



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Procurement and Payroll-Related Matters Pertaining to the Use of Certain Federal Funds

**Metropolitan Transportation Authority
New York City Transit Authority**



Report 2012-S-105

June 2014

Executive Summary

Purpose

To determine whether the New York City Transit Authority (Transit) used the American Recovery and Reinvestment Act (Recovery Act) funds efficiently and for authorized purposes, and whether the funds were properly monitored to prevent fraud, waste and abuse. Our audit covered the period April 30, 2009 through January 23, 2013.

Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA oversees six constituent agencies, including the New York City Transit Authority (Transit). Transit operates the subways in the boroughs of Manhattan, Brooklyn, Queens and the Bronx. Transit also operates the Staten Island Railway and buses in all five boroughs.

In 2009, the federal government passed the Recovery Act to provide financial assistance to states, localities, and public authorities in a time of fiscal distress. The Recovery Act requires entities to use funds for authorized purposes and to mitigate instances of fraud, waste and abuse. In addition, the expenditure of all funds is to be transparent to the public, and the public benefits of these funds are to be reported clearly, accurately and in a timely manner. Transit received Recovery Act funding for 23 projects estimated to cost \$441.4 million. We visited 15 of the 23 projects' sites and did a more detailed review of one project, the Induction Loop project (estimated to cost \$13.4 million).

Key Findings

- The prime contractor for the Induction Loop project, Transit Technologies, allowed unauthorized subcontractors to work on the project. One of those subcontractors was Petrocelli Electrical Company, whose former chairman and owner was indicted (and later convicted) on charges of making illegal payments to a labor union representative.
- Two Transit Electronic Maintenance Division (EMD) supervisors were paid excessive and questionable overtime totaling \$31,783 for administrative duties. Most of this overtime was personally requested by the supervisors for themselves. One of these supervisors was paid \$2,158 for three overtime instances before the overtime was actually worked. In addition, we tested overtime for three EMD field supervisors and three of their assigned staff, and found they were paid \$18,878 for 360 overtime hours. However, Transit activity reports indicated these employees were only at the assigned subway stations for about 149 hours, resulting in a potential overpayment of 211 hours at \$10,969.
- We visited work sites for the Induction Loop project, and noticed that an excessive number of Transit employees were assigned there and receiving overtime. At one work site for the Subway Stations Rehabilitation project, we observed five Transit employees sitting idly and determined they received a full day's pay for not working.

Key Recommendations

- Monitor project sites to ensure that only workers for prime contractors and preauthorized subcontractors work on the project.
- Monitor overtime claims to ensure that hours paid were necessary and actually worked, and do not record overtime hours in the timekeeping system before they are actually worked.
- Develop a better system for assigning Transit employees so that staff does not sit idly and create an environment where employees report the fact that they are not actually working.

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

June 18, 2014

Thomas Prendergast
Chairman
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017

Dear Mr. Prendergast:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Procurement and Payroll-Related Matters Pertaining to the Use of Certain Federal Funds* at the New York City Transit Authority. This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	5
Audit Findings and Recommendations	6
Induction Loop Contract Management	6
Electronic Maintenance Division Overtime	8
Inefficient Staff Assignments	10
Jobs Created and Retained	11
Recommendations	12
Audit Scope and Methodology	13
Authority	13
Reporting Requirements	14
Contributors to This Report	15
Agency Comments	16
State Comptroller's Comments	22

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Background

The Metropolitan Transportation Authority (MTA) is a public benefit corporation providing transportation services in and around the New York City metropolitan area. The MTA oversees six constituent agencies, including the New York City Transit Authority (Transit). Transit operates the subways in the boroughs of Manhattan, Brooklyn, Queens and the Bronx. On Staten Island, Transit's Staten Island Railway links 22 communities. Transit also operates buses in all five boroughs, on more than 200 local and 30 express routes. In addition, Transit administers the City's paratransit service throughout New York City to provide transportation options for people with disabilities.

In 2009, the federal government passed the American Recovery and Reinvestment Act (Recovery Act) to provide financial assistance to states, localities, and public authorities in a time of fiscal distress. The Recovery Act requires entities to use funds for authorized purposes and to mitigate instances of fraud, waste and abuse. In addition, the expenditure of all funds is to be transparent to the public, and the public benefits of these funds are to be reported clearly, accurately and in a timely manner.

Transit received Recovery Act funding for 23 projects estimated to cost \$441.4 million. We randomly selected and visited 15 of the 23 projects' sites and did a more detailed review of one project, the Induction Loop project (estimated to cost \$13.4 million), since our analysis found that 63 percent of the cost was budgeted for internal MTA Transit labor even though the project was contracted out to Transit Technologies. The Induction Loop project involves the installation of electronic equipment in subway booths to enable clear communication between the booth attendant and customers. Transit officials determined that the Induction Loop project should be performed by a third party contractor, Transit Technologies, because Transit did not have the technical expertise to perform the work internally. Transit officials also decided that any work performed on the project by its internal labor force in the Electronic Maintenance Division (EMD) would be done exclusively at overtime rates.

