

Department of Transportation

Controls Over Vehicle Use and Transportation-Related Expenses

Report 2019-S-37 | October 2021

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objective

To determine whether the Department of Transportation (Department) has established adequate controls to effectively monitor and ensure accountability over its vehicle use and maintenance expenses. The audit covered the Department's vehicle use and maintenance expenses for the period from January 2017 to December 2019 and subsequent documentation and information obtained through April 2021.

About the Program

The Department's mission is to ensure that its customers – those who live, work, and travel in New York State – have a safe, efficient, balanced, and environmentally sound transportation system. The Department is composed of 11 regional offices across the State, of which 10 operate repair shops responsible for the maintenance of Department vehicles. These 11 regions typically serve their local surrounding counties and are responsible for overall management of vehicles in their region, including repairs and procurement of parts for their vehicles. The Department also uses a centralized procurement contract (Contract), negotiated and entered into on behalf of the State by the Office of General Services, for fleet management and repair services, administered by the Contractor. Along with the Department's 10 regional repair shops, the Contractor provides a network of authorized private repair shops across the State for routine maintenance and repairs and roadside assistance and towing. The regional repair shops either perform maintenance and service in-house or use the authorized private repair shops for parts and/or service, depending on the vehicle type and service needed. As of March 2020, the Department's fleet included both passenger and construction vehicles totaling 4,283 State-owned and 527 leased vehicles. Between January 1, 2017 and December 31, 2019, the Department's vehicle repair and maintenance expenses totaled approximately \$153 million.

Key Findings

- The Department has not established adequate controls to effectively monitor and ensure accountability over maintenance expenses. The Department performs limited to no central monitoring of procurements made through the Contractor and has not determined if the Contractor is complying with Contract terms, despite central office and regional office managers' concerns regarding repairs made at Contractor-authorized private repair shops. Instead, officials rely on the Contractor to monitor service costs and are likely not receiving best pricing for services. The Department does little to hold the Contractor accountable for its responsibility to ensure costs are competitive and reasonable and to avoid duplicate or unnecessary repairs. Further, neither the regional repair shop data nor the Contractor data include sufficient detail the Department would need to adequately monitor vehicle repairs and maintenance costs.
- The Department could improve controls over recalls, warranties, and oversight of fuel and mileage usage. For example, we identified 137 vehicles with 198 open recalls in August 2020. While many of the recalls were repaired after we informed the Department, 15 unrepaired recalls for 12 vehicles remain open as of July 2021. In addition, the Department has not issued written guidance or established agency-wide policies regarding warranties. As a result, warranties are handled differently by the regions, and regional fleet shops do not always attempt to maximize warranty agreements to reduce State costs.

Key Recommendations

- Implement procedures to monitor repair and maintenance costs agency-wide and hold the Contractor accountable for its responsibilities under the Contract.
- Develop a process to track vehicle recalls and provide written guidance to regional offices on their responsibility to ensure recalls are repaired timely.
- Develop and communicate procedures to the regional offices that maximize the utilization of warranties.



Office of the New York State Comptroller Division of State Government Accountability

October 7, 2021

Marie Therese Dominguez
Commissioner
Department of Transportation
50 Wolf Road
Albany, NY 12232

Dear Commissioner Dominguez:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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 *Controls Over Vehicle Use and Transportation-Related Expenses*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance 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,

Division of State Government Accountability

Contents

- Glossary of Terms** **5**
- Background**..... **6**
- Audit Findings and Recommendations**..... **8**
 - Procurement of Vehicle Parts and Services **8**
 - Recalls **10**
 - Warranties **11**
 - Vehicle Logs..... **12**
 - Recommendations..... **13**
- Audit Scope, Objective, and Methodology**..... **14**
- Statutory Requirements**..... **16**
 - Authority..... **16**
 - Reporting Requirements..... **16**
- Agency Comments and State Comptroller’s Comments**..... **17**
- Contributors to Report**..... **25**

Glossary of Terms

| Term | Description | Identifier |
|-------------|----------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| CDL | Commercial Driver's License | <i>Key Term</i> |
| Contract | Centralized procurement contract used by the Department for fleet management and repair services, administered by the Contractor | <i>Key Term</i> |
| Department | Department of Transportation | <i>Auditee</i> |
| NHTSA | National Highway Traffic Safety Administration | <i>Federal Agency</i> |
| OGS | Office of General Services | <i>State Agency</i> |

Background

The mission of the Department of Transportation (Department) is to ensure its customers – those who live, work, and travel in New York State – have a safe, efficient, balanced, and environmentally sound transportation system. The Department is responsible for coordinating and developing a comprehensive transportation policy for the State; coordinating and assisting in the development and operation of transportation facilities and services for highways, railroads, mass transit systems, ports, waterways, and aviation facilities; and formulating and keeping current a long-range, comprehensive statewide master plan for the balanced development of public and private commuter and general transportation facilities.

The Department is composed of 11 regional offices across the State, of which 10 operate regional fleet repair shops. These 11 regions typically serve their local surrounding counties and are responsible for overall management of vehicles in their region, including repairs and procurement of parts for their vehicles. Regional managers oversee the different programs such as fleet, transportation maintenance, design, and construction. The Department's work requires a large fleet of both passenger vehicles (e.g., SUVs, vans, pickup trucks) and construction and heavy-duty vehicles (e.g., snowplows, pavers, rollers).

