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High-Speed Rail Authority:

It Risks Delays or an Incomplete System Because of Inadequate Planning, Weak Oversight, and Lax Contract Management

HIGHLIGHTS

Our review of the High-Speed Rail Authority (Authority) revealed the following.

- The Authority's 2009 business plan estimates it needs $17 billion to $19 billion in federal funds. However, the Authority has no federal commitments beyond $2.25 billion from the American Recovery and Reinvestment Act of 2009 (Recovery Act), and other potential federal programs are small.
- The Authority's plan for spending includes almost $12 billion in federal and state funds through 2013, more than 2.5 times what is now available.
- The Authority does not have a system in place to track expenditures according to categories established by the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, its largest source of committed funding.
- The Authority has not completed some systems needed to administer Recovery Act funds, for example, a system to track jobs created and saved.
- Some monthly progress reports, issued by the Authority's contracted Program Manager to provide a summary of program status, contain inconsistent and inaccurate information.
- Authority staff paid at least $4 million of invoices from regional contractors received after December 2008, without having documented written notification that the Program Manager had reviewed and approved the invoices for payment.
- The Authority paid contractors more than $268,000 for services performed outside of the contractors' work plans and purchased $46,000 in furniture for one of its contractor's use, based on an oral agreement contradicted by a later written contract.

RESULTS IN BRIEF

The Legislature created the High-Speed Rail Authority (Authority) in 1996. State law charges the nine-member Authority with the development and implementation of intercity, high-speed rail service. According to state law, the entire network, from Sacramento to San Diego, is intended to be complete by 2020. In November 2008 voters approved the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Proposition 1A), providing $9 billion for construction of a high-speed rail network (program).

Although the Authority's 2009 business plan contains the elements required by the Legislature, it lacks detail regarding how it proposes to finance the program. For example, the Authority estimates it needs $17 billion to $19 billion in federal grants. The business plan, however, specifies only $4.7 billion in possible funds from the American Recovery and Reinvestment Act of 2009 (Recovery Act) and a few other small federal grants. According to its communications director, the Authority has no definite commitments from the federal government other than Recovery Act funding, which actually amounted to $2.25 billion when awards were announced in January 2010. The program risks significant delays without more well-developed plans for obtaining or replacing federal funds.

Further, the Authority's plan relies heavily on federal funds to leverage state bond dollars through 2013. Proposition 1A bond funds may be used to support only up to 50 percent of the total cost of construction of each corridor of the program. The remaining 50 percent must come from other funding sources. Thus, the award of up to $2.25 billion in Recovery Act funds allows for the use of an equal amount of state bond funds for construction, for a total of about $4.5 billion. However, the Authority's spending plan includes almost $12 billion in federal and state funds through 2013, more than 2.5 times what is now available. Additionally, creating a viable funding plan may be a challenge as matched funding for the least expensive corridor eligible for Recovery Act funds—Los Angeles to Anaheim—amounts to $4.5 billion, while projected costs total $5.5 billion. Barring additional non-Proposition 1A funding, the Authority may have to settle for a plan covering less than a complete corridor. The Authority must decide relatively quickly which corridors will receive federal funds. Its chief deputy director says it must prepare funding plans by spring 2011 in order to meet federal deadlines.

The Authority's plans for private financing include a revenue guarantee that needs further specification, but it is working to improve its approach to risk management. According to the 2009 business plan, the Authority expects private investors to supply $10 billion to $12 billion, but also indicates these investors will require a minimum revenue guarantee from a public entity. The Authority's financial planning consultant has addressed concerns raised by the Legislative Analyst's Office that this might be a prohibited operating subsidy; however, details on how much the revenue guarantee may cost or who might pay it are scant. Additionally, the 2009 business plan provided little detail on how the Authority would manage risk in general, but the Authority is planning to improve risk management for the program.

The Authority also needs to improve its oversight and administrative controls. State law creates a peer review group (review group) to assess the Authority's plans. Most significantly, the review group is to issue an analysis and evaluation of the viability of the Authority's funding plan for each corridor of the program. As of February 2010, however, only five of the group's eight members had been appointed, limiting the expertise available to the Authority. Moreover, according to our legal counsel, the review group is likely subject to the Bagley-Keene Open Meeting Act (Meeting Act), although the Authority has received informal advice to the contrary. Nevertheless, the review group's work could be voided if this issue is not resolved.

