



**U.S. Department of the Interior
Office of Inspector General**

Audit Report

Federal Highway Grants Department of Public Works Government of the Virgin Islands



August 2002

Report No. 2002-I-0042



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL

Caribbean Regional Office
Federal Building, Room 207
St. Thomas, Virgin Islands 00802

August 16, 2002

Honorable Charles W. Turnbull
Governor of the Virgin Islands
No. 21 Kongens Gade
Charlotte Amalie, Virgin Islands 00802

Subject: Audit Report "Federal Highway Grants, Department of Public Works, Government of the Virgin Islands" (No. 2002-I-0042)

Dear Governor Turnbull:

This report presents the results of our audit of the management of Federal highway grants by the Virgin Islands Department of Public Works.

Section 5(a) of the Inspector General Act (5 U.S.C. app. 3) requires the Office of Inspector General to list this report in its semiannual report to the U.S. Congress. In addition, the Office of Inspector General provides audit reports to the Congress. We have also provided a copy this report to the U.S. Department of Transportation.

Please provide a response to this report by September 30, 2002. The response should provide the information requested in Appendix 5 and should be addressed to our Caribbean Regional Office, Federal Building - Room 207, Charlotte Amalie, Virgin Islands 00802.

Sincerely,

Arnold E. van Beverhoudt, Jr.
Regional Audit Manager

cc: Commissioner of Public Works
Commissioner of Property and Procurement

EXECUTIVE SUMMARY

BACKGROUND

In accordance with the Virgin Islands Code (3 V.I.C. Chapter 9), the Department of Public Works is responsible for constructing, maintaining, and repairing public roads and highways in the Virgin Islands. Public Works, through its Office of Highway Engineering, receives annual allocations of funds from the Federal Highway Administration (FHWA), U.S. Department of Transportation. The allocations totaled \$12.7 million in fiscal year 2000 and \$12.8 million in fiscal year 2001. The Office of Highway Engineering had 21 employees, 11 of whom were paid from FHWA funds.

OBJECTIVE

The objective of the audit was to determine whether (1) grant funds were properly accounted for and used in accordance with applicable laws, regulations, and grant requirements; (2) road construction and/or repair contracts were awarded in accordance with applicable procurement requirements; and (3) payments to contractors were made in accordance with contract provisions.

RESULTS IN BRIEF

FHWA funds were used for approved projects. However, internal control weaknesses were identified in the areas of contract administration and grant management. Specifically, we found that:

- " Instead of soliciting bids or proposals for new contracts, Government officials sometimes bypassed the competitive procurement process by issuing contract amendments and change orders that significantly increased the scope of work and cost of contracts financed by FHWA funds.
- " Two contractors may have been paid as much as \$457,763 for overhead costs that were also charged as non-salary direct costs under their professional service contracts.
- " Potential contract cost savings of about \$835,200 were not realized because the Government did not ensure that liquidated damages provisions were included in and enforced for all construction contracts.
- " Salary cost reimbursements were overpaid by \$43,913 because reimbursement vouchers contained errors.

- " The Disadvantaged Business Enterprise Program did not meet program objectives because of a lack of staff for monitoring activities.
- " Federally-financed equipment valued at more than \$35,000 was not adequately accounted for and safeguarded.
- " Complete and accurate traffic load and other transportation data were not always available during development of the Territorial Transportation Improvement Plan.
- " FHWA funds were not always used effectively for critically needed highway improvements.

RECOMMENDATIONS

We made 11 recommendations to the Governor of the Virgin Islands to address the issues discussed in the report.

AUDITEE COMMENTS AND OFFICE OF INSPECTOR GENERAL EVALUATION

In response to the draft report, the Commissioner of Public Works concurred with three recommendations, partially concurred with three recommendations, did not concur with three recommendations, and did not respond to one recommendation. Based on the response, we consider five recommendations resolved but not implemented, four recommendations unresolved, and requested additional information for one recommendation. Because this audit related to Federal funds granted by the Federal Highway Administration, we have added a recommendation that a copy of this report will be provided to the U.S. Department of Transportation.

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INTRODUCTION

BACKGROUND

In accordance with the Virgin Islands Code (3 V.I.C. Chapter 9), the Department of Public Works is responsible for constructing, maintaining, and repairing public roads and highways in the Virgin Islands. In this regard, Public Works (1) performs all functions and exercises all authority as required by Federal law in the construction and repair of Federally-funded highway projects, (2) expends all funds made available by the Federal Government for such purposes, and (3) prepares and submits reports and forms with respect to such activities required by Federal law.

Public Works, through its Office of Highway Engineering, receives annual allocations of funds from the Federal Highway Administration (FHWA), U.S. Department of Transportation. The allocations totaled \$12.7 million in fiscal year 2000 and \$12.8 million in fiscal year 2001. These funds were given to (1) design, repair, construct, and enhance the 316.61 miles of Federal highways in the territory, (2) acquire rights-of-way for such highways, (3) reimburse the Government of the Virgin Islands for the salaries of the employees of Public Works' Office of Civil Rights and State Planning and Research Office, and (4) provide funding for the programs of these two offices. In addition, FHWA funds of more than \$12 million were being held for high priority funding of two projects: the Christiansted Bypass on St. Croix and the Windward Passage to Raphune Hill highway on St. Thomas.

The Office of Highway Engineering had 21 employees, 11 of whom were paid from FHWA funds. The objectives of this unit are to (1) produce a Territorial Transportation Improvement Plan, (2) authorize all funds for the various stages of design and construction projects in a timely manner, (3) develop and implement planning projects under the State Highway Planning Office, (4) coordinate all projects administered by the Eastern Federal Lands Highway Division of the U.S. Department of Transportation, and (5) provide plans and specification for the construction of roads and bridges on Federal highway projects.

OBJECTIVE AND SCOPE

The objective of the audit was to determine whether (1) grant funds were properly accounted for and used in accordance with applicable laws, regulations, and grant requirements; (2) road construction and/or repair contracts were awarded in accordance with applicable procurement requirements; and (3) payments to contractors were made in accordance with contract provisions.

To accomplish the audit objective, we interviewed officials and reviewed pertinent records at the Department of Public Works on St. Thomas and St. Croix and at the Departments of Property and Procurement and Finance on St. Thomas.

Our audit was conducted in accordance with the "Government Auditing Standards," issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures that we considered necessary under the circumstances. The "Standards" require that we obtain sufficient, competent, and relevant evidence to afford a reasonable basis for our findings and conclusions.

As part of our audit, we evaluated the internal controls at the Office of Highway Engineering, the State Planning and Research Office, and the Office of Civil Rights of the Department of Public Works and at the Department of Property and Procurement to the extent we considered necessary to accomplish the audit objective. Internal weaknesses were identified in the areas of contract administration and grant management. These weaknesses are discussed in the Results of Audit section of this report. The recommendations, if implemented, should improve the internal controls in these areas.

PRIOR AUDIT COVERAGE

In January 1995, the Office of Inspector General issued an audit report on Federal highway projects. Deficiencies identified in the report related to enforcement of competitive procurements, documentation in contract files, and appropriateness of overhead cost rates, still exist. Additionally, in April 1999 and October 2000, the Federal Highway Administration and the Department of Public Works jointly issued two reports on cash management activities on St. Thomas and St. Croix (see Appendix 2).