The Department's Office of Fleet Management and Support is responsible for the Department's fleet. Its duties include procurement and disposal of all vehicles; maintenance and repair; centralized annual procurement; and general fleet support for regional offices, including the 10 regional fleet repair shops.

The Department also uses a centralized procurement contract (Contract), negotiated and entered into on behalf of the State by the Office of General Services (OGS), for fleet management and repair services, administered by the Contractor. The Contract provides a network of private repair shops across the State for services including routine maintenance and repairs and roadside assistance and towing. The regional repair shops either perform maintenance and service in-house or use the private repair shops for parts and/or service, depending on the vehicle type and service needed as well as operational needs.

The Contractor's fleet management services are offered on a per occurrence basis or under monthly enrollment pricing (per vehicle), which comes with an attached maintenance fee of \$5.15 per light duty vehicle in addition to the actual charges for the service. The Contractor is required to negotiate costs with private repair shops, ensure costs are competitive and reasonable, and avoid duplicate or unnecessary repairs. The Department is responsible for holding the Contractor accountable for Contract compliance and terms and, under the Contract, must periodically review a sample of procurements to determine compliance with Contract terms and reasonableness of the results to ensure they can withstand public scrutiny. Further, in recognition of market fluctuations over time, Contract guidance encourages users of the Contract to seek improved pricing whenever possible.

The State's procurement process must facilitate each agency's mission and was designed, in part, to ensure fair and open competition and to protect the interest of the State and its taxpayers. State agencies are responsible for ensuring their

procurement process and the quality and prices of purchases are reasonable. They must procure commodities and services in accordance with State Finance Law, but may also have supplemental policies and requirements that should be reviewed and followed. According to New York State Procurement Guidelines, the primary responsibility for procurement rests with State agencies, which must document their procurement process, including information gathering and decisions made relating to procurement. The guidelines also encourage agencies to attempt to negotiate more favorable prices on OGS centralized contracts.

As of March 2020, the Department's fleet comprised 4,283 State-owned and 527 leased vehicles. During the period January 1, 2017 through December 31, 2019, the Department's vehicle repair and maintenance expenses totaled approximately \$153 million, including about \$12.6 million to the Contractor and more than \$8.5 million in commercial fuel purchases using the statewide refueling credit card (i.e., WEX card). According to Department inventory data, as of February 27, 2021, the Department had more than 1.2 million vehicle parts totaling nearly \$17 million dollars in its parts inventory. The Department also had more than 265,500 regional repair shop vehicle work orders opened during the audit scope.

Audit Findings and Recommendations

The Department has not established adequate controls to effectively monitor and ensure accountability over vehicle use and maintenance expenses. The Department could take additional steps to ensure that the costs for procuring parts for repairs made at regional repair shops, as well as services received through authorized private repair shops, are reasonable and in the best interest of the State. Despite statewide and agency policies intended to promote accountability for State vehicle use and maintenance expenses, the Department does not monitor regional offices' procurement of parts for repairs made at regional repair shops. Nor does it monitor its procurement of services through authorized private repair shops to ensure costs are reasonable, despite concerns raised by both central office officials and regional repair shop managers about purchases under the Contract. Further, neither the regional repair shop data nor the Contractor data include the level of detail necessary to adequately monitor vehicle repairs and maintenance costs. We found that, generally, the regional offices do not seek improved pricing for procurements, and instead defer to the pricing offered.

The Department could also improve controls over recalls, warranties, and oversight of fuel and mileage. For example, we identified 137 vehicles with 198 open recalls in August 2020. While many of the recalls were repaired after we informed the Department, 15 unrepaired recalls for 12 vehicles remain open as of July 2021. In addition, the Department has not issued written guidance or established agency-wide policies regarding warranties. As a result, warranties are handled differently by the regions, and regional fleet shops do not always attempt to maximize warranty agreements to reduce State costs. The Department also could not locate 38% of vehicle logs (fuel and mileage) we requested, and many of the logs we did receive lacked sufficient detail required by the Department's policy.

The lack of accountability over State vehicle use and maintenance expenses ultimately increases the risk that the Department is not making the most efficient use of resources and that State vehicles and State funds will be misused. These weaknesses also put the integrity of State property at risk and increase the risk of accident or injury while using State vehicles.

Procurement of Vehicle Parts and Services

Services Through Contractor-Authorized Private Repair Shops

The Department performs limited to no central monitoring of procurements made through the Contractor and has not determined if the Contractor is complying with Contract terms, despite central office and regional office managers' concerns regarding repairs made at Contractor-authorized private repair shops. Instead, officials rely on the Contractor to monitor service costs, and the Department is likely not receiving best pricing for services. The Department does little to hold the Contractor accountable for its responsibility to ensure costs are competitive and reasonable and to avoid duplicate or unnecessary repairs. While officials said that, beginning in August 2018, they began holding monthly calls with the Contractor to

discuss any instances of potential non-compliance with Contract terms, they never provided documentation of what was discussed during these calls.

Further, the data the Department receives from the Contractor on the work performed at the authorized private repair shops is not sufficient to adequately monitor vehicle repair and maintenance costs. The data does not include the type of detail necessary to perform a statistical analysis or even a useful comparison of prices. For example, the Contractor's data will show that an oil change was performed, but it often does not specify the number of quarts or type of oil used, both of which impact the price. Furthermore, the data cannot be used to determine if the correct price was paid based on the terms of the Contract.

