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Thomas F. Prendergast
Chairman and Chief Executive Officer



Metropolitan Transportation Authority

State of New York

October 7, 2014

Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Honorable Thomas P. DiNapoli
Office of the State Comptroller
633 Third Avenue, 31st Floor
New York, NY 10017

RE: Response to Report #2012-S-105 – NYC Transit – Procurement and Payroll-Related Matters
Pertaining to the Use of Certain Federal Funds

Gentlemen:

On June 18, 2014, the Office of the State Comptroller issued the above referenced audit report. As required by Section 170 of the Executive Law, I am providing you with the attached response which addresses the recommendations contained in the report.

A copy of the final audit report is attached for your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "T.F. Prendergast", with a horizontal line extending to the left.

Thomas F. Prendergast
Chairman and Chief Executive Officer

Attachments

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



New York City Transit

September 24, 2014

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-10S

Dear Chairman Prendergast:

We have reviewed the Office of the State Comptroller's (OSC) Final Audit Report on the use of American Recovery and Reinvestment Act (Recovery Act) funds. This Audit Report questions whether New York City Transit used Recovery Act funds efficiently, for authorized purposes, and whether the funds were properly monitored to prevent waste, fraud and abuse.

A Draft Audit Report was provided by the OSC in December 2013 for review and formal comment on recommendations for improvement based on the report's findings. NYCT responded to the OSC with actions that will be taken to implement the report's recommendations, and where recommendations were not implemented, the reasons therefore. The OSC responded to the actions NYCT outlined it will take to implement the report's recommendations with comments in the Final Audit Report.

As of August 2014, 31 of the 32 NYCT Recovery Act funded capital projects were completed and closed out, totaling \$500 million in capital improvements. The Audit Report focused its findings on the Induction Loop, 453 Booths project, an \$8.7 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.

Subways Electronic Maintenance Division (EMD) played an integral part of the Induction Loop project as it provided several important services for the duration of the project. Those services included access for the contractor to NYCT's intercom equipment to allow for interface with the Induction Loops; replacement of old power supplies with new equipment; installation of mounts; testing, inspection, and acceptance of the Induction Loop system before and after installation at all 453 locations.

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 NYCT's response to the OSC's audit comments in the Final Audit Report and the actions we intend to take in the near future to address the concerns raised:

***Comptroller Comment 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%, the project still had the highest rate of internal labor for all projects reviewed. Moreover, we attributed the high internal labor cost to the use of overtime for all work performed.*

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

The high internal labor percentage is mainly attributable to the nature of this project. Work had to be performed at all 468 stations throughout the NYCT subway system and within an area that directly impacts the traveling public (station agent booths). As such, NYCT policies require representatives from certain departments to be present where work was being performed to assist whenever needed to ensure the public impact of the project is minimized. We will continue to work closely to monitor the in-house labor charges to ensure productive use of public funding.

***Comptroller Comment 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 (internal labor) at overtime rates.*

Given the Induction Loop project's scope and duration, overtime was deemed as most efficient in executing the project in lieu of the time required and expense, including benefits, associated with the hiring of additional headcount. This is consistent with federal guidelines and was understood by all parties in advance of the project's award.

***Comptroller Comment 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 remain problematic because, as detailed in our report, the prime contractor assured Transit that no subcontractors in question were affiliated with Santo Petrocelli, Sr., who had been indicted for certain labor law offenses.*

NYCT's Project Management Procedure (PMP) Section 6, Revision 328 outlines the procedure for obtaining approval of subcontractors and suppliers on projects. NYCT will

work more closely with the Vendor Relations group to address any issues regarding the approval of subcontractors as required by NYCT policies and guidelines.

***Comptroller Comment 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.*

All certified payrolls were provided to the OSC except for 3 weeks of craft labor payrolls. Due to the necessity to vacate the field construction office, craft labor payroll records for the 3 weeks in question were misplaced. NYCT will work to improve the retention process of required certified payrolls ensuring documents are submitted and retained in a consistent and timely manner.