RESULTS OF AUDIT

OVERVIEW

FHWA funds were used for approved projects. However, internal control weaknesses were identified in the areas of contract administration and grant management. Specifically, we found that:

- " Instead of soliciting bids or proposals for new contracts, Government officials sometimes bypassed the competitive procurement process by issuing contract amendments and change orders that significantly increased the scope of work and cost of contracts financed by FHWA funds.
- " Two contractors may have been paid as much as \$457,763 for overhead costs that were also charged as non-salary direct costs under their professional service contracts.
- " Potential contract cost savings of about \$835,200 were not realized because the Government did not ensure that liquidated damages provisions were included in and enforced for all construction contracts.
- " Salary cost reimbursements were overpaid by \$43,913 because reimbursement vouchers contained errors.
- " The Disadvantaged Business Enterprise Program did not meet program objectives because of a lack of staff for monitoring activities.
- " Federally-financed equipment valued at more than \$35,000 was not adequately accounted for and safeguarded.
- " Complete and accurate traffic load and other transportation data were not always available during development of the Territorial Transportation Improvement Plan.
- " FHWA funds were not always used effectively for critically needed highway improvements.

CONTRACT ADMINISTRATION

The Departments of Public Works and Property and Procurement did not ensure that professional service and construction contracts for Federal highway projects were administered in accordance with applicable local and Federal guidelines. Specifically, the Departments (1) used contract amendments and change orders to expand the scope of contracts instead of requiring new competitive procurement, (2) did not adequately verify that elements of overhead costs charged on the basis of a percentage of salaries were not also charged as direct contract costs, and (3) did not ensure that all contracts had a specified provision for liquidated damages and that existing liquidated damages clauses were enforced. As a result, the scope of contract work was expanded at a cost of up to 363 percent above the original contract costs without competitive procurement, two contractors may have received duplicate payments for overhead charges totaling about \$457,763 that were also charged as direct costs, and liquidated damages totaling \$835,200 were not assessed against three contractors.

The Competitive Procurement Process Was By-passed Through Contract Amendments

Government officials sometimes bypassed the competitive procurement process by issuing contract amendments or change orders for work that was outside the scope of the original contracts. This practice was contrary to the basic premise contained in both Federal and local regulations that procurement actions be made on a competitive basis to the maximum extent practicable. For example:

- A 1986 contract for engineering design and environmental assessment services for highway projects was extended for a period of more than 13 years through three major amendments and a 1999 noncompetitive follow-on contract that added many items that were not in the original scope of work. The original November 1986 contract was related to highway projects on St. Thomas for the Black Point Hill Road, Bolongo Bay Road, and Mandahl Road at a cost of \$958,841. The first amendment, in July 1988, added engineering services for highway projects on the Long Bay Road and the Frenchman's Bay Road at an additional cost of \$354,368. The second amendment, in June 1990, added engineering services for highway projects on the Veteran's Drive/Lovers Lane intersection, the Long Bay Road near the Yacht Haven Hotel, curbing for the Centerline Road, and changes to prior designs for the Bolongo Bay Road at an additional cost of \$251,742. The third amendment, in July 1991, added engineering services for highway projects on the Race Track Road-Raphune Hill-Centerline Road intersection, a drainage culvert in the Long Bay

area, and the Turpentine Run-Bolongo Bay Road intersection, plus an archeological inventory of the Long Bay and Frenchman's Bay Roads at an additional cost of \$397,412. Lastly, the follow-on contract, in September 1999, added engineering work for the Havensight Road, a storm sewer for 9th Street, the Turpentine Run bridge, a culvert for the Mandahl Road, and additional changes to the designs for the Bolongo Bay Road at an additional cost of \$729,250. Therefore, the final contract cost was \$2,691,613, or an increase of \$1,732,772 (181 percent) over the original contract price of \$958,841.

- A 1993 contract for construction management and inspection services was extended for a period of 5 years through five contract amendments that, in later amendments, added work that was not part of the original scope of work. The original September 1993 contract was related to construction management of highway projects on St. Thomas for the Veteran's Drive and the Moravian Highway at a cost of \$805,086. The first amendment, in March 1995, extended the contract period by 9 months and increased the overhead cost rate specified in the original contract at an additional cost of \$770,333. The second amendment, in December 1995, extended the contract period by 5 months, added overtime costs, and increased the fixed fee (profit) specified in the original contract at an additional cost of \$434,940. The third amendment, in July 1996, extended the contract period by 6 months and increased base labor rates at an additional cost of \$597,318. The fourth amendment, in December 1996, extended the contract period 5 months and added construction management services for Hurricane Marilyn and Bertha recovery projects, the establishment of a materials testing laboratory, and traffic engineering services at an additional cost of \$554,299. And the fifth amendment, in May 1997, extended the contract period 15 months (through fiscal year 1998) and added construction management services for the Lovers Lane and Fort Mylner intersections and the operation of the materials testing laboratory at an additional cost of \$566,932. Therefore, the final contract cost was \$3,728,908, or an increase of \$2,923,822 (363 percent) over the original contract price of \$805,086.

- A 1998 contract for construction services to upgrade Buddhoe Park on St. Croix was extended for a period of 91 days through six change orders that added work that was not in the scope of work of the original contract. The original June 1998 contract for upgrades to Buddhoe Park was in the amount of \$597,590. The first change order added work on the Park's bandstand and bathrooms at an additional cost of \$132,182. The

second change order added extensive landscaping work, including trees and plants and a sprinkler system, at an additional cost of \$176,022. The third change order extended the contract period by 7 days and added further work on the sprinkler system, park benches, brick sidewalks, pole lights, and trimming of trees at an additional cost of \$105,694. The fourth change order extended the contract period by 7 days and added asphalt resurfacing of adjacent streets, curbing, additional lighting, telephone and electrical conduits, a water fountain, and further trimming of trees at an additional cost of \$153,964. The fifth change order extended the contract period by 63 days and added a dockmaster ramp, pavement markings, additional brick work, and metal posts and chains at an additional cost of \$47,694. And the sixth change order extended the contract period by 14 days and added work to replace plants and trees damaged by Hurricane Georges at an additional \$43,695. Therefore, the final contract cost was \$1,257,111, or an increase of \$659,521 (110 percent) over the original contract price of \$597,590.

In the case of the two highway-related professional services contracts, work for each new highway project not included in the scope of work of the original contracts should have been procured separately using competitive requests for proposals. In that way, the Government would have been in a better position to obtain more advantageous contract prices for the additional work.

With regard to the work to upgrade Buddhoe Park, the scope of work should have been better planned so that all desired work (with the exception of that related to repairs of Hurricane Georges damage) could have been included in the original invitation for bids, instead of being added to the contract on a piecemeal basis. It is likely that the Government would have been able to obtain a better overall price for the entire project if it had planned properly and sought competitive bids for all desired work.

**Overhead Costs of \$457,763
Also May Have Been
Charged as Direct Costs**

Two of the 10 contracts we reviewed were "cost plus fixed fee" agreements that included provisions for the payment of the contractors' fringe benefit costs, overhead costs, and a fixed fee (or profit). However, we noted that some types of costs that were charged by the contractors as overhead costs were also charged as direct costs. Specifically, we found the following:

- During the 5-year life of a contract for construction management and inspection services, the approved overhead rates ranged from 61.11 percent to 70.68 percent of salaries and wages. A review of the company's financial statements disclosed that the overhead rates included reimbursement for such costs as travel, rent, utilities, postage, equipment rental, and office maintenance, among others. However, these same cost elements were specifically included in the contract and contract amendments as "miscellaneous direct non-salary costs" that were directly reimbursed under the contract. Based on our review of available contract payment documents, we estimated that potential duplicate payments for such costs totaled \$352,387. We also noted that for 1995, the overhead cost rate of 70.68 percent and the fringe benefit rate of 32.21 percent exceeded the company's calculated field office rates of 66.39 percent for overhead costs and 21.72 percent for fringe benefit costs. These discrepancies appear to have occurred because Government officials did not review the company's financial statement disclosures related to overhead cost and fringe benefit rates. We further noted that the contractor charged for and was paid for overtime and office cleaning costs totaling \$4,984 (for the period of September to October 1997) that were not authorized under the fifth contract amendment. Similarly on March 3, 1997, the Federal Highway Administration disallowed contractor claims for reimbursement of costs totaling \$1,411 (for the period of November 1996 to January 1997) for such items as telephone and cellular phone service, late rent charges, office cleaning, paint, computer supplies, and an airline ticket for a Public Works employee.

