



John Keel, CPA
State Auditor

A Report on
**State of Texas Compliance with
Federal Requirements for
Selected Major Programs at the
Department of Transportation for
the Fiscal Year Ended
August 31, 2012**

February 2013
Report No. 13-022



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Overall Conclusion

The State of Texas complied in all material respects with the federal requirements for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program in fiscal year 2012.

As a condition of receiving federal funding, U. S. Office of Management and Budget (OMB) Circular A-133 requires non-federal entities that expend at least \$500,000 in federal awards in a fiscal year to obtain annual Single Audits. Those audits test compliance with federal requirements in up to 14 areas that may have a material effect on a federal program at those non-federal entities. Examples of the types of compliance areas include allowable costs, procurement, reporting, and monitoring of non-state entities (subrecipients) to which the State passes federal funds. The requirements for 1 of those 14 areas vary by federal program and outline special tests that auditors are required to perform, such as tests of quality assurance programs. The Single Audit for the State of Texas included (1) all high-risk federal programs for which the State expended more than \$75,562,558 in federal funds during fiscal year 2012 and (2) other selected federal programs.

From September 1, 2011, through August 31, 2012, the State of Texas expended \$50.2 billion in federal funds for federal programs and clusters of programs. The State Auditor's Office audited compliance with requirements for selected major programs at the Department of Transportation (Department), which spent \$2,650,694,401 in Highway Planning and Construction funds, \$59,427,457 in Airport Improvement Program funds, and \$40,417,766 in Formula Grants for Other Than Urbanized Areas Program funds during fiscal year 2012.

The Highway Planning and Construction Cluster of Federal Programs

The Highway Planning and Construction Cluster of federal programs, which includes programs administered by the Federal Highway Administration, provides funds to assist state transportation agencies in the planning, design, development, improvement, and replacement of public roads and bridges, including the National Highway System.

The Airport Improvement Program

The Airport Improvement Program, which is administered by the Federal Aviation Administration, provides funds to assist sponsors of public-use airports in the development of a nationwide system of airports to meet the needs of civil aeronautics.

The Formula Grants for Other Than Urbanized Areas Program

The Formula Grants for Other Than Urbanized Areas Program, which is administered by the Federal Transit Administration, provides funds to improve, initiate, and continue public transportation service in rural areas and to provide technical assistance for rural transportation providers.

This audit was conducted in accordance with Single Audit Act Amendments of 1996 and Office of Management and Budget Circular A-133.

For more information regarding this report, please contact James Timberlake, Audit Manager, or John Keel, State Auditor, at (512) 936-9500.

Key Points

The Department complied in all material respects with requirements for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program (see text box for definitions of finding classifications).

Although auditors identified findings at the Department, it is important to note that no finding was material to the federal cluster and programs audited. While this indicates that the State of Texas complied in all material respects with the requirements tested, the Department should correct certain non-compliance and significant deficiencies, which are summarized below.

Finding Classifications

Control weaknesses are classified as either significant deficiencies or material weaknesses:

- A significant deficiency indicates control weaknesses, but those weaknesses would not likely result in material non-compliance
- A material weakness indicates significant control weaknesses that could potentially result in material non-compliance with the compliance area.

Similarly, compliance findings are classified as either non-compliance or material non-compliance, where material non-compliance indicates a more serious reportable issue.

The Department did not always comply with requirements for the Highway Planning and Construction Cluster of federal programs, including requirements related to the Davis-Bacon Act, reporting, subrecipient monitoring, quality assurance, and value engineering. Specifically:

The Department did not have a standardized process for tracking the certified payrolls that contractors are required to submit. As a result, the Department did not always ensure that its contractors submitted required payroll certifications in fiscal year 2012. Those certifications are evidence that the contractors paid their employees prevailing wage rates in compliance with the Davis-Bacon Act.

The Department did not have an effective process to identify federal subawards that are subject to the Federal Funding and Accountability Transparency Act (FFATA) or to submit FFATA reports to the federal government in a timely manner. Additionally, the Department made an error in the amount of American Recovery and Reinvestment Act (Recovery Act) funds it reported in one report that it submitted to the federal government.

The Department did not always communicate required award information to subrecipients. The Department also did not have standardized processes to (1) help ensure that its district offices performed adequate during-the-award monitoring of subrecipients or (2) obtain a Data Universal Numbering System (DUNS) number from each subrecipient prior to making a subaward. The Department did not always monitor its subrecipients to ensure that they complied with federal requirements related to (1) collecting certified payrolls as required by the Davis-Bacon Act, (2) procurement and suspension and debarment, (3) proper

sampling of materials, and (4) procurement policies and selection of subcontractors.

In addition, the Department did not always comply with its quality assurance program approved by the Federal Highway Administration because it could not always provide evidence that certified testers conducted required tests. The automated application the Department uses to administer its quality assurance program, SiteManager, also does not prevent the same individual from both conducting and reviewing those tests.

The Department did not always perform a value engineering analysis when required on federal projects.

Auditors also identified weaknesses in the Department's Federal Project Authorization and Agreement (FPAA) system and Right of Way Information System (ROWIS). Specifically:

- The Department did not appropriately restrict access to FPAA. As a result, programmers had access to make code changes and migrate those code changes to a production environment.
- The Department did not appropriately restrict access to ROWIS. As a result, one programmer could both authorize transactions and submit those transactions to the Department's accounting system for payment (in fiscal year 2012, however, that programmer did not approve any transactions within ROWIS or submit any transactions to the accounting system for payment).

The Department did not always comply with Davis-Bacon Act requirements tested for the Airport Improvement Program.

The Department could not provide all of the required weekly payrolls for the time period tested. Those certifications are evidence that the contractors paid their employees prevailing wage rates in compliance with the Davis-Bacon Act.

The Department did not always comply with requirements related to reporting and monitoring of subrecipients for the Formula Grants for Other Than Urbanized Areas Program. Specifically:

The Department did not submit required FFATA reports during fiscal year 2012. The Department also made errors in other financial and operating reports that it submitted to the federal government.

The Department did not always monitor its subrecipients to ensure that they complied with federal requirements related to allowable costs, subrecipient eligibility, the Davis-Bacon Act, period of availability of federal funds, and procurement.

Auditors followed up on eight findings from prior fiscal years for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program.

The State Auditor's Office reissued eight findings from prior fiscal years as fiscal year 2012 findings in this report. Those eight findings were related to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program and the Formula Grants for Other Than Urbanized Areas Program.

Summary of Management's Response

Management generally concurred with the audit findings. Specific management responses and corrective action plans are presented immediately following each finding in this report.

Summary of Information Technology Review

The audit work included a review of general and application controls for key information technology systems related to selected major programs at the Department. As discussed above, auditors identified issues at the Department involving segregation of duties for FPAA and access for ROWIS.

Summary of Objectives, Scope, and Methodology

With respect to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program, the objectives of this audit were to (1) obtain an understanding of internal controls, assess control risk, and perform tests of controls unless the controls were deemed to be ineffective and (2) provide an opinion on whether the State complied with the provisions of laws, regulations, and contracts or grants that have a direct and material effect on that cluster and those programs.

The audit scope covered federal funds that the State spent for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program at the Department from September 1, 2011, through August 31, 2012. The audit work included control and compliance work at the Department.

The audit methodology included developing an understanding of controls over each compliance area that was material to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program at the Department. Auditors' sampling methodology was based on the American Institute of Certified Public

Accountants' audit guide entitled *Government Auditing Standards and Circular A-133 Audits* dated February 1, 2012. Auditors conducted tests of compliance and of the controls identified for each compliance area and performed analytical procedures when appropriate. Auditors assessed the reliability of data the Department provided and determined that the data was reliable for the purposes of expressing an opinion on compliance with the provisions of laws, regulations, and contracts or grants that have a direct and material effect on the cluster and programs identified above.

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Independent Auditor's Report

*State of Texas Compliance with Federal
Requirements for Selected Major Programs at the
Department of Transportation
for the Fiscal Year Ended
August 31, 2012*



John Keel, CPA
State Auditor

Report on Compliance with Requirements that Could Have a Direct and Material Effect on
The Highway Planning and Construction Cluster of Federal Programs,
The Airport Improvement Program, and
The Formula Grants for Other Than Urbanized Areas Program and on
Internal Control Over Compliance in Accordance with
U. S. Office of Management and Budget Circular A-133
Independent Auditor's Report

Compliance

We have audited the State of Texas's (State) compliance with the types of compliance requirements described in the U. S. Office of Management and Budget (OMB) *Circular A-133 Compliance Supplement* that could have a direct and material effect on the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program for the year ended August 31, 2012. Compliance with the requirements of laws, regulations, contracts, and grants applicable to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program is the responsibility of the State's management. Our responsibility is to express an opinion on the State's compliance based on our audit.

Except as discussed in the following paragraph, we conducted our audit of compliance in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*. Those standards and OMB Circular A-133 require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements referred to above that could have a direct and material effect on the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program occurred. An audit includes examining, on a test basis, evidence about the State's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion. Our audit does not provide a legal determination of the State's compliance with those requirements.

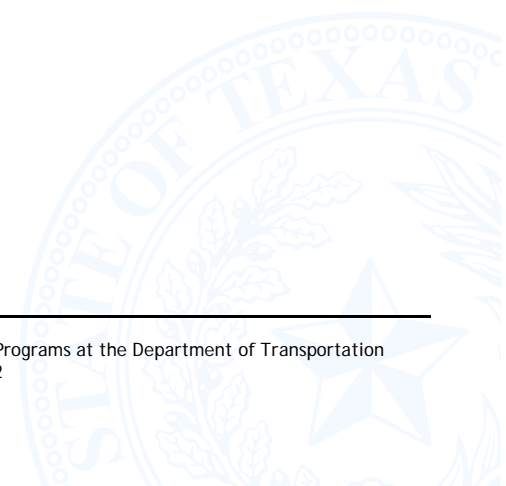
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This audit was conducted as part of the State of Texas Statewide Single Audit for the year ended August 31, 2012. As such, the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program were selected as major programs based on the State of Texas as a whole for the year ended August 31, 2012. The State does not meet the OMB Circular A-133 requirements for a program-specific audit and the presentation of the Schedule of Federal Program Expenditures does not conform to the OMB Circular A-133 Schedule of Expenditures of Federal Awards. However, this audit was designed to be relied on for the State of Texas opinion on federal compliance, and in our judgment, the audit and this report satisfy the intent of those requirements. In addition, we have chosen not comply with a reporting standard that specifies the wording that should be used in discussing restrictions on the use of this report. We believe that this wording is not in alignment with our role as a legislative audit function.

In our opinion, the State complied, in all material respects, with the compliance requirements referred to above that could have a direct and material effect on the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program for the year ended August 31, 2012. However, the results of our auditing procedures also disclosed instances of noncompliance with those requirements, which are required to be reported in accordance with OMB Circular A-133 and which are described in the accompanying Schedule of Findings and Question Costs as items:

Agency	Cluster or Program	Compliance Requirement	Finding Number
Department of Transportation	Highway Planning and Construction Cluster	Davis-Bacon Act	13-134
	Highway Planning and Construction Cluster	Procurement and Suspension and Debarment	13-136
	Highway Planning and Construction Cluster - ARRA	Subrecipient Monitoring	
	Highway Planning and Construction Cluster	Reporting	13-137
	Highway Planning and Construction Cluster - ARRA		
	Highway Planning and Construction Cluster	Special Tests and Provisions - Quality Assurance Program	13-138
	Highway Planning and Construction Cluster	Special Tests and Provisions - Value Engineering	13-139
	CFDA 20.106 - Airport Improvement Program	Davis-Bacon Act	13-140
	CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program	Eligibility Subrecipient Monitoring	13-141
	CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program - ARRA		
CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program	Reporting	13-142	

Internal Control Over Compliance

The management of the State is responsible for establishing and maintaining effective internal control over compliance with the requirements of laws, regulations, contracts, and grants applicable to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program. In planning and performing our audit, we considered the State's internal control over compliance with requirements that could have a direct and material effect on the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program in order to determine our auditing procedures for the purpose of expressing our opinion on compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the State's internal control over compliance.