We conducted a survey of all 10 regional repair shop managers, and nine said they were aware of concerns or issues related to the use of the private repair shops through the Contract. The concerns cited by these managers were frequently related to the excessive costs of services, as well as the Contractor's lack of monitoring of pricing, quality, and necessity of repairs. For example, one manager reported that repair shops stated the Contractor, rather than the repair shop itself, dictates the price they should charge. Another manager stated that the Contract pricing is sometimes so expensive that they must contact the Contractor or the vendor to get the price lowered to a reasonable cost.

We sampled 100 transactions with private repair shops made under the Contract, totaling more than \$325,900, to determine whether the Department properly monitored use of the Contract to ensure the State receives reasonable and competitive pricing for purchased items. Officials interviewed at four regional repair shops stated they do not regularly seek improved pricing for services or compare prices for services for vehicle parts; instead, they generally defer to the pricing offered. With the lack of Department procedures and processes, there is limited assurance the regional offices obtained the best pricing for these services. As a result, the Department could likely realize cost savings through improved controls and monitoring of payments made under the Contract.

We also identified more than \$1,148 in sales tax and \$6,500 in tire disposal fees unnecessarily paid to the Contractor when State law exempts the Department from paying such costs. Department officials stated they believe the tire disposal fees were legitimate expenses, as they are listed in the centralized tire procurement contract, negotiated and entered into on behalf of the State by OGS, and they were not aware of the exemption under the law.

Procurement rules and guidance allow, and even encourage, agencies to seek out improved pricing on OGS centralized contracts. Regional offices can choose between authorized private repair shops and can request that the Contractor add Department-preferred repair shops to its network of private repair shops. Regional officials can also negotiate the cost of repairs between authorized private repair shops. Given the concerns expressed by officials regarding the Contract and the poor quality of data received from the Contractor, the Department should better monitor and manage procurements through the Contractor to ensure costs are

reasonable and take advantage of opportunities to obtain more favorable prices, such as through negotiating and considering price alternatives among vendors.

Vehicle Parts for Regional Repair Shops

Despite having a variety of procurement options available to purchase vehicle parts, regional repair offices are not maximizing all avenues to find the best prices for parts used for in-house repairs, and the Department does not centrally monitor parts' costs to ensure they are procured at the lowest cost and in the best interest of the State. We selected a sample of 22 parts, totaling more than \$63,000, including 18 from the Department's regional repair shop parts inventory and four from select work orders, and found the Department did not make efforts to obtain the best price for any of the sampled items – it simply used the only price it received.

Further, both the parts inventory and regional repair shop (work order) data that the Department has access to is insufficient to adequately monitor vehicle repair and maintenance costs. The parts inventory data includes only aggregate information for the “value on hand” and quantity of each part, and the Department is unable to access complete regional repair shop data, including details on repairs performed and costs for services, parts, and labor. While the Department can access details from each individual work order, it does not have access to data with enough detail to analyze for the purposes of adequately monitoring costs and trends. For example, the regional repair shop data does not include any details on the type of repair or maintenance work done or the costs associated with each repair. Parts data is also entered manually and is, therefore, subject to human error, and the Department has not established edit checks or quality controls.

Recalls

The National Highway Traffic Safety Administration (NHTSA) issues vehicle safety standards and requires manufacturers to recall vehicles that have safety-related defects or that do not meet federal safety standards. When vehicles are not repaired timely, it creates not only a potential safety issue but also the potential for unnecessary future costs of repairs that might result from using a vehicle with defects. NHTSA maintains a database of unresolved (open) recalls for specific vehicles. Vehicles are removed from the database after the manufacturers report that they have completed the repairs.

Open recall information is disseminated to regional offices by the central office, by notices from manufacturers, and by the Contractor. However, the Department does not centrally monitor recall statuses to ensure they are completed in a timely manner. Therefore, in some instances, recalls are left outstanding for long periods of time.

In August 2020, we identified 137 vehicles with 198 open recalls, of which 68 vehicles with 99 open recalls were from the four regional offices we reviewed. After we informed the Department of the open recall status for these vehicles, we conducted a subsequent review in April 2021, which revealed 15 vehicles with 20 open recalls remaining (the other recalls had been removed from the NHTSA

database or repaired since August 2020). While officials said that four of the remaining 20 open recalls have not yet been repaired due to the availability of parts and/or services and five have since been repaired, they did not provide any justification for why the remaining 11 recalls have yet to be repaired as of July 2021. The 15 unrepaired recalls for 12 vehicles were originally announced over 2 years ago, and most of the remaining unrepaired recalls either were of a serious nature (e.g., possible vehicle stalls at high speeds that may result in a crash) or could have resulted in additional damage to the vehicle if not fixed (e.g., water pump failure that may result in an engine compartment fire or risk of deformed fuel tank).

Warranties

Vehicles purchased or leased by the Department usually come with warranty coverages for specific repair and maintenance at no cost to the Department for a certain period of time. These warranty coverages help State agencies prevent unnecessary costs for repairing State vehicles at their own expense. The Department should be communicating, monitoring, managing, and utilizing vehicle and equipment warranties to avoid incurring unnecessary expenses. However, the Department has not issued written guidance or established agency-wide policies regarding warranties; therefore, warranties are handled differently by the regions. Warranty information is not tracked in a central location, making it difficult to monitor across the Department, and it is not readily available to regional repair shop mechanics for all vehicles. Regional repair shop managers receive warranty and lease agreement details when new vehicles come in, and they orally disseminate that information to mechanics. After our audit was engaged, the Department established a warranty claims unit and began working on developing a system to notify mechanics of vehicle warranty coverage.