Audit Findings and Recommendations

We reviewed budgets for the 15 projects and visited these projects' sites and found no exceptions with 13 of them. However, our review of the Induction Loop project and our visit to the Subway Stations Rehabilitation sites found instances of waste and abuse of Recovery Act funds. We attribute these instances to weaknesses in certain controls pertaining to contract management and employee time and attendance.

Induction Loop Contract Management

Transit's construction managers did not adequately review documentation submitted by contractors prior to approving certain contract payments, and they did not ensure that only authorized subcontractors worked on Transit projects. One of those subcontractors was Petrocelli Electrical Company, whose former chairman and owner was convicted on charges of making illegal payments to a labor union representative. Further, subcontractors (including Petrocelli Electrical Company) did not always submit certified payrolls that contained the required statement of compliance with the Copeland "Anti-Kickback" Act.

Payments to Contractors

To receive payments for work performed, contractors are required to submit payment packages to MTA officials. A payment package includes: affidavits certifying payment to laborers, subcontractors and suppliers; a detailed cost breakdown; and certified payrolls. During the period August 31, 2009 through November 2, 2011, Transit Technologies submitted documentation and received approval for seven payments totaling \$2,982,675 for services rendered on the Induction Loop project. Of this amount, \$894,733 was for installation work performed from August 5, 2010 through November 2, 2011 by two subcontractors: Petrocelli Electrical Company and Allan Briteway Electrical Company (Briteway).

We found the subcontractor payments to be problematic because Transit received assurance from Transit Technologies' President that all work on the Induction Loop project would be done by his company's own workforce, not by subcontractors. Furthermore, Petrocelli Electrical Company was formerly owned by Santo Petrocelli, Sr., who also served as the Chairman of the company. Transit Technologies officials told Transit officials that neither Mr. Petrocelli nor his affiliates would perform any work on the Induction Loop contract. Transit officials had concerns with Mr. Petrocelli because he was once a part owner of Transit Technologies and had been recently indicted (and later convicted) on charges of making tens of thousands of dollars worth of illegal payments to a union labor representative. Mr. Petrocelli was sentenced to three months in prison for his crimes.

In addition, on four occasions Transit Technologies' President reported false information on Affidavits Certifying Payment to Laborers, Subcontractors and Suppliers of Material and Services, which he submitted to Transit officials for the period of August 5, 2010 through November 2, 2011. These documents attested that there were no subcontractors engaged in the performance

of work under Transit Technologies' contract, although subcontractors were, in fact, performing work. Further, when Transit officials found out that subcontractors were used, no attempts were made to remove them from the project. The use of unauthorized subcontractors violated the terms of the contract and could have compromised the standards of the work performed.

In responding to our preliminary audit findings, Transit officials stated that Transit Technologies informed them that, as of April 2006, Santo Petrocelli, Sr. had sold his interest in Transit Technologies to his children and had resigned as chairman of Petrocelli Electrical Company. Transit officials further indicated Santo Petrocelli, Sr. had no dealings with Transit Technologies or Petrocelli Electrical Company since April 2006. Officials also added that Transit's Division of Materiel conducted background checks and found no significant unfavorable information regarding Transit Technologies. Nevertheless, the sale of Santo Petrocelli, Sr.'s company to his children was not an arm's length transaction. After we brought this matter to their attention, Transit officials acknowledged that Transit Technologies should have requested approval to use Petrocelli Electrical Company as a subcontractor on the project.

Non-Compliance with Federal Laws and Regulations

The U.S. Department of Labor requires that all contractors and subcontractors performing work on federally financed or assisted construction contracts submit a Wage and Hour form (WH-347), or a form with identical wording. The WH-347 contains a "Statement of Compliance" which addresses the Copeland "Anti-Kickback" Act. The Copeland Act requires the contractor and subcontractor to submit a weekly statement of the wages paid to each employee performing covered work during the preceding payroll period. In addition, the form addresses Regulation 29 C.F.R. §5.5(a)(3)(ii) which requires contractors to attest that the payrolls are correct and complete, and that each laborer has been paid not less than the proper prevailing wage rate for the work performed.

Certified payrolls are the key documents necessary for Transit officials to approve the personal service portion of contract payments. However, we found that there is insufficient oversight and controls over the submission of certified payrolls and federally required documentation. We reviewed the certified payrolls of Petrocelli Electrical Company and Briteway, since services reported as performed by these companies fall under both the Davis-Bacon Prevailing Wage-Rate Laws and the Copeland Act. For the seven payments totaling \$3 million that we reviewed for the period August 31, 2009 through November 2, 2011, subcontractors submitted certified payrolls for just 44 (39 percent) of 113 weeks. In addition, 26 (59 percent) of the 44 certified payrolls lacked the federally mandated "Statement of Compliance," thereby precluding the contractors from being held liable for the attestations on the form regarding kickbacks. MTA officials put certain conditions on this contract because Mr. Petrocelli was a part owner of Transit Technologies and was convicted of making unlawful payments. Because of this, we are troubled that Transit officials did not ensure that certified payrolls, including the required attestations, were received prior to payment.

