and reporting of the *Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS)*.
- Contract No. SC-DTS-0700001—Requiring the development of the *Preliminary Engineering and Final Environmental Impact Statement (PE/EIS)*.
- Contract No. F65107—Project Management Support Services for the Preliminary Engineering/Environmental Impact Statement for the Honolulu High-Capacity Transit Corridor Project.

Background

Honolulu's first serious look at the rapid transit alternative came as part of the O'ahu Transportation Study begun in 1963 when the O'ahu population was already approaching 600,000, according to *Railway Age Magazine*. Since this study was completed in 1967, the establishment of a fixed guideway transit system serving an urban corridor extending from Pearl City to Hawai'i Kai has appeared in every subsequent O'ahu transit study over the last four decades.

Subsequent studies in the 1970s included two Preliminary Engineering and Evaluation Program studies, which considered a variety of options for O'ahu's transit needs that ranged from

expanded bus systems to busways, waterborne ferries, and light rail. In the late 1970s, the proposed Honolulu Area Rail Rapid Transit (HART) project would have comprised an eventual system of 23 miles serving 21 stations between Pearl City and Hawai'i Kai. By 1981 HART had reached the final Environmental Impact Statement stage, and the city had a \$5 million, 80 percent share Urban Mass Transportation Administration (UMTA) grant for preliminary engineering work. However, when then-President Ronald Reagan announced massive budget cuts, including the elimination of all funding for mass transit projects, Honolulu's then newly elected Mayor Eileen Anderson canceled a \$5.75 million engineering study and returned the grant to UMTA, noting reluctance by the state and federal governments to support HART.

Honolulu rapid transit came back to life in 1985 following the election of pro-rapid transit Mayor Frank Fasi, who had been in office during O'ahu Transportation Services' first examination of mass transit alternatives during the 1960s. For this study, the city undertook a modified Alternatives Analysis/Draft Environmental Impact Statement approach that was based upon many of the fundamental decisions already reached in the earlier studies, such as the corridor definition, the need for full grade separation, and the use of fixed guideway technology. The new study concentrated on a consideration of alternative fixed guideway technologies and an evaluation of alternative public-private financial and implementation options. An AA/DEIS report for the project was completed, and the Honolulu city administration and city council reached agreement on a final route choice in November 1991. However, funding complications prevented the project from going forward.

Funding mechanisms had been proposed by the mayor in one year, and the governor in another. According to the *Honolulu Star-Bulletin*, in 1986, Mayor Fasi proposed raising gasoline taxes 66 percent to generate \$3.9 million for a revived HART project. He also wanted \$777 million from the stalled H-3 project to go to HART. In 1990, then-Gov. John Waihee proposed a half-percent excise tax increase to allow the counties to pay for transit projects, including the city's \$1 billion rail line. That same year, the state legislature enacted this tax increase through Act 184. Act 183 had established the Transit Capital Development Fund and directed the state comptroller to expend available moneys from the transit fund as provided by a development agreement between the executive branch of a county and governor. On November 14, 1991, the city council voted 5-4 to enter into a joint funding development agreement with the state. At the U.S. Congress,

Section 3035(w) of the Intermodal Surface Transportation Act of 1991, which became public law in December 1991, authorized the U.S. Secretary of Transportation to negotiate and sign a multiyear agreement with the City and County of Honolulu, including \$618 million in federal funds to carry out construction of the locally preferred alternative. Under the state's Act 184, the counties were required to adopt the half-percent surcharge by October 1, 1992. However, on September 23, 1992, the city council voted 5-4 against the half-percent excise tax increase, effectively killing the project. Subsequently, the *Honolulu Star-Bulletin* reported that, because the city council voted against the tax increase, the U.S. Congress revoked authority to spend some \$990 million in federal dollars on the transit project in May 1993, citing the lack of guaranteed local funding.

Honolulu High-Capacity Transit Corridor Project

The Honolulu High-Capacity Transit Corridor Project, also known as Honolulu Rail Transit, is a 20-mile elevated rail line planned to initially connect West O'ahu with downtown Honolulu and Ala Moana. The system features electric, steel-wheel trains capable of carrying more than 300 passengers each. Its purpose is to eventually provide high-capacity rapid transit in the highly congested east-west transportation corridor between Kapolei and the University of Hawai'i at Manoa, as specified in the O'ahu Regional Transportation Plan 2030.

The proposed route of Honolulu Rail Transit is designed to connect where people live with the areas where most people work, shop, and attend school. Honolulu Rail Transit stations will feature five park-and-ride facilities along the initial 20-mile route, and will be served by express and local feeder buses from neighboring communities. The first line will run from Kapolei to Ala Moana Center, with stops including University of Hawai'i West O'ahu, Waipahu, Leeward Community College, Pearl City, Pearlridge, Aloha Stadium, Honolulu International Airport, Kalihi, Honolulu Community College, downtown, and Kaka'ako. Expansions will include service to Salt Lake, University of Hawai'i at Manoa, Waikiki, and Kalaeloa.

Local funding for the project's operating and capital costs was authorized by Section 46-16.8 of the Hawai'i Revised Statutes (HRS), which allowed the City and County of Honolulu to levy a one-half percent general excise and use tax (GET) surcharge for the operating and capital costs of a locally preferred alternative for a mass transit project, beginning January 1, 2007. The GET surcharge was established at the city level through the Revised Ordinances of Honolulu (ROH) Chapter 6, Article 60, to provide

local funding for the project. According to ROH Section 6-60.1, prior to the tax surcharge monies being expended as the local match for federal funds, the council had to approve by ordinance a locally preferred alternative following an alternatives analysis. In addition, the council must have received an operational, financial, development and route plan for the locally preferred alternative from the director of transportation services; and there must be a commitment of federal funds, whether for planning, land acquisition or construction. Following its receipt of the Alternatives Analysis Report dated November 1, 2006, the city council approved its selection of the locally preferred alternative through Ordinance 07-001.

The locally preferred alternative was defined in this ordinance as a fixed guideway system between Kapolei and the University of Hawai'i at Manoa, starting at or near the intersection of Kapolei Parkway and Kalaeloa Boulevard, with an alignment in five sections: (1) Saratoga Avenue/North-South Road and Kamokila Boulevard, as determined before or during Preliminary Engineering, to Farrington Highway; (2) Farrington Highway/Kamehameha Highway; (3) Salt Lake Boulevard and A'olele Street as determined by the city administration before or during Preliminary Engineering; (4) Dillingham Boulevard; and (5) Nimitz Highway/Halekauwila Street/Kapiolani Boulevard to the University of Hawai'i at Manoa, with the Waikiki branch.

Regarding the use of funds, ROH Section 6-60.2 states that all moneys received from the state derived from the imposition of the surcharge established under this article shall be deposited into the general fund and expended for the purposes authorized by state law, specifically the operating or capital costs of a locally preferred alternative for a mass transit project; and expenses in complying with the Americans with Disabilities Act of 1990. No moneys received from the surcharge shall be used to build or repair public roads or highways or bicycle paths, or to support public transportation systems already in existence prior to July 12, 2005. Pursuant to Section 9 of Act 247, Session Laws of Hawai'i, Regular Session of 2005, ROH Section 6-60.1 shall be repealed on December 31, 2022.

Federal Transit Administration New Starts Program

The *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users* (SAFETEA-LU) has authorized \$6.6 billion in New Starts funding through fiscal year 2008-09. SAFETEA-LU directs the Federal Transit Administration (FTA) to evaluate and rate candidate New Starts projects as an input to federal funding

decisions and at specific milestones throughout each project's planning and development. SAFETEA-LU further supports a comprehensive planning and project development process which New Starts projects must follow, and which is intended to assist local agencies and decision-makers in evaluating alternative strategies for addressing transportation problems in specified corridors and selecting the most appropriate improvement to advance into engineering, design, and construction. Planning and project development for New Starts projects is a continuum of analytical activities carried out as part of metropolitan systems planning, and the National Environmental Policy Act of 1969 (NEPA) review processes.

The FTA's discretionary New Starts program is the federal government's primary financial resource for supporting locally planned, implemented, and operated major transit capital investments. The New Starts program funds new and extensions to existing fixed guideway transit systems in every area of the country. These projects include commuter rail, light rail, heavy rail, bus rapid transit, streetcars and ferries. The FTA's goal for the New Starts program is to fund meritorious projects, develop reliable information on project benefits and costs; ensure projects are treated equitably, nationally; facilitate communication between the FTA, the transit industry and Congress.

New Starts projects must undergo evaluation by the FTA throughout the entire project development process. While the FTA is responsible for ensuring that planning projections are based on realistic assumptions and that design and construction follow acceptable industry practices, it is the responsibility of project sponsors to properly manage, design, engineer and construct projects.

Transit planning and project development process

New Starts projects, like all transportation investments in metropolitan areas, must emerge from a regional, multi-modal transportation planning process. The process is based upon rational decision-making that benefits from information developed during the following three phases of New Starts project development:

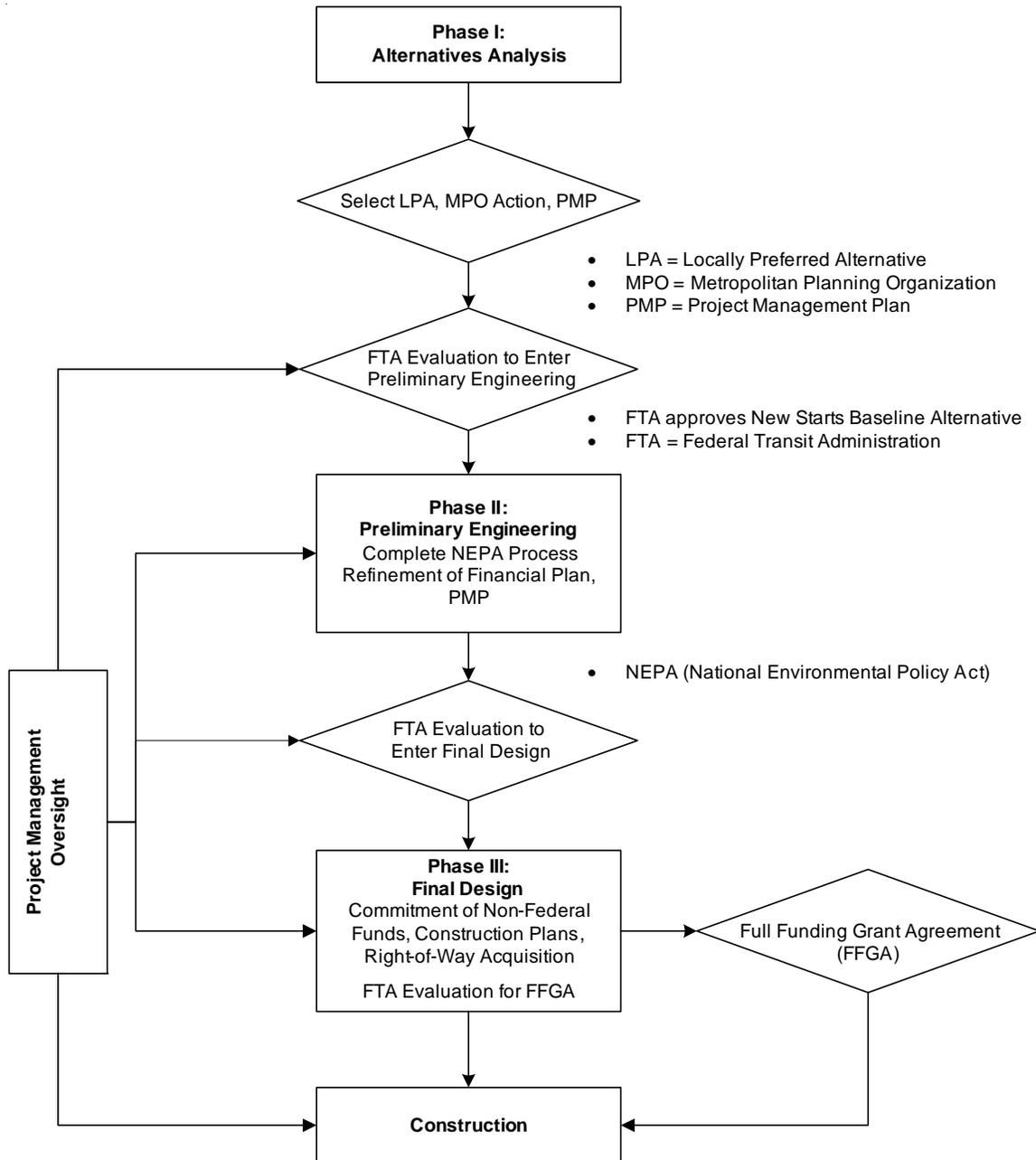
- *Phase I: Alternatives Analysis (AA)* – Local project sponsors are required to perform an Alternatives Analysis that evaluates the *mode* and *alignment* options for a particular corridor in the community. This analysis informs local officials and community members on the benefits, costs

and impacts of transportation options, so that the community can identify a preference. This phase is complete when local and regional decision makers select a locally preferred alternative, and it is adopted by the metropolitan planning organization into the region's long-range transportation plan.

- *Phase II: Preliminary Engineering (PE)* – During the preliminary engineering phase of the project for New Starts developments, local project sponsors consider their design options to refine the locally preferred alternative and complete the National Environmental Policy Act process. Preliminary engineering hones the estimates of project costs, benefits, and impacts. In addition, during the Preliminary Engineering phase of project development, local sponsors finalize management plans, demonstrate their technical capabilities to develop the project, and commit local funding sources.
- *Phase III: Final Design* – This is the last phase of project development and includes the preparation of final construction plans, detailed specifications and bid documents.

Based on its evaluations, the FTA makes decisions about moving projects forward, from preliminary engineering to final design, to annual funding recommendations to Congress, and to the execution of a Full Funding Grant Agreement. In the Annual Report on New Starts, FTA applies these evaluations to recommend funding for projects anticipated to be ready for a Full Funding Grant Agreement before the end of the budget fiscal year, and to recommend funding for other meritorious projects. The New Starts planning and project development process is shown in Exhibit 1.1.