Other discrepancies were identified during the life of the contract. For example, in a letter dated February 20, 1997, Public Works' Grants Manager recommended that the contractor be required to provide justification for some disputed costs and that other costs be disallowed. However, the then-Commissioner of Public Works ordered that all contractor claims be paid. In a memorandum dated October 11, 2001, the Federal Highway Administration's Territorial Representative questioned the overall cost of the services provided by the contractor, noting that the construction management and inspection services had cost an equivalent of 50 percent of the project construction costs, although the industry standard was for construction management and inspection services to cost from 3 to 10 percent of construction costs. A Public Works official responded to the Territorial Representative by explaining that extensions to the project construction period had resulted in the high construction management and inspection costs and

recommending that Public Works be provided with additional permanent staff to perform such services in-house.

- During the 13-year life of a contract for highway engineering and design services, the approved overhead rates ranged from 105 percent to 112.3 percent of salaries and wages. A review of the company's financial statements disclosed that the overhead rates included reimbursement for such costs as rent, telephone service, and utilities, among others. However, these same cost elements were specifically included in the contract and contract amendments as "miscellaneous direct non-salary costs" that were directly reimbursed under the contract. Based on our review of available contract payment documents, we estimated that potential duplicate payments for such costs totaled \$105,376.

In summary, the two contractors may have received duplicate payments totaling about \$457,763 for costs included in the contracted overhead rates and as "miscellaneous direct non-salary costs" under the contracts. To the extent that the opportunity still exists for the Government to make claims against the contractors for reimbursement of the duplicate payments, such claims should be pursued as promptly as possible. Additionally, the Government should ensure that comprehensive reviews are made of proposed direct and overhead (indirect) cost elements during future contract negotiations to ensure that no duplication exists.

**Liquidated Damages
of About \$835,200 Were
Not Enforced and
Collected**

The Government did not ensure that all construction-related contracts had provision for liquidated damages and that, where liquidated damages provisions were included in the contracts, they were enforced. For example:

- A December 1996 contract for the installation of traffic signs on St. Croix that were damaged in September 1995 by Hurricane Marilyn did not include provision for liquidated damages. Although the standard-format contract document had a clause regarding liquidated damages, the daily rate for liquidated damages was stated as "N/A," meaning "not applicable." In May 1997 and again in November 1998, Public Works attempted to issue change orders to increase the scope of work under the contract with a corresponding increase in contract cost, from the original \$63,936 to \$313,515. A proposed supplemental contract was rejected by the Department of Property and Procurement, but a new contract was issued to the same contractor. The second contract, which was issued in

February 2001 at a contract price of \$120,447, also included the notation "N/A" as the daily rate for liquidated damages amount. Because the files at Property and Procurement for the first contract did not include a Notice to Proceed, we were unable to determine the date by which work under the contract should have been completed. However, for the second contract, we determined that completion of work was delayed at least 86 days beyond the required contract completion date. Based on the applicable Federal liquidated damages rate of \$300 per day, we estimated that liquidated damages of about \$25,800 could have been assessed against the contractor if the contract had included provision for liquidated damages.

- Another contractor was not assessed liquidated damages totaling about \$724,200 for two contracts awarded for separate drainage system construction projects in the Sub Base/Crown Bay area of St. Thomas. The first contract was issued in June 1999 and, after four change orders, had a contract completion deadline of 296 days after the approved work start date. However, work under the contract was not completed until 494 days after the required completion date. Based on the \$1,200 per day liquidated damages rate specified in the contract, we estimated that liquidated damages of \$592,800 should have been assessed. The second contract was issued in January 2000 and, after two change orders, had a contract completion deadline of 153 days after the approved work start date. However, work was not completed under the contract until 219 days after the required completion date. Based on the \$600 per day liquidated damages rate specified in the contract, we estimated that liquidated damages of \$131,400 should have been assessed. However, in August 2001, the contractor and a representative of the Commissioner of Public Works wrote to the Commissioner of Property and Procurement requesting an extension of the contract completion dates. Although the Commissioner of Property and Procurement did not respond to the request, as of the time of our review (December 2001), liquidated damages had not been assessed against the contractor.

- A third contractor was awarded a contract in October 1999 for the construction of the Christiansted Boardwalk. The contract, after four change orders, had a contract completion deadline of 209 days after the approved work start date. However, work under the contract was not substantially completed until 142 days after the required completion date. As of the time of our review, the final payment under the contract had not been processed because of a dispute between the contractor and subcontractors and because the contractor had not

submitted all necessary administrative paperwork. However, we found no documentation in the contract files to indicate that the Government was planning to assess the appropriate liquidated damages of \$600 per day, or \$85,200.

In summary, because of the lack of enforcement of liquidated damages provisions, which are standard for construction contracts, the Government lost the opportunity to save at least \$835,200 in construction costs as a result of contractor delays in completing required contract work.

**Federal Highway
Administration Branch
Used to Procure Contract
Services**

In June 1997, Public Works and the Federal Highway Administration entered into a Memorandum of Understanding (MOU) by which the Administration's Eastern Federal Lands Highway Division (Eastern Division) would manage selected highway engineering and construction projects on behalf of Public Works. The MOU was amended in 1999, and a new MOU was being negotiated at the time of our audit.

During fiscal years 1997 through 2001, the Eastern Division managed 21 projects valued at \$59.3 million. The Public Works' Program Manager explained that the services of the Eastern Division were used because it speeded up the procurement process and cost less than commercial construction management contractors. However, the Commissioner of Property and Procurement told us that he had some concerns with the arrangement because his department was completely bypassed by the Eastern Division during the procurement process. Typically, the Eastern Division established a local field office and carried out the engineering design, advertising, bidding, awarding, monitoring and inspection, and payment functions. In compensation, the Eastern Division deducted a fee from the authorized project funds -- typically in an amount equal to about 10 to 15 percent of the total project cost.

In our opinion, it appears that the arrangement between Public Works and the Eastern Division has been productive and cost effective. However, to address the concerns of the Commissioner of Property and Procurement, who is designated by the Virgin Islands Code as the Government's responsible contracting official, we believe that Public Works should negotiate with the Eastern Division to amend the MOU to require that the Eastern Division coordinate its procurement activities with the Department of Property and Procurement, so that the Government's designated contracting official can have a representative participate in the contract procurement process.

GRANT MANAGEMENT

The Department of Public Works needed to improve its management of FHWA grants. Specifically, Public Works did not (1) ensure the accuracy of monthly employee activity reports and salary reimbursements, (2) provide sufficient opportunity for the employment of disadvantaged business enterprises, and (3) adequately protect Federally-funded equipment and maintain accurate property records. In addition, objective planning criteria was not always available for the development of the annual Territorial Transportation Improvement Plan. As a result, salary reimbursements from FHWA funds were overpaid by \$43,913, the Disadvantaged Business Enterprise Program was not achieving its primary objective, FHWA funds were expended to design projects for which construction funds were not available and insufficient funds were available for other needed construction projects, and there was some unaccounted for Federally-funded equipment.

Salary Reimbursements Were Overpaid by \$43,913

FHWA funds are used to reimburse the Government's General Fund for the salary costs for the three employees of the Office of Civil Rights and the four employees of the State Planning and Research Office. The reimbursements are made on the basis of monthly time and attendance activity reports used to document project time distribution. We found that although each month had a varying number of work hours, the activity reports were prepared and reimbursements for salary and fringe benefit costs were based on a standard 160 hours per month. Additionally, although the Government's standard fringe benefit rate was 26 percent of basic salary costs, a rate of 47 percent was used to compute the amount of fringe benefit reimbursements. Further, we noted that although the Notice of Personnel Action for one employee stated that his hourly pay rate of \$7.50, salary reimbursements for this employee were being calculated at an hourly rate of \$7.93. All of these errors resulted in total salary reimbursement overpayments of \$25,986 for fiscal years 2000 and 2001. These errors resulted, at least in part, because the calculations and reimbursement vouchers (Form PR-20) were not reviewed for accuracy before being submitted to the Commissioner of Public Works for approval.