Electronic Maintenance Division Overtime

Transit used federal funds to make questionable overtime payments to certain EMD supervisors and field employees. Because of various policy and procedure weaknesses, there is material risk that Transit paid for overtime hours that were not needed or worked.

Overtime Worked by EMD Supervisors

We reviewed time sheets and payroll reports for selected EMD employees who charged overtime to the Induction Loop project for the period October 21, 2010 through June 3, 2011, and identified two supervisors who claimed excessive amounts of overtime for administrative duties. The overtime claimed resulted in payments of \$31,783 for the period and was mostly claimed in a piecemeal manner before and after the supervisors' regular shift hours. For example, the supervisors put in for 15 minutes of overtime prior to their scheduled workday start and another 45 minutes of overtime after their scheduled workday ended to give them a full hour of overtime for the day. One supervisor was paid \$17,665 for 295 hours of claimed overtime for the period. The other supervisor was paid \$14,118 for 228 hours of claimed overtime for the same period.

We questioned the propriety of these overtime payments for the following reasons:

- 98 percent of the overtime claimed was requested by these supervisors (not their chiefs/managers) for themselves.
- One supervisor received payments totaling \$2,158 for three overtime instances which the supervisor entered into the timekeeping system at least a day before the overtime was allegedly worked. Hours should not be entered into the timekeeping system before they are actually worked.
- These supervisors entered their own overtime into the timekeeping system. There are no controls over timekeeping entries made by EMD supervisors, and therefore, employees could be paid for work that was never performed. Key payroll functions should be separated to preclude employees from making fraudulent entries into the payroll system.

We also found that many of the approvals for the overtime requests were not dated. In addition, the overtime requests often lacked the required pass (or ID) number of the EMD Assistant Chief (or his/her designee) who was required to approve the requests. Without the pass number, neither MTA Transit officials nor OSC auditors could easily identify the person approving the overtime requests because most signatures were difficult to read. Therefore, there was often insufficient assurance that overtime was approved by an authorized supervisor and/or approved in advance of being worked. Since the form already includes the pass number field, we encourage MTA Transit officials to ensure it's filled in.

According to Transit officials, it is standard practice to post an employee's overtime to the payroll system before it is actually worked, and they referred to this as an "anticipated entry." However, we recommend this practice be discontinued since unexpected circumstances could prevent individuals from actually working the anticipated overtime. Further, Transit officials agreed that overtime requests should be dated, and they will review their current processes for the pre-

approval of overtime. Officials also indicated that they will consider requiring managers' pass numbers to be posted to overtime request forms to help ensure that overtime is pre-approved by the appropriate Transit official.

EMD Field Employees' Attendance

Transit lacked an adequate system to accurately verify the hours worked by EMD field employees. In particular, Transit's manual sign-in and -out system to record field workers' time and attendance could not be used to prevent or detect attendance irregularities, such as unauthorized early departures from work. Workers' early departures resulted from poor monitoring of EMD field employees and the absence of a reliable timekeeping system to track EMD employees' attendance. We also determined that Transit officials do not enforce the use of the Automated Fare Collection (AFC) swipe system by their employees.

We determined that overtime pay for EMD field employees is based on the requested overtime hours and not necessarily on the actual hours of work. Further, Transit does not have a reliable system to track field employees' time and attendance. Instead, Transit requires employees to manually sign a time sheet at the beginning and end of their shifts, and it generally pays employees their scheduled shift/overtime hours. To help verify that field employees actually worked overtime hours charged to the Induction Loop project, we reviewed AFC swipe reports for a selected sample of employees. We reviewed AFC reports because Transit Authority Rules and Regulations, Section 27(e), on "Authorized Free Riders" states that "upon entering System property for any purpose, employees shall swipe their identification passes or, where a swipe head is not available, produce such passes for examination by employees in charge."

We judgmentally selected three EMD supervisors for review to determine if the AFC swipe recorded at the subway stations where they claimed to have worked overtime generally corresponded with the overtime hours claimed. We also reviewed the AFC swipe data for the three rank and file employees (maintainers) who were assigned to work with the selected supervisors.

