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State Auditor

A Report on

**State of Texas Compliance with
Federal Requirements for the
Highway Planning and
Construction Cluster at the
Department of Transportation for
the Fiscal Year Ended
August 31, 2013**

February 2014
Report No. 14-024



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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 in fiscal year 2013.

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 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 \$73,222,469 in federal funds during fiscal year 2013 and (2) other selected federal programs.

From September 1, 2012, through August 31, 2013, the State of Texas expended \$48.6 billion in federal funds. The State Auditor's Office audited compliance with requirements for the Highway Planning and Construction Cluster at the Department of Transportation (Department), which spent \$2.6 billion in funds from that cluster during fiscal year 2013.

The Highway Planning and Construction Cluster

The Highway Planning and Construction Cluster of federal programs, which includes programs administered by the Federal Highway Administration, provides funds to assist states in the planning and development of an integrated, interconnected transportation system and for the replacement of public roads and bridges.

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.

Although auditors identified findings at the Department, it is important to note that no finding was material to the federal cluster audited. While that 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 (see text box for definitions of finding classifications).

The Department did not always comply with requirements for the Highway Planning and Construction Cluster, including requirements related to the Davis-Bacon Act, reporting, subrecipient monitoring, project extensions, quality assurance, and utilities. 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 2013. 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 submit required Federal Funding and Accountability Transparency Act reports because it did not have an effective process to identify federal subawards that were subject to the reporting requirements.

The Department did not always communicate required award information to subrecipients. The Department also did not consistently (1) obtain a Data Universal Numbering System (DUNS) number from each subrecipient prior to making a subaward, (2) ensure that subrecipients complied with Central Contractor Registration (CCR) system requirements, and (3) identify required American Recovery and Reinvestment Act information to each subrecipient at the time of disbursement of funds. The Department also did not consistently obtain the required subrecipient OMB Circular A-133 Single Audit reports or follow up on identified audit findings to issue a management decision.

The Department was not able to provide documentation that it had obtained approval from the Federal Highway Administration for project extensions that affected project costs or the amount of liquidated damages it assessed.

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

The Department was not always able to provide evidence of a utility agreement or support for the utility relocation work performed on construction projects.

The Department did not always maintain appropriate segregation of duties for its key information technology systems related to the Highway Planning and Construction Cluster.

During fiscal year 2013, the Department did not have an edit check in SiteManager that required an individual other than the inspector to review and authorize *Daily Work Reports*. The Department asserted that it added an edit check in May 2013; however, until September 2013, that edit check was not recording the authorizer's user id. The Department uses *Daily Work Reports* to document the day-to-day operations of construction on site and to calculate monthly pay estimates to contractors.

The Department did not appropriately restrict access to its Right of Way Information System (ROWIS). As a result, one programmer had access to both authorize transactions in ROWIS and submit approved transactions to the Department's accounting system for payment (in fiscal year 2013, however, that programmer did not approve any transactions within ROWIS or submit any transactions to the accounting system for payment).

The Department did not appropriately restrict access to the Federal Project Authorization and Agreement (FPAA) system. As a result, programmers had access to make code changes and migrate those code changes to the production environment.

Auditors followed up on 10 findings from prior fiscal years for the Highway Planning and Construction Cluster, the Airport Improvement Program, and the Formula Grants for Other Than Urbanized Areas Program.

For the Highway Planning and Construction Cluster, the Department implemented corrective action to resolve one finding from the prior fiscal year. The State Auditor's Office reissued six findings from prior fiscal years as fiscal year 2013 findings in this report.

For the Airport Improvement Program, the Department fully implemented recommendations for one finding from the prior fiscal year. The Department also

partially implemented recommendations for two findings from the prior fiscal year related to 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 the Department's key information technology systems related to the Highway Planning and Construction Cluster. As discussed above, auditors identified issues at the Department involving segregation of duties for SiteManager, FPAA, and ROWIS.

Summary of Objectives, Scope, and Methodology

With respect to the Highway Planning and Construction Cluster, the objectives of the audit were to (1) obtain an understanding of internal controls over compliance, assess the control risk of noncompliance, and perform tests of those controls unless 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 the Highway Planning and Construction Cluster.

The audit scope covered federal funds that the State spent for the Highway Planning and Construction Cluster at the Department from September 1, 2012, through August 31, 2013. The audit work included control and compliance tests at the Department.

The audit methodology included developing an understanding of controls over each compliance area that was direct and material to the Highway Planning and Construction Cluster. 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, 2013. Auditors conducted tests of compliance and of controls identified for each direct and material compliance area and performed analytical procedures when appropriate. Auditors assessed the reliability of data the Department provided and determined that the data was sufficiently 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 identified above.

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Independent Auditor's Report

*State of Texas Compliance with
Federal Requirements for the
Highway Planning and Construction
Cluster at the Department of
Transportation for the Fiscal Year
Ended August 31, 2013*

Report on Compliance for the Highway Planning and Construction Cluster, and Report on
Internal Control Over Compliance Required by OMB Circular A-133

Independent Auditor's Report

The Honorable Rick Perry, Governor
The Honorable David Dewhurst, Lieutenant Governor
The Honorable Joe Straus, Speaker of the House of Representatives
and
Members of the Legislature, State of Texas

Report on Compliance for the Highway Planning and Construction Cluster

We have audited the State of Texas's (State) compliance with the types of compliance requirements described in the *OMB Circular A-133 Compliance Supplement* that could have a direct and material effect on the Highway Planning and Construction Cluster for the year ended August 31, 2013. The State's major federal program at the Department of Transportation is identified in the summary of auditor's results section of the accompanying schedule of findings and questioned costs.