***Comptroller Comment 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 maintained that the overtime hours should not be entered into the payroll system before they are actually worked. Entering hours into the system before employees work them increase the risk that employees will be paid for time not worked. Also, we have amended our report, as warranted, in reaction to official's statement that overtime is not paid in advance because of the two week lag in pay.*

There are controls currently in place to verify and correct any changes to anticipated overtime. Ceasing the practice of entering 'anticipated overtime' will delay payment to employees for work performed. Subways has begun the process of establishing a centralized payroll group. This group's sole function will be to enter all hourly and supervisory payroll information which will prevent employees from making entries for themselves thus further eliminating the potential for fraud. We expect this new group and all applicable processes to be fully implemented by mid-2015.

***Comptroller Comment 6:** We do not agree that OSC staff reviewed pertinent files with Transit managers and concurred with Transit 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.*

After a thorough review of all questions raised, as well as information provided on non-field supervisory functions, the auditors and our investigation failed to identify any instances of excessive or questionable overtime payments. We will continue to review our processes to ensure proper and accurate charging and make adjustments to those processes if deficiencies are identified.

Comptroller Comment 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 cases, swipe records suggest that the employees simply left work early.*

Section 27(e) within the Rules and Regulations addresses the need for employees to swipe upon entering the system. We will continue to reinforce the rule when and where applicable, but for the majority of the work performed for this project, employees were not required to 'enter the system'. The Station Booths are on the unpaid side of the control areas. The majority of work required employees to travel by vehicles with tools and equipment to and from the locations therefore never requiring them to actually enter the paid side of the control areas, therefore not "entering the system". This interpretation was confirmed with Labor Relations who agreed that this rule did not apply to these circumstances.

Comptroller Comment 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.*

Given the nature of the work, Transit employees and the contractor were not working simultaneously. In some instances, Transit employees were to perform tasks immediately following the contractor (i.e. testing of equipment). Additionally when Transit employees are assigned to "access and protection functions" they are to provide access to Transit's assets, observe that the appropriate work practices are being executed and to secure and protect NYC Transit assets upon completion of work.

NYCT safety rules and work policies for field personnel require representatives from certain Departments to be present at work locations when a job is being performed by outside contractors. They provide assistance whenever needed to ensure the public impact of the project is minimized. We will continue work to improve coordination amongst various departments as well as with contractors to assign and utilize personnel in the most efficient manner possible.

Comptroller Comment 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 employee's overtime to work on Recovery Act project 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*

Thomas F. Prendergast
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received their base hourly wages from Transit, prior to any overtime pay funded by the Recovery Act.

Recovery Act guidance (Dated December 18, 2009 - Memorandum to Heads of Executive Departments and Agencies) defines retained jobs as existing positions that are now funded by the Recovery Act:

A second important change is in the definition of a job created or retained. Previous guidance required recipients to make a subjective judgment on whether a given job would have existed were it not for the Recovery Act. The updated guidance eliminates this subjective assessment and defines jobs created or retained as those funded in the quarter by the Recovery Act.

As such, NYCT was compliant with Recovery Act regulations in utilizing Recovery Act funds to perform in-house work through the use of overtime. Subsequent FTE job hour reports as submitted by the MTA reflected an accurate representation of jobs created per the Memorandum, which does not limit the reporting of job hours to straight-time only.

The support functions provided by Transit employees is a requirement when work is being performed in secure or mission critical locations. The Recovery Act funding was a limited opportunity that did not provide a continuous stream of funding. If dedicated forces were hired to support these projects, upon completion, we would have to absorb unbudgeted staff into our operating budget.

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Bianco', with a large, stylized initial 'C'.

Carmen Bianco

Thomas F. Prendergast
September 24, 2014
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cc: R. Bergen
L. Ciaccio
A. Infield
S. Librera
F. Smith

M. Brown
D. Henley
J. Leader
S. Plochochi
M. Woods

CB # 08121401
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