We reviewed the months in 2010 (October and June) and 2011 (February) during which the three supervisors received the highest amounts of overtime compensation from Recovery Act funds. For the months reviewed, the six employees were paid for a total of 360 overtime hours totaling \$18,878. However, the AFC swipe activities on the overtime days indicated that these six employees were only at the assigned subway stations for just about 149 hours, and therefore may have been overpaid 211 hours totaling \$10,969. For example, for one Supervisor and two Maintainers reviewed, we found that they always predetermined that the work would take eight hours of overtime. However, a review of their swipe activity found that these employees' last swipe activities were always several hours before their eight-hour overtime shift was supposed to end.

For example, we questioned overtime payments for one EMD Supervisor and one EMD Maintainer totaling \$6,782. The supporting overtime request forms indicate that a Capital Program Management (CPM) official initiated the overtime in question. However, the CPM official told us that he is not authorized to initiate overtime requests, and thus, he did not request the overtime

(totaling \$6,782) for the Supervisor and Maintainer on the days we reviewed.

In responding to our findings, Transit officials said that AFC swipes are not used for payroll purposes. Officials also indicated that employees often used Transit vehicles to deliver tools and equipment to subway booths, and therefore, such employees would not use their MetroCards. However, we found that vehicle log data did not account for any employees' questionable overtime claims. Further, in some instances, AFC swipe data indicated that employees were somewhere other than the location where they purportedly performed overtime work. For example, on October 14, 2010 one employee claimed eight hours of overtime for work done at the 179 Street, Jamaica and 33rd Rawson Street stations. His eight-hour overtime shift was to end at midnight. However, the employee's last swipe activity for the day showed him at the Union Turnpike, Kew Gardens station in Queens at 6:42 p.m.

Inefficient Staff Assignments

We visited seven Induction Loop equipment installation sites in Brooklyn and Manhattan during the week of November 8, 2010, and five Subway Stations Rehabilitation sites in Brooklyn on May 19, 2011. We observed several instances of waste and abuse of Recovery Act funds during our visits to these two sites.

Induction Loop Installation Sites

Our analysis of the Induction Loop Project (estimated to cost \$13.4 million) found that 63 percent of the cost was budgeted for internal MTA Transit labor even though the project was contracted out. Further, Transit officials decided that any work performed on the project by EMD laborers would be done exclusively at overtime rates. We observed the installation of Induction Loop equipment at seven selected locations. At each location, three Transit employees were outside MetroCard fare booths, although the task of installing the equipment was actually performed inside the booth by a single contractor employee. We question why the three-man crews were assigned to these locations when the only person working was the contracted technician. The three Transit employees stood outside the booth talking - while on overtime. We determined that Transit officials were aware of, and supported, the wasteful practice of assigning three Transit employees to observe the installation at each Induction Loop site.

After our observations, we also determined that the installation of the Induction Loop equipment took an average of 4.75 hours for the contractor employee to complete; however, time records showed that Transit employees spent eight hours of overtime working on each one. Based on our inquiries, we found that the additional 3.25 hours may have been spent by employees' obtaining and returning tools, changing clothes, washing up, preparing reports, or traveling between their headquarters' location and the installation site(s). We believe this is an excessive amount of time (41 percent of the eight hours of overtime) for these indirect tasks and, as a result, we question whether all the overtime incurred is necessary and whether Recovery Act funds were wasted.

In responding to our preliminary audit findings, Transit officials stated that EMD personnel

worked on the Induction Loop project exclusively at overtime rates due to the limited scope and short duration of the project. We note, however, that this project lasted for 33 months (almost three years). Transit officials also indicated that EMD's presence at the fare booths was necessary to perform technical work. According to Transit officials, EMD's function was not merely to observe contractor installation, but to verify the intercom unit was in proper working order and to disconnect and reconnect power and battery backup to the unit. Based on our observations, however, only one employee was needed to perform these tasks. Transit officials could not explain why two additional employees had to be present during the installations.

Subway Station Rehabilitation Sites

On May 19, 2011, we went to the Fort Hamilton Parkway and 9th Avenue subway stations on the D-Line and observed instances of waste and abuse of Recovery Act funds. At the Fort Hamilton station, we observed five Transit employees at 2:15 p.m. who were not working. Instead, the five employees were sitting on a bench near the fare booth. We asked the employees why they were not working. One employee (who identified himself as the Track Safety Supervisor [TSS]) indicated that the Contract Project Manager had instructed his crew to come to this station to meet an employee of a contractor. However, the contractor's employee never appeared. Consequently, the five Transit employees had been idle since 8:30 a.m. - nearly six hours at the time auditors observed them. Because of a lack of adequate Transit cooperation, we were unable to determine who was responsible for the communication breakdown in this instance. Further, a contractor employee at another station told us that this was not the first time the contractor had not shown up while Transit employees sat idly for the day.

We also visited the 9th Avenue station and found eight Transit employees assigned as flaggers. However, at the time of our arrival (3:00 p.m.), only three of the eight employees were actually working, although their shifts were not scheduled to end until 3:30 p.m. We observed the other five employees standing on the station platform. According to the contractor at the site, these employees had already completed their work for the day.