To determine whether regional repair shops are maximizing their use of vehicle warranties, we reviewed warranty information and data from the Contractor for three vehicle types (year, make, and model). During our review, we found the data the Department receives from the Contractor is not sufficient to adequately monitor vehicle repair and maintenance costs for warranties. Despite the data's limitations, we were able to perform a limited analysis of potentially warranted expenses using data from the Contractor. We identified 44 transactions, totaling more than \$27,800 for services on 21 vehicles, that could have potentially been paid under the vehicle warranty. Of those, we selected a sample of 41 transactions, totaling approximately \$27,100 for 18 vehicles, to determine whether the repair or service could have been performed free of cost under a warranty coverage. We found that six of the 41 transactions, totaling more than \$530 for six vehicles, appeared to be covered by manufacturer warranties. We also identified 588 transactions, totaling more than \$29,470, for oil change services that appeared to be covered under the manufacturer's "no cost maintenance plan."

We found that regional repair shops do not always attempt to maximize warranty agreements when repairing vehicles themselves or through authorized private repair shops. According to regional managers, they use warranties to the best

of their ability; however, in severe or emergency weather circumstances when a warranted vehicle required for use is in need of repair, the warranty may be bypassed in order to get the vehicle back on the road as soon as possible. Also, if a vehicle is a significant distance from a repair shop authorized to make repairs covered by the warranty or if the item is inexpensive or easily repaired, the region may choose to repair the vehicle, as it can be quicker than sending the vehicle to an authorized repair shop. In some instances, regions may request reimbursement from manufacturers/dealerships for work performed at regional repair shops. While we understand there may be instances in which it is necessary to repair a vehicle off warranty, many regional offices do not document reasons for bypassing warranty coverage, and none of the regional offices provided us with written procedures that address this area. Therefore, we were unable to verify if any of the transactions in our sample were bypassed for legitimate reasons.

Vehicle Logs

Vehicle logs (fuel and mileage) are used as a control to provide assurance that State vehicles are used solely for business purposes and to protect State resources from waste and abuse. The Department requires employees to use logs to record daily vehicle utilization and trip information when State vehicles are used. While the Department's policy establishes detailed requirements for these logs, officials are not adequately ensuring that logs are maintained and that this policy is being followed, increasing the risk of misuse of State funds and vehicles. The Department could not locate 38% of the logs we requested, and a majority of the remaining logs lacked sufficient detail required by the Department's policy. Given the Department's inability to locate a large percentage of the logs, and the deficiencies we found with the remaining logs, their usefulness as a control is significantly diminished.

With the exception of vehicles and equipment that require an operator with a Commercial Driver's License (CDL), Department policy requires that logs include information such as purpose of the trip, starting location and destination, odometer readings, purchases made using the vehicle fuel card (i.e., WEX card), and the employee's (driver's) signature. For CDL-operated vehicles and equipment, the Department requires the reporting of fewer details. For these vehicle types, operators are required to document vehicle use and maintenance deficiencies identified during pre- and post-operating inspections. For all vehicle types, Department employees are required to obtain credit card receipts for all fuel purchases made using the WEX card and attach them to the log.

Managers of Department program areas are responsible for periodically reviewing logs, at least quarterly, and ensuring employees adhere to Department rules regarding proper vehicle use. Managers should also review monthly exception and weekly transaction reports for questionable transactions, identify the cause, and take appropriate action.

We requested supporting documentation for a sample of 50 logs, which included 515 WEX commercial gas station fuel transactions totaling \$27,391. The Department

provided multiple types of documents, consisting of varying levels of detail about the vehicles and/or trips. These documents included work reports, digital records, and vehicle logs, as well as downloads of credit card charges and actual fuel purchase receipts. However, the Department did not provide 19 of the 50 requested logs (38%) for various reasons (e.g., log was lost, could not be located). Of the 31 logs provided by the Department, 23 did not include adequate information on fuel purchases (totaling \$17,006) and nine lacked other required information, such as mileage driven, odometer readings, and maintenance deficiencies. In addition, the Department did not provide receipts for 61 of the 515 WEX fuel transactions associated with our sample, totaling \$4,591. Six of the 31 logs reviewed had some level of inaccuracy when compared to the WEX data, such as the dates of use, vehicle ID, or fuel purchases.

Recommendations

1. Implement procedures to monitor repair and maintenance costs agency-wide and hold the Contractor accountable for its responsibilities under the Contract.
2. Develop a process to track vehicle recalls and provide written guidance to regional offices on their responsibility to ensure recalls are repaired timely.
3. Develop and communicate procedures to the regional offices that maximize the utilization of warranties.
4. Develop processes to improve monitoring of logs and WEX card purchases to ensure they are maintained and include all required information.
5. Where practicable, improve the quality and detail of information for Contract and regional repair shop repairs and parts, and warranties.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Department has established adequate controls to effectively monitor and ensure accountability over its vehicle use and maintenance expenses. The audit covered the Department's vehicle use and maintenance expenses for the period from January 2017 to December 2019, and subsequent documentation and information obtained through April 2021.