**Exhibit 1.1
New Starts Planning and Project Development Process**



Source: Federal Transit Administration

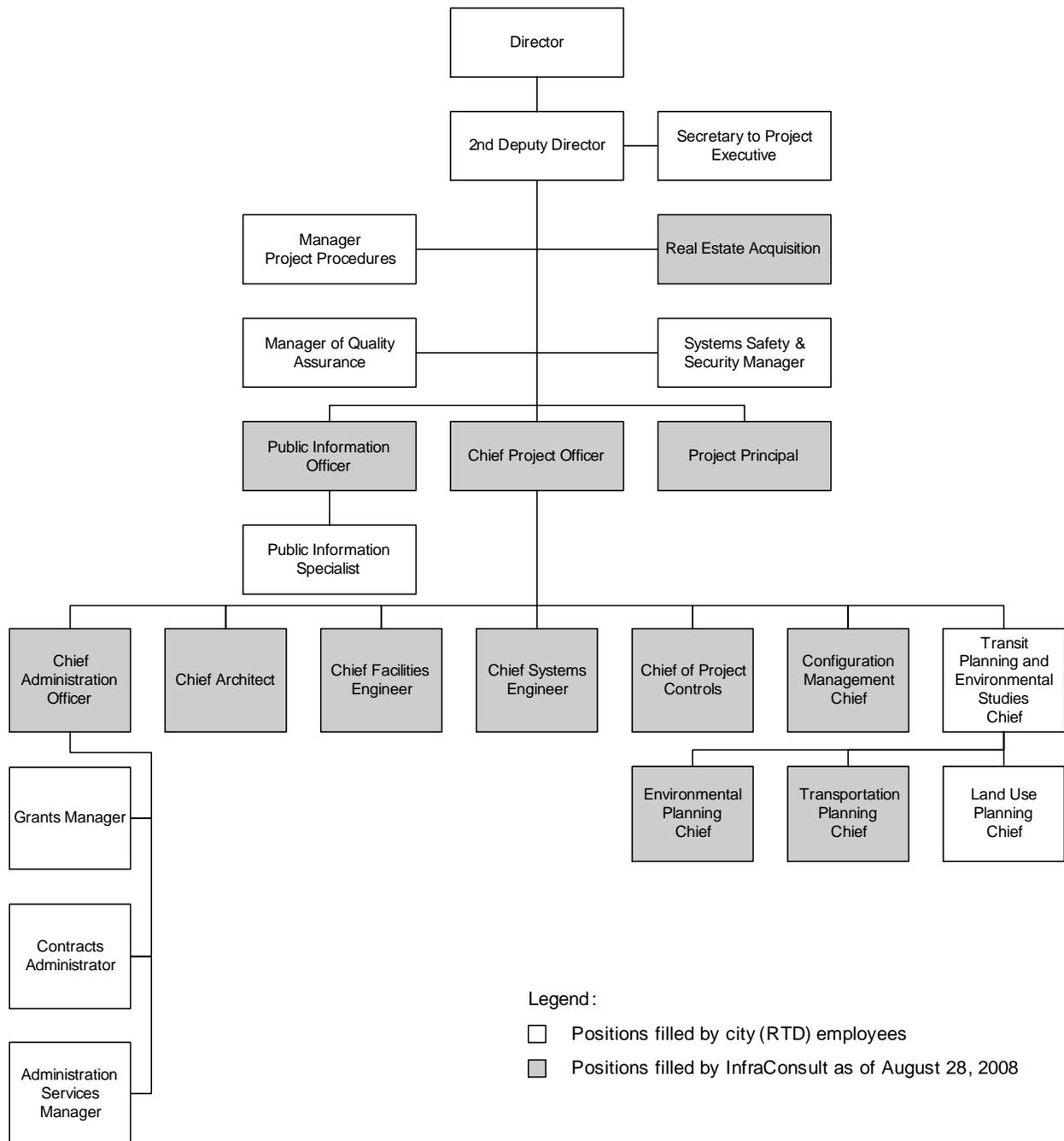
***Honolulu High-Capacity
Transit Corridor Project
organization and funding***

The Department of Transportation Services (DTS) plans and designs activities related to streets, highways, and transit systems under the jurisdiction of the City and County of Honolulu. The department consists of five divisions: Transportation Planning, Public Transit, Traffic Engineering, Traffic Signals & Technology, and Rapid Transit.

The FTA requires New Starts grantees, i.e. the city, to establish the organization to ensure its technical capacity to carry out a major capital project. The current Rapid Transit Division first appeared as a budget item in the proposed FY2007-08 budget, and was given the responsibility to plan and design the fixed guideway project pursuant to the FTA's New Starts process.

In order to help the city meet the technical capacity required by the FTA, the Rapid Transit Division staff is supplemented by employees of InfraConsult, with which the city has a project management support consultant contract. As of December 27, 2007, the division was headed by the DTS second deputy director plus positions allotted for 10 city employees and 12 chief-level InfraConsult employees. With its contract scheduled to end in 2009, InfraConsult's responsibilities include training their future city-employed successors to take over its responsibilities. Currently, this combined staff has the responsibility for overseeing the work of the city's general engineering contractor for the project, PB Americas. Exhibit 1.2 shows the Rapid Transit Division's organizational chart.

Exhibit 1.2
Department of Transportation Services
Rapid Transit Division Organizational Chart



Source: Department of Transportation Services Rapid Transit Division

At start-up, the Rapid Transit Division had a budget of \$4.1 million, which provided for 35 permanent full-time positions, current expenses and equipment. This new organizational unit was needed to meet FTA's requirement that the city have the technical capability and capacity to carry out a major public transportation capital investment pursuant to the New Starts process. The division is supported by the Transit Fund established in 2005 and codified in Section 46-16, HRS, which accounts for all monies transferred from the general fund for the one-half percent county GET surcharge on state tax and all revenues generated by or received for the transit project. Candidate projects seeking to advance through project development are subject to FTA evaluation against New Starts project justification and local financial commitment criteria. The FTA evaluates local financial commitment based on: the proposed non-New Starts share of total project costs, the stability and reliability of the proposed capital financing plan, and the ability of the sponsoring agency to fund operations and maintenance of the entire transit system as planned, once the project is built. The fund was estimated to contain \$45 million in its first year, FY2006-07, increase to \$172.1 million in FY2007-08 and \$285.1 million in FY2008-09. All monies in the Transit Fund are expended for the operating or capital costs of the Honolulu High-Capacity Transit Corridor Project.

Overview of the Honolulu High-Capacity Transit Corridor Project contracts

As of the date of our audit, the Honolulu High-Capacity Transit Corridor Project involved three locally funded professional services contracts, two for the development of federally required reports, and one for a project management support consultant.

- Contract No. F54306—Required the drafting and reporting of the *Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS)* for the Transit Project in the amount of \$9.7 million plus subsequent contract amendments increasing the total payment amount to \$10.2 million. This contract was awarded to Parsons Brinckerhoff Quade & Douglas (PBQD) – later renamed PB Americas – and executed on August 26, 2005, to be completed within 720 calendar days from the Notice to Proceed, exclusive of the time required by the city to review the work.

This is a firm-fixed-price contract. According to the Hawai'i Administrative Rules Section 3-122-136(b), this type of contract provides a price that is not subject to adjustment due to variations in the contractor's cost of

performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the purchasing agency can be established at the outset. Bases upon which firm-fixed-prices may be established include: (1) adequate price competition for the contract; (2) comparison of prices in similar prior procurement in which prices were fair and reasonable; (3) establishment of realistic costs of performance by utilizing available cost or price data and identifying certainties in contract performance; or (4) the use of other adequate means to establish a firm price. The Alternatives Analysis report dated November 1, 2006, served as the city council's basis for adopting Ordinance 07-001, in which the council approved a fixed guideway system as the locally preferred alternative.

- Contract No. SC-DTS-0700001—Required the development of the *Preliminary Engineering and Final Environmental Impact Statement (PE/EIS)* for the Transit Project, including preparing and periodically updating a series of plans for the PE/EIS phase of the project that are required by the Federal Transit Administration for the project review process, totaling \$86 million. This contract was awarded to PB Americas and executed on August 24, 2007, to be completed within 900 days from the first Notice to Proceed date, exclusive of the time required by the city and other public agencies to review the work.

This is a cost-plus-fixed fee contract, defined by the Hawai'i Public Procurement Administrative Rules Section 3-122-135(b)(1)(B)(ii) and 3-122-137(i)(1) as a type of cost-reimbursement contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is modified to provide for an increase or decrease in the scope of work specified in the contract.

- Contract No. F65107—*Project Management Support Services for the Preliminary Engineering/Environmental Impact Statement for the Honolulu High-Capacity Transit Corridor Project*, awarded to InfraConsult LLC for \$11.5 million.

This contract was executed on April 20, 2007 with a term of approximately 30 months.

This is a cost-reimbursement contract, which according to the Hawai'i Public Procurement Administrative Rules, Section 3-122-137(a), provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with subchapter 15 and as provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed, except at its own expense, without prior approval or subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. It has a provision whereby the contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first. This type of contract is appropriate when the uncertainties involved in contract performance are of the magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. It necessitates appropriate monitoring by agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. A summary of the three contracts' basic features is shown in Exhibit 1.3.

Exhibit 1.3
Summary of Audited Contracts

<i>Contract Number / Purpose</i>	<i>Contractor and Contract Features</i>	<i>Total Contract Amount</i>
F54306 Alternatives Analysis/ Draft Environmental Impact Statement (AA/DEIS)	Parsons Brinckerhoff Quade & Douglas Inc. (PBQD) <ul style="list-style-type: none"> • Firm fixed-price <ul style="list-style-type: none"> ➤ Executed 8/26/05 ➤ 720-day completion 	<ul style="list-style-type: none"> • \$10.2 million <ul style="list-style-type: none"> ➤ \$3.2 million awarded to 22 subcontractors
SC-DTS-0700001 Preliminary Engineering/ Environmental Impact Statement (PE/EIS)	PB Americas (PB) – formerly PBQD <ul style="list-style-type: none"> • Cost-plus-fixed fee <ul style="list-style-type: none"> ➤ Executed 8/24/07 ➤ 900-day completion 	<ul style="list-style-type: none"> • \$86 million <ul style="list-style-type: none"> ➤ \$22.8 million awarded to 35 subcontractors
F65107 Project Management Support Consultant	InfraConsult <ul style="list-style-type: none"> • Cost-reimbursement contract <ul style="list-style-type: none"> ➤ Executed 4/20/07 ➤ 30-month completion 	<ul style="list-style-type: none"> • \$11.5 million <ul style="list-style-type: none"> ➤ \$2.0 million awarded to 14 subcontractors

Source: Department of Transportation Services

Objectives of the Audit

1. Assess whether the Department of Transportation Services-Rapid Transit Division's Honolulu High-Capacity Transit Corridor Project contracts were procured in compliance with existing policies, laws and regulations.
2. Assess the effectiveness by which the Department of Transportation-Rapid Transit Division manages its Honolulu High-Capacity Transit Corridor Project contractors to ensure compliance with contract terms and conditions.
3. Make recommendations as appropriate.

Scope and Methodology

The scope of our audit included a review of the procurement of three contracts for technical and professional services, contract management and expenditures up to June 30, 2008. We focused on practices employed by the Department of Transportation Services-Rapid Transit Division (DTS-RTD) and its project management consultant, InfraConsult, in administering the contracts for the Honolulu High-Capacity Transit Corridor Project.

As part of our fieldwork, we reviewed applicable federal, state and city laws, rules, charter provisions, policies, and procedures related to the procurement and contract management. We examined the DTS-RTD's management, operational and other relevant practices for compliance with the Revised Charter of Honolulu, the Revised Ordinances of Honolulu, Hawai'i Public Procurement Code under Hawai'i Revised Statutes Chapter 103D and related Hawai'i Public Procurement Administrative Rules. We conducted a documentation review of department policies and procedures, project files and other documents related to the Honolulu High-Capacity Transit Corridor Project.

We also examined contract terms and agreements related to the project, the city's finance policies, Federal Transit Administration guidelines and other applicable policies and procedures that provide administrative guidance and controls. We conducted interviews with DTS-RTD and InfraConsult staff, particularly those with procurement and contract administration responsibilities, and the FTA regional administrator overseeing the Honolulu High-Capacity Transit Corridor Project. We conducted Internet, literature, and other searches as appropriate to identify other industry or commonly utilized practices. We also reviewed industry best practices and comparative data from the Federal

Transit Administration, other jurisdictions with similar projects and industry organizations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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Chapter 2

The Rapid Transit Division Complied with Procurement and Contract Management Requirements for the Transit Contracts but Needs to Take Measures to Improve Transparency and Increase Accountability

The Honolulu High-Capacity Transit Corridor Project is estimated to cost more than \$5 billion at the time of construction. The three contracts we reviewed, totaling \$107.7 million, comprise the early New Starts project development phases. At this early stage, the city's ability to put in place structures that ensure accountability sets the foundation for what its stakeholders can expect as the project increases in cost and complexity. Perceptions of contractor favoritism persist among the public and for some within the engineering industry, due to the award of two contracts to PB Americas, a firm that has been awarded city projects for several decades. This perception was further reinforced by the project management support consultant award to former PB Americas employees who comprise InfraConsult. However, with this audit, we found that the three contracts we reviewed were awarded in compliance with procurement rules, regulations and policies. All three contracts also complied with contract administration requirements, and contract terms. As of the date of our audit, all three had complied with allowable cost categories.

However, we also found lapses in the time allotted for needed reviews, enforcement of some contract terms, and vulnerabilities within the contracts themselves that could lead to increases in contract costs. The cost of the project, coupled with the city's longstanding relationship with its contractors, understandably leads to concern among all stakeholders that proper oversight must be performed throughout this project. The city has stated its commitment to timeliness, by repeatedly communicating to the public its intent to begin construction in December 2009. However, in order to reassure its stakeholders that the project is also being undertaken with integrity, the city also needs to demonstrate just as strongly that transparency and accountability will not be sacrificed for expediency.

Summary of Findings

1. All three rail transit contracts complied with procurement requirements. However, DTS-RTD needs to improve its documentation of the basis for its procurement decisions to improve transparency.
2. DTS-RTD complies with contract requirements, but needs to improve monitoring and to develop detailed guidelines to increase accountability.

All Three Rail Transit Contracts Complied with Procurement Requirements. However, DTS-RTD Needs to Improve Its Documentation of the Basis for Its Procurement Decisions to Improve Transparency

The National Association of State Purchasing Officials (NASPO) defines public procurement as the process of obtaining goods and services for public purposes in accordance with law and procedures intended to provide for the economical expenditure of public funds. The guiding principle of procurement practices is full and open competition, according to the Federal Transit Administration (FTA). The primary purpose of full and open competition is to obtain the best quality and service at minimum cost, i.e. the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate in public business to every potential offeror.

We found that all three contracts were procured in compliance with federal, state and local requirements. We followed up on recommendations made following the FTA's Procurement System Review, which found 17 deficiencies specific to the city Department of Budget and Fiscal Services (BFS) and Department of Transportation Services (DTS). These deficiencies consisted of establishing management controls or amending policies, which were addressed as of the date of our fieldwork. In addition to following up on the FTA's recommendations, we also reviewed state and local procurement requirements covering: contents of procurement files, public notice and solicitation, selection and evaluation committees, selection and evaluation criteria, negotiation, fixed price contract requirements, discussions with offerors, best and final offers, contract awards, cost reimbursement contract award, and post-contract matters.