Management's Responsibility

Management is responsible for compliance with the requirements of laws, regulations, contracts, and grants applicable to its federal programs.

Auditor's Responsibility

Our responsibility is to express an opinion on the State's compliance for the Highway Planning and Construction Cluster based on our audit of the types of compliance requirements referred to above. Except as discussed in the following paragraph, 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 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 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.

This audit was conducted as part of the State of Texas Statewide Single Audit for the year ended August 31, 2013. As such, the Highway Planning and Construction Cluster was selected as a major program based on the State of Texas as a whole for the year ended August 31, 2013. 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.

We believe that our audit provides a reasonable basis for our opinion on compliance for the Highway Planning and Construction Cluster. However, our audit does not provide a legal determination of the State’s compliance.

Opinion on the Highway Planning and Construction Cluster

In our opinion, the State complied, in all material respects, with the types of compliance requirements referred to above that could have a direct and material effect on the Highway Planning and Construction Cluster for the year ended August 31, 2013.

Other Matters

The results of our auditing procedures disclosed instances of noncompliance, which are required to be reported in accordance with OMB Circular A-133 and which are described in the accompanying schedule of findings and questioned costs as items:

Agency	Cluster	Compliance Requirement	Finding Number
Department of Transportation	CFDA 20.205 - Highway Planning and Construction Cluster	Davis-Bacon Act	2013-156
	CFDA 20.205 - Highway Planning and Construction Cluster - ARRA	Procurement and Suspension and Debarment	2013-158
		Subrecipient Monitoring	
		Special Tests and Provisions - R3 - Subrecipient Monitoring	
	CFDA 20.205 Highway Planning and Construction Cluster	Reporting	2013-159
	CFDA 20.205 - Highway Planning and Construction Cluster - ARRA	Special Tests and Provisions - Project Extensions	2013-160
	CFDA 20.205 Highway Planning and Construction Cluster	Special Tests and Provisions - Quality Assurance Program	2013-161
CFDA 20.205 - Highway Planning and Construction Cluster - ARRA	Special Tests and Provisions - Utilities		
CFDA 20.205 Highway Planning and Construction Cluster		2013-162	

Our opinion on the Highway Planning and Construction Cluster is not modified with respect to these matters.

The State’s response to the noncompliance findings identified in our audit is described in the accompanying schedule of findings and questioned costs. The State’s response was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

Report on Internal Control Over Compliance

Management of the State is responsible for establishing and maintaining effective internal control over compliance with the types of compliance requirements referred to above. In planning and performing our audit of compliance, we considered the State's internal control over compliance with the types of requirements that could have a direct and material effect on the Highway Planning and Construction Cluster to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on compliance for the Highway Planning and Construction Cluster 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. *A significant deficiency in internal control over compliance* is a deficiency, or 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.

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 internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, we consider the following deficiencies in internal control over compliance, as described in the accompanying schedule of findings and questioned costs, to be significant deficiencies:

Agency	Cluster	Compliance Requirement	Finding Number
Department of Transportation	CFDA 20.205 - Highway Planning and Construction Cluster	Activities Allowed or Unallowed	2013-155
		Allowable Costs/Cost Principles	
	CFDA 20.205 - Highway Planning and Construction Cluster - ARRA	Real Property Acquisition and Relocation Assistance	
		Davis-Bacon Act	2013-156
		Period of Availability of Federal Funds	2013-157
	Procurement and Suspension and Debarment	2013-158	
	Subrecipient Monitoring		
	Special Tests and Provisions - R3 - Subrecipient Monitoring		

Agency	Cluster	Compliance Requirement	Finding Number
	CFDA 20.205 Highway Planning and Construction Cluster	Reporting	2013-159
	CFDA 20.205 Highway Planning and Construction Cluster - ARRA	Special Tests and Provisions - Project Extensions	2013-160
	CFDA 20.205 Highway Planning and Construction Cluster	Special Tests and Provisions - Quality Assurance Program	2013-161
	CFDA 20.205 Highway Planning and Construction Cluster - ARRA		
	CFDA 20.205 Highway Planning and Construction Cluster	Special Tests and Provisions - Utilities	2013-162

The State's response to the internal control over compliance findings identified in our audit is described in the accompanying schedule of findings and questioned costs. The State's response was not subjected to the auditing procedures applied in the audit of compliance and, accordingly, we express no opinion on the response.

The purpose of this report on internal control over compliance is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this report is not suitable for any other purposes.

Schedule of Federal Program Expenditures

The accompanying Schedule of Federal Program Expenditures for the Highway Planning and Construction Cluster of the State for the year ended August 31, 2013, 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, 2013*.

John Keel, CPA
State Auditor

February 21, 2014

**Schedule of Federal Program Expenditures for
The Highway Planning and Construction Cluster
For the Year Ended August 31, 2013**

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	\$246,394,767	\$2,216,184,020	\$2,462,578,787
American Recovery and Reinvestment Act	40,979,472	119,625,910	160,605,382
Totals for Highway Planning and Construction Cluster	\$287,374,239	\$2,335,809,930	\$2,623,184,169
<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, 2013</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 \$20,634,933 for the year ended August 31, 2013.</p>			

Schedule of Findings and Questioned Costs

*State of Texas Compliance with
Federal Requirements for the
Highway Planning and Construction
Cluster at the Department of
Transportation for the Fiscal Year
Ended August 31, 2013*

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, 2013*.