A deficiency in internal control over compliance exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control over compliance was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in the State's internal control over compliance that might be deficiencies, significant deficiencies, or material weaknesses. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses, as defined above. However, we identified certain deficiencies in internal control over compliance that we consider to be significant deficiencies. *A significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance. We consider the following deficiencies in internal control over compliance which are described in the accompanying Schedule of Findings and Questioned Costs to be significant deficiencies:

Agency	Cluster or Program	Compliance Requirement	Finding Number
Department of Transportation	Highway Planning and Construction Cluster	Activities Allowed or Unallowed	13-133
		Allowable Costs/Cost Principles Real Property Acquisition and Relocation Assistance	
	Highway Planning and Construction Cluster	Davis-Bacon Act	13-134
	Highway Planning and Construction Cluster	Period of Availability of Federal Funds	13-135

Agency	Cluster or Program	Compliance Requirement	Finding Number
	Highway Planning and Construction Cluster	Procurement and Suspension and Debarment	13-136
	Highway Planning and Construction Cluster - ARRA	Subrecipient Monitoring	
	Highway Planning and Construction Cluster	Reporting	13-137
	Highway Planning and Construction Cluster - ARRA		
	Highway Planning and Construction Cluster	Special Tests and Provisions - Quality Assurance Program	13-138
	Highway Planning and Construction Cluster	Special Tests and Provisions - Value Engineering	13-139
	CFDA 20.106 - Airport Improvement Program	Davis-Bacon Act	13-140
	CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program	Eligibility Subrecipient Monitoring	13-141
	CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program - ARRA		
	CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program	Reporting	13-142

Schedule of Federal Program Expenditures

The accompanying Schedule of Federal Program Expenditures for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program of the State for the year ended August 31, 2012, is presented for purposes of additional analysis. This information is the responsibility of the State's Management and has been subjected only to limited auditing procedures and, accordingly, we express no opinion on it. However, we have audited the Statewide Schedule of Expenditures of Federal Awards in a separate audit, and the opinion on the Statewide Schedule of Expenditures of Federal Awards is included in the *State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2012*.

The State's responses to the findings identified in our audit are described in the accompanying Schedule of Findings and Questioned Costs. We did not audit the State's responses and, accordingly, we express no opinion on the responses.

This report is intended for the information and use of the Governor, the Members of the Texas Legislature, the Legislative Audit Committee, the management of the State, KPMG LLP, federal awarding agencies, and pass-through entities. However, this report is a matter of public record, and its distribution is not limited.

John Keel, CPA
State Auditor

February 21, 2013

**Schedule of Federal Program Expenditures for
The Highway Planning and Construction Cluster,
The Airport Improvement Program, and
The Formula Grants for Other Than Urbanized Areas Program
For the Year Ended August 31, 2012**

Schedule of Federal Program Expenditures Highway Planning and Construction Cluster			
Agency	Federal Pass-through to Non-state Entity	Federal Direct Expenditures	Totals
Department of Transportation			
Other than American Recovery and Reinvestment Act	\$185,271,751	\$2,173,397,131	\$2,358,668,882
American Recovery and Reinvestment Act	87,475,802	204,549,717	292,025,519
Total for Highway Planning and Construction Cluster	\$272,747,553	\$2,377,946,848	\$2,650,694,401
<p>Note 1: This schedule of federal program expenditures is presented for informational purposes only. For the State's complete Schedule of Expenditures of Federal Awards, see the <i>State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2012</i>.</p> <p>Note 2: Federal expenditures for the Highway Planning and Construction Cluster at state entities not included in the scope of this audit totaled \$10,066,734 for the year ended August 31, 2012.</p> <p>Note 3: The Highway Planning and Construction Cluster includes CFDA 20.205, Highway Planning and Construction; CFDA 20.219, Recreational Trails Program; and CFDA 23.003, Appalachian Development Highway System.</p>			

Schedule of Federal Program Expenditures CFDA 20.106 - Airport Improvement Program			
Agency	Federal Pass-through to Non-state Entity	Federal Direct Expenditures	Totals
Department of Transportation			
Other than American Recovery and Reinvestment Act	\$485,122	\$58,543,936	\$59,029,058
American Recovery and Reinvestment Act	0	398,399	398,399
Total for Airport Improvement Program	\$485,122	\$58,942,335	\$59,427,457
<p>Note 1: This schedule of federal program expenditures is presented for informational purposes only. For the State's complete Schedule of Expenditures of Federal Awards, see the <i>State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2012</i>.</p> <p>Note 2: Federal expenditures for the Airport Improvement Program at state entities not included in the scope of this audit totaled \$2,530,204 for the year ended August 31, 2012.</p>			

**Schedule of Federal Program Expenditures
CFDA 20.509 - Formula Grants for Other Than Urbanized Areas Program**

Agency	Federal Pass-through to Non-state Entity	Federal Direct Expenditures	Totals
Department of Transportation			
Other than American Recovery and Reinvestment Act	\$33,648,129	\$1,402,005	\$35,050,134
American Recovery and Reinvestment Act	5,367,632	0	5,367,632
Total for Formula Grants for Other Than Urbanized Areas Program	\$39,015,761	\$1,402,005	\$40,417,766
<p>Note 1: This schedule of federal program expenditures is presented for informational purposes only. For the State's complete Schedule of Expenditures of Federal Awards, see the <i>State of Texas Federal Portion of the Statewide Single Audit Report for the Fiscal Year Ended August 31, 2012</i>.</p>			

Schedule of Findings and Questioned Costs

*State of Texas Compliance with
Federal Requirements for Selected
Major Programs at the
Department of Transportation
for the Fiscal Year Ended
August 31, 2012*

Summary of Auditor's Results

Financial Statements

Issued under separate cover. See State Auditor's Office report entitled *State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2012*.

Federal Awards

Internal Control over major programs:

Material weakness(es) identified? No

Significant deficiency(ies) identified? Yes

Major programs with Significant Deficiencies:

CFDA Number	Name of Federal Program or Cluster
Cluster	Highway Planning and Construction Cluster
20.106	Airport Improvement Program
20.509	Formula Grants for Other Than Urbanized Areas Program

Type of auditor's report issued on compliance for major programs: See below.

Unqualified:

CFDA Number	Name of Federal Program or Cluster
Cluster	Highway Planning and Construction Cluster
20.106	Airport Improvement Program
20.509	Formula Grants for Other Than Urbanized Areas Program

Any audit findings disclosed that are required to be reported in accordance with Section 510(a) of OMB Circular A-133? Yes

Identification of major programs:

CFDA Number	Name of Federal Program or Cluster
Cluster	Highway Planning and Construction Cluster
20.106	Airport Improvement Program
20.509	Formula Grants for Other Than Urbanized Areas Program

Dollar threshold used to distinguish between type A and type B programs:	\$75,562,558
Auditee qualified as low-risk auditee?	No

Section 2:

Financial Statement Findings

Issued under separate cover. See State Auditor's Office report entitled *State of Texas Financial Portion of the Statewide Single Audit Report for the Year Ended August 31, 2012*.

Section 3:

Federal Award Findings and Questioned Costs

This section identifies significant deficiencies, material weaknesses, and instances of non-compliance, including questioned costs, as required to be reported by Office of Management and Budget Circular A-133, Section 510(a).

Department of Transportation

Reference No. 13-133

Activities Allowed or Unallowed

Allowable Costs/Cost Principles

Real Property Acquisition and Relocation Assistance

Highway Planning and Construction Cluster

Award years – Multiple

Award numbers – Multiple

Type of finding – Significant Deficiency

Agencies shall maintain internal control over federal programs that provides reasonable assurance that agencies are managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements (Office of Management and Budget Circular A-133, Subpart C, Section 300 (b)).

Questioned Cost: \$ 0

U.S. Department of
Transportation – Federal
Highway Administration

The Department of Transportation (Department) uses its Right of Way Information System (ROWIS) as the system of record for right of way transactions across the state. **However, the Department did not appropriately restrict access to ROWIS.** Specifically, one programmer had access to both authorize transactions within ROWIS and submit approved transactions to the accounting system for payment. In general, programmers should not have access to approve transactions or submit them for payment. Allowing programmers inappropriate access increases the risk of unauthorized or fraudulent transactions. However, in fiscal year 2012, the programmer did not approve any transactions within ROWIS or submit any transactions to the accounting system for payment.

Recommendation:

The Department should modify programmer access to ROWIS so that programmers cannot both approve transactions and submit transactions to the accounting system for payment.

Management Response and Corrective Action Plan:

A TSD programmer had been provided full rights to the Right of Way Information System (ROWIS) to assist with production support, and the rights were removed at the time SAO initially identified the issue. The specific issue highlighted in the finding has been corrected.

The current standard operating process allows a user to gain access to ROWIS by first being added to a LDAP group, followed by the privileges set by the ROW division’s ROWIS business analyst. This current process provides ROW the opportunity to vet who has access to ROWIS and at what level; therefore, we believe the current process is adequate.

In addition, ROW will review ROWIS access on a quarterly basis to determine whether access rights need to change, based on business needs.

TRANSPORTATION, DEPARTMENT OF

Implementation Date: *April 30, 2013*

Responsible Person: *Hilda Correa*

Reference No. 13-134

Davis-Bacon Act

(Prior Audit Issues 12-142, 11-142, and 10-82)

Highway Planning and Construction Cluster

Award years – 2010 and 2011

Award numbers – CM 96(732) and STP 1102(311)

Type of finding – Significant Deficiency and Non-Compliance

When required by the Davis-Bacon Act, the U.S. Department of Labor's (DOL) government-wide implementation of the Davis-Bacon Act, the American Recovery and Reinvestment Act, or federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (Title 40, United States Code, Sections 3141-3142).

Questioned Cost: \$ 0

U.S. Department of
Transportation - Federal
Highway Administration

Non-federal entities shall include in construction contracts that are subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and DOL regulations (Title 29, Code of Federal Regulations (CFR), Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (Title 29, CFR, Sections 5.5 and 5.6). This reporting is often done using optional form WH-347, which includes the required statement of compliance (Office of Management and Budget No. 1215-0149).

The Department of Transportation (Department) was not always able to provide documentation showing that it collected weekly certified payrolls from its contractors. **For 2 (3 percent) of 60 projects tested, the Department did not ensure that contractors submitted all weekly certified payrolls for fiscal year 2012.** Specifically, the Department could not provide eight certified payrolls for those two projects during the period tested. The total federal amount expended on those projects, including payroll and non-payroll costs, was \$706,667.

The Department does not have a standardized process for tracking certified payrolls that contractors submit.

Each area office within each Department district office determines its own method for ensuring that contractors submit certified payrolls. As of December 3, 2012, the Department asserted that its 25 district offices had a total of 89 area offices. Auditors determined the following for the 60 projects tested:

- For 6 (10 percent) of the 60 projects, area offices used the Electronic Project Record System (EPRS), which allows users to detect missing certified payrolls by reviewing system-generated missing certified payrolls for each vendor for a project.
- For 4 (7 percent) of the 60 projects, area offices used EPRS and a tracking sheet to monitor whether contractors had submitted all certified payrolls.
- For 26 (43 percent) of the 60 projects, area offices used a tracking sheet to monitor whether contractors had submitted all certified payrolls.
- For 24 (40 percent) of the 60 projects, area offices did not have formal, documented processes to ensure that contractors submitted certified payrolls.