While the three contracts complied with requirements, there were opportunities for improvement, particularly with the Alternatives Analysis procurement. We found that the Record of Procurement for the Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS) contract contained insufficient evidence of the basis for the contract price as recommended by the FTA Best

Practices Procurement Manual. The procurement record also did not contain a Record of Negotiation between the city and its contractor aside from revisions to contract drafts. Taken together, these two practices made it difficult to determine whether negotiated prices submitted were fair and reasonable according to Hawai'i Administrative Rules. In addition, the selection committee changed the way it evaluated Past Performance, one of the selection criteria, after receiving proposals. Instead of relying on telephone interviews from other clients as originally planned, the members' personal familiarity with the proposers took precedence over obtaining additional information from other clients. While the committee had the leeway to do so, the decision to base its evaluation more on personal perceptions and less on independent information than originally planned undermines the integrity of the process and reinforces perceptions that the city's procurement decisions are predetermined.

Procurement complied with federal, state and local government policies and regulations

The procurement process for the rail transit system is subject to federal, state and local laws, policies and regulations. The Federal Transit Administration is the agency that runs and manages programs of financial assistance for mass transportation. As authorized by the 2005 *Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)*, the FTA supports locally planned and operated public mass transit systems throughout the United States. The FTA has a vested interest in assisting grantees to maintain efficient and effective procurement systems as well as a legal responsibility to ensure that its grantees expend federal funds in accordance with FTA regulations, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (49 CFR Part 18), and the contractual agreements between the FTA and the local grantee.

For this project, the FTA exercised its oversight through a Procurement System Review, conducted from February 26 to March 7, 2007. The review found deficiencies with respect to 17 elements. Corrective actions specific to the City and County of Honolulu consisted of amending procedures in four elements, establishing or developing procedures in seven elements, and establishing management controls in six elements. During our fieldwork, we found that these corrective actions were made through the establishment of BFS Financial Policy Section 01.9, FTA-Funded Procurement, effective December 31, 2007, and DTS Standard Operating Procedures, effective March 18, 2008. At the state level, Hawai'i is decentralized in its procurement of

goods, services, and construction, with each jurisdiction having authority to purchase. Within the state Department of Accounting and General Services, the State Procurement Office serves as the central authority on procurement statutes and rules for all governmental bodies of the state and its counties and the central source on matters of procurement policy. Statewide there are 20 chief procurement officers with the following jurisdictions: counties (finance, council, water supply), legislature (House and Senate), Judiciary, Office of Hawaiian Affairs, University of Hawai'i, Hawai'i Health Systems Corporation, Department of Education, and executive departments. Within the city's executive branch, the director of the Department of Budget and Fiscal Services serves as the Chief Procurement Officer, who has delegated procurement authority to each department head, who may further delegate procurement authority.

At the city level, all purchasing must comply with State of Hawai'i procurement laws, rules and city ordinances. The purchase of goods, services, and construction is based on the needs and requests of departments and agencies of the executive branch of the city. The Purchasing Division of the city's Department of Budget and Fiscal Services solicits and makes awards for goods, services, and construction needed by departments and agencies of the executive branch of the City and County of Honolulu. A summary of the procurement oversight structure at the federal, state and city levels are shown in Exhibit 2.1.

We assessed compliance with procurement requirements by reviewing the Record of Procurement Process for each contract, ranging from May 2005 to July 2007. We also reviewed procurement files related to each project, ranging in dates from April 14, 2005 to August 24, 2007. We also communicated with firms that had expressed interest in each contract during the procurement process, whether or not they decided to submit a bid, to obtain their perspectives on the process. Through this process, we found that all three procurement processes complied with existing requirements.

**Exhibit 2.1
Procurement Oversight Structure**

<i>Agency</i>	<i>Roles and Responsibilities</i>
U.S. Department of Transportation, Federal Transit Administration	<ul style="list-style-type: none"> • Runs and manages programs of financial assistance for mass transportation • Legal responsibility to ensure that its grantees expend federal funds according to regulations • Evaluates New Starts projects and makes decisions about moving projects forward
State of Hawai'i Department of Accounting and General Services, State Procurement Office	<ul style="list-style-type: none"> • Serves as the central authority on procurement statutes and rules for all governmental bodies of the state and counties
City and County of Honolulu Department of Budget and Fiscal Services Purchasing Division	<ul style="list-style-type: none"> • Director serves as the chief procurement officer with delegated authority to department heads, who may in turn delegate their authority within their departments • Solicits and makes awards for goods, services and construction needed by agencies of the executive branch
City and County of Honolulu Department of Transportation Services	<ul style="list-style-type: none"> • Establishes policies and procedures for the procurement of professional architectural and engineering services • Director may select an evaluation committee to evaluate the proposals, approve modifications to the Request for Proposals and provide for submittal of “best and final” offers • Director will make the consultant selection on the basis of evaluation report information provided • Project managers will be responsible for the preparation and processing of the contract review draft, and upon selection of the best proposal, the final contract for execution

Sources: U.S. Department of Transportation Federal Transit Administration, State of Hawai'i Department of Accounting and General Services, State Procurement Office; City and County of Honolulu, Department of Budget and Fiscal Services – Purchasing Division, Department of Transportation Services

City addressed deficiencies found during FTA's Procurement System Review

The FTA's Circular 4220.1.E *Third Party Contracting Requirements* contains 54 mandatory procurement standards applicable to grantee procurement standards when contracting with federal funds. From February 26 to March 7, 2007, the FTA contracted with the firm Leon Snead & Company, P.C. to conduct a procurement system review of the City and County of Honolulu's Department of Budget and Fiscal Services and Department of Transportation Services covering both system-wide procurement elements and individual requirements evaluated on a contract by contract basis under the city's contractor, O'ahu Transportation Services.

We followed up on the findings of this procurement systems review, focusing on those issues specific to the two city departments. The review assessment consisted of two categories: *Not Deficient* – meaning that in all instances the grantee complied with the requirement – and *Deficient* – meaning that in one or more applicable instances the grantee did not comply with the requirement. The review found deficiencies with respect to 17 elements specific to the City and County of Honolulu. Recommended corrective actions consisted of amending procedures in four elements, establishing or developing procedures in seven elements, and establishing management controls in six elements. The specific findings are as follows:

I. Amend procedures

- *Written Standards of Conduct* did not include references to conflicts of interest regarding members of immediate family or an organization that employs or is about to employ those above.
- *Written Protest Procedures* did not contain directions directly to city employees to notify FTA of the protest in all instances where FTA funds were involved.
- *Prequalification Criteria* did not contain FTA requirements.
- *Procurement Policies and Procedures* did not contain FTA Circular Requirements in the areas of: Use of Time and Materials Type Contracts, Contract Term Limitation, Revenue Contracts, Prohibition Against Geographic Preferences, Procurement of Architectural and

Engineering Services, Procurement by Noncompetitive Proposals (Sole Source), Options, Contract Cost and Price Analysis for Every Procurement Action, Cost Plus Percentage of Cost Prohibited, Advance Payments, Progress Payments, Contract Award Announcement, and Statutory and Regulatory Requirements.

II. Establish/develop procedures

- *Contract Administration System* did not contain functions of contract administration. Responsibilities were neither well defined nor clearly divided among responsible offices or individuals.
- Independent Cost Estimate
- Geographic Preferences
- Award to Responsible Contractors
- Sole Source if Other Award is Feasible
- Cost Analysis Required (Sole Source)
- Progress Payments

III. Establish management controls

- Written Procurement Selection Procedures
- Price and Other Factors (RFP)
- Evaluation of Options

We found that these deficiencies were addressed through the establishment of BFS Financial Policy Section 01.9, Federal Transit Administration Funded Procurement, effective December 31, 2007, and DTS Standard Operating Procedures, effective March 18, 2008.

In addition to its technical evaluation, the FTA Procurement System Review included a response to a complaint filed alleging favoritism in the selection of a subcontractor. The review concluded that the grantee's technical direction was purely

motivated by the needs of the project and not by a desire to select one subcontractor over another. The grantee has the authority to give technical direction to its prime contractors within the scope of the contract. The FTA's contractor did not detect any violation of the FTA standards regarding this issue.

Rail transit contracts complied with state and local procurement requirements

All purchasing for the city must comply with State of Hawai'i procurement laws, rules and city ordinances. Within the mandatory procurement standards, FTA Circular 4220.1.E, 7.a. also notes that grantees (i.e., the city) and subgrantees shall use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the procurements conform to applicable federal law. Thus, we conducted a review of procurement files for compliance with the state's public procurement law, Hawai'i Revised Statutes (HRS) 103D, related Hawai'i Administrative Rules (HAR), the Department of Budget and Fiscal Services' Financial Policies and the Department of Transportation Services' Standard Operating Procedures applicable to the procurement of professional services.

HRS 103D-304, Procurement of Professional Services, states that contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices. The purpose of HAR Section 3-120-1 is to promote economy, efficiency, and effectiveness in the procurement of goods and services, and the construction of public works for the state and counties by:

- (1) simplifying, clarifying and modernizing the law governing procurement;
- (2) requiring the continued development of procurement policies and practices;
- (3) making the procurement laws of the state and counties as consistent as possible;
- (4) ensuring the fair and equitable treatment of all persons who deal with the procurement system of the state and counties;
- (5) providing increased economy in procurement activities and maximizing best value to the fullest extent practicable;
- (6) fostering effective broad-based competition within the free enterprise system;
- (7) providing safeguards for the maintenance of a procurement system of quality and integrity; and
- (8) increasing public confidence in the procedures followed in public procurement.

The purpose of the city's procurement policy is to authorize city department heads or designees to purchase goods, services and construction, and to set forth the policy and procedures for the

procurement and payment of such items. This policy contains requirements for a procurement file that should contain, at minimum, copies of forms, the purchase order worksheets documenting quotations received, justification for less than three quotations, awards to other than the lowest bid, and any other information pertinent to the purchase. This is reinforced by the DTS' Standard Operating Procedures, whose purpose is to delineate responsibilities for departmental capital improvement project procurement activities.

We assessed compliance with FTA and other requirements by reviewing the Record of Procurement Process for each contract: dated May 2005 for the Alternatives Analysis; April 2007 for Project Management Support Services, and July 2007 for Preliminary Engineering. A summary of the procurement requirements used to assess compliance is shown in Exhibit 2.2.

Exhibit 2.2
Procurement Requirements Compliance Checklist

<i>Category</i>	<i>Criteria Used</i>
Contents of Procurement File	Budget and Fiscal Services (BFS) Policy 01.2, II-D, effective 12/04/07 BFS Policy 01.9, FTA-Funded Procurement, effective 12/31/07
Public Notice / Solicitation	Hawai'i Revised Statutes (HRS) 103D-302(c), 303 Hawai'i Administrative Rules (HAR) 3-122-16.03(b) to (d), 16.04; 46; 51 BFS Policy 01.5 IV-B, V-A
Selection/Evaluation Committee	DTS Standard Operating Procedure 3-3.3 HRS 103D-304(d) HAR 3-122-45.01, -69
Selection/Evaluation Criteria	HRS 103D-304(e) HAR 3-122-45.01, -52 DTS Standard Operating Procedure 3-3.3
Negotiation	HRS 103D-304(h) HAR 3-122-66(a), 137, 155
Fixed Price Contract Requirements	HAR 3-122-136(a), (b)
Discussions with Offerors	HAR 3-122-53
Best and Final Offers	HAR 3-122-54
Contract Awards	HAR 3-122-57
Cost Reimbursement Contract Award	HAR 3-122-137(d), (f); 133; 137 BFS Policy 01.3 XI-A.2
Post-contract Award	HRS 103D-304(i) HAR 3-122-58(a), -63 BFS Policy 01.5 V-C

Sources: Hawai'i Revised Statutes, Hawai'i Administrative Rules, BFS Policies, DTS Standard Operating Procedures

In addition, we reviewed procurement files related to each project. For the Alternatives Analysis, we reviewed files ranging from the professional services solicitation on April 14, 2005 to the contract execution on August 26, 2005. We also interviewed firms that had expressed interest in bidding for each contract during the procurement process, to obtain their perspectives. For Project Management Support Services, we reviewed files ranging from the original request for an independent services contract,

approved on December 29, 2006, to the notification of InfraConsult's selection on March 14, 2007. For the Preliminary Engineering procurement, we reviewed files ranging from the February 21, 2007 Hawai'i Government Employees' Association notification regarding the Declaration of Confidentiality for employees with access to procurement information to the August 24, 2007 contract award and execution. We found that all three procurement processes complied with existing requirements, but also that there were areas that could be improved.

The division needs to improve its documentation of the basis for its procurement decisions to increase transparency and accountability

One purpose of full and open competition is to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate in public business to every potential offeror, according to the FTA. This is particularly significant in the procurement of services, whose selection can be more subjective compared to the purchase of equipment. Because of its subjective nature, narrative documentation of the selection process for professional services is critical, according to the National Association of State Purchasing Officials (NASPO). While all three contracts complied with procurement requirements, we found that the procurement for the Alternatives Analysis contract presented opportunities for improving transparency and accountability by better documenting the basis for its decisions, balancing expediency with accountability during the selection process, and considering more broad-based means of solicitation.

The Record of Procurement and related project files indicate that all three contracts were procured in compliance with existing policies, laws and regulations. However, the Record of Procurement for the Alternatives Analysis contract contained insufficient evidence of the basis for the contract price as recommended by the FTA Procurement Self-Assessment Guide. In addition, the procurement record contained no Record of Negotiation. Taken together, these two practices made it difficult to determine whether the negotiated prices submitted were fair and reasonable according to Hawai'i Administrative Rules. The Record of Procurement contains a handwritten cost estimate performed by the DTS-RTD administrator prior to procurement that did not adequately cite sources of information. When asked whether a Record of Negotiation existed, the administrator cited edits to successive drafts of the contract contained within the administrator's office files. DTS has since established policies addressing these issues based on FTA's procurement system review. Insufficient documentation of the source for contract cost estimates and subsequent negotiations reduces confidence in the

procurement process and the reasonableness of the agreed upon final contract cost.

Another issue affecting accountability was a change that the selection committee made after receiving proposals during the AA/DEIS procurement. Originally, this was to be based on interview responses from the proposing firm's list of past clients. After receiving proposals, the selection committee changed its own procedure for evaluating Past Performance, one of the criterion specified within the Request for Proposals. When the committee compared the reference list provided with the projects that the proposed team members worked on, committee members decided that it would be sufficient to base this evaluation on their personal experiences with each of the firms. While this change technically still fulfilled this criterion, this change lessened the amount of independent information that the committee could have used for its evaluation. Instead of relying on telephone interviews from other clients as originally planned, the members' personal familiarity with the proposers took precedence over obtaining additional information from other clients. While the committee had the leeway to do so, the decision to base its evaluation more on personal perceptions and less on independent information than originally planned undermines the integrity of the process and reinforces perceptions that the city's procurement decisions are predetermined.