Federal Awards

Internal Control over major programs:

Material weakness(es) identified? No

Significant deficiency(ies) identified? Yes

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

Unmodified

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

Dollar threshold used to distinguish between type A and type B programs: \$73,222,469

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, 2013*.

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. 2013-155

Activities Allowed or Unallowed

Allowable Costs/Cost Principles

Real Property Acquisition and Relocation Assistance

(Prior Audit Issue 13-133)

Highway Planning and Construction Cluster

Highway Planning and Construction Cluster - ARRA

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

SiteManager Application

The Department of Transportation (Department) uses *Daily Work Reports* to document the day-to-day operations of construction on site. The Department’s SiteManager application is the system of record for those reports, which the Department uses to calculate and generate monthly pay estimates to contractors. According to the Department’s *Estimate Manual*, someone other than the inspector should review *Daily Work Reports* for accuracy and authorize those reports.

During fiscal year 2013, the Department did not have an edit check in SiteManager that required someone other than the inspector to review and authorize *Daily Work Reports*. The Department asserted that it added that edit check to SiteManager in May 2013. However, SiteManager did not record the authorizer’s user ID until the Department implemented an additional change to SiteManager in September 2013. Therefore, for fiscal year 2013, auditors were unable to verify whether someone other than the inspector reviewed and authorized *Daily Work Reports*. A lack of segregation in duties for the *Daily Work Report* approval process could result in inaccurate monthly estimates and inaccurate payments to contractors.

Right of Way Information System

The 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 2013, the programmer did not approve any transactions within ROWIS or submit any transactions to the accounting system for payment.

DEPARTMENT OF TRANSPORTATION

The issues discussed above affected all awards for the Highway Planning and Construction Cluster on the State's Schedule of Expenditures of Federal Awards.

Recommendation:

The Department should:

- Update SiteManager to require segregation of duties within the process for inspecting and authorizing Daily Work Reports.
- 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:

CST Response:

The May 10, 2013 SiteManager release included an application control to disallow the DWR creator from authorizing his/her own DWR. The authorizer user ID is captured as of the September 13, 2013 SiteManager release. The application has been tested, and controls are working as designed.

Implementation Date: Action Implemented – May/September 2013

Responsible Person: John F. Obr

ROWIS Response:

In response to the Department's inappropriate access level in ROWIS, we concur with the audit recommendation of modifying programmer access to ROWIS in order that the same individual cannot both approve and submit transactions to the accounting system for payment. We have made the adjustment in ROWIS. Effective immediately, an individual cannot approve transactions that he/she submitted to the accounting system for payment.

Implementation Date: Action Implemented – January 2014

Responsible Person: James Huang

Reference No. 2013-156

Davis-Bacon Act

(Prior Audit Issues 13-134, 12-142, 11-142, and 10-82)

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

Award years – 2009, 2010, 2011, and 2012

Award numbers – HP 2009 (919), IM 0204 (280), STP 2010(558)ES (ARRA), STP 2013(089), HP 2009(753), STP 2012(064), and STP 2009(485)ES (ARRA)

Type of finding – Significant Deficiency and Non-Compliance

When required by the Davis-Bacon Act, the U.S. Department of Labor's governmentwide 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 U.S. Department of Labor (Title 40, United States Code,

Questioned Cost: \$ 0

U.S. Department of
Transportation – Federal
Highway Administration

Sections 3141-3142).

Non-federal entities shall include in their construction contracts subject to the Davis-Bacon Act a requirement that the contractor or subcontractor comply with the requirements of the Davis-Bacon Act and U.S. Department of Labor regulations (Title 29, Code of Regulations (CFR), Part 5, Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction). That includes a requirement for the contractor or subcontractor to submit to the non-federal entity on a weekly basis, 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). That reporting can be done using Optional Form WH-347, which includes the required statement of compliance (U.S. Office of Management and Budget No. 1215-0149).

For 7 (12 percent) of 60 projects tested, the Department of Transportation (Department) did not ensure that contractors submitted all certified payrolls for fiscal year 2013. Specifically, for those 7 projects the Department could not provide 42 certified payrolls for the period tested. The total federal amount expended on those 7 projects, including payroll and non-payroll costs, was \$198,234,854.

The Department did not have a standardized process for tracking certified payrolls that contractors submitted. Each area office within each Department district office determined its own method for ensuring that contractors submitted certified payrolls. Not having a standardized process increases the risk that the Department may not identify the contractors that have not submitted weekly certified payrolls. When the Department does not collect certified payrolls from its contractors, it cannot ensure that contractor and subcontractor employees are properly classified and being paid prevailing wage rates in accordance with the Davis-Bacon Act.

Recommendation:

The Department should enhance its monitoring to ensure that its contractors submit all required certified payrolls.

Management Response and Corrective Action Plan:

Management concurs with the recommendation that the Department should enhance its monitoring to ensure that its contractors submit all required certified payrolls. Requiring all prime contractors and sub-contractors to utilize our EPRS program for submitting payrolls would resolve the issue, but our external partners indicated that there is a significant impact to the contracting community. The largest concern is the investment for technology/programming to produce the type of file needed to import into EPRS. There is no off-the-shelf product that interfaces with EPRS, nor is there IT support for the interface. This issue is compounded by the fact that prime contractors and sub-contractors do not solely contract with the Department.