To accomplish our objective, we became familiar with, and assessed the adequacy of, the Department's internal controls as they related to our audit objective. We conducted interviews with relevant officials in the Department's central and select regional offices to become familiar with the internal controls related to vehicle use and maintenance expenses. We reviewed applicable laws, regulations, policies, procedures, and the Contract. We also obtained inventory listings of Department vehicles. Additionally, we conducted a survey of all 10 regional fleet shop managers to gain insight into policies, procedures, and practices regarding vehicle repair and maintenance. We also interviewed officials and reviewed select documentation from four of the Department's 10 regional fleet shops. We selected the four regional shops based on various risk factors, such as high-dollar and/or questionable Contract transactions and incurred costs for potentially warrantied parts and/or services.

We selected various samples of expenses, services, vehicles, and locations. In order to determine whether the Department held the Contractor accountable for compliance with its contractual responsibility to ensure costs are competitive and reasonable and to avoid duplicate or unnecessary repairs, we judgmentally selected a sample of 100 of more than 85,420 transactions. These items were selected based on various factors, including the average cost of repair, number of transactions per vehicle, and age of the vehicle compared to repair cost. We judgmentally selected 22 of more than 1.2 million parts in order to determine whether the Department had maximized all avenues to find the best prices for parts used for regional repair shop repairs. These items were selected based on various factors, including highest cost and variation in pricing for the same part. We also reviewed warranty coverage information and Contract transactions for all vehicles matching three vehicle types (year, make, and model) in an attempt to identify any transactions that should have been covered by warranty. These three vehicle types were judgmentally selected, in part, to include vehicles with recent model years that were both leased and owned and with relatively high vehicle purchase costs (for those vehicles owned) to increase the likelihood that they would have been covered under warranty during our scope. As described in the body of the report, our analysis was severely constrained due to data limitations. This analysis resulted in 44 transactions potentially covered by warranty, and we selected 41 of the 44 transactions to review. The 41 transactions were judgmentally selected because they were associated with vehicles assigned to the four regional repair shops we reviewed. We also reviewed the Contract data for all models of vehicles made by one manufacturer covered by a no-cost maintenance plan. Additionally, we selected a judgmental sample of 50 vehicle usage logs and all associated commercial WEX fuel transactions, accounting for \$27,391, in order to determine whether the Department was adhering to its own policies and procedures. We judgmentally selected 50 vehicle usage logs, each covering a 1-month period, and associated fuel receipts during our 36-month scope for 48 of the approximately

4,800 vehicles in the Department's inventory as of March 2020, based on fuel card activity. We also reviewed Contract data to identify potentially unnecessary payments, such as for sales tax and tire disposal fees. The results of our samples cannot be projected to the population as a whole.

We verified reliability of the data used to select our samples and conduct our audit work, and found that most data sets were generally reliable for the purposes of our audit. However, we were unable to fully test the Department's parts inventory and regional repair shop work order data for completeness and/or accuracy. We used a vehicle recall search service to identify any open NHTSA recall repairs on active Department vehicles and requested support for all Department vehicles with unrepaired recalls. While we conducted testing to verify that the vehicle recalls search service results represent the same data as in NHTSA's database, we could not fully test the NHTSA database for completeness. However, the NHTSA information we used is publicly available and serves as the industry's standard for reporting recalls. Car makers, car dealers, and car repair shops, as well as the general public and government officials, all have a vested interest in the accuracy of this data, which provides some control. Furthermore, we reported every known instance of open vehicle recall to the Department for their review. For those data sets where we could not fully test reliability, we relied more heavily on corroborating evidence to support our findings to further limit our reliance on the data.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight and administration of vehicle use and maintenance expenses.

Reporting Requirements

A draft copy of this report was provided to Department officials for their review and comment. Rather than consider the recommendations as an opportunity to improve its oversight, Department officials expressed nearly universal disagreement with our audit conclusions and recommendations. We also note that the Department's response includes multiple misleading and/or inaccurate statements. Our responses to those comments are included as State Comptroller's Comments, which are embedded in the Department's response.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Transportation 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 why.

Agency Comments and State Comptroller's Comments



Department of
Transportation

KATHY HOCHUL
Governor

MARIE THERESE DOMINGUEZ
Commissioner

September 13, 2021

Nadine Morrell, Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Re: Audit Draft Report – 2019-S-37, Issued 08/13/2021

Dear Ms. Morrell:

The New York State Department of Transportation (NYSDOT) has reviewed the Office of State Comptroller (OSC) draft report 2019-S-37 titled Controls Over Vehicle Use and Transportation-Related Expenses. We disagree with several of the audit findings and provide the following as responses to OSC's recommendations.

RESPONSE TO RECOMMENDATIONS:

OSC Recommendation (1): *Implement procedures to monitor repair and maintenance costs agencywide and hold the Contractor accountable for its responsibilities under the Contract.*

Response: We disagree, in part, with this recommendation. NYSDOT utilizes the OGS Centralized Contract pursuant to Executive Chamber direction issued March 4, 2014. The Contractor is required to monitor and schedule maintenance and repair services for a portion of the NYSDOT fleet, ensuring that work completed is appropriate, necessary, and cost-effective. To ensure that the Contractor is meeting these requirements, in August 2018, NYSDOT began holding monthly calls with the Contractor to discuss any instances of potential noncompliance with the contract terms. NYSDOT receives and reviews monthly bills from the Contractor and questions any irregularities. The approval thresholds set up are a method to ensure a level of accountability. Regions will review work completed by the Contractor if there is a concern about work done at a repair facility. NYSDOT has also raised issues to OGS to force adherence to the current contract, and to ensure tighter controls going forward.

State Comptroller's Comment – Department officials disagree, stating they have controls to monitor the Contract. However, the audit found those controls to be ineffective. It is unclear why continuing ineffective controls would improve monitoring.