TRANSPORTATION, DEPARTMENT OF

When contractors do not consistently submit required certified payrolls, the Department cannot ensure that contractor and subcontractor employees are properly classified and being paid the appropriate wage rate in accordance with the Davis-Bacon Act.

Recommendations:

The Department should:

- Establish and implement formal, documented controls to ensure that contractors submit all required certified payrolls.
- Maintain documentation of its receipt of all certified payrolls.

Management Response and Corrective Action Plan:

Management concurs with the recommendation that the Department should consistently review its tool to identify missing certified payrolls. As expressed in the audit there are different means by which this identification is carried out. Because of the ability for the contracting community to use different processes to submit required monthly payrolls, each responsible construction office has resorted to whatever means necessary in an attempt to track payrolls to the best of their ability. If there was a way to require all prime contractors and sub-contractors to utilize our EPRS program for submitting payrolls, this would no longer be an audit finding. However, there is an investment for each business that utilizes EPRS that we are not prepared at this time to require as part of our contracting requirements. We will continue to give direction to the district offices and guidance/support to ensure that all certified payrolls are received on TxDOT projects.

CST will continue to search for a tool to address the recommendations, which we concur with.

Implementation Date: Ongoing

Responsible Person: John Obr

Reference No. 13-135

Period of Availability of Federal Funds

(Prior Audit Issues 12-143, 11-143, and 10-81)

Highway Planning and Construction Cluster

Award years – Multiple

Award numbers – Multiple

Type of finding – Significant Deficiency

Agencies shall maintain internal control over federal programs that provides reasonable assurance that agencies are managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements (Office of Management and Budget Circular A-133, Subpart C, Section 300 (b)).

The Department of Transportation (Department) uses the Federal Project Authorization and Agreement (FPAA) system to process and track project approvals from the Federal Highway Administration. The FPAA system details when federal funds are authorized, which is the starting point for the period of availability of federal funds. The Department must obtain approval from the Federal Highway Administration prior to starting construction work on a project and expending federal funds (Title 23, Code of Federal Regulations, Section 630.106).

Questioned Cost: \$ 0

U.S. Department of
Transportation – Federal
Highway Administration

The Department did not appropriately restrict access to the FPAA system. Specifically, two programmers had access to make code changes and then migrate those code changes into the production environment for

the FPAA system. In general, programmers should not have access to migrate code changes that they make to the production environment. Allowing programmers inappropriate access increases the risk of unauthorized changes and does not allow for adequate segregation of duties.

The Department's Finance Division manages the FPAA system. In fiscal year 2012, the Department made only one change to the FPAA system, and different individuals developed and migrated that change to the production environment.

Recommendation:

The Department should establish and enforce change management procedures for systems the Finance Division manages, including eliminating programmers' access to migrate code changes that they make to the production environment.

Management Response and Corrective Action Plan:

Finance and IT have implemented a change management process where the FPAA programmers do not have write privileges to the production FPAA system. FPAA production code migrations were handled by the Finance IT desktop support group. This process was implemented in July 2012. Due to a recent IT reorganization, production code migrations are now handled by the IT Customer Service Helpdesk to ensure proper separation of duties. FPAA programmers do not have the technical capability to make any changes in the production environment, including code migrations.

Implementation Date: March 31, 2013

Responsible Persons: Mark Evans

Reference No. 13-136

**Procurement and Suspension and Debarment
Subrecipient Monitoring**

(Prior Audit Issues 12-144, 11-144, 10-84, and 09-80)

**Highway Planning and Construction Cluster
Highway Planning and Construction Cluster - ARRA**

Award years – Multiple

Award numbers – Multiple

Type of finding – Significant Deficiency and Non-Compliance

The Department of Transportation (Department) is required by the Office of Management and Budget (OMB) Circular A-133, Section .400, to monitor the provisions of the contracts or grant agreements. In addition, the Department is responsible for the construction of all federal aid projects, and it is not relieved of such responsibility by authorizing performance of the work by a local public agency or other federal agency. State transportation departments are responsible for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans and specifications (Title 23, Code of Federal Regulations, Section 635.105(a)).

Questioned Cost: \$ 0
U.S. Department of Transportation – Federal Highway Administration

Pre-award Monitoring

At the time of the award, pass-through entities must identify to subrecipients the applicable compliance requirements and the federal award information, including the Catalog of Federal Domestic Assistance (CFDA) title and number, the federal award name and number, the name of the federal awarding agency, and whether the award

is research and development (Office of Management and Budget (OMB) Circular A-133, Section .400(d), and OMB Circular A-133 Compliance Supplement, Part 3, Section M).

Federal rules require that, when a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded from federal contracts. This verification may be accomplished by checking the Excluded Parties List System (EPLS), collecting a certification from the entity, or adding a clause or condition to the covered transaction with that entity (Title 2, Code of Federal Regulations, Section 180.300). Covered transactions include all nonprocurement transactions (that is, subawards to subrecipients) irrespective of award amount (Title 2, Code of Federal Regulations, Sections 180.220 and 180.970).

Beginning October 1, 2010, an agency may not make an award to an entity until it has obtained a valid Data Universal Numbering System (DUNS) number for that entity (Title 2, Code of Federal Regulations, Sections 25.105 and 25.205).

Auditors tested 60 Department project agreements with subrecipients and identified the following:

- For 7 (12 percent) of 60 agreements tested, the advanced funding agreement did not contain all required elements including the CFDA title and number, award name and number, or name of awarding federal agency. That occurred because the advanced funding agreement template the Department used did not contain the required information.
- For 5 (8 percent) of 60 agreements tested, the advanced funding agreement did not contain language requiring the subrecipients to certify that they were not suspended or debarred. The Department did not have documentation showing that it had verified that the subrecipients were not suspended or debarred.

The advanced funding agreements the Department used for the projects discussed above were agreements that Department used prior to updating its advanced funding agreement template in September 2009. For subrecipient award agreements signed after September 2009 that auditors tested, the Department communicated all required federal award information.

Additionally, the Department has not established a process to obtain a DUNS number from each subrecipient prior to making a subaward. While the Department provided evidence that it had obtained a DUNS number for subrecipients tested to which it passed federal funds during fiscal year 2012, it could not provide evidence that it had obtained that information prior to making each subaward.

When the Department does not verify that subrecipients are not suspended or debarred, this increases the risk the Department could enter into an agreement with an entity that is not eligible to receive federal funding. Incomplete communication of federal compliance requirements in the Department's agreements increases the risk that subrecipients will not follow federal guidelines related to local government project procedures for administering and managing a project. Inadequate identification of federal awards and not obtaining DUNS numbers can lead to improper reporting of federal funding on a subrecipient's schedule of expenditures of federal awards (SEFA) and Federal Funding and Accountability Transparency Act (FFATA) reports. In fiscal year 2012, the Department passed through \$272,747,553 in federal funds (including American Recovery and Reinvestment Act funds) to subrecipients.

During-the-award Monitoring

The Department did not consistently conduct sufficient during-the-award monitoring of its subrecipients.

Auditors tested documentation of during-the-award monitoring for 60 subrecipients. That documentation included reviews for allowability, period of availability, reporting, compliance with the Davis-Bacon Act, and quality assurance. Auditors identified the following issues at the Department's district offices:

- For 3 (5 percent) of 60 subrecipients tested, the Department could not provide evidence that it conducted onsite inspections for projects those subrecipients managed. Onsite inspections are a tool to monitor subrecipients' compliance with federal requirements; therefore, the Department also did not monitor those subrecipients' compliance with the Davis-Bacon Act or quality assurance requirements.
- For 2 (3 percent) of 58 subrecipients tested that were subject to procurement requirements, the Department was unable to provide evidence that it approved its subrecipients' procurement policies and procedures or vendor selection.

TRANSPORTATION, DEPARTMENT OF

Through its *Local Government Project Procedures Manual*, the Department provides monitoring guidelines to its district and regional offices for the monitoring of subrecipients. However, implementation of the guidelines and creation of processes for monitoring are carried out by region-level and district-level staff.

Insufficient during-the-award monitoring increases the risk the Department would not detect subrecipients' non-compliance with federal requirements.

Recommendations:

The Department should:

- Communicate all required award information to all subrecipients.
- Verify that its subrecipients are not suspended or debarred.
- Develop and implement a process to obtain a DUNS number from each subrecipient prior to making a subaward.
- Consistently monitor subrecipients for compliance with the Davis-Bacon Act, quality assurance requirements, and procurement requirements.

Management Response and Corrective Action Plan:

All contract templates have been updated to include the required information listed. The deficiencies relate to agreements that were executed before the templates were updated and were not identified during prior efforts to locate past agreements.

During FY2012 and the first quarter of FY2013, the Department has implemented the following:

Created a Local Government Projects Office (LGPO), who developed and distributed a Summary of Best Practices — Local Government Practices to district and division personnel who are involved with managing various elements of LG (subrecipient) projects (an update has also been issued in January 2013).

Initiated district, area, and project office visits by LGPO staff to review subrecipient monitoring procedures

Developed enhanced Local Government Project training for Department and local government personnel (initial class with new presentation will be January 2013)

Provided a central source (LGPO) for district, division, and office personnel to obtain assistance on LG project issues

The purpose of these actions is to develop and implement a more consistent program of local government project oversight within all districts throughout the state (utilizing the best practices previously used within individual districts). This is achieved through the creation of a dedicated staff for understanding subrecipient monitoring requirements, enhancing training programs for Department and local government personnel, and utilizing the LGPO staff to provide support, oversight, and monitoring to Department personnel for compliance with subrecipient monitoring requirements.

During the remainder of FY 2013 and continuing in 2014, the Department will:

Continue implementation of items listed above

Update the LGPP

Further enhance training along with updating the LGPP

Increase the number of office visits by LGPO staff to review procedures and guide district/area LG project personnel

Implementation Date: August 31, 2013 and ongoing

Responsible Person: John Obr

Reference No. 13-137

Reporting

(Prior Audit Issue 12-145)

Highway Planning and Construction Cluster
Highway Planning and Construction Cluster - ARRA
Award years – 2010 and 2011

Award numbers – STP 1102(301)SRS, STP 2011(446)MM, DMO 2012(224), STP 2011(674)SRS, and STP 2009 (489)ES
Type of finding – Significant Deficiency and Non-Compliance

Federal Funding Accountability and Transparency Act Reports

The Federal Funding Accountability and Transparency Act (FFATA) requires prime recipients of federal awards made on or after October 1, 2010, to capture and report subaward and executive compensation data regarding first-tier subawards that exceed \$25,000. A subaward is defined as a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received a grant or cooperative agreement award and that is awarded to an eligible subrecipient (Title 2, Code of Federal Regulations (CFR), Chapter 170).

Questioned Cost: \$ 0
U.S. Department of Transportation – Federal Highway Administration

The Department did not always submit reports in a complete and timely manner as required by FFATA.
Specifically:

- For 3 (5 percent) of the 60 subaward projects tested for which the Department was required to submit FFATA reports, the Department did not submit the required reports to the FFATA Subaward Reporting System (FSRS). Two of those errors occurred because the Department’s process to identify subawards that it is required to report to FSRS is not sufficient. Specifically, the Department relies on the federal award identification numbers (FAIN) on the USAspending.gov Web site to identify awards that are subject to FFATA requirements. Using that information, the Department cross-references the FAIN to an award number to determine which projects have associated subawards that are subject to FFATA reporting. However, that process does not ensure that the Department reports on all subawards subject to FFATA requirements, including those that may not be listed on USAspending.gov. For the remaining error, although the FAIN was listed on USAspending.gov the Department did not identify that the subaward met the reporting requirements in Title 2 CFR, Chapter 170 and, as a result, it did not submit that report.
- For 1 (2 percent) of the 57 subaward projects tested for which the Department submitted a FFATA report, the Department did not submit the required report to FSRS within the required time frame. The Department submitted that report 21 days late and asserted this occurred because it was the Department’s first report submission and the Department was still developing its process for submitting required reports.