Jobs Created and Retained

Section 1512 of the Recovery Act requires all prime recipients of Recovery Act funds to submit a report each calendar quarter to federal officials. The report should include: the total amount of Recovery Act funds received; the amount of funds expended or obligated; and the number of jobs "created" or "retained" expressed as full-time equivalents (FTEs). Jobs created are those new positions created and filled or previously existing unfilled positions that are filled. Jobs retained are those previously existing filled positions that are retained as a result of Recovery Act funding. The FTE calculations should be based on aggregate hours or percentage of effort worked to ensure that temporary or part-time labor is not overstated.

We reviewed 128 timekeeping entries for 35 EMD titles that charged time to the Induction Loop project during the third quarter of 2010 to determine the accuracy of the reported FTEs. (Note: Our review did not include the jobs data reported for contractor employees who worked on

Recovery Act projects.) We found that Transit reported 5.26 FTE jobs created and/or retained (based on 2,695 internal labor hours) for EMD employees for the third quarter of 2010. However, the MTA did not actually create or retain any jobs for the employees we tested, and therefore, the MTA should not have reported the 5.26 FTE jobs to the federal government. We found that Recovery Act funds were actually used to pay overtime to existing Transit employees. These Transit employees first worked their regularly scheduled shifts and then worked overtime to perform work on the Induction Loop project.

We question why Recovery Act funds meant to create or retain jobs were used to pay existing MTA employees for overtime on the Induction Loop project. EMD officials told us that they chose to use Recovery Act funds to pay overtime on this project (rather than create new jobs) because of the project's limited scope and duration. Further, officials told us that the conversion of overtime hours to jobs created or retained was consistent with the formal guidance the federal government provided to them. However, based on our review of the federal guidance, we concluded that it did not support the use of overtime, worked by existing employees, to calculate jobs created or retained.

Recommendations

1. Monitor project sites to ensure that only workers for prime contractors and preauthorized subcontractors work on the project.
2. Properly monitor contractors and subcontractors to ensure that certified payrolls and other federally mandated forms are correctly completed and submitted, and that appropriate laws are complied with.
3. Establish controls that would prevent employees from making entries into the timekeeping system for themselves.
4. Monitor overtime claims to ensure that hours paid are necessary and actually worked, and do not record overtime hours in the timekeeping system before they are actually worked.
5. Segregate the key payroll functions to reduce the opportunity for fraudulent or erroneous payroll entries by EMD supervisors.
6. Discontinue the practice of allowing employees to submit overtime requests for themselves.
7. Investigate excessive and questionable overtime payments charged to Recovery Act funds by EMD employees and recoup the payments as appropriate.
8. Establish a control environment that supports internal controls and compliance with the Transit Rules and Regulations, Section 27(e), and discipline non-compliant employees.
9. Determine whether it is necessary to assign three Transit employees to observe a contractor installation.

10. Develop a better system for assigning Transit employees so that staff does not sit idle, and create an environment where employees report the fact that they are not actually working.
11. Correct prior job creation/retention reports and resend them to federal officials.

Audit Scope and Methodology

We audited Transit's use of Recovery Act funds for the period April 30, 2009 through January 23, 2013. Our audit objectives were to determine whether Transit used the funds efficiently and for authorized purposes and whether the funds were properly monitored to prevent fraud, waste and abuse.

To accomplish our objectives, we met with Transit officials to gain an understanding of their policies and procedures for the administration and management of their Recovery Act-funded projects. We also reviewed the pertinent sections of the Recovery Act as well as MTA and federal guidelines pertaining to the Recovery Act. In addition, we made site visits to Recovery Act-funded project sites and interviewed employees and contractors working at these sites. We also examined contracts and the contract award process; certified payrolls, budgets, and performance records used to determine the number of jobs created and retained; the appropriateness of payments made to vendors; as well as the overtime charges for Transit EMD employees assigned to the Induction Loop project.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for the purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article X, Section 5 of the State Constitution and Section 2803 of the Public Authorities Law.

Reporting Requirements

We provided a draft copy of this report to MTA New York City Transit officials for their review and formal comment. We considered the response of the MTA New York City Transit in preparing this final report and attached the response in its entirety to the end of the report. Although Transit officials did not specifically agree or disagree our recommendations, they indicated that actions have been or will be taken to implement most of them. Our rejoinders to certain statements by the MTA New York City Transit are included in our report's State Comptroller's Comments.

Within 90 days of the final release of this report, the Chairman of the Metropolitan Transportation Authority shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments

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Thomas F. Prendergast
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

January 24, 2014

Ms. Melissa Little
Audit Manager
The Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

**Re: Draft Report #2012-S-105 (Procurement and Payroll-Related Matters
Pertaining to the Use of Certain Federal Funds)**

Dear Ms. Little:

This is in reply to your letter requesting a response to the above-referenced draft report.