The Department's Bryan District began a pilot program in the fall of 2013 requiring 100% payroll submission in EPRS on all projects scheduled to begin January 2014, and CST is monitoring the results. CST will continue to offer direction to the district offices and guidance/support to ensure that all certified payrolls are received on TxDOT projects.

Implementation Date: Ongoing

Responsible Person: John F. Obr

DEPARTMENT OF TRANSPORTATION

Reference No. 2013-157

Period of Availability of Federal Funds

(Prior Audit Issues 13-135, 12-143, 11-143, and 10-81)

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

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 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 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.

In fiscal year 2013, the Department did not make any changes to the FPAA system.

The issue discussed above affected all awards for the Highway Planning and Construction Cluster on the State’s Schedule of Expenditures of Federal Awards.

Recommendation:

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

Management Response and Corrective Action Plan:

TxDOT IT Security will review requests for access to the FPAA production environment which are submitted via a TxDOTNow ticket routed through the IT security help desk. These requests will be cross referenced so that no individual programmers will have write access to the production environment. Neither of the two individuals identified in the audit have write access to the production environment as of January 29, 2014.

Implementation Date: Action Implemented – January 2014

Responsible Person: Margaret Dixon

DEPARTMENT OF TRANSPORTATION

Reference No. 2013-158

Procurement and Suspension and Debarment

Subrecipient Monitoring

Special Tests and Provisions - R3 - Subrecipient Monitoring

(Prior Audit Issues 13-136, 12-144, 11-144, 10-84, and 09-80)

Highway Planning and Construction Cluster

Highway Planning and Construction Cluster – ARRA

Award years – See below

Award numbers – See below

Type of finding – Significant Deficiency and Non-Compliance

The Department of Transportation (Department) is required by U.S. Office of Management and Budget (OMB) Circular A-133, Section .400, to monitor the provisions of contracts or grant agreements. Additionally, 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 (CFR), 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 for research and development (OMB Circular A-133, Section .400(d)).

Additionally, 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 and its principals are not suspended or debarred or otherwise excluded from federal contracts. That 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. Covered transactions include all nonprocurement transactions irrespective of award amount (Title 2, CFR, Section 1200).

For American Recovery and Reinvestment Act (Recovery Act) subawards, the Department must identify to subrecipients the requirement to register in the Central Contractor Registration (CCR) system, including obtaining a Data Universal Numbering System (DUNS) number, and maintain the currency of that information (Section 1512(h) of Recovery Act and Title 2, CFR, Section 176.50(c)). The Department also must separately identify to each subrecipient and document at the time of disbursement of funds, the federal award number, the CFDA number, and the amount of Recovery Act funds (Title 2, CFR, Section 176.210).

Beginning October 1, 2010, an agency may not make a non-Recovery Act award to an entity until it has obtained a DUNS number for that entity (Title 2, CFR, Sections 25.105 and 25.205).

The Department did not consistently include all required elements in its subaward agreements and did not consistently obtain subrecipient DUNS numbers or assess subrecipient compliance with CCR system requirements. Specifically:

- For 9 (15 percent) of 58 subaward agreements tested, the agreements did not contain all required elements, including the CFDA title and number, award name and number, name of awarding federal agency, or whether the award was for research and development. The Department has subaward agreement templates that identify federal award information and applicable compliance requirements; however, it did not consistently use the current templates when it made new subawards.
- For 4 (7 percent) of 58 subaward agreements tested, the Department could not provide documentation that it verified that the subrecipients were not suspended or debarred from participation in federal contracts. Additionally, for all 58 subaward agreements tested, the Department did not ensure that the subrecipients'

DEPARTMENT OF TRANSPORTATION

principals were not suspended or debarred from participation in federal contracts and did not pass that requirement on to its subrecipients as required. The suspension and debarment clause in the Department's subaward agreement templates did not cover principals of subrecipients as required.

- For all 6 Recovery Act subaward agreements tested, the Department did not assess subrecipient compliance with CCR system requirements. The Department did not have a process to verify subrecipient registration with the CCR system prior to making a subaward with Recovery Act funds.
- For 3 (50 percent) of 6 Recovery Act projects tested, the Department did not separately identify to each subrecipient, and document at the time of disbursement of funds, the federal award number, the CFDA number, and the amount of Recovery Act funds. Those errors occurred because the Department's automated process to notify subrecipients does not make those notifications after the project completion date recorded in the Department's system.
- The Department did not obtain a DUNS number from its subrecipients prior to issuing the subaward for 24 (83 percent) of 29 subaward agreements tested for which that requirement applied. The Department has not established a process to obtain a DUNS number from each subrecipient prior to making a non-Recovery Act subaward.

Inadequate identification of federal awards to subrecipients could lead to inaccurate reporting of federal funding on a subrecipient's schedule of expenditures of federal awards. Not verifying that subrecipients or their principals are not suspended or debarred from federal contracts increases the risk that the Department could enter into awards with ineligible parties. Not obtaining DUNS numbers or not verifying that subrecipients are registered with the CCR system prior to making a subaward could lead to inaccurate federal reporting.

During-the-award Monitoring

Federal aid contracts shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting the criteria of responsibility as may have been established by the state transportation department in accordance with Title 23, CFR, Section 635.110. Award shall be within the time established by the state transportation department and subject to the prior concurrence of the U.S. Department of Transportation's division administrator (Title 23, CFR, Section 635.114).