Not submitting all required reports to FSRS in a complete and timely manner decreases the reliability and availability of information provided to the awarding agency and other users of that information

American Recovery and Reinvestment Act Reporting

Section 1512 of the American Recovery and Reinvestment Act (Recovery Act) requires that recipients submit quarterly reports to the federal government. Information required to be submitted includes (1) the amount of Recovery Act funds received; (2) the amount of Recovery Act funds received that were expended; (3) a detailed list of all projects or activities for which Recovery Act funds were expended; (4) an estimate of the number of jobs created or retained; and (5) detailed information on any subcontracts or subgrants awarded by the recipient, including the data elements required to comply with the FFATA (Recovery Act, Section 1512(c)). The prime

recipient of Recovery Act funds is responsible for the reporting of all data required by Recovery Act, Section 1512, for its subrecipients. As the prime recipient of Recovery Act funds, the Department obtains that information from its subrecipients and submits it to the federal government.

For 1 (2 percent) of 60 Recovery Act Section 1512 reports tested, the Department understated its total federal Recovery Act funds received by \$1,342,560. That was the result of a manual data entry error. The Department did not detect the error because it did not review the Recovery Act expenditure data it imported into its reporting system before it submitted the report.

Quarterly reports must be submitted to the federal government to comply with Recovery Act Section 1512 reporting requirements and provide transparency regarding Recovery Act expenditures. When the Department submits an inaccurate report, that decreases the reliability of the information intended for the federal government and the general public.

Recommendations:

The Department should:

- Develop and implement a process to ensure that it identifies and submits all required FFATA reports, including reports related to subawards that are not identified by USAspending.gov.
- Submit required FFATA reports in a timely manner.
- Develop and implement a review process to ensure that it reports accurate information required by the Recovery Act.

Management Response and Corrective Action Plan:

The Department has identified fields in DCIS and FIN imaging that can help us identify projects that should be reported.

This is a temporary workaround, and we feel the most efficient method to address FSRS reporting requirements is to move reporting to the districts (typically TP&D) and divisions/offices that are administering these projects, who are aware of all the obligations and obligation adjustments as they occur and they could easily report these actions in FSRS.

Integral Construction Division ARRA support employees receive detailed ARRA information from our TxRADS database comparing key values from our previous quarter's 1512 submissions to those of the pending quarter. Key values such as job, expenditures and obligations are compared and if abnormalities are discovered they are investigated. Investigation will include reviewing documentation, data entry, and if necessary conversations with the FIN Division.

Implementation Date: Ongoing

Responsible Person: John Obr

TRANSPORTATION, DEPARTMENT OF

Reference No. 13-138

Special Tests and Provisions – Quality Assurance Program

(Prior Audit Issues 12-146, 11-146, 10-87, and 09-81)

Highway Planning and Construction Cluster

Award years – 2009, 2010, and 2011

Award numbers –STP 2011(771)HES, NH 2008(508)G, STP 2011(450)ES, STP 2011(309), STP 2011(751), CM 96(732), STP 2009(667)MM, BR 2005(25), STP 2011(773), and HP 2009(628)

Type of finding – Significant Deficiency and Non-Compliance

Each state transportation department must develop a quality assurance program that will assure that the materials and workmanship incorporated into each federal-aid highway construction project on the National Highway System conform with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in Title 23, Code of Federal Regulations (CFR), Section 637.207, and be approved by the U.S. Department of Transportation’s Federal Highway Administration (FHWA) (Title 23, CFR, Section 637.205). Sampling and testing must be performed by qualified laboratories, and qualified sampling and testing personnel must be used in the acceptance decision (Title 23, CFR, Section 637.209).

Questioned Cost: \$ 0
U.S. Department of Transportation - Federal Highway Administration

The Department of Transportation (Department) did not always comply with its quality assurance program approved by the FHWA. Twenty-two (10 percent) of 212 quality assurance samples tested (associated with 60 projects) contained errors related to the test documentation in SiteManager, the Department’s automated system for quality assurance testing. Specifically:

- For 12 (6 percent) of the 212 quality assurance samples tested (associated with 5 projects), the Department did not document the name of the individual who was the tester. As a result, auditors were unable to determine (1) whether the sample tests were conducted, reviewed, and approved by the same individual and (2) whether the individual who conducted the test was a certified tester.
- For 10 (5 percent) of the 212 quality assurance samples tested (associated with 5 projects), the tester and reviewer were the same individual. Management at Department district offices attributed those errors to limited resources and reductions in staff levels.

SiteManager does not have sufficient controls to ensure that (1) only certified testers are able to enter and sign off on test records and (2) a tester does not also sign off as the reviewer. Not segregating testing and reviewing responsibilities and having potentially unqualified personnel perform sample testing increases the risk that the Department may not detect project deficiencies that could affect safety and increase costs.

Recommendations:

The Department should:

- Implement appropriate segregation of duties among the personnel who conduct quality assurance sample testing and personnel who review that testing.
- Implement controls to ensure that only qualified personnel perform quality assurance sample testing.
- Document the names of the testers for quality assurance sample testing.

Management Response and Corrective Action Plan:

Management will be meeting with FHWA to ensure that the quality assurance program approved by the FHWA accomplishes the goals of both agencies. We will also ensure that separate testers and reviewers are designated and documented in Sitemanager.

Implementation Date: August 31, 2013

Responsible Person: John Obr

Reference No. 13-139

Special Tests and Provisions - Value Engineering

Highway Planning and Construction Cluster

Award year – 2006

Award numbers – STP 2006(434) MM, IM 6107(410), and STP 2006(151)MM

Type of finding – Significant Deficiency and Non-Compliance

State departments of transportation (DOT) are required to establish a value engineering program and perform a value engineering analysis on all applicable projects (Title 23, Code of Federal Regulations (CFR), Section 627.1).

Questioned Cost: \$ 0
U.S. Department of
Transportation- Federal
Highway Administration

In establishing its value engineering program, a DOT must (1) establish and document program policies and procedures that ensure the required analysis is conducted on all applicable projects, and encourage analyses on other projects that may benefit; (2) ensure the analysis is conducted and all approved recommendations are implemented and documented prior to letting; (3) monitor and assess its value engineering program, and provide an annual report to the Federal Highway Administration; (4) establish and document policies, procedures, and contract provisions that identify when Value Engineering Change Proposals (VECP) may be used; identify the analysis, documentation, basis, and process for evaluating and accepting a VECP; and determine how the net savings of each VECP may be shared between the DOT and contractor; (5) establish and document policies, procedures, and controls to ensure a value engineering analysis is conducted and all approved recommendations are implemented for all applicable projects administered by local public agencies, and ensure the results of these analyses are included in program monitoring and reporting; and (6) provide for the review of any project for which a delay occurs between when the final plans are completed and the project advances to a letting for construction to determine whether a change has occurred to the project's scope or design where a value engineering analysis would be required to be conducted (Title 23, CFR, Section 627.7).

Projects for which a value engineering analysis must be performed include (1) projects located on the National Highway System with an estimated total project cost of at least \$25 million that use federal-aid highway program funding; (2) bridge projects with an estimated total cost of at least \$20 million that use federal-aid highway program funding; and (3) any other projects that the Secretary of the U.S. Department of Transportation determines to be appropriate (Title 23, United States Code, Section 106(e) and Title 23, CFR, Section 627.5).

The Department of Transportation's (Department) value engineering program does not address the review of projects for which a delay occurs between completion of the final plans for the project and letting for construction to determine whether a change in the project's scope or design requires a value engineering analysis.

Additionally, for 3 (12 percent) of 26 projects tested that required a value engineering analysis, the Department did not perform that analysis. For two of those three projects, the original estimates for the projects were below the threshold for a value engineering analysis. However, changes made prior to the final design of those two projects increased the cost to amounts that exceeded \$25 million. As a result, a value engineering analysis was required. For the third project, the Department district office staff responsible for the project asserted that they did not recall receiving communication from Department management advising them of the criteria for performing a value engineering analysis.

The Department's Design Division most recently notified each district office of the requirement to perform a value engineering analysis on projects that meet the criteria for that analysis in April 2011. However, that notification informed district offices only about the criteria for determining which projects require a value engineering analysis and did not include a list of potential projects that may have required a value engineering analysis. As a result, district offices may not be aware of projects that require a value engineering analysis.

Not performing required value engineering analyses increases the risk that the Department will not identify opportunities to improve quality, minimize cost, reduce construction time, ensure safe operations, and achieve environmental and ecological goals.

Recommendations:

The Department should:

- Ensure that its value engineering program addresses projects for which a delay occurs between the planning and letting phases.
- Develop and implement documented policies and procedures to review the status of projects when the original estimates have been changed resulting in a cost increase that could make a project subject to value engineering requirements.
- Perform a value engineering analysis on all projects that meet the criteria of for that analysis.

Management Response and Corrective Action Plan:

The Department continues to make improvements to the Value Engineering (VE) program to assure that projects meeting the requirements have a value engineering analysis conducted. Although 3 of 26 projects tested did not have an analysis conducted, these projects were awarded in 2006 prior to these changes and strides are being made to ensure that VE analysis is conducted on all applicable projects.

Each year a memorandum is issued to the districts reminding them of the need for VE, the availability of a facilitator, and a list of possible applicable projects in the upcoming 3 years. (The memorandum in 2011 did not include a list of projects but did give the district the criteria for VE analysis requirements.) Future memorandums will include a list of projects.

In September, 2012, the Design Division issued the latest memorandums (Attachment A) addressing updates to the VE requirements per changes in Federal Legislation (Moving Ahead for Progress in the 21st Century Act or MAP-21). These memos indicated that the project costs had increased to \$50 million for roadway projects and \$40 million for bridge projects. The memos also indicated that a VE analysis would be required when the estimated cost increased and reached the threshold due to cost and/or scope creep near construction letting.

The Project Development Process Manual, and PS&E Preparation Manual are currently being updated (Attachment B) to include the changes due to MAP-21 and will include language advising the project engineer to check for VE analysis requirements if the project estimate, scope, or a delay from design completion to letting occurs.

Another improvement the Design Division will be undertaking is reviewing the letting schedule for the upcoming two fiscal years (Attachment C) for any possible projects at or near the cost requirements and comparing the project with VE analyses completed, or scheduled.

Implementation Date: April 30, 2013 (Manual Change)

Responsible Person: Rory Meza, P.E.

TRANSPORTATION, DEPARTMENT OF

Reference No. 13-140

Davis-Bacon Act

(Prior Audit Issue 12-147)

CFDA 20.106 – Airport Improvement Program

Award years – Multiple

Award numbers – 3-48-SBGP-49-2008, 3-48-SBGP- 54-2009, 3-48-SBGP-57-2009, 3-48-SBGP-73-2011, and 3-48-SBGP-75-2011

Type of finding – Significant Deficiency and Non-Compliance

When required by the Davis-Bacon Act, the U.S. Department of Labor’s (DOL) government-wide implementation of the Davis-Bacon Act, the American Recovery and Reinvestment Act, or federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (Title 40, United States Code, Sections 3141-3142).