While these procurements met the requirement for a waiver for the standard minimum of three bids under HAR Section 3-122-66, the low number of bids resulted in public uncertainty as to whether the city has obtained the best value from these contracts. The FTA notes that advertising in appropriate media is a prudent manner of ensuring unbiased notification for procurements and of making new contacts. Although DTS-RTD exceeded minimum state procurement advertising requirements by listing Request for Proposals both on the city website and in one local newspaper, advertising in diverse media for projects of this size and complexity would help to foster effective broad-based competition.

The Record of Procurement for the Alternatives Analysis contract did not follow best practices for documenting the basis for contract cost and subsequent negotiations

FTA Circular 4220.1E, Paragraph 7.i, *Written Record of Procurement History*, requires grantees to maintain records detailing the history of a procurement. At a minimum, these

records must include: the rationale for the method of procurement; selection of contract type; reasons for contractor selection or rejection; and the basis for the contract price. However, the FTA also notes that a good record of procurement history would contain more than the minimum required by the FTA circular. According to the FTA's Best Practices Procurement Manual, a properly documented procurement file provides an audit trail from the initiation of the acquisition process to the beginning of the contract. The file provides the complete background, including the basis for the decisions at each step in the acquisition process. A well-documented file speaks for itself, without need of interpretation from the contract administrator. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries.

We found that, although the Record of Procurement for the Alternatives Analysis contract contains a cost estimate, this record consisted of a handwritten cost estimate performed by the DTS-RTD administrator prior to procurement that did not adequately cite sources of information. The DTS-RTD administrator stated that the cost analysis was performed based on the administrator's previous experience with the city's AA/DEIS process and informal inquiries from agencies and contractors in other cities. While not yet required by city policy at the time of this procurement, the cost analysis still could have benefited from more detailed information regarding the sources of information used for calculations. In its discussion of cost analysis requirements, FTA's Procurement Self-Assessment Guide states that this is a common problem found during procurement system reviews. When cost analysis is performed, it often does not show that federal cost principles were used to determine unallowable costs. Some grantees have used as a price analysis technique previous prices that were established in contracts awarded non-competitively without appropriate cost analysis.

HRS 103D-304 provides for negotiations to be conducted confidentially. However, there does not seem to be any prohibition against providing documentation of the basis for determining the fairness and reasonableness of the negotiated contract price. According to the FTA's Best Practices Procurement Manual, it is essential that every contract award be documented with a Memorandum of Negotiations which must describe the most important aspects of the procurement history. FTA's Procurement Self-Assessment Guide states that:

Procurement system reviews regularly note that grantees are awarding without negotiations with the offerors. It may be simply that discussions are not being documented ... if negotiations are not necessary, the file should be documented to reflect the analysis that led to that conclusion.

When asked whether a Record of Negotiation existed, the DTS-RTD administrator cited drafts of the contract contained within the administrator's office files. However, there was no accompanying memoranda or summary of negotiation within the contract files. Insufficient documentation of the source for contract cost estimates and subsequent negotiations reduces confidence in the procurement process and the reasonableness of the agreed upon final contract cost. Improvements have occurred since then. Effective December 31, 2007, BFS has established policies specific to FTA-Funded Procurement, addressing these issues based on FTA's Procurement System Review. In addition, documentation of subsequent negotiations for the Preliminary Engineering contract was more detailed, featuring a project negotiation plan and minutes of negotiation meetings.

The selection committee changed its own procedure for rating Past Performance after receiving proposals

NASPO defines proposal evaluation criteria as the factors, usually weighted, relating to management capability, technical capability, manner of meeting performance requirements, price and other important considerations used to evaluate which proposer in a competitive negotiation has the most advantageous offer. HRS 103D-304(e) specifies that the selection criteria employed in descending order of importance shall be: (1) experience and professional qualifications relevant to the project type; (2) past performance on projects of similar scope for public agencies or private industry, including corrective actions and other responses to notices of deficiencies; (3) capacity to accomplish the work in the required time; and (4) any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open and fair competition for professional services contracts.

Accordingly, the project selection criteria and reviewers' instructions for the Alternatives Analysis contract includes rating the following on a five-point scale, for a possible maximum of 50 points:

(1) Qualifications and Relevant Experience (Multiplier = 3.5):

- a. Will the firm perform or exercise responsibility for at least 30 (subject to change) percent of the work with its own work force? Brokerage firms are not acceptable.
- b. The firm's experience and expertise in FTA New Starts requirements.
- c. The firm's experience and expertise in preparing transportation-related Environmental Impact Statements:
 - i. Required under NEPA
 - ii. Required under HRS Chapter 343
- d. The firm's experience and expertise with public outreach/involvement in relation to transportation plan development.
- e. Relevant experience, specialized experience, qualifications/skills of the firm's key staff members.
- f. The firm's subconsultants, if any:
 - i. Is the complement of subconsultants appropriate?
 - ii. The experience and expertise of the individual subconsultants in relation to the work.
 - iii. The experience, expertise, qualifications/skills of the subconsultants' key staff members in relation to the work.
 - iv. The probable effectiveness of the firm and its subconsultants as a team.

(2) Past Performance (Multiplier = 2.5) based on interview responses from the firm's list of past clients:

- a. Dollar value of past work for the client (less than \$1 million, \$1 million to \$5 million, \$5 million to \$10 million, over \$10 million).
- b. Scope of past work for the client (AA, DEIS, other planning).

- c. Performance on previous contracts with respect to cost control, quality of work, and ability to meet schedules.
 - d. Demonstrated responsiveness to clients.
- (3) Capacity to accomplish the work on time (Multiplier = 2.5):
- a. Will the firm have a project office in Honolulu? Due to time differences between Honolulu and the mainland, a Honolulu project office is favored to ensure prompt communications with key staff.
 - b. Staff resources and assignments in the Honolulu project office.
 - c. Firm's resources available for project requirements.
 - d. Project administration/management capability based on appropriateness and completeness of the consultant team's organization – organization elements include administration, quality assurance/quality control, scheduling, configuration management, and document control.
- (4) Additional criteria (Multiplier = 1.5):
- a. The firm's level of understanding of work required.
 - b. The firm's level of understanding of FTA New Starts requirements.
 - c. The firm's level of understanding of NEPA/HRS Chapter 343 requirements.
 - d. The firm's commitment to include Disadvantaged Business Enterprises to participate in a contract award.

During the AA/DEIS procurement, the selection committee changed its own basis for Past Performance after proposals were received. Interviews of proposing firms' past clients were removed from consideration. Instead, evaluations for this criterion were based only on the selection committee members' own personal experiences with each of the firms. Originally, according to meeting minutes of the review and selection meeting on May 23, 2005, the listing of project selection criteria stated that the evaluation for Criterion No. 2 – Past Performance was to be based on interview responses from the firm's list of past clients.

Questions intended for past clients included: the name of the project and scope that the particular firm was involved in; the firm's responsibilities; how these clients knew the project's team members; their assessment of the quality of work; whether work was completed on time and within budget; and whether they would recommend the firm. Thus, interviews with past clients would have yielded additional impartial information regarding the potential contractors' performance, including cost control, quality of work, ability to meet schedules and responsiveness. However, upon comparing the reference list provided with the projects that the proposed team members worked on, it was determined that telephone interviews would not be as useful as originally envisioned and the committee members' experiences with the proposed team members were sufficient to evaluate this criterion. Therefore, the committee members agreed that the valuation of Past Performance would be based on their personal experiences with each of the firms.

Our interviews with committee members revealed that the unstated objective of the Past Performance criterion was to become familiar with those firms submitting proposals. Both firms included team members with whom committee members had worked with during the city's previous rail project in the early 1990s. Since selection committee members were already familiar with the two proposers, they did not think additional interviews were necessary. However, the selection committee's decision to change the basis for a particular criteria after receiving proposals diminished the integrity of the procurement process by perpetuating the impression that the outcome of the city's procurement decisions are predetermined.

Citing insufficient review time, the Department of Budget and Fiscal Services cancelled the original Request for Proposals for the Project Management Support Consultant

On January 18, 2007, the Department of Budget and Fiscal Services cancelled the original Request for Proposals (RFP) for the Project Management Support Consultant due to untimely submission for review and the need for more stringent reporting requirements. In its memo regarding the cancellation, BFS stated that it wanted to ensure there was sufficient time to review procurement-related documents, recommend more stringent reporting and scope of services clarification. In its defense, DTS cited the administration's compressed timeline to meet the project delivery goal of 2009 as the reason for its untimely submission. While DTS made the recommended changes to the revised RFP,

the department noted that some issues could have been addressed through an addendum to the RFP.

A BFS Purchasing Division administrator countered that despite the standard 30 to 60 days given to review RFPs, DTS allowed only one to two days of review for this RFP, with the expectation that addenda could be issued for minor changes. The BFS Purchasing Division administrator initially agreed to this compromise. However, the division subsequently found during its review that there were too many inconsistencies, insurance issues, and too few required documents approved and in place, leading to the cancellation. A new RFP was issued the following week, on January 23, 2007.

The transportation department's focus on meeting the administration's project goals, without taking into consideration the amount of time needed for adequate BFS review, undermined its own goal of timely project completion, and temporarily resulted in confusion among potential proposers regarding the viability of the project. In addition, this incident reinforced perceptions that proper oversight can be sacrificed to meet the administration's project goals. To both departments' credit, the BFS administrator said that improvements have been made since then, with more of a team approach between the two departments to facilitate procurement reviews.

Less than three bids were received for all three contracts

FTA Circular 4220.1E, 8a. requires all procurements to be conducted in a manner providing full and open competition, the guiding principle of procurement requirements and practices. The FTA also notes that advertising in appropriate media is a prudent manner of ensuring unbiased notification for procurements and of making new contracts. The FTA Best Practices Procurement Manual states that because it is often easier not to accommodate a potential new offeror, and easier to deal with fewer entities, agencies must vigilantly cultivate ways to increase competition at reasonable expense.

All three contracts, totaling \$107.7 million, attracted two bids each. Two contracts were subject to a minimum of three bids, as specified in HRS 103D-304(g), Procurement of Professional Services. According to DTS-RTD and one industry source, the small number of firms qualified to perform and oversee the highly technical tasks for these contracts played a role in the low number of bids. Another firm supported this rationale, stating that after submitting a question during the RFP process, the firm

decided not to submit a bid because the firm did not have enough locally available people to handle the contract.

Indeed, these procurements met the requirement for a waiver pursuant to HAR 3-122-66, which states that if the names of less than three qualified persons are submitted pursuant to HRS 103D-304(g), the head of the purchasing agency may determine that negotiations under HRS 103D-304(h), be conducted provided that (a) the prices submitted are fair and reasonable; and (b) other prospective offerors had reasonable opportunity to respond; or there is not adequate time to resolicit through public notice statements of qualifications and expressions of interest. The standard by which prospective offerors had reasonable opportunity to respond is based partially on HAR 3-122-16.03(d), which states that at minimum, public notice shall be publicized on a purchasing agency or provider Internet site, and optionally, in addition, the agency may also use a daily or weekly publication of statewide circulation or countywide within the pertinent county.

This waiver was granted based on the fact that advertising on the city's website and one local newspaper and giving prospective proposers 30 days to respond was deemed sufficient. However, while technical requirements were met, the outcome, obtaining less than the standard minimum of three bids for three consecutive contracts increased public uncertainty as to whether the city has obtained the best value from these contracts. This could be an indication that existing minimum advertising requirements, and the time given to firms to prepare proposals, may be insufficient for a project of this size and complexity.

Aside from advertising, another issue that contributed to the low number of bids is the perception of favoritism among potential bidders. Two engineering firms we interviewed expressed frustration that the city's previous contract awards to PB Americas over the past 12 years seem to have placed the company in a favored position with respect to future contracts. Indeed, one of the factors reviewers were asked to consider, under the category of capacity to accomplish work on time, was whether the firm will have a project office in Honolulu. The rationale was that, due to time differences between Honolulu and the mainland, a Honolulu project office was favored to ensure prompt communications with key staff. While this factor does not explicitly prevent other firms from submitting bids, this has the effect of diminishing the chances of companies other than PB Americas with the same technical capabilities, but who would have incurred additional expense to build a greater presence in

Honolulu, possibly having to increase their bids as a result. The FTA's Best Practices Procurement Manual addresses this by stating that a competitive advantage is not always unfair. A contractor may have a fair competitive advantage by virtue of its experience, its expertise, or more efficient operations. Occasionally, an incumbent contractor may have what appears to be an insurmountable competitive advantage by virtue of its previous work for the grantee. An advantage of this type may not necessarily be unfair, according to the FTA. However, we heard from two firms who stated that they were discouraged from bidding on future projects as a result of its experience with the city's procurement process. Thus, in addition to adhering to technical procurement requirements, DTS-RTD needs to assess whether the level of advertising is sufficient for the project, and whether the factors considered within certain procurement criteria limit the city's ability to attract a greater number of bids.

DTS-RTD Complies with Contract Requirements, but Needs to Improve Monitoring and to Develop Detailed Guidelines to Increase Accountability

The National Association of State Procurement Officials (NASPO) defines contract administration as the management of various facets of contracts to assure that the contractor's total performance is in accordance with the contractual commitments and obligations to the purchaser are fulfilled. Contracts are not only a means to acquire needed resources, but also a means to transfer risk to the contractor, according to the American Institute of Certified Public Accountants. Even though management may not be able to guarantee the success of contracted activities, management can take actions to better control the risks from contracted activities by: keeping contractors fully accountable to deliver what they promised; including clearly identified deliverables and deadlines; including a statement in the contract terms explicitly defining the intent of the contract, what is expected, and who is responsible; and arranging contract payments to match contractor performance.

We examined all three contracts for these elements by assessing compliance with state and local requirements pertaining to their particular contract type. Specifically, Alternatives Analysis was a firm-fixed-price contract, Project Management Support consultant (InfraConsult) was a cost-reimbursement contract, and Preliminary Engineering (PB Americas) was a cost-plus-fixed fee contract, also a type of cost-reimbursement contract. Each type of contract was subject to particular requirements as detailed by the State Public Procurement Code and associated Hawai'i Administrative Rules, and specific city policies. We found that all three contracts complied with their applicable requirements. We

also spoke to the FTA deputy regional administrator for Region IX and the program manager for general engineering for the region to obtain their insights into the city's compliance. The FTA administrator noted that DTS-RTD has been responsive to FTA requirements and have asked questions when the agency needed assistance or clarification. We found that all three contracts complied with requirements as well as key contract terms.