Overpayments of salary reimbursements to the General Fund totaling an additional \$17,927 were also made in the case of an employee who worked in two functional areas of Public Works during the period of March 1999 through October 2000. Reimbursements should only have been processed for work on

approved FHWA programs. In a November 13, 2001 letter, the Federal Highway Administration's Territorial Representative disapproved a reimbursement claim for the period of October 1999 through June 2000. But erroneous reimbursements for the remaining 11 months of the overall period were not detected and disapproved. Combined with the overpayments of \$25,986 discussed in the prior paragraph, total overpayments of salary reimbursements from FHWA funds amounted to \$43,913.

Disadvantaged Business Enterprise Program Did Not Achieve Stated Objectives

The Office of Civil Rights administers the Disadvantaged Business Enterprise Program. The objectives of the program are to (1) ensure non-discrimination in the award and administration of highway programs funded by the U.S. Department of Transportation, (2) help remove barriers for disadvantaged business enterprises, and (3) assist in the development of firms that can compete successfully in the market outside the program.

However, the program was not adequately funded nor staffed. Although the program and salary cost reimbursements should have been financed with FHWA funds, the required funding was not provided by Public Works' Office of Highway Engineering. During fiscal year 2001, funding for the program was not authorized as part of the annual Territorial Transportation Improvement Plan and, as of October 17, 2001, salary reimbursements for fiscal year 2001 had not been processed. In January 2002, subsequent to the completion of our audit, Public Works requested additional FHWA funds to reimburse the Department for payroll costs of the Disadvantaged Business Enterprise Program. In March 2002, the FHWA Representative retroactively approved additional funding of \$112,511 for the fiscal year 2001 payroll costs.

At the time of our audit, the Office of Civil Rights had a staff of two persons on St. Croix and no staff on St. Thomas. This staffing level, particularly on St. Thomas, did not allow for the efficient administration of the program, which involved site visits to disadvantaged businesses, site visits to highway projects where disadvantaged businesses were employed, and training for the more than 90 businesses territory-wide that were registered with the program.

The Federal Transportation Equity Act for the 21st Century requires that not less than 10 percent of the amount available annually for Federal highway projects be expended with small business concerns. In an effort to comply with this requirement, Public Works established a percentage goal for each highway

project in the Virgin Islands. However, the target percentages were not always achieved. For example, a goal of 28 percent disadvantaged business participation was established for a construction project on St. Croix. However, although five disadvantaged businesses were hired under the project and the Federal minimum participation level of 10 percent was met for the year, only a 13.05 percent of participation (rather than the locally-established goal of 28 percent) was achieved for this particular construction project.

The policy statement for the Disadvantaged Business Enterprise Program states that implementation of the program is a legal obligation and that failure to carry out its terms shall be treated as a violation whereby sanctions may be imposed. Therefore, if the program is not effective in ensuring local participation by disadvantaged businesses, FHWA funding could be jeopardized. We believe that the absence of an effective communications channel between the Office of Civil Rights and the Office of Highway Engineering contributed to this problem.

**Federally-Financed
Equipment Was Not
Adequately Accounted
for and Safeguarded**

FHWA funds were used to purchase equipment and supplies for the Office of Highway Engineering, the State Planning and Research Office, and the Office of Civil Rights. FHWA funds were also used to purchase vehicles for the Office of Highway Engineering and the State Planning and Research Office. Although we received inventory lists from the Office of Highway Engineering and the State Planning and Research Office, both lists were incomplete. Specifically, we found that:

- Virgin Islands property numbers were missing from 105 of 165 items on the lists. In addition, a laptop computer assigned to the St. Croix branch of the State Planning and Research Office and sent to St. Thomas for repairs was not included in the St. Croix office's inventory list.

- The prior supervisor of the Office of Civil Rights provided a handwritten list of 11 items (computers and printers) in the St. Croix office. However, a recently-purchased photocopier on St. Croix and six items in the St. Thomas office were not included. Additionally, correspondence from the supervisor revealed that computer equipment that was purchased in 1997 at a total cost of \$24,564 could not be identified. Other computer equipment also purchased in 1999 at a total cost of about \$10,340 was not in service.

- We selected a sample of 30 equipment items from the available inventory lists and attempted to locate the items. We could not find 3 of the 30 items and noted that 16 items did not have Virgin Islands property tags.

Both Federal and local property management regulations require that detailed property management records be maintained and that physical inventories of equipment be taken at least once every two years. These controls were not in place for FHWA-funded equipment.

Complete Data Was Not Available to Develop the Territorial Transportation Improvement Plan

The Territorial Transportation Improvement Plan is a document used by the Office of Highway Engineering as the guide for obligating the territory's annual allotment of FHWA funds. The Director and Assistant Program Manager of Highway Engineering compile the plan with input from the Commissioner of Public Works and the Governor's representative. However, our review disclosed that the underlying data needed to effectively determine transportation needs and priorities was incomplete and, therefore, of questionable validity in the selection of projects to be included in the plan.

It is the responsibility of the State Planning and Research Office to provide meaningful data related to the territory's traffic flows and counts, road condition, and other transportation activities to identify transportation needs and make recommendations to improve the highway system. This type of data was being collected and used for transportation planning on St. Croix. However, the State Planning and Research Office was not adequately staffed on St. Thomas, where it had only one employee. As a result, only limited transportation research was performed and very limited relevant data was available for the planning of territorial transportation projects. For example, during fiscal year 2000, FHWA funds of about \$2 million were allocated for traffic signal improvement, repair, and control on St. Croix and, as of August 2001, \$1.6 million of that amount had been expended. In contrast, only \$77,000 was allocated and expended for similar work on St. Thomas because of the lack of data to determine the needs on that island.

The lack of relevant transportation data for the St. Thomas/St. John district could also be a contributing factor why Public Works has often expended large sums of FHWA funds to design projects only to have the design plans remain unused for many years, thus requiring that the design work be updated or redone at additional cost when the project is finally scheduled for

construction. Further, because there was not a prioritized list of potential transportation projects for the St. Thomas/St. John district, projects not included in the Territorial Transportation Improvement Plan were initiated by the Office of Highway Engineering. We believe that the State Planning and Research Office should be provided with the staff and other resources necessary to function effectively in the St. Thomas/St. John district and that transportation data from that district and the St. Croix district should be used to establish and periodically update a comprehensive 5-year project schedule as part of the Territorial Transportation Improvement Plan.

**Federal Highway Funds
Were Not Used Effectively
for Critical Highway
Improvements**

Although FHWA funds of more \$12 million were available annually to the Virgin Islands, these funds were not always used effectively for critical highway improvement projects. For example:

- The Federal Highway Administration gave Public Works authorization to hire technical staff (such as engineers) under contract and pay the related contract costs from FHWA funds. However, this was intended to be a temporary arrangement until such time as permanent Public Works employees could be hired and trained to take over the technical aspects of administering the FHWA grants and related transportation projects. However, Public Works has maintained the six contract employees on staff for 5 years (1997 to 2002), at an annual cost of about \$460,000 (\$456,489 in fiscal year 2000 and \$464,000 in fiscal year 2001). Therefore, these FHWA funds, totaling about \$2.3 million over 5 years, were not available for highway projects.