Questioned Cost: \$ 0

U.S. Department of
Transportation - Federal
Aviation Administration

Non-federal entities shall include in construction contracts that are subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and DOL regulations (Title 29, Code of Federal Regulations (CFR), Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). This includes a requirement for the contractor or subcontractor to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (Title 29, CFR, Sections 5.5 and 5.6). This reporting is often done using optional form WH-347, which includes the required statement of compliance (Office of Management and Budget No. 1215-0149).

The Department of Transportation (Department) was unable to provide documentation that it consistently collected certified weekly payrolls required by the Davis-Bacon Act. Specifically, for 4 (44 percent) of 9 projects tested, the Department could not provide at least one of the required weekly certified payrolls for the time period tested. For each of those projects, the Department collected most, but not all, certified payrolls for those projects during fiscal year 2012. The total federal amount expended on those projects in fiscal year 2012, including payroll and non-payroll costs, was \$2,273,021.

Those errors occurred because the Department did not sufficiently review its tracking spreadsheet to ensure that contractors had submitted all required certified payrolls. For three of the four projects tested for which the Department did not have all certified payrolls, the Department could not provide evidence that it communicated with the contractors regarding the missing certified payrolls prior to the time that auditors began testing.

When contractors do not consistently submit all certified payrolls, the Department is unable to ensure that contractors and subcontractors properly classify and pay their employees the appropriate wage rate in accordance with the Davis-Bacon Act.

Recommendations:

The Department should:

- Consistently review its tracking spreadsheet to identify missing certified payrolls.
- Request missing certified payrolls from contractors.

Management Response and Corrective Action Plan:

All files found in non-compliance were still under construction, and payrolls had been received and audited for the majority of the contract term to date. The missing weeks would have been requested upon routine review of the file or upon notification of final payment. While the Act requires weekly payroll reports, there is no guidance as to when a report is considered to be late or missing and how rapidly follow-up with the contractor is required.

TRANSPORTATION, DEPARTMENT OF

The Division hired a full-time employee to be responsible for all Davis Bacon Act requirements in late March of 2012. The new employee assumed the duties as well as the Division's tracking documents that had previously been handled by temporary employees. She had to catch-up files, create new files for new projects, and all other necessary duties for proper tracking. Learning the duties, developing new processes, and updating files and procedures took several months. All the while, she worked to track weekly payrolls for 40+ projects, and spent more time auditing the reports she received to ensure proper wage rates were being paid. She has worked with her Lead Worker to streamline previous processes, has developed a more efficient tracking process, and is routinely contacting contractors when necessary requesting required documentation. Additionally, monthly oversight of the tracking documentation is performed by the Lead Worker. Finally, upon closeout of construction, a Lead Worker is reviewing payroll compliance files for completeness and accuracy.

Implementation Date: Action Completed December 31, 2012

Responsible Person: David Fulton

Reference No. 13-141

Eligibility

Subrecipient Monitoring

(Prior Audit Issues 12-149 and 10-92)

CFDA 20.509 – Formula Grants for Other Than Urbanized Areas

CFDA 20.509 – Formula Grants for Other Than Urbanized Areas - ARRA

Award years – 2009 and 2010

Award numbers – TX-18-X032, TX-18-X033, TX-86-X001, TX-86-X002, and TX-86-X003

Type of finding – Significant Deficiency and Non-Compliance

The Department of Transportation (Department) is required by Office of Management and Budget (OMB) Circular A-133, Section .400, to monitor subrecipients to ensure compliance with federal rules and regulations, as well as the provisions of contracts or grant agreements. The Department monitors 38 rural transit districts and several intercity bus providers to ensure that they comply with the requirements for the Formula Grants for Other Than Urbanized Areas program. Monitoring is accomplished through public transportation coordinators located within the Department's 25 district offices, who oversee various federal programs within their jurisdictions. The Department is required to certify the eligibility of applicants and project activities, ensure compliance with federal requirements by all subrecipients, and monitor local project activity (Federal Transit Administration Circular C_9040.1f, page II-3).

Questioned Cost: \$ 0

U.S. Department of
Transportation - Federal Transit
Administration

Subrecipient Eligibility

For 1 (3 percent) of 30 subrecipient agreements tested, the Department did not provide evidence that it verified that the subrecipient was eligible to participate in the Formula Grants for Other Than Urbanized Areas program. This occurred because the Department could not provide evidence that it obtained a request for proposal from one of its private entity subrecipients, which the Department uses to determine eligibility for its private entity subrecipients. Auditors determined that the subrecipient was eligible to receive federal funds. However, not maintaining adequate documentation of eligibility increases the risk that the Department could award federal funds to ineligible subrecipients.

During-the-award Monitoring

The Department is required to conduct on-site quarterly visits to review agency financial records that support requests for payment (Title 43, Texas Administrative Code, Section 31.48(c)(3)). Additionally, the Department's grant's management manual requires that on-site visits be documented using a PTN-126 form. During fiscal year 2012, the Department did not consistently conduct during-the-award monitoring for all subrecipients. Specifically:

- For 1 (3 percent) of 30 of subrecipients tested, the Department did not conduct required quarterly onsite visits. This error occurred because management in the Department's Public Transportation Division incorrectly determined that quarterly onsite visits were not necessary for that for-profit subrecipient. As a result, the Department did not monitor that subrecipient for compliance with allowable costs requirements through onsite visits. However, the Department provided evidence that it reviewed that subrecipient's invoices prior to payment.
- For 1 (11 percent) of 9 of subrecipients tested that were subject to the requirements of the Davis-Bacon Act, the Department could not provide evidence that it monitored the subrecipients' compliance with the requirements of the Davis-Bacon Act. The Department asserted that the coordinator responsible for monitoring that subrecipient was unaware of procedures for monitoring compliance with Davis-Bacon Act requirements.
- For 1 (3 percent) of 30 of subrecipients tested, the Department did not monitor supporting documentation to ensure that subrecipients' activities occurred within the period of availability established in the project grant agreement. The Department's review of the subrecipient's reimbursement request did not detect that the subrecipient submitted expenditures after the end of the period of availability established by the project grant agreement. However, those expenditures were for allowable activities that occurred within the period of availability for the federal award as a whole.
- For 3 (20 percent) of 15 subrecipients tested that were subject to procurement requirements, the Department could not provide evidence that it monitored the subrecipients' compliance with procurement requirements using its procurement checklist, which it requires for procurements exceeding \$25,000. For one of those projects, the Department asserted that the coordinator responsible for monitoring the subrecipient was unaware of the requirement. For the remaining two projects, the Department was unable to provide evidence that it monitored the projects using the required checklist.

When the Department does not consistently monitor its subrecipients, it is not able to ensure the most efficient use of federal transportation funds to develop, maintain, and improve transportation systems in non-urbanized areas.

Recommendations:

The Department should:

- Certify and maintain documentation of eligibility for all subrecipients, including private entity subrecipients, prior to awarding federal funds.
- Perform and maintain documentation of monitoring all subrecipients, including private entity subrecipients.
- Train staff on the Department's internal policies and procedures for subrecipient monitoring, including monitoring for compliance with requirements related to period of availability, the Davis-Bacon Act, and procurement.

Management Response and Corrective Action Plan:

In general, we concur with the finding.

In most cases, the incidents cited in the finding involved former employees who may not have been trained on practices currently in place. A meeting with staff was held 1/15/13 and 1/17/13, to discuss these audit findings and remind staff of current monitoring practices related to subrecipient eligibility, period of availability, procurement and the Davis-Bacon Act. The next training, slated for July, will again include training on these issues. We feel our current monitoring procedures are adequate and will explore opportunities for improvement.

In the incident involving the lack of a quarterly review, we agree the PTN 126 form was not used. This was a large capital project in multiple geographic locations. The decision was made to review all detailed supporting documents with each request for reimbursement, thereby increasing the level of scrutiny beyond the standard quarterly review process. Onsite visits to monitor and inspect the project were performed routinely throughout the life of the project and were coordinated with staff housed in the various locations. In the future, we will document these activities. In

this environment, use of the PTN 126 form (designed to review a sample of supporting documents on a quarterly basis) was considered redundant and inadequate for the level of monitoring conducted.

Implementation Date: August 31, 2013

Responsible Person: Donna Roberts

Reference No. 13-142

Reporting

(Prior Audit Issues 12-148 and 10-91)

CFDA 20.509 - Formula Grants for Other Than Urbanized Areas

Award years – 2008, 2009, 2010, 2011, and 2012

Award numbers –TX-18-X031, TX-18-X032, TX-18-X033, TX-18-X034, and TX-18-X035

Type of finding – Significant Deficiency and Non-Compliance

Federal Funding Accountability and Transparency Act Reports

The Federal Funding Accountability and Transparency Act (FFATA) requires prime recipients of federal awards made on or after October 1, 2010, to capture and report subaward and executive compensation data regarding first-tier subawards that exceed \$25,000. A subaward is defined as a legal instrument to provide support for the performance of any portion of the substantive project or program for which a recipient received a grant or cooperative agreement award and that is awarded to an eligible subrecipient (Title 2, Code of Federal Regulations (CFR), Chapter 170).

Questioned Cost: \$ 0

U.S. Department of
Transportation - Federal Transit
Administration

The Department of Transportation’s (Department) Public Transportation Division did not report subawards as required by FFATA during fiscal year 2012. Specifically the Department did not submit reports for 54 subawards made under grants TX-18-X034 and TX-18-X035—which exceeded \$25,000 and were obligated after October 1, 2010—to the Federal Funding Accountability and Transparency Act Reporting System (FSRS). As a result, the Department did not report that it had obligated \$42,862,467 for projects associated with those 54 subawards. The Department previously submitted some FFATA reports in fiscal year 2011; however, it does not have an effective control to ensure that it submits the required reports. The staff responsible for those reports did not submit reports during fiscal year 2012 due to an oversight.

Not submitting all required reports to FSRS decreases the reliability and availability of information provided to the awarding agency and other users of that information.

SF-425 Reports

A grantee must submit a federal financial report for each active/executed grant (Federal Transit Administration Circular 5010.1D, page III-2(3)(a)(b)). The SF-425 report is used to report expenditures under federal awards, as well as cash status. Reporting instructions for the SF-425 report specify that the recipient’s share of expenditures must be based on actual cash disbursements or outlays, including payments to subrecipients and contractors.

For all three SF-425 reports tested for which matching requirements were applicable, the Department reported non-federal share amounts that were not supported by its accounting records. The Department determined the non-federal share of expenditures by multiplying its federal outlays by the required matching percentage. According to the Department, these errors occurred because the Federal Transit Administration directed the Department to provide the required match, and not the actual match, on its SF-425 reports. However, that practice resulted in the Department reporting amounts that were not based on actual cash disbursements or outlays as required.

Inaccurate reporting on financial reports decreases the reliability of information provided to funding agencies and other stakeholders.

RU-20 Reports

Recipients are required to submit an annual report containing financial and operating information. The state agency administering a Formula Grants for Other Than Urbanized Areas program is responsible for submitting rural reports on behalf of the state and its subrecipients. This data is submitted using the Rural General Public Service Transit form (RU-20).

For all six RU-20 reports tested, the Department could not provide evidence to support the amounts it reported for local operating assistance and annual capital costs. The Department asserted that support for those amounts was previously maintained by an employee who no longer works for the Department and the Department did not maintain that support after the employee's departure. As a result, auditors could not determine whether those amounts were accurate.

Unsupported information in reports increases the risk that federal agencies could rely on inaccurate information.

Recommendations:

The Department should:

- Develop and implement a documented process to identify and report projects subject to FFATA requirements.
- Report actual non-federal share amounts on its SF-425 reports.
- Maintain supporting documentation for RU-20 reports.

Management Response and Corrective Action Plan:

We concur with the finding.