For all three rail transit contracts, we developed a contract compliance checklist based on the requirements for each type of contract. We also reviewed contract files to document original contract costs and change orders, documented key contract terms and benchmarks. We conducted a line-item review of invoices submitted by contractors within the scope of our audit period, up to June 30, 2008, and tested each invoice with the contract terms. We reviewed BFS expenditure detail reports to verify expenditures as of June 30, 2008.

While we found that all three contracts complied with their specific requirements, we found that each one contained terms that make each one vulnerable to exceeding their maximum contract amounts. For example, amendments to the Alternatives Analysis contract resulted in the net addition of 26 deliverables and \$346,000 to the original contract. In addition, the Alternatives Analysis report dated November 2006, was substantially complete, but was still open as of the beginning of our fieldwork in September 2008. While we estimate that the cost for the remaining deliverables would be within the maximum contract amount, leaving the contract open means that additional charges could be made to the contract, increasing the final cost.

We also found that the InfraConsult contract was vulnerable to increased costs due to the retention of the option to create an Allowance for Extra Work after the original allowance had already been set aside for other purposes. The original contract had allotted \$1 million for extra work requested by the city. Through a contract amendment on February 4, 2008, this entire amount was already set aside by a contract amendment to secure federal approvals and appropriations as well as to increase the Allowance for Reimbursable Expenses. While an additional amount was not specified, the option to create an allowance remains within the amended contract. This means that an unknown amount of charges could occur, possibly greater the original \$1 million that had been set aside for this purpose.

For the PB Americas contract, the vulnerability was found in enforcing one of the contract terms. We found that on January 14, 2008, DTS-RTD approved an invoice payment for 13 employees who provided at least 507 hours of work without obtaining required prior approval from the city, for a known total of \$42,858. PB Americas acknowledged its error and stated that additional guidance among its employees had been drafted to ensure that this would not happen again. The invoice was approved, even though establishing the appropriate staffing procedure had been required in the contract, but was not submitted until May 6, 2008.

Both the InfraConsult and PB Americas contracts were vulnerable to increased costs due to the lack of guidelines regarding the detail within invoices for subcontractors charging a monthly flat rate. For these two contracts, we found 12 subcontractors who charged a monthly lump sum ranging from \$3,000 to \$16,400, totaling \$583,895. Of these 12 subcontractors, only three provided descriptive details of the work they performed. The rest contained little more than one-line descriptions such as “consulting fee” or “professional services” and the date of the work performed. An overall guideline for such contracts requesting more substantial descriptions of the charges for which invoices were submitted could provide reasonable assurance to the city that its contractors’ subcontractors were appropriately charging for work that had been satisfactorily completed.

Alternatives Analysis contract complied with requirements and had clearly identified deliverables that matched contract payments

The Alternatives Analysis comprises the first phase of project development for New Starts projects under the Federal Transit Administration. Local project sponsors are required to perform an alternatives analysis that evaluates the mode and alignment options for a particular corridor in the community. This analysis informs local officials and community members of the benefits, costs and impacts of transportation options, so that the community can identify a preference. This phase is complete when local and regional decision makers select a locally preferred alternative, and it is adopted by the metropolitan planning organization into the region’s long-range transportation plan.

The Alternatives Analysis contract awarded to Parsons Brinckerhoff Quade Douglas (now renamed PB Americas) is a firm-fixed-price contract. According to Hawai’i Administrative Rules, this type of contract provides a price that is not subject to adjustment due to variations in the contractor’s cost of performing the work specified in the contract. It should be used whenever prices which are fair and reasonable to the purchasing

agency can be established at the outset. Bases upon which firm-fixed-prices may be established include: (1) adequate price competition for the contract; (2) comparison of prices in similar prior procurement in which prices were fair and reasonable; (3) establishment of realistic costs of performance by utilizing available cost or price data and identifying certainties in contract performance; or (4) the use of other adequate means to establish a firm price. According to a DTS-RTD administrator, this contract type was selected for this report because the products and activities required are prescribed in the federal guidelines, and are therefore defined at the outset. This was a deliverables-based contract, meaning that the contractor gets paid when the product or deliverables are completed, technically reviewed and accepted by the department. We found that the structured nature of the report required corresponds with the requirements of a firm-fixed-price contract according to Hawai'i Administrative Rules.

In addition, BFS Policy 01.5 IV specifies that firm-fixed-price contracts include a reimbursable allowance and allowance for extra work, stating that these amounts are not to be exceeded without a contract amendment. We found that this fixed price contract contained both of these elements, in compliance with these policies. Compliance with the contract terms for the AA contract was also measured according to workplan tasks and deliverables spelled out in the contract payment schedule, as noted in the following exhibit.

Exhibit 2.3
Summary of Alternatives Analysis Contract Compliance

Fixed Price Contract	Key Terms	Compliance Assessment
Hawai'i Administrative Rules (HAR) 3-122-136(a)	<p>Extent and type of work can be reasonably specified and cost can be reasonably estimated</p> <p>Places responsibility on the contractor to deliver goods and services at a price that may be firm or subject to a contractually specified adjustment</p>	<p>Products and activities required are prescribed in federal guidelines</p> <p>Contract sets the total aggregate amount as the maximum payable under this contract in accordance with a payment schedule</p>
HAR 3-122-136(b)	Firm fixed price contract should be used whenever prices which are fair and reasonable to the purchasing agency can be established at the outset	Firm fixed price was based on DTS' previous experience with this process, and interviews with agencies and contractors in other jurisdictions
BFS Policy 01.5 IV	Fixed price contract may have a reimbursable allowance and allowance for extra work	Contract includes a reimbursable allowance of \$200,000. No specific amount for extra work
AA Contract Terms	<p>Executed August 26, 2005 with a 720-day completion</p> <p>228 deliverables under 13 workplan tasks</p> <p>Lump sum maximum payable of \$10,210,000</p> <p>Reimbursable costs set at a maximum of \$280,000</p>	<p>Substantially completed through submission of the Alternatives Analysis Report dated November 2006, submitted to the city council but the contract remains open</p> <p>211 deliverables submitted as of September 2008</p> <p>Estimated total based on invoices submitted plus outstanding deliverables: \$10,209,954</p> <p>Estimated total based on invoices submitted plus outstanding deliverables: \$279,953</p>

Sources: DTS-RTD Contract and contract files, Hawai'i Administrative Rules and BFS Policy

We compared these tasks to invoices found in DTS-RTD files to determine whether charges were appropriate according to the contract terms. We also reviewed contract files containing related correspondence, letters, memoranda and other relevant documents. We found that the original contract amount included \$10.2 million as a lump sum plus \$280,000 in reimbursable expenses. The original contract included 13 general tasks and specified 202 deliverables for a total of \$9.5 million. After three amendments, 26 deliverables with an estimated cost totaling \$346,000 were added. This increased the maximum payable by 5.26 percent. These changes were made in order to meet the city council Resolution 05-377 deadline to issue the Alternatives Analysis report separate from the Draft Environmental Impact Statement by November 1, 2006. According to a DTS-RTD administrator, meeting this deadline meant that the DEIS had to conform to a different set of federal requirements than were anticipated for the originally planned AA/DEIS contract. The DEIS was subsequently completed as part of the Preliminary Engineering contract, discussed in the subsequent section.

We reviewed 37 invoices dated from September 23, 2005 to April 18, 2008 and matched the deliverables with the contract payment schedule. Our review included invoices and deliverables totaling \$9.96 million under the lump sum amount and \$279,953 in reimbursable expenses. We found that for the Alternatives Analysis contract, DTS-RTD was able to monitor contract deliverables by checking them against work plan tasks specified within the contract. Thus, we were able to track what was supposed to be delivered through the payment schedule, what was actually delivered via the invoices, and what the city paid through the BFS expenditure reports. We conclude that this contract could be effectively monitored if the existing system is properly and consistently used. The Alternatives Analysis report, dated November 1, 2006, served as the city council's basis for adopting Ordinance 07-001, in which the council approved a fixed guideway system as the locally preferred alternative between Kapolei and the University of Hawai'i at Manoa.

The InfraConsult contract complied with requirements and invoice charges matched appropriate cost categories

InfraConsult's function under this contract is to supplement the city's staff with private sector staff in order to provide the city with sufficient technical capacity to manage the rail transit project and oversee the work of planning, environmental, engineering, and construction contractors during the Preliminary Engineering/ Environmental Impact Statement phase. The contractor is also responsible for ensuring that as the project matures, a number of

positions supplied initially through the InfraConsult contract will be filled incrementally by staff directly employed by the city.

This is a cost-reimbursement contract, which according to HAR Section 3-122-137(a), provides for payment to the contractor of allowable costs incurred in the performance of the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed, except at its own expense, without prior approval or subsequent ratification by the procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified until the contract is completed or until the costs reach the specified ceiling, whichever occurs first. A cost-reimbursement contract is appropriate when the uncertainties involved in contract performance are of the magnitude that the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed-price contract. It necessitates appropriate monitoring by agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met.

According to the DTS-RTD administrator, the InfraConsult contract is not as structured as a deliverables-based Alternatives Analysis contract because there is no specific product, only the number of man-hours and staff involved. InfraConsult oversees the preliminary engineering contract by watching contractor costs, distribution of funds, and whether costs are on track to meet their respective budgets. Because of this, we based our contract compliance assessment on the allowable cost categories as prescribed by the contract.

According to the original contract, the total aggregate amount contained the following categories:

- \$10.1 million for Basic Services, comprising the consultant's staff services (labor) and related services of subconsultants, inclusive of state general excise and use tax.
- A \$423,250 Allowance for Reimbursable Expenses that includes project-related business travel, hotel and per diem charges, car rental and mileage, computer-related hardware, software, and external internet service, temporary office rent and other expenses.

- \$1 million Allowance for Extra Work requested by the city.

We reviewed InfraConsult invoices submitted between May 15, 2007 and June 20, 2008, the last invoice submitted within our audit scope. We also reviewed contract files containing relevant correspondence, letters, memos and other related documents. We performed a line-item review of each invoice to determine whether the charges on the invoices were appropriate to the cost categories to which they were assigned. Overall, we found that the charges were appropriately classified. We also summarized invoice charges to correspond to the cost categories and found that, as of the date of the last invoice, the total encumbered amounts by category were as follows:

- Basic Services: \$4.5 million, consisting of:
 - Labor (InfraConsult staff) \$3.6 million,
 - Subconsultants \$695,355, and
 - GE Tax (4.5 percent) \$193,803.
- Other Direct Costs: \$262,497, which includes:
 - Other Direct Costs \$251,193, and
 - GE Tax (4.5 percent) \$11,304.

Our assessment of compliance based on key requirements of Hawai'i Administrative rules 3-122-137 and InfraConsult's contract terms are summarized in Exhibit 2.4.

Exhibit 2.4
Summary of InfraConsult Contract Compliance

<i>Cost-Reimbursement Contract</i>	<i>Key Requirements</i>	<i>Compliance Assessment</i>
Hawai'i Administrative Rules 3-122-137	<p>Appropriate when the cost of contract performance cannot be estimated with sufficient certainty to realize economy by use of any type of fixed price contract.</p> <p>Necessitates appropriate monitoring by agency personnel during performance to give reasonable assurance that objectives of the contract are being met.</p>	<p>Award based on comparative evaluation as stated in the RFP of differing price, quality and contractual factors to determine the most advantageous offering.</p> <p>City reserves the right to approve replacement personnel and timing of replacement, and with project manager's concurrence, InfraConsult's personnel may be assigned directly to city managers and staff to perform assigned duties under city staff supervision.</p>
InfraConsult Contract Terms	<p>Executed April 20, 2007 with a 30-month completion.</p> <p>\$10,101,263 for Basic Services, including labor, related subconsultants, inclusive of state general excise and use tax.</p> <p>\$423,250 Allowance for Reimbursable Expenses including project-related business travel, computer-related expenses, temporary office rent and other expenses plus \$1 million Allowance for Extra Work as requested by the city.</p>	<p>Contract was 17 months into its term during our audit fieldwork.</p> <p>Line items meeting the criteria for Basic Services comprised \$4,500,532 in total invoices submitted between May 15, 2007 and June 20, 2008.</p> <p>These expenses were classified in submitted invoices as Other Direct Costs. This line item comprised \$262,497 in invoices submitted from May 15, 2007 and June 20, 2008.</p>

Sources: InfraConsult Contract, DTS-RTD contract files, and Hawai'i Administrative Rules

According to our review of invoices and BFS expenditure reports, invoiced and encumbered costs within our audit scope comprised 42 percent of the total contract amount. We conclude that this amount seems reasonable considering that this is a management contract halfway through its term. The division's monitoring of

costs under this contract appears adequate as of the date of our fieldwork, but continued vigilance is required to ensure that contract costs remain on track for the remainder of the contact period.

PB Americas contract complied with contract requirements and invoices matched appropriate cost categories

Preliminary Engineering comprises the second phase of New Starts projects overseen by the FTA. During this phase, local project sponsors consider their design options to refine the locally preferred alternative and complete the National Environmental Policy Act (NEPA) process. This phase hones the estimates of project costs, benefits and impacts. In addition, during this phase of project development, local sponsors finalize management plans, demonstrate their technical capabilities to develop the project, and commit local funding sources.

This is a cost-plus-fixed fee contract, defined by HAR Section 3-122-137(i)(1) as a type of cost-reimbursement contract that provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable incurred costs. The fee is established at the time of the contract award and does not vary whether or not the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is modified to provide for an increase or decrease in the scope of work specified in the contract.

The PB Americas contract was executed on August 24, 2007 with a contract term of 900 calendar days from the first Notice to Proceed (NTP) date, exclusive of the time that the city and other public agencies require to review the work. The contract contains three such dates:

- NTP #1 for work required to prepare a Draft Environmental Impact Statement (DEIS) and the documents required by the FTA to support the city's application to advance the project to the Preliminary Engineering phase of the FTA New Starts project development process. This was issued on August 24, 2007.
- NTP #2 to be issued after the FTA approves the project's entry into Preliminary Engineering (PE), for continuing DEIS work and initiating PE work up to the maximum expenditure dollar amount determined by the city. This was pending as of August 2008.

- NTP #3 for the remainder of the work not already included in the NTP #1 or #2 and to be issued upon the city's determination to provide funds in a manner consistent with contract requirements. This was issued on July 28, 2008.

According to the PB Americas contract, the total aggregate amount of \$86 million included the following categories:

- \$17.9 million direct labor,
- \$26.8 million overhead,
- \$29.7 million subconsultants,
- \$4 million fixed fee,
- \$3.6 million GE tax,
- \$2.9 million Allowance for Other Direct Costs, and
- \$1 million Allowance for Extra Work as requested by the city.