The Department did not consistently conduct sufficient during-the-award monitoring of its subrecipients. **Specifically, for 1 (2 percent) of 44 projects tested that were subject to procurement requirements, the Department was unable to provide evidence that it approved the subrecipient's procurement policies and contractor selection.** The project was a pass-through, toll-financed project for which the agreement did not require the Department to provide formal letters of concurrence on the subrecipient's contractor selection. By not providing a formal letter of concurrence, the Department is unable to ensure that the federal-aid contract was awarded to the lowest responsive, responsible bidder.

Audits and Sanctions

The Department must ensure that each subrecipient expending \$500,000 or more in federal awards during the subrecipient's fiscal year obtain an OMB Circular A-133 Single Audit and provide a copy of the audit report to the Department within nine months of the end of the subrecipient's fiscal year end (OMB Circular A-133, Sections 320 and 400). In addition, the Department must issue a management decision on audit findings within six months after receipt of the subrecipient's audit report and follow up to ensure that the subrecipient takes timely and appropriate corrective action on all audit findings (OMB Circular A-133, Section 400). In cases of continued inability or unwillingness of a subrecipient to obtain the required audits, the Department shall take appropriate action using sanctions (OMB Circular A-133, Section 225).

The Department did not consistently obtain the required subrecipient Single Audit reports or follow up on identified audit findings to issue a management decision. Specifically:

- For 4 (7 percent) of 58 subawards tested for which the subrecipient was required to obtain a Single Audit, the Department did not provide a Single Audit report or a certification from the subrecipient that an audit was not required. Three of those subawards were with the same subrecipient.

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- For 3 (75 percent) of 4 subawards tested with Single Audit findings, the Department did not issue a management decision and ensure that the subrecipient took appropriate and timely corrective action on audit findings. All three of those subawards were with the same subrecipient.

When the Department does not ensure that required audits are performed and does not follow up on deficiencies noted in Single Audit reports, the Department increases the risk that deficiencies could go unaddressed.

The issues discussed above affected the following awards:

<u>Award Number</u>	<u>Award Year</u>	<u>Award Number</u>	<u>Award Year</u>	<u>Award Number</u>	<u>Award Year</u>
50-13XF0004	2012	PTF 1102(055)	2011	STP 2010(368)MM	2010
50-13XF0009	2012	PTF 2008(311)	2008	STP 2010(840)MM	2010
CBI 2009(328)	2008	PTF 2008(413)	2008	STP 2011(223)TE	2012
CM 2007(555)	2007	PTF 2008(460)	2008	STP 2011(233)TE	2011
CM 2009(240)	2008	PTF 2008(533)	2013	STP 2011(381)MM	2010
CM 2009(242)	2008	PTF 2012(125)	2012	STP 2011(390)MM	2010
CM 2009(243)	2009	STP 1102(192)SRS	2012	STP 2011(446)MM	2010
CM 2009(336)	2008	STP 1102(200)MM	2011	STP 2011(612)SRS	2012
CM 2011(288)	2010	STP 1102(261)MM	2011	STP 2011(694)SRS	2012
CM 2012(132)	2011	STP 2002(124)TE	2008	STP 2011(925)SRS	2012
DMO 2004(424)ES (ARRA)	2012	STP 2002(125)TE	2010	STP 2011(929)SRS	2011
DMO 2007(208)	2012	STP 2002(128)ESTE (ARRA)	2010	STP 2012(244)SRS	2011
HP 1102(121)	2012	STP 2002(184)ESTE (ARRA)	2009	STP 2012(249)SRS	2011
HP 2006(867)	2006	STP 2003(559)ES (ARRA)	2009	STP 2012(286)SRS	2011
HP 2007(914)	2007	STP 2005(145)MM	2009	STP 2012(436)	2012
HP 2010(626)	2010	STP 2007(895)MM	2010	STP 97(253)ESTE (ARRA)	2010
HP 2011(783)	2011	STP 2008(560)MM	2010	STP2008(470)MM	2008
NH 2012(599)	2012	STP 2008(880)SRS	2008		
PL 0011(48)	2012	STP 2008(893)MM	2008		
PLD 1102(120)	2011	STP 2009(501)ES (ARRA)	2010		

Recommendations:

The Department should:

- Communicate all required award information to subrecipients.
- Verify that its subrecipients and their principals are not suspended or debarred from participation in federal contracts.

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- Develop and implement procedures to obtain DUNS numbers from each subrecipient prior to making a subaward.
- Develop and implement procedures to verify that a Recovery Act subrecipient is registered with the CCR system prior to making a subaward.
- Communicate required Recovery Act award information at the time of disbursement of funds.
- Consistently monitor subrecipients for compliance with procurement requirements.
- Obtain and review all required Single Audit reports from its subrecipients and forward audit findings to the appropriate Department divisions for management decisions.

Management Response and Corrective Action Plan:

We are continuing our ongoing efforts to identify and update funding agreements that were executed four or more years ago without the current required information and for which federal funding is still being utilized. In addition, we have updated all applicable contract templates to refer specifically to principals.

Implementation Date: Ongoing

Responsible Person: Janice Mullenix

All FIN_FPAA requests for local let project, right of way (ROW), etc. that involve a local entity must be accompanied by the Data Universal Numbering System (DUNS). Under a new process implemented by CST and FIN, it is the responsibility of the FIN Letting Management Branch to get the data from the District or ROW staff submitting the request.

Implementation Date: January 2014

Responsible Persons: Alison McMillan and John Stott

The last ARRA project was let in December 2012, and no ARRA subawards have been made since ARRA ended.

Implementation Date: January 2013

Responsible Person: John F. Obr

For the handful of ARRA projects not yet complete, CST will continue to send letters communicating the required information.