Additionally, the Authority lacks systems to comply with state law regarding bond funds. According to state law, only up to 2.5 percent ($225 million) of its portion of bond funds from Proposition 1A may be used for administration and only 10 percent ($900 million) may be used for planning, environmental review, and preliminary engineering (preconstruction tasks). According to its fiscal officer, the Authority is unsure how it will classify the expenditure of bond proceeds and does not have a system for tracking expenditures by category. Until such a process is in place, the authority cannot report accurately on its expenditures and risks running out of bond funds available for administration or preconstruction task costs. This is a serious problem because it is set to have spent $168 million of the $1.1 billion in bond proceeds authorized for these purposes by the end of fiscal year 2009-10.

Contractors accounted for 95 percent of the program's total expenditures over the past three fiscal years. Although the Authority generally followed state requirements for awarding contracts, its processes for monitoring the performance and accountability of its contractors—especially the entity that has been contracted to manage the program (Program Manager)—are inadequate. The Program Manager's monthly progress reports, a primary document summarizing monthly progress on a regional and program level, have contained inaccurate and inconsistent information. For example, the July 2009 report indicated that the regional contractor working on the Los Angeles-to-Anaheim corridor had completed 81 percent of planned hours but had spent 230 percent of planned dollars. In addition, although the progress reports described actions taken or products created, they did not compare those actions and products to what the contractors promised to complete in their work plans. The work plan for a consultant the Authority recently hired to oversee the Program Manager does not include a review of the monthly reports.

The Authority does not generally ensure that invoices reflect work performed by contractors. According to the chief deputy director, the Program Manager should review each regional contractor's invoice to ensure that the work claimed actually has been performed and then notify Authority staff whether the invoice should be paid. The chief deputy director further stated that staff should not pay invoices without notifications. However, Authority staff paid at least $4 million of invoices from regional contractors received after December 2008—when the Authority's fiscal officer says she was informed that such notifications were required—without documenting notification. The Authority only recently adopted written policies and procedures related to invoice payment. However, those policies and procedures do not adequately describe its controls or their implementation.

Finally, the Authority made some payments that did not reflect the terms of its agreements, risking its ability to hold contractors accountable for their performance. For example, it spent $46,000 on furniture for its Program Manager's use based on an oral agreement, despite the fact that its written contract expressly states that oral agreements not incorporated in the written contract are not binding. The written contract requires the Program Manager to provide its own furniture, equipment, and systems. Additionally, the Authority paid a regional contractor more than $194,000 to subcontract for tasks not included in the regional contractor's work plan and paid the Program Manager $53,000 for work on Recovery Act applications, which was also outside the Program Manager's work plan.

RECOMMENDATIONS

To ensure that it can respond adequately to funding levels that may vary from its 2009 business plan, the Authority should develop and publish alternative funding scenarios that reflect the possibility of reduced or delayed funding from planned sources. These scenarios should detail the implications of variations in the level or timing of funding for the program and its schedule.

To plan adequately for private investment, the Authority should further specify the potential cost of revenue guarantees and who would pay for them.

In order to respond effectively to circumstances that could significantly delay or halt the program, the Authority should ensure that it implements planned actions related to risk management.

To avert possible legal challenges, the Authority should ensure that the review group adheres to the Meeting Act or seek a formal opinion from the Office of the Attorney General regarding whether the review group is subject to this act.

To ensure that it does not run out of funds for administrative and preconstruction tasks prematurely, the Authority should track expenditures for these activities and develop a long-term spending plan for them.

To ensure that Authority staff receive relevant information on the program's status, they should amend the program management oversight consultant's work plan to include a critical review of progress reports for accuracy and consistency. Authority staff also should ensure that the Program Manager revises its progress reports to include information on the status of promised products and services.

To determine if it is paying invoices that accurately reflect work performed, the Authority should ensure that staff adhere to controls for processing invoices. For example, staff should not pay invoices from regional contractors until they receive notification from the Program

Manager that the work billed has been performed, or until they have conducted an independent verification.

To ensure that it does not misuse public funds and can hold contractors accountable, the Authority should adhere to the conditions of its contracts and work plans, and make any amendments or modifications to contracts or work plans in writing.

AGENCY COMMENTS

The Authority raised concerns about the report title but agreed with our recommendations and outlined actions it is taking or plans to take to address them.

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