We reviewed invoices to determine whether the charges were appropriate for the categories to which they were assigned. We performed line-item reviews of invoices from September 28, 2007 to March 18, 2008 to test for compliance with contract terms. We also reviewed contract files containing any related letters, memos and other documentation.

We also reviewed compliance with the invoicing section of the contract, which states that invoices shall be supported by adequate documentation as determined by the city and shall detail the work, hours, employee name for which payment is being requested, including subconsultants' employees, and shall itemize, with receipts, invoices attached and other direct costs for which reimbursements are being requested. We found that, the majority of invoices were filed with the appropriate supporting documents, including contract-required prior city approvals for all subcontractors. As of April 16, 2008, BFS expenditure reports show that the city had expended 7.36 percent of the contract amount. Our review is summarized in the following exhibit.

**Exhibit 2.5
Summary of PB Americas Contract Compliance**

Cost-Plus-Fee Contract	Key Requirements	Compliance Assessment
BFS Policy 01.5 IV*	Payment to contractor of an agreed fixed fee plus reimbursement of allowable incurred cost. Fee is established at contract award.	Fixed fee comprises \$4 million of the \$86 million contract amount.
HAR 3-122-137	<p>Completion form requires contractor to complete and deliver a specified end-product as a condition for payment of the entire fixed fee.</p> <p>This type of contract is particularly suitable for research, development and study-type contracts.</p>	<p>Contract states that fixed fee is only due and payable for project work for which the city has given notice to proceed and for which the consultant has satisfactorily completed.</p> <p>Services described in the RFP include conducting engineering and technical studies to support the preparation of environmental impact statements.</p>
PB Americas Contract Terms	<p>Executed August 24, 2007 with a 900-day completion.</p> <p>Notice to Proceed #1 was for work required to prepare a Draft Environmental Impact Statement and federally required documents to support the city's application into the Preliminary Engineering phase.</p> <p>NTP #2 was to be issued after FTA approves project's entry into PE, for initiating PE work up to a maximum expenditure dollar amount as determined by the city.</p> <p>NTP #3 for the remainder of work not already included.</p> <p>Total contract amount of \$86 million was classified according to the following cost categories:</p> <ul style="list-style-type: none"> • Direct Labor \$17.9 million • Overhead \$26.8 million • Subconsultants \$29.7 million • Fixed Fee \$4.0 million • Other Direct Costs \$2.9 million • GE Tax \$3.7 million • Allowance for Extra Work \$1.7 million 	<p>Contract was approximately one year into its term during our fieldwork.</p> <p>Granted the same as execution date; Draft Environmental Impact Statement approved by FTA and the city in October 2008.</p> <p>Pending as of August 2008.</p> <p>Granted on July 28, 2008.</p> <p>As of April 16, 2008, BFS expenditure reports showed \$6.1 million encumbered according to the following categories:</p> <ul style="list-style-type: none"> • Direct Labor \$1.7 million • Overhead \$2.6 million • Subconsultants \$1.3 million • Fixed Fee \$391,428 • Other Direct Costs \$50,844 • GE Tax \$272,635

*Hawai'i Administrative Rules 3-122-137 defines cost-plus-fixed fee contract as a type of cost-reimbursement contract

Sources: PE/EIS contract, DTS-RTD contract files, Hawai'i Administrative Rules, and BFS Policy

In a separate review, contractor Booz Allen Hamilton issued the professional opinion under the FTA's Project Management Oversight Program that the city has demonstrated its technical capacity and capability to implement the preliminary engineering phase of project development. The DEIS, building on the findings of the Alternatives Analysis report, was completed and approved by the FTA on October 28, 2008.

All contracts remain vulnerable to exceeding maximum payable amounts

All three contracts remained open during our audit, including the Alternatives Analysis contract, for which the report had been dated November 2006. Although this contract was substantially complete, without closing the contract, additional work could be charged to the contract, which could possibly increase the maximum amounts that will eventually be paid to contractors. Changes to this contract, from a combined AA/DEIS to a standalone Alternatives Analysis contract, resulted in the addition of certain tasks and the deletion of others. Amendments added \$510,000 to the contract. Of this amount, \$346,000 and 26 additional deliverables were attributable to the change. The DEIS was completed under the PB Americas contract.

The InfraConsult contract remains vulnerable to additional costs through the retention of an Allowance for Extra Work after \$1 million had already been distributed for this purpose. A contract amendment on February 4, 2008 already set aside this entire amount for specified purposes, and could have been deleted from the amended contract. However, the option to create an Allowance for Extra Work as requested by the city remains in the amended InfraConsult contract, creating an open door for increasing contract costs.

The vulnerabilities we found under the PB Americas contract dealt mostly with implementation. We found one instance in which a contract requirement pertaining to compensation and invoicing was not followed. Specifically, the contract states that advance city approval is required for non-project employee project charges with a regular hourly rate of \$70 per hour or higher. The contract also states that the consultant shall develop procedures to be approved by the city that limit charges by non-project office employees to those in the consultant's cost estimate within the original contract. However, PB Americas submitted a request for approval after 13 employees had already provided at least 507 hours of work, for a known total of at least \$42,858. Of these employees, six had performed an unspecified number of hours for a structural workshop. Because the invoice submitted for the same period as indicated on the memo consolidated these

employees' work for the entire month, we were unable to determine the actual number of hours spent on this workshop. DTS-RTD approved this request despite the lack of prior approval, and before the appropriate policy was established and distributed to PB Americas employees as required under the contract. In addition to this incident, one invoice did not have supporting receipts for a \$2,566 postage charge.

The InfraConsult and PB Americas contracts were vulnerable to increased costs due to the lack of guidelines regarding the detail within invoices for subcontractors charging a monthly flat rate. For these two contracts, we found 12 subcontractors who charged a monthly lump sum ranging from \$3,000 to \$16,400, totaling \$583,895. Of these 12 subcontractors, only three provided descriptive details of the work they performed. The rest contained little more than one-line descriptions such as "consulting fee" or "professional services". The city's payment of subcontractors is based on the primary contractor's satisfaction with the work performed. However, having a subcontractor who does not perform according to contract terms hurts not only the contractor, but also city taxpayers if the work not performed leads to delays or change orders and increases in contract costs.

Amendments to the Alternatives Analysis contract resulted in the addition of 26 deliverables and \$346,000 to the original contract

The city originally planned to develop a combined Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS) report, based on a previous report developed in March 1990. According to the DTS-RTD administrator, the original plan was to follow the AA/DEIS with a Final EIS, which would narrow down the number of alignments, mirroring the process the city followed in the early 1990s. In this scenario, the DEIS would be distributed for public comment, then those comments would be incorporated into the final EIS.

For the current rail transit project, the DTS-RTD administrator said that the original schedule was to complete the AA/DEIS in February or March 2007. This was amended when the city council opted to choose the Locally Preferred Alternative before the general excise tax increase was enacted in January 2007, so that taxpayers would know what transit system they were buying before voting. In response to the city council's request, the DTS-RTD administrator responded to the council that if the DEIS was done separately, the agency could remove 45 days from the public comment period. The administrator anticipated that the

DEIS could be completed a few months thereafter. With Resolution 05-377, the city council urged the city administration to complete the AA no later than November 1, 2006 so that the council could select the locally preferred alternative by December 31, 2006.

When asked whether the contract would have cost less if it was bid out as only an Alternatives Analysis report rather than a combined AA/DEIS report, DTS-RTD managers said that it could have cost more, because the two reports had common elements and were substantially similar and would have resulted in duplicate efforts and higher costs. Thus, the intent was to minimize duplication of effort and the associated resources that it might take. While DTS administrators stated that the cost impact was minimal, we found that the change from an AA/DEIS report to an Alternatives Analysis report resulted in the net addition of 26 deliverables and \$346,000 to the original contract amount to meet applicable requirements.

Two of the three amendments for the Alternatives Analysis contract resulted in cost increases: The first amendment, executed in June 28, 2006, added \$100,000 to provide for additional professional and technical services to prepare (1) miscellaneous analysis relating to the FTA New Starts Program and other potential sources of federal funding and (2) to plan and implement a transit symposium, which did not add to the original contract cost. The second amendment, executed on December 28, 2006, added \$246,000 to better reflect the actual products and services rendered, and to incorporate additional work needed between the selection of the locally preferred alternative and the receipt of FTA permission to enter the Preliminary Engineering phase. The Alternatives Analysis contract changes are summarized in the following exhibit.

**Exhibit 2.6
Alternatives Analysis Contract Change Timeline**

<i>Date</i>	<i>Event</i>
August 26, 2005	AA/DEIS contract executed with 202 deliverables at a maximum payable amount of \$9.7 million.
June 28, 2006	<p>Amendment #1 to prepare miscellaneous analysis relating to the FTA New Starts Program and other potential sources of federal funding, adding 16 deliverables and added \$100,000 to the contract. The maximum payable increased to \$9.9 million.</p> <p>The amendment also added the implementation of a transit symposium to the workplan tasks. The symposium did not add to the contract amount.</p>
December 28, 2006	<p>Amendment #2 to better reflect actual products prepared and services rendered, to incorporate additional work needed between selection of the Locally Preferred Alternative and receipt of FTA permission to enter Preliminary Engineering.</p> <p>This amendment added 10 deliverables and \$246,000 to the contract cost. The maximum payable increased to \$10.2 million.</p>
October 16, 2007	<p>Amendment #3 to change the consultant's name from PBQD to PB Americas and to reflect actual products prepared and services rendered for the FTA application to enter Preliminary Engineering.</p> <p>This amendment did not result in additional tasks and no net change to contract amount.</p>

Source: DTS-RTD contract files

The Alternatives Analysis contract remains open despite substantial completion of contract deliverables

The Alternatives Analysis report dated November 2006 was submitted to the city council. However, as of the date of our fieldwork, 17 deliverables were still outstanding, at an estimated cost of \$253,810. The DTS-RTD administrator stated that significant parts have been completed by the contractor as of our fieldwork date. The administrator explained that technical report drafts contained sufficient information needed to complete the Alternatives Analysis report. What remained was completing final drafts and “clean-up” work. Because PB Americas was also

awarded the subsequent Preliminary Engineering contract, the company fell behind in closing the Alternatives Analysis contract.

When asked if it was industry practice to have the same company involved in two phases of the project, the administrator said there are no regulations against having the same company do both alternatives analysis and preliminary engineering reports. The administrator said that a conflict of interest arises if the same contractor starts final engineering and construction concurrently, because the EIS preparer can influence the magnitude of the final design. Once the design is completed, the administrator said, there is no conflict if the same contractor performs the next step. Another manager within the division was asked whether having the same contractor for two contracts made it easier to transfer the Draft Environmental Impact Statement requirements from the alternatives analysis contract to the preliminary engineering contract. The manager said no, because the alternatives analysis contract was substantially complete by the time the preliminary engineering contract was awarded and therefore whoever was awarded that contract would have received the same information and the same contract requirements. However, based on the administrator's previous statement, we note that PB Americas could have conceivably closed the alternatives analysis contract in a more timely manner if it was not also awarded the Preliminary Engineering contract.

We documented the deliverables required according to the alternatives analysis contract payment schedule, and compared them with the deliverables documented in 37 invoices dated from September 15, 2005 to March 14, 2008, the last invoice within our audit scope, June 30, 2008. We determined that, assuming the charges for the remaining 17 deliverables correspond to the contract payment schedule, the entire contract amount would be expended under both the maximum lump sum payment and reimbursable expenses, meaning that the contract could be completed within the original contract cost. However, the fact that the alternatives analysis contract remains open also leaves this contract open to additional costs. Thus, while we confirmed that the contract was substantially completed as of the date of our fieldwork and could reasonably be completed within budget, prompt closure of this contract would ensure that maximum contract costs are not exceeded.

The option to establish an Allowance for Extra Work for an undetermined amount leaves the InfraConsult contract open to undefined additional costs

During its Financial Audit of the City and County of Honolulu, for the Fiscal Year ended June 30, 2004, PriceWaterhouseCoopers LLP recommended that the city should not execute contracts and encumber funds for projects that include an allowance for extra work unless the scope of services is clearly defined. Of the \$11.5 million established as the maximum payable under the original InfraConsult contract, \$1 million was established as an Allowance for Extra Work requested by the city. There was no specific definition of what types of services or contract expenses would fall under this allowance, except that the work shall be set forth in writing through execution of a contract amendment. Its purposes were not clarified until the execution of Amendment No. 1, on January 31, 2008 which distributed the \$1 million allowance into two areas: \$963,490 for additional services to assist the city with securing federal approvals and appropriations plus \$36,510 to increase the Allowance for Reimbursable Expenses. Once this distribution was made, this allowance should have been deleted.

However, the amended InfraConsult contract still retains an option to establish another Allowance for Extra Work, with no specified dollar limit. Similar to the original \$1 million allowance, the extra work shall be set forth in writing through execution of a contract amendment. Each such amendment shall include a description of the additional services to be provided and the estimated cost of such services. Any funds remaining at the end of this agreement shall revert back to the city. DTS administrators noted that the distribution of the \$1 million allowance was within its intended use, and that any allowance would go through the appropriate approval process. The intended use was ostensibly for unforeseen events and therefore could not be pre-defined. However, having the option to establish an allowance for vague purposes for which no specific cost limit is set, leaves the contract vulnerable to fraud, waste and abuse due to additional costs for possibly unrelated or unnecessary activity.

PB Americas did not secure required approvals before submitting an invoice for 13 employees who had provided at least 507 hours of work

The PB Americas contract requires city approval of certain employees with hourly rates of \$70 or higher. This policy was developed in response to a selection committee member's concern over a *bait and switch*, whereby a firm would identify key

personnel in the submittal and switch to a replacement. In addition, the contract specified that PB Americas would establish appropriate procedures to be approved by the city that limits charges by non-project office employees to those in the consultant's cost estimate, which was attached to the contract.

Our sample of invoices showed that PB Americas complied with this requirement in most instances. However, we found that on January 10, 2008, PB Americas submitted a request for approval after 13 employees had already provided at least 507 hours of work, for a known total of at least \$42,858. Among these employees, six had performed an unspecified number of hours of work for a structural workshop. At that time, the required procedure had not been finalized. PB Americas acknowledged this as an error, and reported that it had drafted additional guidance for its employees to ensure that this would not happen again. Despite the contractor's error, DTS-RTD approved the request on January 14, 2008. DTS-RTD approved an invoice covering this period on March 14, 2008 although the promised Project Staffing Procedure covering this incident was not submitted by PB Americas to the city until May 6, 2008. Subsequent to the new procedure, the contract files also included one memo from PB Americas to DTS-RTD dated May 29, 2008, requesting approval of non-project office staff charging hourly rates of \$70 or higher, to participate in the project. This request was approved by the division, even though the employees' hourly rates were not specified in the memo. These incidents convey the message that the division will not always hold the contractor accountable for all contract terms.