- Public Works did not always maximize the use of FHWA funds for transportation-related projects. In 1998, a \$598,000 contract for renovations of the historic Budhoe Park on St. Croix was increased through a series of six change orders to \$1,257,111 (110 percent increase) for such additional work as restroom renovations and elaborate landscaping and sprinkler systems. In 1999, a \$280,245 contract for construction of a Millennium Monument at Point Udall on St. Croix was likewise increased through a series of change orders to \$442,568 (58 percent increase) for enhancements to the project. Therefore, the additional funds used on these non-transportation projects were not available for needed highway improvements.

RECOMMENDATIONS

TO THE GOVERNOR OF THE VIRGIN ISLANDS

We recommend that the Governor of the Virgin Islands direct the Commissioner of Public Works to:

1. Strictly enforce the provisions of the Code of Federal Regulations and Virgin Islands procurement policies that require the use of competitive procurement procedures for purchases and contracts funded by grants from the Federal Highway Administration. This should include discontinuing the practice of using contract amendments and change orders to expand the scope of existing contracts so as to bypass the competitive procurement requirements.

2. Establish procedures to require that reviews are performed of the cost elements included in overhead rates charged by contractors to ensure that these items are not also charged against the contracts as direct costs. With regard to the specific contracts discussed in this report, if it is determined that duplicate charges did occur, action should be initiated to recover the duplicate amounts.

3. Prepare and process the documents necessary to recover amounts that were reimbursed to the General Fund in excess of the correct salary amounts related to Federal highway programs.

4. Establish procedures to require that documents to request future salary reimbursements are reviewed for accuracy prior to being submitted to the Commissioner for signature approval.

5. Provide the Office of Civil Rights with the staff and other resources needed to effectively administer the Disadvantaged Business Enterprise program in both the St. Croix and St. Thomas/ St. John districts.

6. Establish and strictly enforce procedures for the control of equipment purchased with Federal highway funds, as required by the Code of Federal Regulations and Virgin Islands property management policies. These procedures should provide for detailed property management records, physical inventories at least every other year, the physical safeguard and maintenance of such equipment, and policies for disposal of items that are no longer needed or usable.

7. Provide the State Planning and Research Office with the staff and other resources needed to effectively carry out the transportation research and planning functions necessary to prepare 5-year Territorial Transportation Improvement Plans that address the specific priority needs of both the St. Croix and St. Thomas/ St. John districts.

8. As part of establishment of the Territorial Transportation Improvement Plans, ensure that the amount of Federal highway funds used annually for non-transportation projects is kept to a minimum level so as to maximize the funding available for critically-needed highway improvements.

9. Negotiate with the Eastern Federal Lands Highway Division to amend the existing memorandum of understanding to require that the Division coordinate its procurement activities with the Department of Property and Procurement, so that the Government's designated contracting official can have a representative participate in the contract procurement process.

We recommend that the Governor direct the Commissioner of Property and Procurement to:

10. Ensure that a daily rate is specified in the liquidated damages clause for all construction-related contracts, and strictly enforce the application of the liquidated damages provisions if contractors fail to complete contracted work within the required time periods (except for causes beyond their control, such as a natural disaster).

11. Provide detailed information on the cost exceptions identified on this report to the FHWA for its determination of eligibility for Federal reimbursement.

AUDITEE RESPONSE

The July 9, 2002 response (Appendix 3) to the draft report from the Commissioner of Public Works expressed concurrence with Recommendations 3, 4, and 5; partial concurrence with Recommendations 1, 6, and 7; and nonconcurrence with Recommendations 2, 8, and 10. The response did not address Recommendation 9.

**OFFICE OF INSPECTOR
GENERAL REPLY**

Based on the response, we consider Recommendations 3, 4, 5, 6, and 7 resolved but not implemented; Recommendations 2, 8, 9, and 10 unresolved; and requested additional information for Recommendation 1 (see Appendix 4). Because this audit related

to grant funds provided by the Federal Highway Administration, we have added a recommendation (No. 11). Public Works provide information to FWHA for resolution of the cost exceptions. Specific comments made by the Commissioner of Public Works in his response to the draft report and our replies to the Commissioner's comments follow:

Recommendation 1. Partial concurrence.

Public Works Response. The response stated, "It is often not in the best interest of the Government to request new bids when additional work arises in relation to existing contracts. The case can also be made that it is less costly to have additional work performed by change orders and supplemental agreements, rather than by bidding for new contracts for existing projects. . . . Further, consulting engineering firms are selected based on professional competence, experience, and approaches to work, and not necessarily on price. When such professionals are selected and are performing satisfactorily, it is quite reasonable that additional work for the same or extended projects to be performed as amendment(s) to the professional service contracts."

Office of Inspector General Reply. Although we acknowledge that professional service contractors are generally selected on the basis of qualifications, rather than price, we do not agree with the presumption that the use of change orders or contract amendments, rather than competitively awarding contracts for new or extended projects, can often be more advantageous to the Government. Public Works' practice of continuously extending existing highway engineering contracts through change orders and contract amendments – up to a period of 15 years in one instance – is a questionable business practice that locks the Government into a relationship with one service supplier and deprives it of the potential for obtaining the same or better quality service at a more favorable price. Public Works should develop a good working relationship with a number of highway engineering firms and use the competitive procurement process to encourage those firms to compete against each other to give the Government the best possible service at the best possible price.

Recommendation 2. Nonconcurrence.

Public Works Response. The response stated, "The listing of direct non-salary costs and the listing of overhead costs, which were used for the development of overhead rates, were

both approved at the initiation of the Professional Services Agreements (PSAs) by the Federal Highway Administration (FHWA) and [Property and Procurement]. . . . Costs that can be identified with any one project can be charged to that project, and does not preclude the application of the overhead rate."

Office of Inspector General Reply. We agree that the charging of both direct and indirect (overhead) costs to a project or contract is allowable under Federal cost principles. However, it is improper to charge the same costs as both direct and indirect (overhead) costs, as appears to have occurred in the instances reported in the finding. To the extent that costs have been charged as both direct and indirect costs, it represents a duplicate charge that should be recovered from the contractors involved. In at least one case cited in the finding, FHWA representatives disallowed costs totaling about \$1,411 that were duplicate charged.

Recommendation 6. Partial concurrence.

Public Works Response. The response noted that the Federal regulations for the administration of grant programs (generally referred to as the "Common Rules") allow states and territories to account for Federally-funded equipment using their own policies and procedures and stated that, as a result, "No separate system is necessary to account for equipment and supplies purchased with federal funds." The response also stated, "While some items of equipment on the [inventory] listing did not have [Property and Procurement] property numbers, some of these items were identifiable on the list by their serial numbers and other markings." The response further stated that FHWA approved the use of computer equipment and supplies purchased for the Disadvantaged Business Enterprise program as part of a Department of Public Works computer network system, but that the system may not have been operational at the time of the auditor's site visit.

Office of Inspector General Reply. With regard to the applicable property management requirements, while it is true that the Common Rules allow states and territories to use their own property management policies and procedures, the property manual issued by Property and Procurement closely mirrors the requirements contained in the Common Rules. Specifically, the Property and Procurement's procedures require that detailed property records be maintained for all equipment (whether locally or Federally funded) and that physical inventories of equipment be performed at least every other year. The Property

and Procurement procedures also require that a Government of the Virgin Islands property tag be affixed to each item of equipment and that the corresponding property number be included in the property records. Lastly, we did not question the use of computer equipment and supplies of the Disadvantaged Business Enterprise program as part of Public Work's network. But we did make mention of the fact that some of this equipment was not being used at the time of our site visit.

Recommendation 7. Partial concurrence.

Public Works Response. The response stated that "the auditor used an incorrect assumption in contrasting \$1.6 million of expenditures for traffic signal improvement and repair on St. Croix to \$77,000 for similar activities on St. Thomas, as of August 2001. The fact is that in the years just prior to FY 2000, substantial funds were expended for improvement to most of the signalized intersections on St. Thomas, under the Veterans Drive Project." The response also stated, "It is also a misstatement of fact to say that because there was no prioritized list of potential transportation projects for the St. Thomas/St. John district, projects not included in the [Territorial Transportation Improvement Plan] were initiated by the Office of Highway Engineering."