I have attached for your information the comments of Mr. Carmen Bianco, President, New York City Transit, which address this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.F. Prendergast".

Thomas F. Prendergast
Chairman and Chief Executive Officer

Attachment

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

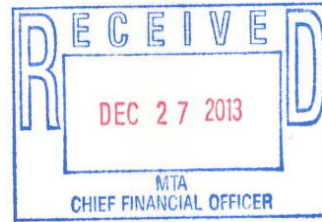
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Carmen Bianco
 President



OFFICE OF THE
 CHAIRMAN

13 DEC 26 11:07



December 24, 2013

Thomas F. Prendergast
 Chairman and Chief Executive Officer
 Metropolitan Transportation Authority
 347 Madison Avenue 7th floor
 New York, NY 10018

Re: New York State Comptroller’s Request for Response to the report “Procurement and Payroll-Related Matters Pertaining to the Use of Certain Federal Funds” 2012-S-10

Dear Chairman Prendergast:

We have reviewed the Office of the State Comptroller’s (OSC) Draft Audit Report on the use of federal stimulus funds. As of December 2013, 31 of the 32 NYCT American Recovery and Reinvestment Act (ARRA) funded capital projects were completed and closed out, totaling \$500 million in capital improvements.

The Draft Audit Report’s findings focus on the Induction Loops, 642 Booths project, which was originally a \$13.4 million project to aid hearing-impaired customers at station booths system-wide. Customers wearing a hearing aid with T-coil can better communicate with a station agent via a magnetic field while background noise has been reduced. It is important to note that the project’s budget was adjusted because the number of booths addressed was reduced to 453; part-time booths were removed from the scope of work for a reduction of 189 locations. Construction began in August 2009 and substantial completion was achieved in April 2012.

OSC expressed concern that the Transit labor portion of the project was larger than that of the third party contractor (in-house labor represented 63% of the original \$13.4 million project budget). Please note that the base budget for a project is typically set at the pre-design/scoping stage and is often subject to change during design and/or before construction award when more detailed engineering and support needs information is available. In this case, the project’s budget was reduced to \$8.7 million primarily due to reductions in scope per the above and, as part of this reduction, the in-house (TA) Labor budget was adjusted from \$3.13 million to \$1.43 million and the in-house Construction Administration budget was reduced from \$5.34 million to \$3.1 million. Factoring in these updates, Transit labor accounted for 46% of the budget versus the third party contractor at 54% of the budget.

* Comment 1

The final split between in-house Labor and the third party contractor was the result of the allocation of work. The contractor was responsible for the building, delivery and installation of the actual induction loops apparatus while all other work (listed below) was performed using NYCT Department of Subways (DOS), Electronics Maintenance Division (EMD) in-house

MTA New York City Transit is an agency of the Metropolitan Transportation Authority, State of New York

* See State Comptroller’s Comments on page 22.

Thomas F. Prendergast
 December 24, 2013
 Page 2

forces, with assistance from the DOS Stations Division.

The use of in-house labor forces to either construct or to provide essential support services is a fundamental element in how NYCT manages its capital projects in a 24-hour-a-day, 7-day-a-week operation. An adequate level of support ensures safe construction practices and appropriate access to our facilities.

EMD provided several important services during the Induction Loops project, including access for the contractor (Transit Technologies) to NYCT's Norcon intercom equipment so that the contractor could interface Induction Loops with Norcon equipment during installation in the booths. Simultaneously, EMD replaced old power supplies with newer equipment. EMD installed mounts, repaired equipment as necessary, tested the system before and after installation of the Induction Loops system, and inspected and accepted the Induction Loops system at all 453 locations. In short, EMD was an integral part of the Induction Loops project.

Over the course of the audit, EMD managers met with the NYS Office of the Comptroller multiple times. EMD provided the OSC with requested documentation and fully described the operations, systems, processes, rules and constraints as these pertained to the Induction Loops project.

It was explained to OSC auditors that EMD was not authorized to add headcount for this project due to the project's limited scope and duration. This is consistent with federal guidelines and was understood by all involved parties including Capital Program Management (CPM), EMD and the NYCT Office of Management and Budget (OMB) in advance of the project award. NYCT maintenance forces operate at or close to maximum capacity in managing baseline responsibilities and, in lieu of incurring the expense, including benefits, of additional headcount, overtime was deemed more efficient to execute the Induction Loop project.

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While NYCT is pleased with the successful completion of this project, we continually strive to improve our work practices and productivity and welcome any and all suggestions. Below is a summary of the NYCT response to OSC's audit recommendations and the actions we intend to take in the near future to address the concerns raised.

Comptroller Recommendation 1: Monitor project sites to ensure that only workers for prime contracts and preauthorized subcontractors work on the project.