Invoices from subcontractors who were paid a monthly lump sum contained little or no information regarding the work performed for that period

The InfraConsult and PB Americas contracts were vulnerable to increased costs due to the lack of guidelines regarding the detail within invoices for subcontractors charging a monthly flat rate. For these two contracts, we found 12 subcontractors who charged a monthly lump sum ranging from \$3,000 to \$16,400, totaling \$583,895. Of these 12 subcontractors, only three provided descriptive details of the work they performed. The rest contained little more than a one-line description such as "consulting fee" or "professional services".

The invoicing section of the PB Americas contract states that invoices shall be supported by adequate documentation as determined by the city and shall detail the work, hours, employee

name for which payment is being requested, including subconsultants' employees, and shall itemize, with receipts, invoices attached and other direct costs for which reimbursements are being requested. However, DTS-RTD administrators stated that there were no specific guidelines in the InfraConsult and PB Americas contracts for the level of detail required for subcontractors authorized to charge a monthly fixed rate or lump sum. Thus, the levels of detail actually provided by subcontractors within these invoices regarding the services performed were inconsistent.

Examples of descriptive details included consulting with community organizations regarding mass transit, assisting in the organization of community events and providing coordination with community officials, providing factual information to the public involvement manager regarding mass transit; tracking all public information relating to mass transit, which gives some idea of what services were provided to the city during that period. Another firm specifically noted that activities covered by the invoice included drafting material for submission to the media, giving three presentations on the project and scheduling future presentations. However, other invoices offered no explanation beyond one line describing one month's service as a "consulting fee" or "professional services subcontract". While the city's expenses under monthly fixed rate contracts were predictable, this does not negate the need to have adequate substantiation of the services provided. Providing sufficient details regarding the services provided would have provided reasonable assurance to the city that payments to subcontractors were subjected to adequate verification procedures to ensure that the work was satisfactorily done.

DTS-RTD administrators said that lump sum payments function similar to a retainer. The city's payment of subcontractors is based on the primary contractor's satisfaction with the work performed. The logic is that the contractor has a disincentive to attest to work that was not actually performed by its subcontractors, because the contractor would have to take from its own revenues to perform the same task. However, having a subcontractor who does not perform according to contract terms hurts not only the contractor, because the city could be at risk for possible increases in contract costs if the work not performed leads to delays or change orders. Additional details within each subcontractor invoice would facilitate the process of tracking reasons behind any change orders, helping to maintain a paper trail in case of contract disputes, or other types of post-contract award reviews.

Conclusion

Transparency in government means that citizens can see through its workings, to know exactly what goes on when public officials transact public business. Government that is not transparent is more prone to corruption and undue influence because there is no public oversight of decision making, according to the Markkula Center for Applied Ethics. According to the U.S. president's January 21, 2009 memorandum for heads of executive departments and agencies, transparency promotes accountability and provides information for citizens about what their government is doing. Legislators, government officials, and the public need to know whether (1) government manages public resources and uses its authority properly and in compliance with laws and regulations; (2) government programs are achieving their objectives and desired outcomes; (3) government services are provided effectively, efficiently, economically, ethically, and equitably; and (4) government managers are held accountable for their use of public resources.

The need to continuously ensure that information is readily available to a wide array of stakeholders can sometimes be at odds with the pressure on government bodies to procure services expediently and administer contracts efficiently. The city administration's stated commitment to break ground in December 2009 has been characterized by FTA's project management oversight contractor as part of an optimistic schedule. According to city officials, this schedule is primarily meant to minimize the impact of inflation on the project's as-built cost. Indeed, the FTA's Contractor Performance Assessment report has stated that inflation is the single largest factor in considering the difference between the cost *as estimated* at the time of the locally preferred alternative and the *as-built* cost, comprising 41 percent of the difference in the nominal dollar AA/DEIS cost estimate and actual project costs. The longer the period between the locally preferred alternative and the time of construction, the greater the effect of inflation on the cost of a project in year-of-expenditure dollars. On the other hand, sacrificing accountability for expediency also has its own risks.

The most prominent example was the RFP process for the Project Management Support Consultant (InfraConsult). DTS-RTD focused on posting the original RFP quickly, but gave BFS very limited time to review the RFP and supporting documents. BFS allowed the request to be posted, anticipating that any changes could be addressed by issuing addenda. However, further review found that so many of the critical elements were missing or incomplete that the RFP had to be cancelled, and a new one had

to be reissued. Thus, DTS-RTD's attempt to expedite the process backfired when the importance of a thorough review was minimized. The lack of documentation within official records regarding negotiations for the Alternatives Analysis contract did not have the same impact, but nevertheless gave rise to more questions than answers regarding the basis for the final contract cost.

Such questions arise when, on such a large project, one firm is awarded two out of three contracts, and another firm consists of the same firm's former employees. Our interviews indicate that other firms have been discouraged from submitting bids due to the firm's decades-long relationship with the city. While PB Americas may have legitimately earned its contract awards by building a strong presence in the state, the perception of favoritism persists among other firms in the industry. In addition, InfraConsult's origins as a firm established by ex-employees of PB Americas contributes to the idea that firms connected to PB Americas have a greater than average chance to participate in the project.

Our audit found instances that could further reinforce this perception. The selection committee's decision to change the basis for Past Performance to its members' personal experience rather than moving forward with originally planned interviews with other clients sends the message that pre-existing personal relationships play a significant role in the ability of firms to secure contracts with the city, thus discouraging firms that may be just as capable but not as familiar. The perception that the city extends favorable treatment to PB Americas was further reinforced by DTS-RTD's approval of an invoice for more than 500 hours of work for employees who were not pre-approved according to contract terms. PB Americas' longstanding relationship with the city, along with an estimated \$5 billion price tag, places greater demands on the city to not only meet procurement and contract administration requirements on a purely technical level, but also go above and beyond them in scrupulously documenting its decisions so that all interested stakeholders can be assured that decisions were made with full accountability.

Recommendations

The Department of Transportation Services-Rapid Transit Division should:

- a. Continue to encourage fair and open procurement by remaining vigilant in following existing procurement policies and regulations.
- b. Within the official Record of Procurement, sufficiently document the sources of information for contract cost estimates prior to procurement and final contract cost in a memorandum or summary of contract negotiations.
- c. Convey support for proper oversight by all agencies involved by providing outside agencies with timely and complete submissions for review.
- d. For future large or complex procurements, consider outreach through diverse media through market communication networks such as trade associations, to increase competition and encourage additional qualified firms to submit bids.
- e. Improve documentation of reasons for contract negotiations and awards to increase transparency and accountability.
- f. Direct the contractor to submit any remaining deliverables and close the Alternatives Analysis contract to ensure that the maximum cost is not exceeded.
- g. Develop guidelines for providing supporting documentation of the work performed to verify the contract-related tasks for invoices submitted by subcontractors who are paid in lump sum amounts.
- h. Specify the terms under which a future Allowance for Extra Work would be established, the basis for the allowance amount, and the approval process to be used.
- i. Withhold approval of invoices for payment until the contractor has met applicable contract requirements, including the development of pertinent policies and procedures, to ensure the proper expenditure of city funds.

Response of Affected Agency

Comments on Agency Response

We delivered draft copies of this report to the Department of Transportation Services (DTS) on September 9, 2009. A copy of the transmittal letter is included as Attachment 1. The DTS director submitted a written response dated October 2, 2009 which is included as Attachment 2.

In its response, DTS generally agreed with our recommendations to continue compliance with procurement and contract administration regulations, and to provide more detailed documentation within contract files. The department agreed with five of our recommendations, pointing out areas in which improvements had already begun, such as providing agencies with timely and complete submissions for review, providing greater detail in the development of cost estimates and expanded efforts to encourage competition in contract solicitations.

DTS disagreed with four of our recommendations. We recommended that the contractor submit any remaining deliverables so that the department could close the Alternatives Analysis contract to ensure that the maximum cost is not exceeded. The department disagreed with this recommendation based on the fact that this is a firm-fixed-price contract, under which cost overruns are not possible without the approval of the city. However, the department reported processing a request to the consultant to complete the deliverables due to the city, which is in line with our recommendation, as a step toward closing the contract. We contend that any contract that remains open is vulnerable to additional costs.

We recommended that the department develop guidelines for providing supporting documentation of the work performed by subcontractors for its primary contractor. DTS disagreed, noting that subcontractors do not have direct contractual relationships with the city. This recommendation was based on the inconsistency of detail we found within invoices provided by subcontractors who were paid a monthly lump sum. As we noted in the report, contract files indicated that some subcontractors charging a monthly lump sum were able to provide some details of the work they performed. This indicated to us that providing a more detailed summary beyond one-line descriptions of work that had already been performed was not an impossible task for subcontractors, but would not be done if the

city did not provide some type of guidance. We contend that the city could benefit from obtaining more supporting information from its contractors regarding the work that its subcontractors perform.

We recommended that the department specify the terms under which a future Allowance for Extra Work would be established, the basis for the allowance amount, and the approval process to be used. This recommendation was based on the department's practice of specifying a \$1 million Allowance for Extra Work for one contract, then redistributing that amount through a contract amendment. However, instead of deleting an allowance that had already been used, the amended contract still contained the option of establishing a future Allowance for Extra Work, without a specified dollar limit. The department essentially argued in favor of the value of an Allowance for Extra Work, to maintain flexibility when unforeseen events arise. However, the department showed that having some upfront guidelines are possible, when it was able to specify a million-dollar amount for this allowance in the original contract. Absent a specific dollar amount, the department could have provided guidelines for appropriate uses for such an allowance. Our recommendation would address an inconsistency in practice and send the message to all stakeholders that an Allowance for Extra Work is not tantamount to a blank check. In a subsequent comment related to this same issue, the department stated that "a justifiable increase in contract amounts in and of itself is not a bad thing." We agree; however, we also believe that justifications can be made within previously set guidelines.

We recommended that the department withhold approval of invoices for payment until the contractor has met applicable contract requirements. This recommendation was based on an invoice submitted for work performed by contractor staff who had not been pre-approved, as required within its contract. In the course of following up on this incident, we discovered that the contract already contained a provision for the contractor to develop procedures addressing this situation. As noted in the report, we found that this required procedure was not in place when the invoice was submitted. Thus, this one incident touched upon two contract provisions that were not followed. The department disagreed that this incident could have been avoided by implementing the contract provision to develop the appropriate procedure, because this was due to the contractors' lack of staffing. Nevertheless, the department also reported that it hired an accountant to audit contractor invoices, who has been instrumental in requiring resubmission of invoices. Thus, the

department implemented a more stringent invoice review process after this incident occurred, indicating that the department essentially agrees with the spirit of our recommendation.

The department also provided clarifying points, many of which we included in our report based on verified sources and our own work papers compiled during audit fieldwork. Other suggestions were not included. For example, we retained the original wording regarding the rail transit route on page 3, which was the exact wording found on the city's rail transit information page, www.honolulutransit.org and was still in place at the time the department's response was submitted.

The department disagreed with our statement on page 28 that its Record of Procurement for the Alternatives Analysis contract did not follow the best practices for documenting the basis for contract costs and subsequent negotiations. However, in the report, we noted that while this information was indeed within the record, this portion consisted of a handwritten calculation by the DTS administrator, with no supporting documentation regarding its sources. Thus, we could not determine the basis for this information without asking the DTS administrator. In contrast, as we stated in the report, the FTA's Best Practices Procurement Manual states that:

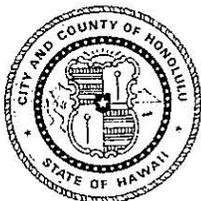
A well documented file speaks for itself, without need of interpretation from the contract administrator. A well-documented file also supports actions taken, provides information for reviews and investigations, and furnishes essential facts in the event of litigation or legislative inquiries.

Regarding our discussion on pages 30-33 regarding a change in procedures during the selection process, the department states that we implied that a change in criteria had taken place. However, we clarified that we were discussing a change in procedure within a specific criteria, not a change in the criteria itself. The department further contends that this change was completely allowable and therefore did not diminish the integrity of the procurement process. We acknowledged that the committee had the leeway to make this change. However, if, as the department noted in its response, it expected primarily positive responses from reference sources and that it would provide little value, then this should not have been included in the original agreed upon procedure. We contend that, if the committee members wanted to include their personal experiences with proposers, this should have been added to existing procedures, rather than a replacement for a previously agreed

upon procedure. When faced with a situation where procurement decisions could be perceived as the result of contractors' personal relationships with people within the committee, we contend that those responsible for such a selection should err on the side of incorporating more sources of information in their decision-making, rather than less.

The department takes issue with our reporting of statements made by firms who stated that they were discouraged from bidding on future projects as a result of their experience with the city's procurement process. We reported these statements to convey that this negative perception exists, that such perceptions have a real impact on the number of bids that the city receives, which could then impact the city's ability to receive competitive bids. We contend that the views of prospective offerors are valuable to all stakeholders when evaluating the procurement process. We maintain that the department could benefit from examining its practices to assess possible ways of combating this perception.

The department objects to our mentioning the fact that one firm was awarded two out of the three contracts, and another firm consisted of the same firm's former employees. This information is well-known, easily substantiated with publicly available sources, and would have been a serious omission if it was not mentioned as part of the report. Our conclusion brings together facts that contribute to a particular public perception, and end with the statement that because such perceptions exist, DTS-RTD needs to be scrupulous with its documentation. We are encouraged that, as the DTS stated in its response, this is a noble goal to which the department will aspire.



LESLIE I. TANAKA, CPA
CITY AUDITOR

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September 9, 2009

COPY

Mr. Wayne Yoshioka, Director
Department of Transportation Services
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Mr. Yoshioka:

Enclosed for your review are two copies (numbers 12 and 13) of our confidential draft audit report, *Audit of the Department of Transportation Services' Honolulu High-Capacity Transit Corridor Project Contracts*. If you choose to submit a written response to our draft report, your comments will generally be included in the final report. However, we request that your response address each audit recommendation as follows:

1. Whether you agree or disagree with the audit recommendation,
2. If you agree with the recommendation, please detail your corrective action plan, and
3. The date you expect to implement your corrective action plan.

Please submit your response to my office no later than 12:00 noon on Wednesday, September 23, 2009.

For your information, the mayor, managing director, and each councilmember have also been provided copies of this **confidential** draft report.

Finally, since this report is confidential, still in draft form, and changes may be made to it, access to this draft report should be restricted to those assisting you in preparing your response. Public release of the final report will be made by my office after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie I. Tanaka".