Implementation Date: January 2014

Responsible Person: John F. Obr

Older versions of the Pass Through Finance project funding agreements did not require TxDOT pre-approval of the bidding process. In 2009, the funding agreements were revised to include "and bidding process" in the following sentence in paragraph 10.A of new funding agreements, "The project and bidding process must be authorized by the Department and Federal Highway Administration before it is advertised for letting." The current LGPP, Summary of Best Practices, and project development checklists include the requirement for TxDOT pre-approval of the LG bidding process prior to advertising for letting. This requirement is also presented in the LGPP training class.

Implementation Date: Ongoing

Responsible Person: David M.Y. Millikan

We agree with this finding. External Audit & Advisory Services management and staff identified these issues while ensuring that the Single Audit report files were organized and accurately tracked in a new database.

Audit staff will work with Finance and other Department staff to obtain data identifying all subrecipients of Department funds and, therefore, know which entities should be submitting Single Audit reports or notifications that

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Single Audits were not required. In addition, tracking of reports with findings is being explicitly tracked in the new database to facilitate the identification of such reports and the status of receiving updates on the status of implementation. These steps should ensure that the issues identified do not occur in the future.

Implementation Date: August 2014

Responsible Person: Tony Rose

Reference No. 2013-159

Reporting

(Prior Audit Issues 13-137 and 12-145)

Highway Planning and Construction Cluster

Award years – 2010 and 2011

Award numbers – STP 2011(226)TE, DMO 2012(224), STP 2011(229)TE, PTF 2010(544), STP 2012(249)SRS, and STP 2011(674)SRS

Type of finding – Significant Deficiency and Non-Compliance

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 first-tier subawards of \$25,000 or more. Prime recipients are to report subaward information no later than the end of the month following the month in which the obligation was made (Title 2, Code of Federal Regulations, Chapter 170).

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

For 6 (21 percent) of the 29 subawards subject to Transparency Act reporting requirements tested, the Department of Transportation (Department) did not submit the required reports. Those errors occurred because the Department’s process to identify subawards that are subject to Transparency Act reporting requirements was not sufficient to identify the subawards. Not submitting all required Transparency Act reports decreases the reliability and availability of information for the awarding agency and other users of that information.

Recommendation:

The Department should develop and implement a process to ensure that it identifies all of its subawards that are subject to Transparency Act reporting requirements and that it submits all required Transparency Act reports.

Management Response and Corrective Action Plan:

All FIN_FPAA requests for local let project, right of way (ROW), etc. that involve a local entity must be accompanied by the Data Universal Numbering System (DUNS). Under a new process implemented by CST and FIN, it is the responsibility of the FIN Letting Management Branch to get the data from the District or ROW staff submitting the request. An assigned person will gather the list of projects with DUNS each month from our local administered project, FIN_FPAA-requests, and monthly lettings and send it to CST.

CST will compare the information received from FIN/Letting Management with the data from www.USASpending.gov. Any award that needs to be reported not found in the system will be reported to FHWA. Once the award is uploaded to the system for reporting, CST will report the subaward in the FFATA Subaward Reporting System.

Implementation Date: January 2014

Responsible Persons: John F. Obr, Alison McMillan, and John Stott

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Reference No. 2013-160

Special Tests and Provisions – Project Extensions

Highway Planning and Construction Cluster - ARRA

Award year – 2009

Award numbers – STP 2009(104)ES and DMO 2007(383)ESTE

Type of finding – Significant Deficiency and Non-Compliance

Approval from the Federal Highway Administration (FHWA) is required for project extensions affecting project costs or the amount of liquidated damages, except for projects administered by the state department of transportation as identified by Title 23, United States Code, Section 106(c), which allow the state department of transportation to assume the responsibilities for design, plans, specifications, estimates, contract awards, and inspection of progress (Title 23, Code of Federal Regulations, Section 635.121).

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

The Department of Transportation (Department) uses change orders within SiteManager, its construction administration system, to obtain FHWA approval for a project extension. However, for 2 (14 percent) of 14 major change orders tested, the Department was not able to provide documentation that it had obtained approval from the FHWA for the project extension that affected project costs or the amount of liquidated damages assessed. Coordination with FHWA is essential for the review and approval of major change orders because the changes may affect the scope of work, project schedule, or project eligibility for federal aid.

Recommendation:

The Department should maintain documentation of FHWA approval for all project extensions that require approval.

Management Response and Corrective Action Plan:

Management concurs with the recommendation. FHWA has until it closes out its project records with TxDOT to approve change orders, all of which are now approved in SiteManager (no hard copies required), which facilitates records management.

Implementation Date: Implemented – January 2013

Responsible Person: John F. Obr

Reference No. 2013-161

Special Tests and Provisions – Quality Assurance Program

(Prior Audit Issues 13-138, 12-146, 11-146, 10-87, and 09-81)

Highway Planning and Construction Cluster

Highway Planning and Construction Cluster - ARRA

Award years – See below

Award numbers – See below

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

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

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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 of Transportation (Department) did not always comply with its approved quality assurance program. Specifically:

- For 2 (1 percent) of 235 quality assurance samples reviewed, for 2 (3 percent) of 60 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*. Not performing required quality assurance tests increases the risk that the Department may not detect project deficiencies that could affect safety and increase costs.
- For 30 (13 percent) of 226 quality assurance samples tested, auditors could not determine whether the tests were performed by an individual who was certified to perform those tests.

