



Department of Transportation

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March 12, 2026

Holly Reilly, Director of State Expenditures
Office of the State Comptroller
Bureau of State Expenditures
110 State Street - 10th Floor
Albany, NY 12236-0001

Re: Audit Final Report: "Examination of Payments to WSP USA Inc.", Issued February 12, 2026

Dear Ms. Reilly:

The New York State Department of Transportation (NYSDOT) has reviewed the Office of the State Comptroller's (OSC) Final Report titled "Examination of Payments to WSP USA Inc." NYSDOT provides the following as responses to OSC's recommendations relevant to it.

NYSDOT Response to Recommendations:

Unsupported Labor Hours

OSC Recommendation (1): Review the Department's controls, and establish additional controls if necessary, to ensure payments approved by the Department comply with State requirements and the contract terms and conditions and are appropriately supported with sufficient documentation to ensure the payments are just, true and correct prior to being entered into SFS.

***NYSDOT Response:** NYSDOT continuously explores opportunities to improve its controls, and enhances existing controls or implements new controls as needed. NYSDOT will remind applicable staff of their obligation to obtain sufficient documentation for the payments they are responsible for.*

OSC Recommendation (2): Provide relevant training to the Department staff responsible for reviewing and approving invoices, such as OSC training, to ensure only appropriate and supported expenses are approved for payment.

***NYSDOT Response:** NYSDOT already provides staff with a host of resources to assist them in their review and approval of expenses. This includes Statewide Financial System (SFS) support site, virtual and in-person initial and refresher training and presentations, and sessions to assist staff with any questions and concerns. NYSDOT also leverages our partners' (e.g.*

SFS) training opportunities when available, and will notify employees when these opportunities arise.

OSC Recommendation (3): Review the labor expenses paid to WSP outside of the examination period to ensure these expenses are supported and recover any overpayments as necessary.

NYSDOT Response: *NYSDOT will take this recommendation under advisement as we will also need to consider the expected amount of recovery along with the cost of undertaking such review.*

Insurance Expenses

OSC Recommendation (1): Review the Department's contract terms to ensure they reflect the intent of the parties.

NYSDOT Response: *NYSDOT's contract terms reflect the intent of the parties and, as noted below, there is no indication in this contract that they do not.*

OSC Recommendation (2): Develop controls to ensure staff reviewing and approving invoices for payment are aware of the contract terms and conditions, as well as the relevant GFO requirements, to prevent the approval and payment of inappropriate expenses under the contract.

NYSDOT Response: *NYSDOT disagrees with this recommendation and, upon advice of agency counsel, will not attempt to recover such expenses as they were properly reimbursed.*

As noted in NYSDOT's preliminary response dated February 20, 2025, the finding that the expenses subject to this recommendation were not eligible for reimbursement is erroneous. Accordingly, this recommendation is based upon a false premise and will not be actioned by NYSDOT.

Contract D038197 (the "Contract") is a federally funded contract covering Biennial and Interim Bridge Inspections in New York State Department of Transportation (NYSDOT) Regions 8 & 9 for 2022 – 2025. The proper interpretation of the Contract, shared by NYSDOT and the contracting community at large, allows for the reimbursement of certain insurance costs. Specifically, Article 9 must be read strictly and in acceptance of its plain textual meaning and also in harmony with the rest of the Contract. When doing so, there is no conflict.

Article 9 requires that the consultant must "procure, at its own sole cost and expense" the insurance set forth in article 9. (Emphasis added.) Article 9 also requires the consultant to maintain the required insurances. In other words, the consultant bears the responsibility - and associated costs - of obtaining and maintaining the required insurance. This clearly establishes the entity that must obtain the insurance; here, the consultant. This is in contrast with owner-controlled insurance, which under recently passed legislation NYSDOT was authorized to use. Under the owner-controlled insurance paradigm, the project owner (in this case NYSDOT) would procure the necessary insurances, not the consultant. Nothing in Article 9 makes the costs of the insurance non-reimbursable.