Leslie I. Tanaka, CPA
City Auditor

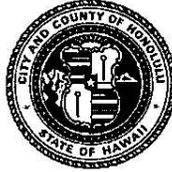
Enclosures

DEPARTMENT OF TRANSPORTATION SERVICES
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MUFI HANNEMANN
MAYOR



C & C OF HONOLULU
CITY AUDITOR

WAYNE Y. YOSHIOKA
DIRECTOR

SHARON ANN THOM
DEPUTY DIRECTOR

October 2, 2009

RT9/09-331690R.2

Mr. Leslie Tanaka, CPA
City Auditor
Office of the City Auditor
1001 Kamokila Boulevard, Suite 216
Kapolei, Hawaii 96707

Dear Mr. Tanaka:

Subject: Draft Audit Report of the Honolulu High-Capacity
Transit Corridor Project's Contracts

In response to your letter dated September 9, 2009, and subsequent approved extension, we submit our comments (attached) to the draft audit report.

Attachment 1 contains DTS' responses to your auditor recommendations. While we acknowledge the draft report's recommendations, it should be noted that the Rapid Transit Division (RTD) is already compliant with the third-party procurement requirements of the Federal Transit Administration and HRS 103D and associated Hawaii Administrative Rules. Your recommendations are generally to continue our practice and, in parts, to expand procurement activities including more detailed documentation in the contract files, both noble goals to which we will aspire. However, we disagree with four recommendations and our reasons for objecting are included in Attachment 1.

Attachment 2 contains RTD's comments on the draft audit report. We would appreciate your consideration to incorporate the comments within the final report.

Thank you for the opportunity to review and provide comments on the draft report. If you have any questions, please contact Toru Hamayasu at 768-8344.

Very truly yours,

WAYNE Y. YOSHIOKA
Director

Attachments

Department of Transportation Services – Rapid Transit Division (RTD)
 Responses to Audit Recommendations

Audit Recommendations	RTD Responses
<p>Continue to encourage fair and open procurement by remaining vigilant in following existing procurement policies and regulations.</p>	<p>RTD does not disagree with the recommendation. RTD continues to follow the Federal Transit Administration's (FTA's) Circular 4220.1F, FTA's Third-Party Procurement Best Practices Manual, Hawaii Revised Statutes Chapter 103D and the implementing Hawaii Administrative Rules Chapter 3. Corrective action plan: No changes to existing practice.</p>
<p>Within the official Record of Procurement, sufficiently document the sources of information for contract cost estimates prior to procurement and final contract cost in a memorandum or summary of contract negotiations.</p>	<p>RTD does not disagree with the recommendation. RTD is providing greater detail in the development of cost estimates prior to procurement in a Memorandum of Contract Negotiations, as demonstrated in the Record for Contract No. SC-DTS-0700001. Corrective action plan: No changes to existing practice.</p>
<p>Convey support for proper oversight by all agencies involved by providing outside agencies with timely and complete submissions for review.</p>	<p>RTD does not disagree with the recommendation. RTD is providing outside agencies with timely and complete submissions for review. Corrective action plan: No changes to existing practice. As stated on page 31 of the Draft Report, "To both departments' credit, the BFS administrator said that improvements have been made since then, with more of a team approach between the two departments to facilitate procurement reviews."</p>

Audit Recommendations	RTD Responses
<p>For future large or complex procurements, consider outreach through diverse media through market communication networks such as trade associations, to increase competition and encourage additional qualified firms to submit bids.</p>	<p>RTD does not disagree with the recommendation. RTD expanded its efforts to encourage competition in contract solicitations, especially for large and complex projects.</p> <p>The following events were advertised in the national Engineering News Record:</p> <ul style="list-style-type: none"> • Design-Build West O’ahu Farrington Highway RFP project workshop, June 2, 2008. • The Core Systems RFP workshop, August 11, 2008. • The Maintenance and Storage Facility RFP workshop, May 4, 2009. <p>The following solicitations were advertised in the American Public Transportation Association’s national newsletter, “Passenger Transport”:</p> <ul style="list-style-type: none"> • Project Management Support Consultant, August 31, 2009. • General Engineering Consultant, September 14, 2009. <p>Corrective action plan: No changes to existing practice.</p>
<p>Improve documentation of reasons for contract negotiations and awards to increase transparency and accountability.</p>	<p>RTD does not disagree with the recommendation. RTD is providing greater detail in the development of cost estimates prior to procurement in a Memorandum of Contract Negotiations, as demonstrated in the Record for Contract No. SC-DTS-0700001.</p> <p>Corrective action plan: No changes to existing practice.</p>
<p>Direct the contractor to submit any remaining deliverables and close the Alternatives Analysis contract to ensure that the maximum cost is not exceeded.</p>	<p>RTD disagrees with the recommendation. The Alternatives Analysis contract is a firm fixed-price contract and cost overruns are not possible without the approval of the City. RTD is processing a request to the consultant to complete the deliverables due to the City.</p>

Audit Recommendations	RTD Responses
<p>Develop guidelines for providing supporting documentation of the work performed to verify the contract-related tasks for invoices submitted by subcontractors who are paid in lump sum amounts.</p>	<p>RTD disagrees with the recommendation. Subcontractors do not have direct contractual relationships with the City. It is the purview of the City's contractor to accept and approve subcontractor invoices for payment. The lump sum payments represent the maximum allowable costs for the work provided. If the contractor is not satisfied with the subcontractor work product, the contractor could terminate the subcontract and engage another firm to provide the services. The subcontractors paid lump sum amounts are able to respond rapidly to tasks assigned to them as an identified need arises.</p>
<p>Specify the terms under which a future Allowance for Extra Work would be established, the basis for the allowance amount, and the approval process to be used.</p>	<p>RTD disagrees with the recommendation. RTD believes that in a project of this size and complexity, establishing an Allowance for Extra Work is an effective and efficient way to control total costs while maintaining flexibility when unforeseen events arise, necessitating the mobilization of special, unique services. There is no reasonable way to accurately predetermine unforeseen needs arising during the project development. Contract language requires that additional work requested by the City to be performed under the Allowance for Extra Work be described and estimated. Contract language also requires that the contract be amended for the additional work and any funds remaining at the end of the contract reverts back to the City.</p>

Audit Recommendations	RTD Responses
<p>Withhold approval of invoices for payment until the contractor has met applicable contract requirements, including the development of pertinent policies and procedures, to ensure the proper expenditure of city funds.</p>	<p>RTD disagrees with the recommendation. RTD believes that the situation cited in the draft report regarding approval of an erroneous invoice occurred because of a staffing shortage and not for the lack of procedures. In April 2008, RTD remedied the situation by hiring an accountant to audit contractor invoices. This has resulted in contractor(s) being required to re-submit invoices.</p>

Department of Transportation Services – Rapid Transit Division
 Review Comments on the Draft “Audit of the Department of Transportation Services
 Honolulu High-Capacity Transit corridor Project Contracts” (September 2009)

Page	Draft Audit Report Text	RTD Comments
n/a	“O’ahu”; “Hawai’i”; “Manoa”; “Waikiki”	Improper use or non-use of diacritical marks.
2	“... reached agreement on a final route choice in July 1990.”	Revise “July 1990” to “November 1991” Reason: Res. 91-241, CD-1, amended the LPA.
2	“The plan was approved in May.”	Act 184 was approved by the governor on 6/19/1990.
2	“On October 15, 1991, a U.S. House committee amended its transit package to include \$618 million ...”	Delete the sentence and refer to Section 3035(vv) of the Intermodal Surface Transportation and Efficiency Act of 1991.
2	“On November 14, 1991, the city council voted 5-4 to enter into a joint funding development agreement with the state.”	Insert additional background information, similar to the GET surcharge. Act 183 was approved by the Governor on 6/19/1990 and established the Transit Capital Development Fund and Development Agreement requirements.
2	“On May 11, 1993, the U.S. House revoked the authority to spend some \$990 million in federal dollars ...”	This statement is questionable. The U.S. House cannot unilaterally revoke spending authority.
3	“The first line will run from ...”	Revise to: “Honolulu Rail Transit will run from East Kapolei to Ala Moana Center, with 21 stations including the University of Hawai’i West O’ahu, Waipahu, Leeward Community College, Pearlridge, Aloha Stadium, Honolulu International Airport, Kalihi, Iwilei, and Kaka’ako. Extensions will include service to Salt Lake, University of Hawai’i at Mānoa, Waikī, and West Kapolei.”
9	Exhibit 1.2 Organizational Chart	The legend indicates positions filled by RTD and InfraConsult but the differentiation in color or shading is difficult to discern in the draft report provided for review.
10	Contract No. F54306 – “This is a firm fixed price contract.”	“Firm fixed-price contract” per HAR § 3-122-135(b)(1)(A)(i).
11	Contract No. SC-DTS-0700001 – “This is a cost-plus-fee” contract...”	“Cost-plus-fixed fee contract” per HAR § 3-122-135-(1)(B)(ii).
12	Exhibit 1.3	1. Use HAR terminology for contract types 2. Contract F65107 is not a professional services contract

Page	Draft Audit Report Text	RTD Comments
19	Exhibit 2.1	<p>1. Delete the spacing between "Services" and "Purchasing Division"; Insert a comma after "Services."</p> <p>2. Delete "selection of the best proposal" in fourth bullet in RTD roles and responsibilities and replace with "identification of the selected offeror."</p>
20	Second paragraph starting with "We focused our review on"	It is unclear whether the report presents the findings of Leon Snead & Company or whether OCA conducted an independent review. If OCA conducted an independent review, it should explain why this effort was necessary and why OCA did not simply adopt the findings of FTA's contractor.
21 - 22	"In addition to its technical evaluation, the FTA Procurement System Review included a response to a complaint filed alleging favoritism in the selection of a subcontractor. The review concluded that the grantee's technical direction was purely motivated by the needs of the project and not by a desire to select one contractor over another."	The word "contractor" in the second sentence should be "subcontractor."
26	"The Record of Procurement for the Alternatives Analysis contract did not follow best practices for documenting the basis for contract cost and subsequent negotiations."	RTD disagrees with the blanket nature of this statement. The AA contract files do contain cost estimate data of historic cost (adjusted for inflation), comparative averages of similar work done by other agencies, and estimated man-hours and average hourly rates.
27- 30	Discussion relating to "The selection committee changed its own procedure for rating Past Performance after receiving proposals."	The statement suggests that after receiving offers, the selection committee changed the evaluation criteria. This implication is false. The selection committee's decision to evaluate the Past Performance criterion based on its individual experience with the offerors was completely allowable and it is speculative that this would "diminish the integrity of the procurement process." The selection committee's decision strengthened the evaluation process by considering the committee members' first-hand knowledge instead of the reference checks. The reference check results were primarily positive responses, as one would expect from the reference sources listed by the offerors.

Page	Draft Audit Report Text	RTD Comments
31	<p>“Citing insufficient review time, the Department of Budget and Fiscal Services cancelled the original Request for Proposals for the Project Management Support Consultant.”</p> <p>“The transportation department’s focus on meeting administration deadlines...temporarily resulted in confusion among potential proposers regarding the viability of the project.”</p>	<p>RFP 15011 was cancelled by BFS on January 16, 2007 due to its concerns about review time and contract deliverables. RFP 15016 was subsequently released six working days later on January 24, 2007. There were no substantive differences between the RFPs. DTS’ communication to the BFS Director stated that the changes requested by BFS would not individually or collectively cause significant changes to the RFP’s scope of work and could have been covered by addendum. RTD believes that the changes would not have affected the preparation of proposal submittals by potential offerors.</p> <p>Firstly, this statement is speculative and unfairly suspicious. There is no “administration deadlines”. The project’s schedule establishes deadlines of activities. Secondly, DTS correspondence to BFS referred to the “Administration’s project delivery goal,” not “administration deadlines”. Thirdly, this statement relating to “confusion among potential proposers” is not substantiated.</p>
32	<p>“All three contracts, totaling \$107.7 million, attracted less than the minimum three bids specified in HRS 103D-304(g), Procurement of Professional Services.”</p>	<p>One of the three contracts was procured under HRS 103D-303, Competitive Sealed Proposals.</p> <p>The statement implies that “obtaining less than the standard minimum of three bids for three consecutive contracts increased public uncertainty as to whether the city has obtained the best value from these contracts.” RTD met all legal requirements to solicit participation by all qualified offerors. The lack of more offers in the three solicitations is not a remediable fault of RTD but rather a reflection of the reluctance of potential offerors to participate in the city’s procurement process because of a lack of resources or personal bias.</p>

Page	Draft Audit Report Text	RTD Comments
33	<p>“... we heard from two firms who stated that they were discouraged from bidding on future projects as a result of its experience with the city’s procurement process.”</p>	<p>RTD follows the procurement process required the Hawaii Revised Statutes Chapter 103D and implementing administrative rules and FTA’s Third Party Contracting Guidance in FTA Circular 4220.1F. If the unnamed firms chose not to participate “as a result of its experience with the city’s procurement process,” then perhaps the procurement process set by statute and administrative rules is flawed. RTD should not be held responsible for subjective statements made by unnamed sources regarding the City’s procurement process. The word “encumbered” should be replaced with “expended.”</p>
43	<p>“As of April 16, 2008, BFS expenditure reports show that the city had encumbered 7.36 percent of the contract amount.”</p>	
45	<p>Third paragraph starting with ‘The InfraConsult contract remains vulnerable to additional costs through the retention of an Allowance for Extra Work ...’</p>	<p>Firstly, establishing an Allowance for Extra Work is an effective and efficient way to control total costs while maintaining flexibility when unforeseen events arise, necessitating the mobilization of specialized and unique services. This is especially true for a project of HHCTCP’s size and complexity. There is no reasonable way to accurately predetermine unforeseen needs arising during the project development. Contract language requires that additional work requested by the City to be performed under the Allowance for Extra Work be described and estimated. Contract language also requires that the contract be amended for the additional work and any funds remaining at the end of the contract reverts back to the City. Secondly, any amendment to increase the base contract amount must be justified and approved by the BFS Director. Justifiable increases in contract amounts in and of itself is not a bad thing.</p>

Page	Draft Audit Report Text	RTD Comments
54	<p>“...one firm is awarded two out of three contracts, and another firm consists of the same firm’s former employees.”</p>	<p>The suggestion that one firm and its employees, both current and former, are given preferential treatment in competitive procurement is incorrect. If the writer had evidence of improper activities by RTD, it should be stated rather than couched in terms that place RTD at a disadvantage in defending itself to unknown critics. As OCA staff member was told repeatedly, the public transit industry is comprised of a small group of experienced professionals who often are former employees of other large firms, many of whom may or may not have an interest in Honolulu’s transit project. Therefore, it is neither notable that PB Americas was awarded two out of three contracts nor is it unusual that other similar firms chose not to participate in the solicitations for the AA Analysis or the GEC contracts.</p>