The Department uses SiteManager as its system of record for quality assurance testing on its highway construction projects. However, SiteManager does not have edits checks to prevent testers from reviewing and approving their own tests. Specifically:

- For 14 (6 percent) of the 223 quality assurance samples reviewed, the tester and reviewer recorded in SiteManager were the same individual.
- For 17 (8 percent) of the 223 quality assurance samples reviewed, the Department did not document the name of the individual who was the tester in SiteManager. 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.

SiteManager does not have edit checks 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 on the same quality assurance sample. 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.

The issues discussed above affected the following awards:

<u>Award Number</u>	<u>Award Year</u>	<u>Award Number</u>	<u>Award Year</u>
STP 2012(390)MM	2012	STP 2009(485)ES (ARRA)	2009
NH 2013(043)	2012	STP 2009(531)ES (ARRA)	2010
BR 2004(709)	2011	BR 2008(107)	2008
STP 2011(798)	2011	BR 2002 (923)	2009
BR 2010(983)	2010	STP 1102(412)	2011
BR 1102(517)	2010	STP 2013(018)	2012
STP 2009(880)MM	2009	BR 2011(019)	2012
NH 2012(197)	2011	STP 2012(035)	2011
IM 0355(150)	2012	STP 1102(408)	2011
NH 2012(351)	2012	STP 2010(089)ESTE (ARRA)	2009
STP 2010(897)MM	2010	STP 2012(060)	2011
STP 2012(064)	2011	CM 2005(79)	2010

Recommendations:

The Department should:

- Perform quality assurance sampling for all required tests as documented on its sampling checklist.
- Implement controls to ensure that only qualified personnel perform quality assurance sample testing.
- Implement appropriate segregation of duties among the personnel who conduct quality assurance sample testing and personnel who review that testing.
- Document the names of the testers for quality assurance sample testing.

Management Response and Corrective Action Plan:

For both samples cited, we confirmed the finding. We will consult with District staff to determine reasons for test deficiencies and to emphasize importance of performing all required tests.

Implementation Date: February 2014

Responsible Person: John F. Obr

The September 13, 2013, SiteManager release included an application control that requires the "Tested By" field to be populated with a certified tester. This control prevents authorization of samples without a certified tester recorded in the test template. The release also included application controls to segregate duties for materials QA testing. Additionally the September 13, 2013, SiteManager release required a valid tester name to be part of the acceptance and authorization. The application has been tested and controls are working as designed.

Implementation Date: September 2013

Responsible Person: John F. Obr

Reference No. 2013-162

Special Tests and Provisions – Utilities

Highway Planning and Construction Cluster

Award year – 2011

Award number – NH 2011(937)

Type of finding – Significant Deficiency and Non-Compliance

Utility agreements, permits, and supporting documentation define the conditions and provisions for accomplishing and reimbursing utility companies for utility relocation work that was required due to a federal aid highway program funded project. The utility agreement shall specify the terms and amounts of any contribution or repayments made or to be made by the utility and shall be supported by plans, specifications when required, and itemized cost estimates of the work agreed upon. The utility agreement must be approved by the Federal Highway Administration (FHWA) prior to the utility incurring any costs or conducting any work that would be eligible for reimbursement (Title 23, Code of Federal Regulations, Section 645.113).

Questioned Cost: \$ 13,700 U.S. Department of Transportation - Federal Highway Administration
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For 1 (2 percent) of 41 utility relocations tested, the Department of Transportation (Department) was unable to provide evidence of a utility agreement or support for the utility relocation work performed on the construction project. As a result, auditors were unable to determine (1) whether the Department coordinated with the appropriate utilities prior to FHWA construction authorization, (2) whether the costs associated with the utility

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relocation work were allowable, (3) and whether the utility relocation work was performed in accordance with an approved agreement. Therefore, auditors considered that \$13,700 utility relocation to be a questioned cost. The Department asserted that a utility agreement existed, but it was unable to locate that agreement in its district office that supervised the utility work. By not properly maintaining utility agreements the Department may not adequately monitor utility relocation work to ensure compliance with federal requirements.

Recommendation:

The Department should maintain utility agreements and supporting documentation for all utility relocation work.

Management Response and Corrective Action Plan:

The original executed agreements for utility accommodations are maintained in the headquarters Right of Way office of record. In the cited case, the district failed to notify the Right of Way Division and forward the original agreement documents. In September of 2013, three additional utility specialists were hired to assist and train district personnel, monitor, and report the status of utility accommodations on transportation projects. The additional oversight and improved processes will assure all agreements are filed and maintained for record.

Implementation Date: August 2014

Responsible Person: Jesse Cooper

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 2012 Schedule of Findings and Questioned Costs.
- Each finding in the 2012 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, 2013) has been prepared to address these responsibilities.

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)).

Initial Year Written: 2012
Status: Partially Implemented

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.

Corrective Action:

This finding was reissued as current year reference number: 2013-155.

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).

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 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.

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: 2013-156.

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)).

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 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.

Corrective Action:

This finding was reissued as current year reference number: 2013-157.

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

Initial Year Written: 2008
Status: Partially Implemented

U.S. Department of
Transportation – Federal
Highway Administration

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)).

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.

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.

Corrective Action:

This finding was reissued as current year reference number: 2013-158.

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).

Initial Year Written: 2011
Status: Partially Implemented

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.

Corrective Action:

This finding was reissued as current year reference number: 2013-159.