NYCT has a process to certify subcontractors prior to starting work on projects. For this contract, the CPM Construction Manager did not seek approval of an electrical subcontractor due to a misunderstanding regarding the corporate structure of the prime contractor. When the Construction Manager learned that a subcontractor was performing work, he sought and secured the necessary subcontractor approval. Please note, the value of the work performed by the subcontractor did not trigger an integrity review under MTA Board policies. Also, the work assigned to the subcontractor was completed successfully and on time.

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While this was a rare error by a single individual, NYCT will nevertheless issue a bulletin to all Design/Construction/Project Managers reminding them to secure approval of all subcontractors

Thomas F. Prendergast
 December 24, 2013
 Page 3

prior to allowing them to work on projects. NYCT did perform a responsibility review (integrity included) for the prime contractor, Transit Technologies. Copies of this document were inadvertently omitted from the information conveyed to OSC; these documents will be forwarded to OSC via MTA Audit by the end of December.

Comptroller Recommendation 2: Properly monitor contractors and subcontractors to ensure that certified payrolls and other federally mandated forms are correctly completed and submitted and that appropriate laws are complied with.

The Induction Loop contractor, Transit Technologies, submitted certified payrolls for all pay periods when craft labor performed work on the project. When no craft labor was working on the project, certified payrolls were not required and therefore were not submitted. One subcontractor inadvertently submitted certified payrolls on a standard form and not the US Department of Labor approved form. NYCT identified this the error when the Induction Loop contractor submitted payroll at the time of payment requisition; all payrolls were subsequently corrected and resubmitted.

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NYCT will issue a bulletin to all Design/Construction/Project Managers reminding them to ensure that certified payrolls are submitted on the proper form depending on the contract funding source.

Comptroller Recommendation 3: Establish controls that would prevent employees from making entries into the timekeeping system for themselves:

Although there are controls in place to prevent abuse and fraudulent payroll entries, DOS is in the process of reviewing additional opportunities to strengthen existing controls and further reduce the potential for fraud.

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Comptroller Recommendation 4: Monitor overtime claims to ensure that hours paid are necessary and actually worked, and do not pay overtime to employees before the hours are worked.

Overtime tracking continues to be a focus for all NYCT managers and supervisors. Signed approvals and verifications are included in all processes. All overtime must be approved in writing by each manager in order to authorize payment to an employee. Scheduled overtime is included in each employee's assignment sheet (unscheduled overtime is not included in advance). Current payroll system constraints for hourly and supervisory employees require that "anticipated hours" are entered in advance of weekend work and corrected the following week. It is important to note that all NYCT personnel are paid on a two-week lag; no overtime is ever paid in advance. NYCT will continue to monitor all payroll and overtime and strive to maximize productivity.

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Comptroller Recommendation 5: Segregate the key payroll functions to reduce the opportunity for fraudulent or erroneous payroll entries by EMD supervisors.

An investigation of the incidents cited during the audit did not reveal any instances of fraudulent payroll entries. EMD did identify an erroneous entry where an improper charge

Thomas F. Prendergast
 December 24, 2013
 Page 4

number was entered for an individual. This was shown to the OSC and then corrected. Specifics were included in the January 4, 2012 response memorandum provided to the OSC auditors.

Comptroller Recommendation 6: Discontinue the practice of allowing employees to submit overtime requests for themselves.

A supervisor presence is required for staff to work overtime and, as such, a supervisor must request overtime for himself/herself to accompany overtime requests for his/her staff. The request by a supervisor does not authorize the supervisor to work the overtime or receive payment for the overtime unless the written request is reviewed and approved by the appropriate manager. In all cited cases, appropriate manager approval was received.

Comptroller Recommendation 7: Investigate excessive and questionable overtime payments charged to Recovery Act funds by EMD employees and recoup the payments as appropriate.

After thorough review of the occurrences in question, our investigation did not identify any instances of excessive or questionable overtime payments. The OSC staff reviewed the files with NYCT managers and concurred with the findings at the time. We will continue to review our processes to ensure proper and accurate charging.

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Comptroller Recommendation 8: Establish a control environment that supports internal controls and compliance with the Transit Rules and Regulations, Section 27(e), and disciplines non-compliant employees.

NYCT Rules and Regulations address the need for employees to swipe upon entering the system. We continue to enforce this rule, however the majority of work performed for this project did not require entry into the system. In-house forces primarily worked in the Station Agent Booths which are on the unpaid side of the fare control areas.

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Comptroller Recommendation 9: Determine whether it is necessary to assign three Transit employees to observe a contractor installation.

Multiple NYCT personnel from various divisions are often required to oversee or participate in different contractor activities at the same location. DOS divisions work with CPM and contractors to minimize non-productive field time and to ensure that all safety procedures for field work are in place. NYCT will continue to look for opportunities to increase the efficiency of personnel deployment.