During fiscal year 2012 FFATA reporting was carried out intermittently. This audit identified areas which did not report as required. We have reorganized functions within the division and devoted resources to a staff position to become a reports clearinghouse to track any and all required reports, including FFATA. This position will inventory all required reports, alert management and other staff when reports are due, and will report on status of completing required reporting.

Implementation Date: March 30, 2013

Responsible Person: Bobby Killebrew

SF-425 reports are completed in accordance with guidance from our funding agency, the Federal Transit Administration (FTA). The SAO has determined that such guidance does not adhere to requirements from OMB. Several attempts to have the FTA and SAO discuss this item were unsuccessful. We will continue to work through this issue with all parties.

Implementation Date: May 31, 2013

Responsible Person: Bobby Killebrew

The RU-20 reports are individual rural transit district reports that are part of the National Transit Database (NTD) annual report. In a prior year (calendar year 2011), staff created documentation to reconcile the NTD RU-20 reports to the PTN-128 reporting database. This was not done in calendar year 2012. PTN staff will prepare this documentation for current and future reporting years.

Implementation Date: March 30, 2013

Responsible Person: Bobby Killebrew

Summary Schedule of Prior Year Audit Findings

Federal regulations (OMB Circular A-133) state, “the auditee is responsible for follow-up and corrective action on all audit findings.” As part of this responsibility, the auditee reports the corrective action it has taken for the following:

- Each finding in the 2011 Schedule of Findings and Questioned Costs.
- Each finding in the 2011 Summary Schedule of Prior Audit Findings that was not identified as implemented or reissued as a current year finding.

The Summary Schedule of Prior Audit Findings (year ended August 31, 2012) has been prepared to address these responsibilities.

Department of Transportation

Reference No. 12-142

Davis-Bacon Act

(Prior Audit Issues 11-142 and 10-82)

Highway Planning and Construction Cluster

Award years – Multiple

Award number – NH 2010(086)

Type of finding – Significant Deficiency and Non-Compliance

When required by the Davis-Bacon Act, the U.S. Department of Labor’s (DOL) government-wide implementation of the Davis-Bacon Act, or by federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (Title 40, United States Code (USC), Sections 3141--3147).

Initial Year Written: 2009
Status: Partially Implemented

U.S. Department of
Transportation – Federal
Highway Administration

Non-federal entities shall include in construction contracts that are subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and the DOL regulations (Title 29, Code of Federal Regulations (CFR), Sections 5.5-5.6). In addition, contractors or subcontractors are required to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (Title 29, CFR, Sections 3.3-3.4). This reporting is often done using optional form WH-347, which includes the required statement of compliance (Office of Management and Budget No. 1215-0149).

The Department of Transportation (Department) was not always able to provide documentation showing that it collected certified weekly payrolls from its contractors. **For 1 (2 percent) of 60 projects tested, the Department did not ensure that contractors submitted all weekly certified payrolls for fiscal year 2011.** Specifically, the Department could not provide two certified payrolls for that project during the period tested. The total federal amount expended on that project, including payroll and non-payroll costs, was \$1,464,177.

For the error identified, the contractor provided certified weekly payrolls using the Electronic Project Records System (EPRS). EPRS provides reports that show any gaps in the submission of weekly certified payrolls, which allows the Department to follow up on any missing submissions. The Department asserted that the individual who was responsible for monitoring the project was no longer working for the Department and, as a result, the Department was unable to determine whether it obtained the certified payrolls that it could not provide to auditors.

The Department does not have a standardized process for tracking certified payrolls that contractors submit.

Each area office within each Department district office determines its own method for ensuring that contractors submit payroll certifications. As of December 28, 2011, the Department's 25 district offices had a total of 89 area offices. Of the 60 projects tested:

- For 23 (38.3 percent) of the 60 projects, area offices used the EPRS system, which allows users to detect missing payrolls by creating missing payroll reports for each vendor for the project.
- For 23 (38.3 percent) of the 60 projects, area offices used a tracking sheet to monitor whether contractors had submitted all weekly certified payrolls.
- For 14 (23.3 percent) of the 60 projects, area offices did not have formal, documented processes to ensure that contractors submitted weekly certified payrolls.

When contractors do not consistently submit required certified payrolls, the Department cannot ensure that contractor and subcontractor employees are properly classified and being paid the appropriate wage rate in accordance with the Davis-Bacon Act.

Corrective Action:

This finding was reissued as current year reference number: 13-134.

Reference No. 12-143

Period of Availability of Federal Funds

(Prior Audit Issues 11-143 and 10-81)

Highway Planning and Construction Cluster

Award years – Multiple

Award numbers – Multiple

Type of finding – Significant Deficiency

Agencies shall maintain internal control over federal programs that provides reasonable assurance that agencies are managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements (Office of Management and Budget Circular A-133, Subpart C, Section 300 (b)).

Initial Year Written: 2009 Status: Partially Implemented U.S. Department of Transportation – Federal Highway Administration

The Department of Transportation (Department) uses the Federal Project Authorization and Agreement (FPAA) system to process and track project approvals from the Federal Highway Administration. The FPAA system details when federal funds are authorized, which is the starting point for the period of availability of federal funds. The Department must obtain approval from the Federal Highway Administration prior to starting construction work on a project and expending federal funds (Title 23, Code of Federal Regulations, Section 630.106).

The Department did not appropriately restrict access to the FPAA system. Specifically, two programmers had access to move code into the production environment of FPAA. In general, programmers should not have access to migrate code changes to the production environment. Allowing programmers inappropriate access increases the risk of unauthorized changes and does not allow for adequate segregation of duties.

The Department's Finance Division manages the FPAA system. In fiscal year 2011, the Department made only one change to the FPAA system, and different individuals developed and moved that change to the production environment.

Corrective Action:

This finding was reissued as current year reference number: 13-135.

Reference No. 12-144

Procurement and Suspension and Debarment
Subrecipient Monitoring
Special Tests and Provisions – R3 – Subrecipient Monitoring
(Prior Audit Issues 11-144, 10-84, and 09-80)

Highway Planning and Construction Cluster
Highway Planning and Construction Cluster – ARRA
Award years – Multiple
Award numbers – Multiple
Type of finding – Material Weakness and Material Non-Compliance

The Department of Transportation (Department) is required by the Office of Management and Budget (OMB) Circular A-133, Section .400, to monitor subrecipients to ensure compliance with federal rules and regulations, as well as the provisions of the contracts or grant agreements. In addition, the Department is responsible for the construction of all federal aid projects, and it is not relieved of such responsibility by authorizing performance of the work by a local public agency or other federal agency. State transportation departments are responsible for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans and specifications (Title 23, Code of Federal Regulations, Section 635.105(a)).

Initial Year Written: 2008 Status: Partially Implemented

U.S. Department of Transportation – Federal Highway Administration
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Pre Award Monitoring

At the time of the award, pass-through entities must identify to subrecipients the applicable compliance requirements and the federal award information, including the Catalog of Federal Domestic Assistance (CFDA) title and number, the federal award name and number, the name of the federal awarding agency, and whether the award is research and development (OMB Circular A-133, Section .400(d), and OMB Circular A-133 Compliance Supplement, Part 3, Section M).

Federal rules require that, when a non-federal entity enters into a covered transaction with an entity at a lower tier, the non-federal entity must verify that the entity is not suspended or debarred or otherwise excluded from federal contracts. This verification may be accomplished by checking the Excluded Parties List System (EPLS), collecting a certification from the entity, or adding a clause or condition to the covered transaction with that entity (Title 2, Code of Federal Regulations, Section 180.300). Covered transactions include all nonprocurement transactions (that is, subawards to subrecipients) irrespective of award amount (Title 2, Code of Federal Regulations, Sections 180.220 and 180.970).

Additionally, the Department is required to determine that its subrecipients have adequate project delivery systems for projects approved under Title 23 of the United States Code (USC) (Title 23, USC, Section 106(g)(4)). The Department's rules in the Texas Administrative Code also require the Department to determine whether its subrecipients have adequate project delivery systems to manage contracts in a timely manner, consistent with federal, state, and department regulations, standards, and specifications (Title 43, Texas Administrative Code, Section 15.52). The Department uses an Advance Funding Agreement Special Approval Transmittal Form to ensure that subrecipients have the required project delivery systems.

Auditors tested 60 Department project agreements with subrecipients and identified issues in all of the agreements tested. Specifically:

- For 37 (71 percent) of 52 of agreements tested for which the subrecipients were not metropolitan planning organizations, the Department did not complete the Advance Funding Agreement Special Approval Transmittal Form to verify that the subrecipients had the capability to perform the work proposed and to manage the work according to standards.
- For 38 (63 percent) of the 60 agreements tested, the Department did not require the subrecipients to certify that they were not suspended or debarred.

- For 54 (90 percent) of the 60 agreements tested, the Department did not properly identify federal award information to the subrecipients.
- For 1 (2 percent) of the 60 agreements tested, the Department did not notify the subrecipient of Single Audit requirements.
- For 1 (2 percent) of the 60 agreements tested, the Department did not notify the subrecipient of OMB A-87 Cost Principles.
- For 1 (2 percent) of the 55 agreements tested that were subject to requirements for local government training, the Department did not ensure that at least one of the subrecipient's staff attended training on local government project procedures required as part of its agreement (the Department implemented that training to ensure that subrecipients were aware of project and grant requirements).

While the Department uses a standard template for agreements with subrecipients, that template did not consistently identify the federal award title and number, the CFDA title and number, the federal awarding agency, or the compliance requirements. However, the template referred to the master advanced funding template agreement, which requires subrecipients to comply with federal requirements and provides other information regarding allowable costs and other requirements.

The Department's agreement template also requires the subrecipient to refrain from conducting business with other entities that are suspended or debarred; however, the template did not consistently require subrecipients to certify that they are not suspended or debarred. Agreements dated after September 23, 2009, however, contained language requiring the subrecipient to certify it was not suspended or debarred.

Not ensuring that subrecipients have adequate project delivery systems increases the risk that the Department could award federal funds to subrecipients that cannot effectively manage subawards in compliance with federal guidelines. Inadequate identification of federal awards by the Department may lead to improper reporting of federal funding on a subrecipient's schedule of expenditures of federal awards (SEFA). Additionally, when the Department does not verify that subrecipients are not suspended or debarred, this increases the risk the Department could enter into an agreement with an entity that is not eligible to receive federal funding. Incomplete communication of federal compliance requirements in the Department's agreements increases the risk that subrecipients will not follow federal guidelines related to administering subrecipient awards and increases the risk that subrecipients lack the proper understanding of local government project procedures to administer and manage a project. In fiscal year 2011, the Department passed-through \$270,922,797 in federal funds (including Recovery Act funds) to subrecipients.

Subrecipients of Recovery Act Funding

The American Recovery and Reinvestment Act (Recovery Act) of 2009 required recipients to (1) maintain records that identify adequately the source and application of Recovery Act funds; (2) separately identify the federal award number, the CFDA number, and the amount of Recovery Act funds to each subrecipient, at the time of the subaward and disbursement of funds; and (3) require their subrecipients to include, on their SEFAs, information to specifically identify Recovery Act funds (Title 2, Code of Federal Regulations, Section 176.210).

Recipients of Recovery Act funds are also required to ensure that subrecipients of Recovery Act funds maintain active registrations in the Central Contractor Registration (CCR) and obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number (Title 2, Code of Federal Regulations, Section 176.50, and Recovery Act, Section 1512(h)). This information is needed to allow the recipient to properly monitor subrecipient expenditures of Recovery Act funds and for oversight by the federal awarding agencies, offices of inspector general, and the U.S. Government Accountability Office.