OSC reports that "Procurement rules and guidance allow, and even encourage, agencies to seek out improved pricing on OGS centralized contracts," and gives credit to NYSDOT

by noting that when pricing provided by the Contractor seems inappropriate, managers “[C]ontact the Contractor or vendor to get the price lowered to a reasonable cost.”

State Comptroller’s Comment – As noted on page 9, we contacted 10 regional shop managers, and found Department managers do not consistently contact the Contractor to ensure reasonableness of costs; rather, one manager stated that they have, on occasion, done this because they noticed costs seemed unreasonable for the service performed. The Department has no procedures to instruct managers to do this on a consistent basis.

Of note, OSC’s audit report lacks specific citations to enable a pointed response. Notwithstanding, “The State Finance Law *requires* [emphasis added] that agencies use an OGS centralized contract to purchase commodities that meet the agency’s requirements with respect to form, function and utility.” See *New York State Procurement Guidelines, May 2014, Section II, Procurement Basics, D. Contracts, OGS Centralized Contract*. Further, with regard to the NYS Procurement Guidelines reference that “Agencies are encouraged to attempt to negotiate more favorable prices,” this (1) is not a mandate, but a suggestion, and should not be construed as a strict standard to which NYSDOT must comply,

State Comptroller’s Comment – We are perplexed by the Department’s statement, “OSC’s audit report lacks specific citations to enable a pointed response.” As noted on pages 6 and 7 of the report, Contract guidance encourages users of the Contract to seek improved pricing whenever possible. In addition, Section 4.28(A) of the Contract states that “in recognition of market fluctuations over time, authorized users are encouraged to seek improved pricing whenever possible.” Further, New York State Procurement Guidelines encourage agencies to attempt to negotiate more favorable prices on OGS centralized contracts. The Department incorrectly concluded it cannot negotiate a lower cost on this Contract when, in fact, it has done so, albeit on a very limited basis. Further, we did not state that the Department was mandated to negotiate more favorable pricing. We clearly stated instead that it was an option afforded to them under New York State Procurement Guidelines, which we urge the Department to consider to best utilize State resources.

(2) generally, under principles of contract law, negotiation of contract terms after parties execute a contract is not permissible unless contract terms allow, or a change in circumstances warrant such, and (3) is not referring to costs of services that an OGS Centralized Contractor negotiates as part of their services for a state agency, but refers to the contractual fees that a Contractor receives when performing as a party to an OGS Centralized Contract. The terms of the OGS centralized contract, executed between the Contractor and NYSDOT, do not allow for negotiation of more favorable fees of the Contractor’s core services after contract execution. See <https://online.ogs.ny.gov/purchase/snt/awardnotes/7200223168TC.pdf>.

State Comptroller’s Comment – The Department has abdicated its oversight by failing to take sufficient action to ensure the most competitive prices were paid, and has not

provided any support for its narrow interpretation of the New York State Procurement Guidelines. Moreover, the Department's assertion is directly contradicted by Section 4.28(A) of the Contract, which states that "in recognition of market fluctuations over time, Authorized Users are encouraged to seek improved pricing whenever possible."

Further, the NYS Procurement Guidelines "recommendation" contradicts the intent of the OGS Centralized Contract, which is to establish the lowest price in a competitive landscape; the competitive procurement process effectively strips agencies of their leverage to negotiate the contractor's core fees, because such fees should already be the lowest in the industry based on the competitive landscape.

State Comptroller's Comment – See previous comment.

Alternatives to the Contract, if permissible under the State Finance Law, are limited by the realities of managing a large, diverse fleet of equipment that is meant to be in near constant use. Much of the spending associated with the Contract is for large, specialized equipment with limited dealer support, meaning that utilizing an alternative vendor hundreds of miles away would require staff travel time, and would remove the equipment from the operational roster for an unacceptable period. In short, the costs would outweigh the benefit, and NYSDOT's practices are supported, arguably mandated, by State Finance Law and the Contract. In sum, OSC's recommendations fail to consider (a) that NYSDOT is legally required to utilize the OGS centralized contract under the State Finance Law and NYS Procurement Guidelines, (b) that NYSDOT is without leverage to negotiate terms and conditions on a contract previously awarded in a competitive landscape, (c) the true intent of the NYS Procurement Guidelines, and (d) the cost associated with constantly surveying the market for lower priced services.

State Comptroller's Comment – It is clear from the Department's response that it has ignored its internal control responsibilities established in Article 45 of the Executive Law. Further, under the Contract, as noted on page 9 of the audit report, the Department can choose between authorized private repair shops and can also request that the Contractor add Department-preferred repair shops to its network of private repair shops, enabling them to leverage terms and conditions including pricing. Further, we did not fail to take into account any costs associated with constantly surveying the market for lower-priced services. To the contrary, we repeatedly asked Department officials if they analyze costs in this area, but they could not provide any evidence that they considered or performed a cost-benefit analysis in negotiating more favorable pricing, despite their statement implying otherwise. Instead, Department officials chose to defer to the Contractor in many cases.

A majority, if not all, of OSC's findings related to recommendation (1) are specific to services the Contractor is required to provide to the State. For example, OSC notes "[T]he Data the Department receives from the Contractor on the work performed at the authorized private repair shops is not sufficient to adequately monitor vehicle repair and

maintenance costs . . . the Contractor's data will show that an oil change was performed, but it often does not specify the number of quarts or type of oil used." The reports provided by the Contractor are dictated by the contract, a contract procured by OGS; NYSDOT cannot mandate changes to core terms, such as billing details, of OGS's centralized contract. In effect, OSC's recommendations should be directed to OGS as it relates to their future procurement of a centralized contract.