Office of Inspector General Reply. The \$1.6 million expended on St. Croix during fiscal year 2000 represented an extensive traffic signal and signage program throughout the island, whereas the response notes that the work performed on St. Thomas before fiscal year 2000 was specifically related to the Veterans Drive. Many other highways and roadways on St. Thomas and St. John were in need of improved signals and signage. Further, we did not state that there were no St. Thomas/St. John projects included in the Territorial Transportation Improvement Plan, only that they were not clearly prioritized and, therefore, other projects not included in the Plan were sometimes started before projects that were in the Plan.

Recommendation 8. Nonconcurrence.

Public Works Response. The response stated, "Costs for project inspection, and program administration are allowable whether such services are provided by contract personnel or by employees on Government NOPA(s) [Notices of Personnel Action]. Either way, such costs are 100% allowable under the Federal Highway program. . . . The arrangement in place for

contract personnel to work on the Federal Highway program have continued with the approval of the granting agency." The response also stated that "the cost of \$1,257,111 for the Buddhoe Park project did not exceed 10% of the 1998 program funds, which totaled \$12,972,960. And, the cost of \$442,568 for the Millennium Monument project was only about 3% of 1999 program funds, which totaled \$12,856,480."

Office of Inspector General Reply. According to documentation received from FHWA representatives, that FHWA intended that the use of contract personnel to manage the Federal highway program in the Virgin Islands would be a temporary arrangement until such time as Public Works was able to hire and train a staff of full-time employees to assume the oversight responsibility. However, through the time of our review, Public Works had not taken positive steps in that direction. We are pleased to see that Public Works has now begun the process of converting contract personnel to full-time employees status to manage the Federal highway program. With regard to the costs incurred for developing the Buddhoe Park and Millennium Monument, our primary concern was that the costs for these non-transportation projects were allowed to increase significantly beyond the original plans, thus reducing the amount of FHWA funds available for critically-needed highway improvements. The cost of the Buddhoe Park project escalated from \$598,000 to \$1,257,111 (110 percent) and the cost of the Millennium Monument increased from \$280,245 to \$442,568 (58 percent). Given the highway improvement needs of the Virgin Islands, we believe that it would have been more prudent to fund the Buddhoe Park and Millennium Monument projects from other sources, such as bond proceeds available for general capital improvement projects.

Recommendation 10. Nonconcurrency.

Public Works Response. The response stated, "As the Contracting Officer's Technical Representative (COTR) the Commissioner of [Public Works] is responsible for informing [Property and Procurement] if the contractor fails to complete the work on time, and of the need to enforce provisions for liquidated damages, if such is the case. Under [the Virgin Islands Code] the Commissioner of [Property and Procurement] may decide to forego liquidated damages when it is decided that failure to complete the work on time was due to no fault of the contractor. . . . Further, the enforcement of liquidated damages provisions can lead to challenges. And often do. In such cases, the daily rates as included in the contracts mentioned in the audit

report would most likely not stand-up in court." The response also stated, "Due to an error when the contract documents were revised, the rates in the contracts in questions are the federal rates rather the lower local rates, which are as much as 75% less." The response further explained the circumstances related to each of the contracts discussed in the finding, in each case dismissing our conclusion that liquidated damages should have been assessed.

Office of Inspector General Reply. We acknowledge that the imposition of liquidated damages would not be appropriate if construction delays were caused by factors outside the control of the contractor or if delays were justified and officially approved through change orders or contract amendments that extended the contract completion dates. In the examples cited in the finding, we took into account such approved extensions of the contract completion dates. However, we do not agree with the notion that liquidated damages should not be enforced because such action might result in legal challenges by contractors. If the Government has adequately monitored contractor performance and documented problems and delays that were due to factors within the control of the contractors, it should be in a position to justify and defend in court the imposition of liquidated damages. If the Government would begin to aggressively defend its right to enforce liquidated damages that were included in properly executed contracts, contractors may be less likely to challenge such action on the Government's part. Finally, with regard to the application of Federal, as opposed to local, liquidated damage rates, we believe that because the contracts in question were prepared, reviewed, and executed in good faith by all parties concerned, the rates as stated in the contracts – whether based on Federal or local law – should be enforced.

APPENDIX 1 - MONETARY IMPACT

FINDING AREAS	<u>Cost Exceptions</u>	<u>Funds To Be Put To Better Use</u>
Contract Administration		
Overhead Charges	\$457,763	
Unauthorized Overtime Costs	4,984	
Liquidated Damages		\$835,200
Grant Management		
Salary Reimbursements	<u>43,913</u>	<u> </u>
Totals	<u>\$506,660</u>	<u>\$835,200</u>

All amounts represent Federal funds.

APPENDIX 2 - PRIOR AUDIT REPORTS

OFFICE OF INSPECTOR GENERAL REPORT

The January 1995 report "Federal Highway Projects, Department of Public Works" (No. 95-I-312) stated that although the Departments of Public Works and Property and Procurement used appropriate competitive bidding procedures to award construction contracts for highway projects, the Departments needed to ensure that (1) competitive negotiation procedures were used to award professional services contracts for project management firms for highway projects and for contract employees to staff the Highway Program Office and (2) contract files contained adequate documentation of such competition or justification as to why competitive procedures could not be used. The report also stated that Public Works needed to (1) close out completed or inactive Federal highway projects, (2) provide documentation to verify whether Federal or local funds were used to pay costs related to a non-highway project, and (3) ensure that overhead rates used by project management firms were fully documented and did not duplicate administrative costs that were also charged as direct costs. Because the then-Governor of the Virgin Islands did not respond to the report's 10 recommendations, they were considered to be unresolved.

Based on our current audit, we determined that only 3 of the 10 recommendations had been implemented. As a result, the reported deficiencies related to the enforcement of competitive procurement requirements, the completeness of contract files, and the appropriateness of overhead cost rates still existed.

FEDERAL HIGHWAY ADMINISTRATION REPORTS

The April 1999 report on "Cash Management Activities in the Virgin Islands" concluded that vendors were not always paid in a timely manner, even when the funds were already received from the Federal Highway Administration. As a result, Public Works paid more for contracted work because the contractors added the cost of capital in subsequent awards. The report included five recommendations to Public Works.

The October 2000 report on "Cash Management Activities in the Virgin Islands - St. Croix" concluded that, although significant improvements were made in the timeliness of Public Works' payment process, further improvements were still needed to ensure that vendors were paid in a timely manner. The report included five recommendations to Public Works.

Based on our current audit, we determined that only 1 of the 10 recommendations made in the two cash management reports had been implemented. At the close of the audit, personnel from the Federal Highway Administration were compiling written procedures for use by Public Works in processing documents related to Federal highway grants.

APPENDIX 3 - RESPONSE TO DRAFT REPORT

**GOVERNMENT OF THE UNITED STATES
VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS**

**RESPONSE TO FINDINGS AND RECOMMENDATIONS TO THE
OFFICE OF INSPECTOR GENERAL (OIG) DRAFT AUDIT REPORT
ON FEDERAL HIGHWAY GRANT PROGRAM
REPORT No. V-IN-VIS-002-01-R**

**FORWARDED TO THE GOVERNOR FOR REVIEW AND SUBMISSION TO
THE US OFFICE OF INSPECTOR GENERAL (USOIG)
JULY 9, 2002**

GOVERNMENT OF THE U.S. VIRGIN ISLANDS
DEPARTMENT OF PUBLIC WORKS

Response to Findings and Recommendations of the Office of Inspector General
Draft Audit Report on the Federal Highway (FHWA) Program
Report # V-IN-VIS-002-01-R

The following are responses to the findings and recommendations of the above referenced Draft Audit Report. Numbered responses are keyed to the eight bulleted findings on page 7 of the report, and the corresponding recommendations on pages 21 and 22, of the report.