For 17 (94 percent) of 18 project agreements with subrecipients tested, the Department did not comply with Recovery Act requirements with respect to its subrecipients. Specifically:

- For 1 (6 percent) of the 18 agreements, the Department did not obtain a correct DUNS number for its subrecipient.
- 14 (78 percent) of the 18 agreements did not contain evidence that the Department notified the subrecipients of all required award information.

- 6 (33 percent) of the 18 agreements did not contain evidence that the Department communicated reporting requirements associated with Recovery Act awards to the subrecipients.
- 6 (33 percent) of the 18 agreements did not contain evidence that the Department ensured that the proposed budgets separately identified Recovery Act funds.

While the Department uses a standard template for award agreements with subrecipients, the template did not consistently identify the federal award title number, the CFDA title and number, the federal awarding agency, or Recovery Act requirements. Additionally, at the time of audit testing, the Department did not have a consistent process to verify a subrecipient's DUNS prior to award.

Inadequate identification of Recovery Act awards by the Department may lead to improper reporting of federal funding in a subrecipient's SEFA. In fiscal year 2011, the Department passed-through \$119,577,779 in Recovery Act funds to subrecipients.

During-the-award Monitoring

The Department does not have standardized processes to ensure adequate during-the-award monitoring of subrecipients by its district offices. Auditors tested documentation of during-the-award monitoring for 60 subrecipients. That documentation included reviews of invoices for allowability, period of availability, and reporting. Auditors identified the following issues at the Department's district offices:

- For 1 (3 percent) of 34 of subrecipients tested for which Davis-Bacon Act requirements applied, the Department was unable to provide evidence that it monitored its subrecipients' compliance with Davis-Bacon Act requirements.
- For 21 (40 percent) of 53 of subrecipients tested for which procurement requirements applied, the Department was unable to provide evidence that it approved its subrecipients' procurement policies and procedures or vendor selection.

Through its *Local Government Project Procedures Manual*, the Department provides monitoring guidelines to its district and regional offices for the monitoring of subrecipients. However, implementation of the guidelines and creation of processes for monitoring are determined by the region and district level staff. In addition, the Department does not have a standard process for reviewing each district office's procedures and activities related to subrecipient monitoring.

By not providing direct oversight or review of monitoring procedures and activities at each district office or region, the Department is not able to ensure that sufficient monitoring occurs. This also increases the risk the Department would not detect non-compliance by subrecipients administering federally funded projects.

Additionally, the Department did not always correctly identify subrecipients in its accounting system. Specifically, auditors identified two projects that should have been identified, but were not identified, as subrecipients in the Department's accounting system, the Financial Information Management System (FIMS). While the Department has a process to review and track subrecipient projects, it did not identify and flag those two projects in FIMS. Department management asserted that this occurred because of the inaccurate identification of one of the projects and delayed project setup for the other project. Auditors identified \$41,838 in expenditures for those two projects. Not correctly identifying and tracking all subrecipients increases the risk that the Department could fail to sufficiently monitor subrecipient expenditures.

Corrective Action:

This finding was reissued as current year reference number: 13-136.

TRANSPORTATION, DEPARTMENT OF

Reference No. 12-145

Reporting

(Prior Audit Issues 11-145 and 10-83)

Highway Planning and Construction Cluster

Award years – Multiple

Award numbers – Multiple

Type of finding – Significant Deficiency and Non-Compliance

PR-20 Reports

The Office of Management and Budget (OMB) Circular A-133 Compliance Supplement requires the Department of Transportation (Department) to submit a PR-20, Voucher for Work Under Provisions of the Federal-Aid and Federal Highway Acts, as Amended (OMB No. 2125-0507). The PR-20 is required by the Federal Highway Administration (FHWA) to report the total expenditures for a project that received federal aid. The report should be completed and submitted promptly after the close-out of a project.

Initial Year Written: 2009 Status: Partially Implemented

U.S. Department of Transportation - Federal Highway Administration
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The Department has a significant backlog of PR-20 reports it must still submit to the FHWA. As of August 31, 2011, the Department had not submitted PR-20 reports for 1,423 projects that had been closed for more than 90 days. The projects for which the Department must still submit PR-20 reports date back to December 2002. Auditors identified this issue in the prior two audit periods, and the Department began implementing a corrective action plan to reduce the backlog of reports in fiscal year 2010. Department management asserted that the Department focused on submitting PR-20 reports for American Recovery and Reinvestment Act (Recovery Act) projects before other projects in fiscal year 2011 due to the higher visibility and limited period of availability associated with Recovery Act projects. In fiscal year 2011, the Department submitted 1,077 PR-20 reports. The FHWA relies on the Department to submit PR-20 reports to close out funding and records on federally funded projects. Auditors tested a sample of 25 PR-20 reports the Department submitted during fiscal year 2011 and did not identify any compliance errors.

Corrective Action:

Corrective action was taken.

Transparency Act Reporting

The Federal Funding Accountability and Transparency Act (Transparency Act) requires prime recipients of federal awards made on or after October 1, 2010, to capture and report subaward and executive compensation data regarding their first-tier subawards that exceed \$25,000. The prime recipient is required to report subaward information through the Federal Funding Accountability and Transparency Subaward Reporting System (FSRS) by the end of the month following the month in which the subaward was signed (Title 2, Code of Federal Regulations (CFR), Chapter 170).

Additionally, recipients must report all required elements established in the Office of Management and Budget's *Open Government Directive- Federal Spending Transparency and Subaward and Compensation Data Reporting* (August 27, 2010), Appendix C, including the subaward date, subawardee Dun and Bradstreet Data Universal Numbering System (DUNS) number, amount of subaward, subaward obligation or action date, date of report submission, and subaward number.

The Department did not always report accurate and complete information as required by the Transparency Act. Specifically:

- For 1 (7 percent) of the 14 subaward projects tested for which the Department was required to submit reports, the Department did not submit the required report to FSRS. The Department did not identify that this subaward met the requirements established by Title 2 CFR, Chapter 170; as a result, it did not submit the report.

- For 2 (15 percent) of the 13 subaward projects tested for which the Department submitted the required reports, the Department did not report all required information accurately. For one project, the Department reported an incorrect subrecipient name and DUNS number that was not supported by its award documentation. For the other project, the Department reported the incorrect DUNS number because it did not correctly verify information provided by the subrecipient.

The Department relies on the federal award identification numbers (FAIN) on the USASpending.gov Web site to identify awards that are subject to Transparency Act requirements. Using that information, Department staff cross-reference the FAIN to an award number to determine which projects have associated subawards that are subject to Transparency Act reporting. However, that process does not ensure that the Department reports on all subawards subject to Transparency Act requirements, including those that may not be in USASpending.gov.

Not reporting all required subawards to FSRS or reporting inaccurate information decreases the reliability of information provided to the awarding agency and other intended users of that information.

Corrective Action:

This finding was reissued as current year reference number: 13-137.

Reference No. 12-146

Special Tests and Provisions – Quality Assurance Program

(Prior Audit Issues 11-146, 10-87, and 09-81)

Highway Planning and Construction Cluster

Award years – Multiple

Award numbers – STP 2009(485)ES, STP 2011(301), STP 2010(624)MM, NH 2010(849), STP 2002(141)ESTE, STP 2009(124), STP 2011(623)ES, CM 2009(732), STP 2009(516)ES, NH 2010(913), STP 2011(362), IM 353(275), and NH 2011(742)

Type of finding – Significant Deficiency and Non-Compliance

Control Weaknesses in SiteManager

Agencies shall maintain internal control over federal programs that provides reasonable assurance that the institutions are managing federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements (Office of Management and Budget Circular A-133, Subpart C, Section 300 (b)).

Initial Year Written: 2008
Status: Partially Implemented

U.S. Department of
Transportation - Federal
Highway Administration

The Department of Transportation (Department) uses SiteManager as its system of record for quality assurance testing on its highway construction projects. However, **SiteManager does not have sufficient controls to ensure that (1) only certified testers are able to enter and sign off on test records and (2) a tester does not also sign off as the reviewer.**

For 48 (22 percent) of 216 quality assurance samples tested, the tester and reviewer were the same individual.

Management at Department district offices attributed those errors to limited resources and reductions in staff levels. Not segregating testing and reviewing responsibilities increases the risk that the Department may not detect project deficiencies that could cost time and money to correct.

Quality Assurance Program

Each state transportation department must develop a quality assurance program that will assure that the materials and workmanship incorporated into each federal-aid highway construction project on the National Highway System conform with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in Title 23, Code of Federal Regulations, Section 637.207, and be approved by the U.S. Department of Transportation's Federal Highway Administration (FHWA) (Title 23, CFR, Section 637.205). Sampling and testing must be performed by qualified laboratories, and qualified sampling and testing personnel must be used in the acceptance decision (Title 23, CFR, Section 637.209).

The Department did not always comply with its quality assurance program approved by the FHWA. Specifically:

- **For 6 (10 percent) of 60 highway construction projects tested, the Department did not comply with the testing requirements for each type of material as specified in the Department’s *Guide Schedule for Sampling Testing*.** For 4 of the 6 projects, the Department did not perform 11 tests listed on its sampling checklist. For the remaining two projects, the sampling checklist did not list all required material tests; as a result, the Department did not perform three required tests.
- **Quality assurance tests for 9 (15 percent) of 60 projects tested were conducted by an individual who was not a certified tester.** Due to the limitations within SiteManager discussed above, the Department does not have sufficient controls to ensure that only qualified personnel complete quality assurance sampling testing.

Corrective Action:

This finding was reissued as current year reference number: 13-138.

Reference No. 12-147

Davis-Bacon Act

CFDA 20.106 – Airport Improvement Program

Award years – Multiple

Award numbers – 3-48-SBGP-37-2006, 3-48-SBGP-41-2007, 3-48-SBGP-49-2008, 3-48-SBGP-54-2009, 3-48-SBGP-57-2009, and 3-48-SBGP-66-2009

Type of finding – Significant Deficiency and Non-Compliance

When required by the Davis-Bacon Act, the U.S. Department of Labor’s (DOL) government-wide implementation of the Davis-Bacon Act, or by federal program legislation, all laborers and mechanics employed by contractors or subcontractors to work on construction contracts in excess of \$2,000 financed by federal assistance funds must be paid wages not less than those established for the locality of the project (prevailing wage rates) by the DOL (Title 40, United States Code (USC), Sections 3141-3144).

Initial Year Written: 2011 Status: Partially Implemented U.S. Department of Transportation - Federal Aviation Administration
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Non-federal entities shall include in construction contracts that are subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and the DOL regulations (Title 29, Code of Federal Regulations (CFR), Sections 5.5-5.6). In addition, contractors or subcontractors are required to submit to the non-federal entity weekly, for each week in which any contract work is performed, a copy of the payroll and a statement of compliance (certified payrolls) (Title 29, CFR, Sections 3.3-3.4). This reporting is often done using optional form WH-347, which includes the required statement of compliance (Office of Management and Budget No. 1215-0149).

The Department of Transportation (Department) was not always able to provide documentation showing that it collected certified weekly payrolls required by the Davis-Bacon Act. Specifically, for 2 (20 percent) of 10 projects tested, the Department could not provide one of the required weekly certified payrolls for the quarter tested. The total federal amount expended on the projects associated with those payrolls in fiscal year 2011, including payroll and non-payroll costs, was \$1,969,350.

These errors occurred because the Department did not always accurately complete the tracking spreadsheet it uses to ensure that contractors submit all certified weekly payrolls. For one project, the tracking spreadsheet, which lists the date of each required report and the date that the report was submitted, did not list all weeks for which certified payrolls should have been submitted; as a result, the Department did not collect certified payrolls for those weeks. For the remaining project, the tracking spreadsheet showed that the Department received the certified payroll; however, the Department could not locate the certified payroll.