State Comptroller's Comment – Pursuant to the Contract terms, the responsibility of monitoring Contractor performance is placed on the Department. The Contract terms set forth a minimum standard of data that the Contractor must provide. However, this does not preclude the Department from requesting more detailed information should it be necessary to more effectively monitor Contractor performance. As noted on page 9, we found that the data cannot be used to determine if a reasonable price was paid based on the terms of the Contract. Yet at no point did the Department ask the Contractor for this information.

OSC Recommendation (2): *Develop a process to track vehicle recalls and provide written guidance to regional offices on their responsibility to ensure recalls are repaired timely.*

Response: We disagree with this recommendation as the recommended process is already in effect. The State's commercial repair vendor distributes to NYSDOT a monthly report of all open recalls. These recalls are noted as either "Remedy Available" or "Remedy Not Available". This report is monitored and acted upon, with vehicle-specific information being sent to the appropriate regional manager(s) monthly. Recall statuses are discussed regularly during monthly managers' meetings and followed up with emails from managers at multiple levels. NYSDOT also receives recall notices from manufacturers. Once a recall notice is received, a multi-unit project is created in NYSDOT's fleet management software system to identify the affected vehicles and monitor the remediation efforts. NYSDOT's process establishes multiple separate and distinct touchpoints, on a recurring basis.

NYSDOT additionally objects to OSC's inclusion of the statement that "In August 2020, we identified 137 vehicles with 198 open recalls..." NYSDOT maintains that this assessment was made in error. On 4/14/21, NYSDOT met with OSC and informed them that this assessment of open recalls was likely incorrect. At that point OSC stated that they would provide evidence of the existence of 198 open recalls as of August 2020, but the evidence was never provided. On 4/21/21, NYSDOT inquired as to the whereabouts of the promised evidence. On 4/22/21, the OSC Audit Supervisor responded by stating that "Instead of getting them the numbers we reported in the prelim, we plan to send information on outstanding recalls after we updated our findings based on the feedback you provided. The team is still working on that and plan to get it to you by next week as well." The information demonstrated only twenty open recalls, not 198 as erroneously stated in OSC's report. As is the case in any audit, the auditor maintains the burden of supporting their findings, and OSC simply has not demonstrated more than 20 open recalls.

State Comptroller's Comment – The Department has misrepresented the vehicle recall timeline and the facts provided in the report. We provided the Department with the initial list of 198 open recalls in October 2020. After the Department reviewed the initial listing and provided additional information over the course of several months, we updated our findings to 15 vehicles with 20 open recalls from April 2021, and not the 137 vehicles with 198 recalls the Department is dwelling on. The Department's assertion that we stated we did not plan to report on the number of open recalls initially identified is false; rather, we explained that we would revise the number of recalls outstanding after the Department provided additional information and report that the Department stated the recalls had been completed by the conclusion of our audit. It was necessary to report the original number of recalls because, when provided with the initial list, the Department could not verify whether the recalls had been addressed. Therefore, while many recalls were closed by the completion of the audit, nearly 1 year later, we cannot determine whether the recalls had been addressed by the Department before we provided the initial list in October 2020 or whether they were subsequently addressed.

OSC Recommendation (3): *Develop and communicate procedures to the regional offices that maximize the utilization of warranties.*

Response: We disagree with this recommendation and object to OSC's assertion that \$530 in potential warranty savings (less than 2% of OSC's sample of \$27,100) reasonably supports a conclusion that warranties are not currently being maximized. As noted in OSC's report, off warranty repairs can be necessitated by operational realities including severe and/or emergency weather, and the need to maximize the time equipment is in operation plowing snow, repairing roads, and transporting people and equipment. OSC's report further notes that regional managers receive warranty details when new vehicles are onboarded. Additional warranty information is disseminated from the main office through NYSDOT's fleet management software. Regional managers utilize this warranty information to make prudent decisions in real-time. NYSDOT executed more than 265,000 work orders during the audit period. While cost is always a concern, the potential \$530 savings needs to be weighed against the operational costs of increased vehicle downtime and the staff's hourly rates required to navigate the warranty process and coordinate vehicle delivery and pickup, which as OSC noted vehicles may be located a "[S]ignificant distance from a repair shop authorized to make repairs covered by the warranty" A shortage of vehicles due to dealer service or warranty repairs may also increase the overtime required to conduct essential NYSDOT functions, which further substantiates NYSDOT's position. The availability of equipment to maintain a safe highway system for the traveling public is NYSDOT's number one priority.

State Comptroller's Comment – As we explained in the report, our warranty analysis was severely constrained due to the poor level of detail maintained by the Department—a constraint that also limits the Department's ability to adequately monitor warranties or quantify how significant the savings from a repair made under warranty could be. In their response, Department officials note areas for cost-benefit analysis but have never

performed a cost-benefit analysis themselves. Further, as the Department indicates below, its Warranty Claims Unit has since identified over \$300,000 in savings. While officials state that this is a time-consuming process, we reiterate that their ability for analysis is constrained by their inadequate level of detail maintained—and that, if improved, would enable more efficiency.

OSC's statement that "After our audit was engaged, the Department established a warranty claims unit and began working on developing a system to notify mechanics of vehicle warranty coverage" is inaccurate. The Warranty Claims Unit was created in October 2019, prior to NYSDOT's engagement with the OSC Audit Team.