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Comptroller Recommendation 10: Develop a better system for assigning Transit employees so that staff does not sit idly and create an environment where employees report the fact that they are not actually working.

NYCT supervisors set up their crews' work schedules a week or more in advance and ensure that the assignments and hours required are compliant with union rules. Due to the complexity in scheduling work assignments, it can on occasion be challenging to reassign staff if a contractor does not appear at a given location on-time. NYCT monitors such activities and routinely reports contractor performance deficiencies to senior management. We agree that we should strive for the highest possible productivity and will continue to look for opportunities to improve performance.

Thomas F. Prendergast
 December 24, 2013
 Page 5

Comptroller Recommendation 11: Correct prior job creation/retention reports and resend them to federal officials.

On page 12 of the Draft Report, the OSC questions “why Recovery Act funds meant to create or retain jobs were used to pay existing MTA employees for overtime on the Induction Loops project.” We understand that the referenced “retained jobs” on pages 11 and 12, as per ARRA guidance (December 18, 2009 - Memorandum to Heads of Executive Departments and Agencies), are defined as existing positions that are now funded by the Recovery Act. The Act did not prohibit the use of overtime. As such, NYCT was compliant with ARRA regulations in utilizing ARRA funds to perform in-house work through the use of overtime and associated reporting of job hours.

* Comment 9

We have carefully reviewed the recommendations in the Draft Audit and continue to aim for improvements in processes and procedures that will make the most efficient use of our resources.

If you have any questions or need additional information, please contact me.

Sincerely,



Carmen Bianco

cc: R. Bergen	M. Brown
L. Ciaccio	D. Henley
A. Infeld	J. Leader
S. Librera	S. Plochochi
F. Smith	M. Woods

TFP log# 01121913
 CB log # 12201301
 JPL log # 01121913
 MB log # CP13-2067

State Comptroller's Comments

1. We remain concerned about the portion of the budget used for internal labor. According to Transit officials, most of the Induction Loop project was contracted out because Transit staff did not have the technical expertise to perform the work. Yet, after decreasing the projects' internal labor portion to 46 percent, the project still had the highest rate of internal labor for all the projects we reviewed. Moreover, we attributed the high internal labor cost (percentage) to the use of overtime for all work performed.
2. We question whether the duration of this project was "limited." In fact, as our report indicates, the project took 33 months. Further, Transit officials consciously decided to pay employees (or internal labor) at overtime rates.
3. Transit officials provided us with no documentation showing that the CPM Construction Manager sought and obtained approval for the subcontractors once he learned they were working on the Induction Loop project. Further, the use of the subcontractors remains problematic because, as detailed in our report, the prime contractor assured Transit that no subcontractors would be used. Moreover, as also detailed in our report, the subcontractors in question were affiliated with Santo Petrocelli, Sr., who had been indicted for certain labor law offenses.
4. We found instances where craft labor was used, but the CPM officials were unable to provide us with the required certified payrolls. Officials told us that some of the payroll documents in question were misplaced when Transit moved offices from Long Island City to Manhattan. Further, officials never provided us with any corrected and/or resubmitted payrolls.
5. Transit officials state that "anticipated hours" are entered in advance of weekend work and then are corrected, as needed, during the following week. Nonetheless, we maintain that overtime hours should not be entered into the payroll system before they are actually worked. Entering hours into the payroll system before employees work them increases the risk that employees will be paid for time not worked. Also, we have amended our report, as warranted, in reaction to officials' statement that overtime is not paid in advance because of the two-week lag in pay.
6. We do not agree that OSC staff reviewed pertinent files with Transit managers and concurred with Transit's findings. For certain overtime hours paid, we maintain that there was no evidence to demonstrate that the employees in question were actually at their assigned locations performing work.
7. We acknowledge that Transit staff performed work primarily at agent booths on the unpaid side of the fare control area. However, we also note that the employees identified in our audit were often assigned to work on multiple booths during their overtime shifts. To travel from one booth to the next, these employees had to enter paid fare zones to take trains to their next work locations. There were, however, no electronic MetroCard "swipe" records showing that employees traveled from one booth to another during their overtime shifts. Instead, in many instances, swipe records suggest that the employees simply left work early.
8. We visited seven Induction Loop equipment installation sites and observed three Transit employees who were working overtime. The three Transit employees were standing

outside the booth and were talking, while the contracted technician was inside the booth installing the equipment. Therefore, we question whether “non-productive field time” was minimized.

9. The Recovery Act does not prohibit the use of overtime for projects funded by the Act. However, we do not agree that paying existing Transit employees overtime to work on Recovery Act projects constitutes job retention, as defined by Section 1512 of the Recovery Act. Therefore, Transit officials should not have reported that they retained jobs for the employees who were paid overtime. Such employees already received their base hourly wages from Transit, prior to any overtime pay funded by the Recovery Act.