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

<p>Initial Year Written: 2008 Status: Partially Implemented</p> <p>U.S. Department of Transportation - Federal Highway Administration</p>
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qualified laboratories, and qualified sampling and testing personnel must be used in the acceptance decision (Title 23, CFR, Section 637.209).

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.

Corrective Action:

This finding was reissued as current year reference number: 2013-161.

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).

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).

Initial Year Written: 2012
Status: Implemented
U.S. Department of Transportation- Federal Highway Administration

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.

Corrective Action:

Corrective action was taken.

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).

Initial Year Written: 2011 Status: 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 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.

Corrective Action:

Corrective action was taken.

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).

Initial Year Written: 2009 Status: Partially Implemented 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.

Corrective Action:

Corrective action was taken.

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:

- 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 2012:

In general, we concur with the finding.

DEPARTMENT OF TRANSPORTATION

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.

Management Response and Corrective Action Plan 2013:

These findings and related monitoring procedures were discussed in staff training sessions on 1/15/13 and 1/17/13. In addition, a new tool for monitoring compliance with Davis-Bacon Act was introduced in July 2013, and implemented with the first quarter monitoring activities of FY 14. Therefore, we have taken corrective action to address the finding. It is our understanding that insufficient time has passed to test the effectiveness of the new monitoring tool, and the state auditors will return at a future date to conduct testing.

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).

Initial Year Written: 2009 Status: Partially Implemented 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.

DEPARTMENT OF TRANSPORTATION

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.

Corrective Action:

Corrective action was taken.

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.

Recommendation:

The Department should report actual non-federal share amounts on its SF-425 reports.

Management Response and Corrective Action Plan 2012:

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.

Management Response and Corrective Action Plan 2013:

On August 15, 2013 a meeting was held with individuals present from the following organizations, Texas Department of Transportation (TxDOT), Federal Transit Administration (FTA) and the State Auditor's Office (SAO), to discuss the conflicting guidance issued by FTA and direction from SAO on completing the Federal Financial Report (FFR) formerly called the SF 425. All parties agreed the direction from SAO was the correct way to complete the FFR and FTA agreed to place that direction in a letter to TxDOT. On October 25, 2013, TxDOT received a letter from FTA concurring with the direction provided by SAO on how to correctly complete the FFR. Implementation to proceed as directed by SAO and FTA was immediate. A training session was held in October with our financial and field staff to emphasize accurate reporting of matching funds. The reimbursement form used by our grant subrecipients was revised to allow for proper reporting of match. Therefore, we have taken corrective action to address the finding. It is our understanding that insufficient time has passed to test the effectiveness of the change in direction on completing the FFR, and the state auditors will return at a future date to conduct testing.

Implementation Date: October 2013

Responsible Person: Bobby Killebrew

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.

Corrective Action:

Corrective action was taken.

Appendix

Objectives, Scope, and Methodology

Objectives

With respect to the Highway Planning and Construction Cluster, the objectives of the audit were to (1) obtain an understanding of internal controls over compliance, assess the control risk of noncompliance, and perform tests of those controls unless 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 the Highway Planning and Construction Cluster.

Scope

The audit scope covered federal funds that the State spent for the Highway Planning and Construction Cluster at the Department of Transportation (Department) from September 1, 2012, through August 31, 2013. The audit work included control and compliance tests at the Department.

Methodology

The audit methodology included developing an understanding of controls over each compliance area that was direct and material to the Highway Planning and Construction Cluster.

Auditors selected non-statistical samples for tests of compliance and controls for each direct and material compliance area based on the American Institute of Certified Public Accountants' audit guide entitled *Government Auditing Standards and Circular A-133 Audits* dated February 1, 2013. In determining 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 used professional judgment to select additional items for compliance testing. Those sample items generally are not representative of the population and, therefore, it would be inappropriate to extrapolate those results to the population.

Auditors conducted tests of compliance and of controls identified for each direct and material compliance area and performed analytical procedures when appropriate.

Auditors assessed the reliability of data the Department provided and determined that the data was sufficiently 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.

Information collected and reviewed included the following:

- Department data for expenditures, contractor payrolls, procurement, reporting, cash revenue, required matching funds, real property acquisitions, subrecipients, quality assurance testing, value engineering analysis, project extensions, project approvals, and utility adjustments.
- 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 work was conducted from July 2013 through December 2013. 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 States 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*.

The following members of the State Auditor’s staff performed the audit:

- Kristin Alexander, MBA, CIA, CFE (Project Manager)
- Parsons Dent Townsend, CGAP, CICA (Assistant Project Manager)
- Serra Tamur, MPAff, CIA, CISA (Information Technology Coordinator)
- Kelsey Arnold (Prior Year Finding Coordinator)
- Jennifer Brantley, MS, CPA (Team Lead)
- Michelle Lea DeFrance, CPA
- Justin Griffin, CISA
- Thomas Mahoney, CGAP
- Fred Ramirez
- Tony White, CFE
- Dana Musgrave, MBA (Quality Control Reviewer)
- James Timberlake, CIA (Audit Manager)

Copies of this report have been distributed to the following:

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The Honorable Joe Straus III, Speaker of the House, Joint Chair

The Honorable Jim Pitts, House Appropriations Committee

The Honorable Harvey Hilderbran, House Ways and Means Committee

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The Honorable Rick Perry, Governor

Department of Transportation

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Mr. Ted Houghton, Chair

Mr. Jeff Austin III

Mr. Jeff Moseley

Mr. Fred Underwood

Mr. Victor Vandergriff

Mr. James Bass, Interim Executive Director and Chief Financial Officer



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