State Comptroller's Comment – Again, the Department is distorting actual Department and OSC audit timing actions. We initially engaged the audit in May 2019, but at the request of Department officials – to accommodate their priorities and workload of staff – postponed it until January 2020. During that postponement period, the Department established the Warranty Claims Unit.

The Warranty Claims Unit was created to maximize NYSDOT's utilization of warranties. This Unit analyzes trends in our fleet and the industry as a whole and acts as the escalation point for regions that require assistance with warranty reimbursement. This can be a time-consuming process. However, after vehicle manufacturers claimed certain repairs were not covered by warranty, NYSDOT recently obtained reimbursements from International Trucks of \$145,385 and \$162,507 for two types of parts that were changed by multiple NYSDOT Fleet Shops. This was after months-long efforts by the Warranty Claims Unit.

OSC Recommendation (4): *Develop processes to improve monitoring of logs and WEX card purchases to ensure they are maintained and include all required information.*

Response: We partially disagree with this recommendation, objecting to the assertion that this record keeping issue increases the risk of State vehicles and State funds being misused. Failure to produce a fuel or usage log years after the vehicle was used would be evidence of a gap in record retention, at worst. While the current policy calls for retention of paper receipts, the digital records available to the Department provide an unmatched level of detail and accuracy. Monitoring of transportation expenses occurs continuously through multiple reports. As noted by OSC, managers receive a monthly exception report that details any potentially questionable transactions. Additionally, managers receive a weekly report that details all WEX commercial transactions executed by all members of their staff. To provide further oversight capabilities, all Motor Pool vehicles are equipped with GPS and can be monitored in real time in case of any suspected improper usage, which provides a greater level of oversight and monitoring than any policy, procedure, or record that OSC audited. Through the Department's contract with Verizon Network Fleet, the Department is also able to provide reports of a vehicle's usage history in case of suspected improper usage.

State Comptroller's Comment – In noting examples of monitoring fuel and usage logs, Department officials deflect from the real issue that staff are not following their own policies to monitor logs for completeness and accuracy. As noted on page 12 of the report, the Department requires employees to use logs to record daily vehicle utilization and trip information when State vehicles are used. While the Department's policy establishes detailed requirements for these logs, officials are not adequately ensuring that logs are maintained and that this policy is being followed. The Department could not locate 38% of the logs we requested, and a majority of the remaining logs lacked sufficient detail, as required by the Department's policy. Therefore, it is not clear whether there was a gap in record retention or whether the logs did not exist entirely. While electronic records provide some level of detail, certain information necessary to monitor the appropriateness of the trip is not included.

NYSDOT will modify policies to ensure current practices (retention of digital records) are reflected. NYSDOT will clearly communicate changes to managers to ensure adherence to the revised policies.

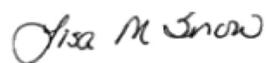
OSC Recommendation (5): *Where practicable, improve the quality and detail of information for Contract and regional repair shop repairs and parts, and warranties.*

Response: We partially disagree with this recommendation. NYSDOT continuously improves the quality and detail of repair, parts, and warranty information and will continue to do so going forward. However, we believe this recommendation stems from OSC's lack of understanding of the data currently available to NYSDOT. OSC's statement that "[T]he Department is unable to access complete regional repair shop data, including details on repairs performed and costs for services, parts, and labor. For example, the regional repair shop data does not include any details on the type of repair or maintenance work done, nor the costs associated with each repair..." is demonstrably false. NYSDOT provided the OSC audit team with access to every work order performed within the audit period. Each work order includes details on repairs performed, and costs for service, parts, and labor. NYSDOT maintains a large volume of granular and very complex fleet data. This information is readily available to be analyzed at any time by team members with extensive knowledge of automotive maintenance facilities, repairs, nomenclature, and practices. The availability of this detailed information enables NYSDOT to monitor costs and activity at the vehicle level, as well as for the fleet as a whole.

State Comptroller's Comment – While the Department has access to individualized work order information containing granular detail, the information is not accessible in a format that enables the Department to perform constructive analysis of costs agency-wide. Rather, the system requires officials to manually review each individual work order—a process that cannot identify Department or regional trends, outliers, or common areas of concern, thus reducing its overall effectiveness as a monitoring tool.

If you have any questions, please contact Shane Gilcrest, Director, Office of Fleet Administration and Support at 518-485-2875.

Sincerely,

A handwritten signature in black ink that reads "Lisa M. Snow". The signature is written in a cursive style with a large initial "L".

p.p. Lisa Snow
Grace Boss
Assistant Commissioner

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Nadine Morrell, CIA, CISM - *Audit Director*

Heather Pratt, CFE - *Audit Manager*

Andrea LaBarge, CFE - *Audit Supervisor*

Danielle Rancy, MA - *Examiner-in-Charge*

Dan Choiniere - *Senior Examiner*

Matthew Conway, MBA - *Senior Examiner*

Christina Frisone - *Senior Examiner*

Nancy Hobbs - *Senior Examiner*

Jonathan Julca - *Senior Examiner*

Kelly Traynor - *Senior Editor*

Contact Information

(518) 474-3271

StateGovernmentAccountability@osc.ny.gov

Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236



Like us on Facebook at facebook.com/nyscomptroller

Follow us on Twitter @nyscomptroller

For more audits or information, please visit: www.osc.state.ny.us/audits/index.htm