Finding #1: Instead of soliciting bids or proposals for new contracts, Government officials sometimes bypassed the competitive procurement process by issuing contract amendments and change orders that significantly increased the scope of work and cost of contracts financed by FHWA.

Concurrence or Non-concurrence: **The DPW only partially concurs** with this finding and the corresponding recommendation. It is true that several contracts and professional services agreements were extended by change orders and amendments as noted by the auditor, and in some instances the changes were protracted. However, all contractors discussed under this finding were initially employed by open competition through the Department of Property & procurement (DP&P). Also, all changes to said contracts were executed through the DP&P. It must be noted that federal regulations, 49 CFR, Part 18; Section 36; subsection (a) and (b) (1) permits the V.I. Government to conduct procurement for grants, using its own laws. VIC Title 31; Section 31-242-32 authorizes and requires the Commissioner of Property and Procurement to utilize these instruments for changes in existing contracts when they are in the best interest of the V.I. Government. The Commissioner of DP&P must balance this requirement with the requirement for full and open competition. It is often not in the best interest of the Government to request new bids when additional work arises in relation to existing contracts. The case can also be made that it is less costly to have additional work performed by change orders and supplemental agreements, rather than by bidding for new contracts for existing projects. This is due to: **a)** In the latter instance, substantial time would be lost, (time is money) which can be quantified in administrative costs, and loss of use, from the end-product not being available on a timely basis. **b)** historical prices used for change orders and prices for supplemental agreements are the same as in the initial contract, and usually not as high as would be expected under a new bid.

Further, consulting engineering firms are selected based on professional competence, experience, and approaches to the work, and not necessarily on price. When such professionals are selected and are performing satisfactorily, it is quite reasonable that

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additional work for the same or extended projects to be performed as amendment(s) to the professional services agreement.

Corrective Action Taken: In more recent times efforts have been made to reduce the frequency of change orders and amendments.

Finding # 2: Two contractors may have been paid as much as \$457,763 for overhead costs that were also charged as non-salary direct cost under their professional services contracts.

Concurrence or Non-concurrence: **The PWD does not concur** with this finding. The listing of direct non-salary costs and the listing of overhead costs, which were used for the development of the overhead rates, were both approved at the initiation of the Professional Services Agreements (PSAs) by the Federal Highway Administration (FHWA) and the DP&P. The argument presented by the firm on the Veteran Drive project, which was accepted by the FHWA, was that the indirect cost overhead rates in the PSA(s) are intended to recover costs pertaining to the overall operation of the consulting firms, at the corporate level and as it relates to corporate management activities for the firms' field offices. The rates are developed to recover costs that are distributed over various projects or objectives and which cannot be readily assigned to any one project. Costs that can be identified with any one project can be charged to that project, and does not preclude the application of the overhead rate. Neither does the development and application of an indirect cost rate prevent the charging of costs that are directly generated by a particular project.

As the result of a previous OIG audit finding and questions from the Grants Manager, the DPW did raise this matter with the FHWA, back in 1997. After several meetings and discussions between the DPW, the consulting firm for the Veteran Drive project, and the FHWA, the then officials of that agency agreed with the firm's claim for reimbursement of the direct non-salary cost items. It must be noted that for every project funded by FHWA, individual invoices were and are submitted to that agency for review and approval prior to reimbursement. Further, all contracts and professional services agreements are reviewed and approved by FHWA for concurrence in award, including the review and approval of the procurement documents.

Finding # 3: Potential contract costs savings of about \$835,200 were not realized because the Government did not ensure that liquidated damages provisions were included in and enforced for all contracts.

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Concurrence or Non-concurrence: **The DPW does not concur** with this finding. With the exception of one contractor who was certified on the Disadvantaged Business Enterprise (DBE) program, liquidated damages provisions were included in construction contract documents, which were submitted to the Department of Property and Procurement (DP&P). As the Contracting Officer's Technical Representative (COTR) The Commissioner of DPW is responsible for informing the DP&P if the contractor fails to complete the work on time, and of the need to enforce provisions for liquidated damages, if such is the case. Under VIC; Section 242-86 (B) & (D) the Commissioner of DP& P may decide to forego liquidated damages when it is decided that failure to complete the work on time was due to no fault of the contractor. This includes but is not limited to disasters.

With regard to the four contracts discussed by the auditor, two are still open. In the case of Contract # CC-21-DPW-T-99 for Sub Base Entrance Culvert Crossing, as the auditor noted, the contractor has requested a time extension claiming mitigating circumstances for conditions beyond its control. Contract # CC-23-00G-C-99 for the Christiansted Boardwalk is still in dispute and appears to be headed for litigation. We believe that in the case of these two contracts, the auditor pre-maturely concluded that savings were lost for the lack of enforcement of liquidated damages provisions. One can only guess at what decision the Contracting Officer or the court may make.

Initially Contract # CC-47-PWD-T-98, Project # NH-30(28) for Crown Bay Drainage and Veterans Drive Crossing, had a required completion date of January 5, 2000. According to the DPW records, and discussions with the engineer, **work on the contract was substantially completed by March 15, 2000, when project time was stopped.** However, the acceptance of the work was delayed until 2001, due to minor items that did not affect substantial completion. All extra time worked by the contractor up to substantial completion was covered by approved change orders. See documentation attached as **Exhibit # 01; pages - 30**

Regarding Contract # CC-2-PWD-C-99 and Contract # CC-002A-PWD-C-97 (SC) for installation of traffic signage, the DPW has been unable to determine the reason why the DP&P did not include a clause for liquidated damages. It may be that DP&P personnel some of whom are no longer with the DP&P, might have erroneously thought that liquidated damages could be waived because the contractor was a member of the DBE program.

Further, the enforcement of liquidated damages provisions can lead to challenges. And often do. In such cases, the daily rates as included in the contracts mentioned in the audit report would most likely not stand-up in court. The OMB Circular # A-102; Subpart B 13.36 (a) and (b), as incorporated in 49 CFR- Part 18, permits the States/ Territories to use there own laws for procurement of goods and services for federally funded programs. This includes using local rates for liquidated damages provisions. Due to an error when the contract documents were revised, the rates in the contracts in question are the federal rates rather than the lower local rates, which are as much as 75% less. If all of the liquidated damage provisions as discussed by the auditor were implemented with the local rates, which should prevail, the lost opportunity at savings would only be about \$208,800. This would further be reduced to \$197,400 by exclusion of \$592,800 (adjusted to \$29,400 for application of the local rate of \$150 x 196 days) liquidated damages with regard to Project # NH-30-(28) as discussed above. Depending on the final outcome of Contract #s CC-21-PWD-T-99 and CC-23-00G-C-99 this amount could be further reduced. More recently, the contract documents submitted to DP&P have been changed to reflect the local rates, as they were prior, and as required by V.I. Law.

Finding # 4: Salary Cost Reimbursements were overpaid by \$43,913 because reimbursement vouchers contained errors.

Concurrence or Non-concurrence: **DPW concurs** with this finding and the recommendation. The auditor was correct regarding some of the errors identified in payroll reimbursements. 1) The employee who prepared the draw downs for the program did use the wrong rate 47% instead of 26% for fringe benefits. 2) The employee who prepared the draw down used the hourly rate from the payroll documents which differed from the rate on the employee's NOPA. 3) The auditor was also correct regarding the employee that did not work full-time on the DBE program, but whose salary was fully drawn down.

However, while the auditor did comment on the fact that payroll for the program was drawn down based on 160 hours per month as opposed to 80 hours by-weekly, no comment was made regarding the difference in the financial impact to the DPW. The fact is that if salaries were drawn down based on 80 hours, as expended, this would amount to 2080 hours per year, per employee, as apposed to 160 hours per month which totals 1920 hours per year, per employee. Over a two year period, and for 6 employees, this would amount to a credit to the DPW of about 1920 hours at varying rates of pay. This will also be taken into account in preparing and processing documents to reimburse the granting agency.