When contractors do not consistently submit certified payrolls, the Department cannot ensure that contractors and subcontractors properly classify and pay their employees the appropriate wage rate in accordance with the Davis-Bacon Act.

Additionally, for 3 (30 percent) of 10 projects tested, the Department did not record the date on which it received the required certified payrolls. The Department relies on the tracking spreadsheet to ensure that it collects the required certified payrolls. As a result, when the Department does not complete its tracking spreadsheet correctly, it cannot ensure that contractors submit required payroll certifications and comply with the Davis-Act Act.

Corrective Action:

This finding was reissued as current year reference number: 13-140.

Reference No. 12-148

Reporting

(Prior Audit Issue 10-91)

CFDA 20.509 – Formula Grants for Other Than Urbanized Areas

Award years – Multiple

Award numbers - TX-18-X031-02, TX-18-X033-01, TX-18-X032-01, TX-86-X002-01, and TX-86-X003-00

Type of finding – Significant Deficiency and Non-Compliance

Recipients are responsible for managing, monitoring, and reporting performance and financial information for each project, program, subaward, function, or activity supported by the award. Recipients use the *Financial Status Report* SF-269 or SF-269A to report the status of funds for non-construction projects (Title 2, Code of Federal Regulations (CFR), Section 215.52). The *Federal Financial Report* SF-425 is used to report expenditures under federal awards, as well as cash status. Reporting instructions for the SF-425 report specify that the recipient’s share of expenditures be based on actual cash disbursements or outlays, including payments to subrecipients and contractors. Additionally, according to the reporting instructions, entities should submit quarterly reports no later than 30 days after the end of each reporting period.

Initial Year Written: 2009 Status: Partially Implemented U.S. Department of Transportation - Federal Transit Administration

The Department of Transportation (Department) did not submit 2 (25 percent) of 8 SF-425 reports tested by the required due dates. The Department asserted that it submitted those reports late because of changes in the procedures and forms it used to submit those reports.

Additionally, for all three SF-425 reports tested that had matching requirements, the Department reported non-federal share amounts that were not supported by its accounting records. The Department was unable to support the amounts it reported as its non-federal share of expenditures because it did not consistently track the local amount of the non-federal share. Instead, the Department determined the non-federal share of expenditures by multiplying its federal outlays by the required match percentage. While the Department changed its process for monitoring subrecipients to include collecting information on local amount of the non-federal share, it did not always carry that information forward to its SF-425 reports.

Corrective Action:

This finding was reissued as current year reference number: 13-142.

TRANSPORTATION, DEPARTMENT OF

Reference No. 12-149

Subrecipient Monitoring

(Prior Audit Issues 10-92 and 10-93)

CFDA 20.509 – Formula Grants for Other Than Urbanized Areas

CFDA 20.509 – Formula Grants for Other Than Urbanized Areas- ARRA

Award years – Multiple

Award numbers – TX-18-X031-02, TX-18-X033-01, TX-18-X032-01, TX-86-X001, and TX-86-X003-00

Type of finding – Significant Deficiency and Non-Compliance

The Department of Transportation (Department) is required by Office of Management and Budget (OMB) Circular A-133, Section .400, to monitor subrecipients to ensure compliance with federal rules and regulations, as well as the provisions of the contracts or grant agreements. The Department monitors 38 rural transit districts and several intercity bus providers to ensure that they comply with the requirements for the Formula Grants for Other Than Urbanized Areas program. Monitoring is accomplished through the Department's 24 district public transportation coordinators who oversee various federal programs within their jurisdictions. Public transportation coordinators perform numerous duties, including quarterly on-site visits, annual compliance on-site reviews, reviews of financial records, approval of monthly invoices, tracking procurement activities, reviews of reports, issuance of improvement action plans when deficiencies are noted, discussion of problems encountered or need for technical assistance, and monitoring of compliance with federal regulations and provisions of grant agreements.

Initial Year Written: 2009
Status: Partially Implemented

U.S. Department of
Transportation - Federal Transit
Administration

Pre-award Documentation

At the time of the award, pass-through entities must identify to subrecipients the applicable compliance requirements and the federal award information, including the Catalog of Federal Domestic Assistance (CFDA) title and number, the federal award name and number, the name of the federal awarding agency, and whether the award is research and development (OMB Circular A-133, Section .400(d), and OMB Circular A-133 Compliance Supplement, Part 3, Section M).

For 2 (20 percent) of 10 subrecipient agreements tested, the Department did not notify its subrecipients of the federal award number in its project grant agreements. This occurred because the Department issued those awards using a template that did not include that information. In July 2010, the Department corrected its template to include the federal award number, and agreements that auditors tested after that date communicated all required award information.

Inadequate identification of federal awards could lead to improper reporting of federal funding on a subrecipient's schedule of expenditures of federal awards (SEFA).

Subrecipients of American Recovery and Reinvestment Act Funding

The American Recovery and Reinvestment Act (Recovery Act) of 2009 required recipients to (1) maintain records that identify adequately the source and application of Recovery Act funds; (2) separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the federal award number, the CFDA number, and the amount of Recovery Act funds; and (3) require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding (Title 2, Code of Federal Regulations, Section 176.210).

The Department did not always notify its subrecipients, at the time of disbursement, of required Recovery Act information. Specifically, **for 3 (60 percent) of 5 subrecipients tested, the Department did not notify its subrecipients of the federal award number, CFDA number, and the amount of Recovery Act funds provided at each disbursement.** This occurred because the Department used an outdated request for reimbursement form to communicate award information to the subrecipients, and that form did not include the required Recovery Act information. In September 2010, the Department created a new form that included all required information, and auditors did not identify compliance errors after the Department's implementation of the new form.

Inadequate identification of Recovery Act awards could lead to improper reporting of federal funding in a subrecipient's SEFA.

During-the-award Monitoring

The Department is required to monitor local project activity and to ensure compliance with federal requirements by all subrecipients (Federal Transit Administration Circular C_9040.1f, Page II-3). The Department monitors its subrecipients' compliance with federal requirements through several methods. As part of its monitoring process, the Department's public transportation coordinators conduct monthly invoice reviews to ensure that subrecipients comply with matching, cash management, period of availability, and program income requirements. Those reviews do not include a review for the allowability of items that subrecipients purchase with federal funds; however, the Department conducts quarterly on-site visits that include a limited review of transactions for allowable costs and activities.

The Department also conducts annual compliance reviews of its subrecipients. Those reviews cover nine program areas. In addition, public transportation coordinators are expected to review subrecipients' real property acquisitions to verify that an appraisal was performed prior to a subrecipient's purchase of real property.

During fiscal year 2011, the Department did not consistently conduct during-the-award monitoring activities for all subrecipients. Specifically:

- For 1 (10 percent) of 10 of subrecipients tested, the Department did not perform an annual compliance review for fiscal year 2011. That subrecipient received less than \$500,000 in federal funds during fiscal year 2011; as a result, it was exempt from the requirement to obtain a Single Audit as specified in OMB Circular A-133, Section .200. Because the subrecipient was not required to obtain a Single Audit, it was particularly important for the Department to conduct an annual compliance review at this subrecipient to monitor the subrecipient's compliance with federal requirements.
- For 1 (10 percent) of 10 of subrecipients tested, the Department did not conduct required quarterly on-site visits for three consecutive quarters. As a result, the Department did not properly monitor this subrecipient for compliance with allowable costs requirements
- For the only subrecipient tested that acquired real property during fiscal year 2011, the Department did not verify that the subrecipient obtained an appraisal prior to purchasing the real property. Specifically, the Department did not verify that an appraisal was performed or ensure that an appraisal was reviewed by a state certified appraiser. The subrecipient purchased the property for \$42,655.
- For 2 (29 percent) of 7 of subrecipients tested, the Department could not provide evidence that it monitored the subrecipients' compliance with requirements of the Davis-Bacon Act.

While the Department has developed processes to monitor its subrecipients through annual compliance reviews and quarterly on-site visits, it has not consistently implemented those processes. Additionally, the Department has not established a standardized process to monitor its subrecipients' compliance with requirements for real property acquisitions or with the Davis-Bacon Act.

When the Department does not consistently conduct quarterly and annual on-site visits at subrecipients, this increases the risk that subrecipient noncompliance could go undetected.

Corrective Action:

This finding was reissued as current year reference number: 13-141.

Appendix

Objectives, Scope, and Methodology

Objectives

With respect to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program, the objectives of this audit were to (1) obtain an understanding of internal controls, assess control risk, and perform tests of controls unless the controls were deemed to be ineffective and (2) provide an opinion on whether the State complied with the provisions of laws, regulations, and contracts or grants that have a direct and material effect on that cluster and those programs.

Scope

The audit scope covered federal funds that the State spent for the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program at the Department of Transportation (Department) from September 1, 2011, through August 31, 2012. The audit work included control and compliance work at the Department.

Methodology

The audit methodology included developing an understanding of controls over each compliance area that was material to the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program at the Department. Auditors selected non-statistical samples for tests of compliance and controls for each compliance area identified based on the American Institute of Certified Public Accountants' audit guide entitled *Government Auditing Standards and Circular A-133 Audits* dated February 1, 2012. In determining the sample sizes for control and compliance test work, auditors assessed risk levels for inherent risk of noncompliance, control risk of noncompliance, risk of material noncompliance, detection risk, and audit risk of noncompliance by compliance requirement. Auditors selected samples primarily through random selection designed to be representative of the population. In those cases, results may be extrapolated to the population but the accuracy of the extrapolation cannot be measured. In some cases, auditors may use professional judgment to select additional items for compliance testing. Those sample items generally are not representative of the population and, therefore, it would not be appropriate to extrapolate those results to the population. Auditors conducted tests of compliance and of the controls identified for each compliance area and performed analytical procedures when appropriate. Auditors assessed the reliability of data the Department provided

and determined that the data was reliable for the purposes of expressing an opinion on compliance with the provisions of laws, regulations, and contracts or grants that have a direct and material effect on the Highway Planning and Construction Cluster of federal programs, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program at the Department.

Information collected and reviewed included the following:

- Department data for expenditures, procurement, reporting, cash revenue, required matching funds, program income, subrecipients, quality assurance testing, value engineering analysis, project extensions, and project approvals.
- Federal notices of award and award proposals.
- Transactional support related to expenditures, procurement, and revenues.
- Department-generated reports and data used to support reports, revenues, and other compliance areas.
- Information system support for Department assertions related to general controls over information systems that support the control structure related to federal compliance.

Procedures and tests conducted included the following:

- Analytical procedures performed on expenditure data to identify instances of non-compliance.
- Compliance testing for samples of transactions for each direct and material compliance area.
- Tests of design and effectiveness of key controls and tests of design of other controls to assess the sufficiency of the Department's control structure.
- Tests of design and effectiveness of general controls over information systems that support the control structure related to federal compliance.

Criteria used included the following:

- The Code of Federal Regulations.
- United States Code.
- U. S. Office of Management and Budget Circulars A-87, A-102, and A-133.
- The American Recovery and Reinvestment Act.

- The Federal Funding Accountability and Transparency Act.
- Federal notices of award and award proposals.
- Federal agency circulars, handbooks, and guidance.
- Department policies and procedures.

Project Information

Audit fieldwork was conducted from July 2012 through December 2012. Except as discussed above in the Independent Auditor’s Report, we conducted our audit of compliance in accordance with auditing standards generally accepted in the United State of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Office of Management and Budget (OMB) Circular A-133, *Audits of State, Local Governments, and Non-Profit Organizations*.

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