However, Article 3, which sets forth the documents forming the contract, expressly includes Exhibit E, which includes Federal Regulations. Exhibit E states that “[a]ctual allowable overhead and direct reimbursable costs under this [Contract] shall be determined in accordance with the following Federal Acquisition Regulations and New York State Policies.” Exhibit E also notes, under the heading of Federal Regulations, that Contract “[r]eimbursement will be limited to the costs which are or would be allowable under Federal costs principles, contained in 48 CFR 1-31 (Federal Acquisition Regulations).” Because the Contract is federally funded: (1) federal regulations apply; and (2) all costs of the project, including any reimbursements for allowable costs, will be reimbursed to the State from the Federal Government.

Similarly, Article 3 makes Exhibit B (Estimate of Direct Non-Salary Cost) part of the contract, including estimated reimbursements for special project insurance and railroad insurance.

Several FAR provisions contained in 48 CFR 1-31 are pertinent here. As an initial matter, 48 CFR 31.105, which covers engineering contracts such as the Contract, states that the cost principles set forth in 48 CFR subpart 31.2 apply, including with regard to reimbursable costs. The operative provision within subpart 31.2 is 31.205-19, which covers Insurance and Indemnification. Paragraph (d) of 31.205-19 states that “[p]urchased insurance costs are allowable” Similarly, and in more detail, paragraph (e)(1) of 31.205-19 states that the “[c]osts of insurance required or approved pursuant to the contract are allowable,” and paragraph (e)(2)(iv) specifically allows for “[c]osts of insurance for the risk of loss of Government property are allowable.”

Here, Special Project Insurance and Railroad Insurance are insurances required by NYSDOT under the contract, and thus are reimbursable under the FAR.

Reading the Contract as a whole, Article 9 requires the consultant to procure insurance, and federal regulations – the FAR – which are included in the Contract under Article 3, allow NYSDOT to reimburse the consultant for the costs. As noted above, Article 9 does not bar reimbursement, and thus Article 9 and the FAR are not contrary to the provisions of Articles 3 or 9, meaning there is no conflict of contract terms at play here.

Lastly, if NYSDOT did not reimburse for these insurance costs, consultants would include the costs in their bids. Accordingly, the reimbursements for insurance were not “extra” costs; the insurance costs would have been paid for by NYSDOT under either provision.

NYSDOT’s response of February 20, 2025 offered to meet and confer further on this issue, including participation by NYSDOT’s General Counsel, with a suggestion that OSC include lawyers of their own, but NYSDOT received no response to that offer.

OSC Recommendation (3): Recover the \$16,659 in inappropriate Railroad Protective Liability Insurance expenses paid to WSP during the examination period.

***NYSDOT Response:** NYSDOT disagrees with this recommendation. As noted above, this recommendation is based upon a false premise. The \$16,659 was not inappropriate and therefore recovery will not be sought by NYSDOT.*

OSC Recommendation (4): Determine if additional inappropriate insurance reimbursements were made outside of the examination period under contract D038197 and recover any inappropriate reimbursements.

***NYSDOT Response:** NYSDOT disagrees with this recommendation. As noted above, this recommendation is based upon the false premise that NYSDOT improperly reimbursed insurance reimbursements.*

OSC Recommendation (5): Determine if the Department reimbursed other inappropriate insurance expenses under other bridge inspection contracts and if so, recover inappropriate reimbursements.

***NYSDOT Response:** As noted above, this recommendation is based upon a false premise and will not be actioned by NYSDOT.*

If you have any questions, please contact Chris Herald, Director of Internal Audit, at 518-457-1085.

Sincerely,



Erin Jaeger
Assistant Commissioner – Administrative Services Division
Chief People Officer

Cc: Honorable Kathy Hochul, Governor of the State of New York
Honorable Thomas P. DiNapoli, State Comptroller
Honorable Andrea Stewart-Cousins, Senate Majority Leader and President Pro Tempore
Honorable Robert G. Ort, Senate Minority Leader
Honorable Carl E. Heastie, Assembly Speaker
Honorable Crystal D. Peoples-Stokes, Assembly Majority Leader
Honorable Edward P. Ra, Assembly Minority Leader
Honorable Liz Krueger, Chairman, Senate Finance Committee
Honorable Thomas O'Mara, Ranking Minority Member, Senate Finance Committee
Honorable J. Gary Pretlow, Chairman, Assembly Ways and Means Committee
Honorable Phillip A. Palmesano, Ranking Minority Member, Assembly Ways and Means Committee
Blake G. Washington, Director, Division of the Budget