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Corrective Action Planned: Details of these items will be further researched and corrective action taken to reimburse the FHWA. The Financial Analyst will be responsible for doing the research; preparing the documentation for review by the Grants Manager; and approval by the Commissioner. A procedure to review transactions prior to the Commissioner's signature will also be implemented. These corrective measures should be implemented by August 31, 2002.

Finding # 5: The Disadvantage Business Enterprise Program did not meet program objectives because of a lack of staff for monitoring activities.

Concurrence or Non-concurrence: **The DPW concurs** with the finding and the recommendation.

Corrective Action: A plan for the DBE program has been developed, completed and approved by the FHWA. The plan includes funding for the program, and the DPW is moving forward to hire personnel to carry out the objectives of the DBE program. The person responsible for coordinating this activity is the Manager of the Office of Civil Rights, and the hiring of personnel should be accomplished within three months.

Finding # 6: Federally financed equipment valued at more than \$35,000 was not adequately accounted for and safeguarded.

Concurrence or Non-concurrence: **The DPW only partially concurs** with this finding. While there is a need to improve the accountability and monitoring of equipment, including the application of additional property tags from DP&P, some of the points discussed by the auditor were incorrect. 1) 49 CFR Section 18.32 (d) (of the Common Rule) is not the subsection under which states and territories are required to account for federally funded equipment. The correct subsection is (b), which provides that state and local government agencies account for such equipment using their own policies and procedures. There is a substantial difference. No separate system is necessary to account for equipment and supplies purchased with federal funds. 2) The laptop computer in the SPR office discussed in the draft audit report was on the listing that was given to the auditor, and may have been overlooked. 3) While some items of equipment on the listing did not have DP&P property numbers, some of these items were identifiable on the list by their serial numbers and other markings. 4) As to equipment and supplies purchased for the DBE Program, a memorandum from the DBE Program Coordinator dated 4/23/01 was submitted to the auditor explaining the status and

disposition of the equipment and supplies - see attached Memo. as **Exhibit # 02; pages-2**. DBE funds of \$24,564 and \$10,339.55 was expended to tie the program activities into the DPW Computer Network System. This included hardware, software, connectivity and a service contract. Since these are part of a system, it is understandable that some aspects would not be identifiable. This treatment is allowable under the **Common Rule**, and the expenditures were approved by the by the FHWA in the DBE 1997 Work Plan, and also prior to subsequent reimbursement. It may be that the system was not in service at the time that the auditor was visiting, but this can happen to any system, and at any time.

Corrective Action: All equipment at DPW falls under the recently introduced WIN-ASSETS SYSTEM which operates through the DP&P. Efforts have begun at DPW to implement the system. These efforts will continue, by identifying all equipment and major supply items; preparing inventory lists by Divisions; maintaining records; monitoring, and submitting information to DP&P. This is an extensive project which will take substantial time, along with human and other resources, which are very limited at this time. We estimate a period of at least nine months to substantially complete this program. The Director of Administration and staff are responsible for this activity.

Finding # 7: Complete and accurate traffic load and other transportation data were not always available during development of the Territorial Transportation Improvement Plan.

Concurrence or Non-concurrence: **The DPW only partially concurs** with this finding. It is agreed that more resources and better organization are needed to improve the collection of data and development of the Territorial Transportation Improvement Plan (TTIP). However, the auditor used an incorrect assumption in contrasting \$1.6 million of expenditures for traffic signal improvement and repair on St. Croix to \$ 77,000 for similar activities on St. Thomas, as of August 2001. The fact is that in the years just prior to FY' 2000, substantial funds were expended for improvement to most of the signalized intersections on St. Thomas, under the Veteran Drive Project. This included new bronze signal poles, signal heads, vehicle detectors in the pavement, along with new controllers and synchronizing of all intersections along Veterans Drive. It is also a misstatement of fact to say that **because there was not a prioritized list of potential transportation projects for the St. Thomas/St. John district, projects not included in the TTIP were initiated by the Office of Highway Engineering.** The TTIP includes projects for the entire Territory. Further, the TTIP is developed with the cooperation, consultation and collaboration many, including DPW Highway Engineering Office, the Chief Engineer, the Commissioner of DPW and input from the Governor's Office. The completed plan is then submitted to the FHWA – oversight agency in Puerto Rico.

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Because the needs associated with the program are many, and the funding of the program is relatively small, it is sometimes necessary to change priorities to meet emerging and more important needs. Such changes are reflected on the TTIP and resubmitted to FHWA, after approval by the Chief Engineer and the Commissioner.

Corrective Action Plan: The DPW is in the process of developing an RFP to hire a consultant to prepare a Territorial Transportation Plan. This should be completed by FY, 2003. The lead personnel for this activity is the Highway Planning Coordinator and staff.

Finding # 8: FHWA funds were not always used effectively for critically needed highway improvements.

Concurrence or Non-concurrence: The DPW **does not concur** with this finding. Costs for project inspection, and program administration are allowable whether such services are provided by contract personnel or by employees on Government NOPA(s). Either way, such cost are 100% allowable under the Federal Highway program. With program funds of about \$65 million over a five year period, the cost \$2.3 million for inspection and administration of the program, only amounts to about 3%. This is a minuscule amount compared to the real cost of administering this 100% federally funded program. The arrangement in place for contract personnel to work on the Federal Highway program have continued with the approval of the granting agency. The DPW with the approval of FHWA is in the process of having contract personnel converted to V.I. Government employee NOPA(s).

With respect to the expenditure of the yearly allocation of federal funds on enhancement projects, the Territory is not held to a limit of 10%, as the auditor indicated. The 10% requirement is tied to the Surface Transportation Program (STP), which does not apply to the Territories or Puerto Rico. Notwithstanding the non-applicability of the STP requirement, the cost of \$1,257,111 for the Buddhoe Park project did not exceed 10% of the 1998 program funds, which totaled \$12,972,960. And, the cost of \$442,568 for the Millennium Monument project was only about 3% of 1999 program funds, which totaled \$12,856,480. See copies of Apportionment Memoranda attached as **Exhibit # 03; pages 4.**

APPENDIX 4 - STATUS OF RECOMMENDATIONS

Finding/Recommendation Reference	Status	Action Required
1	Management partially concurs; additional information needed.	Provide documentation to show recent instances where competitive procurement of new contract services was used in lieu of contract amendments or change orders to extend the scope of existing contracts.
2, 8, 9, and 10	Unresolved.	Reconsider the recommendations and provide a corrective action plan that includes the target date and title of the official responsible for implementation of each recommendation.
3, 4, 5, 6, and 7	Resolved, not implemented.	Provide documentation to show that the corrective actions stated in the response to the draft report have been completed.
11	Unresolved.	Provide documentation to show the status of followup action taken to resolve the cost exceptions.

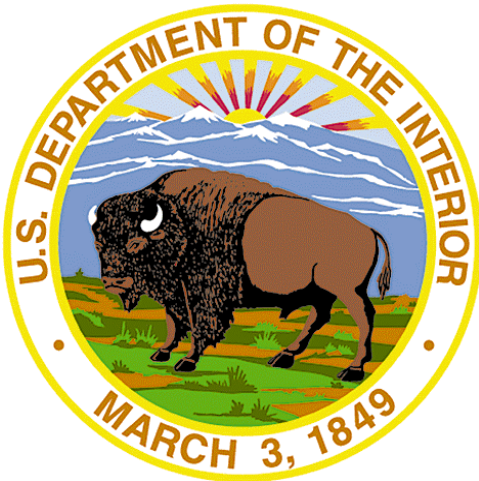
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