



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Selected Aspects of Multi-Modal Program Projects and Payments

Department of Transportation



Report 2011-S-12

September 2012

Executive Summary

Purpose

To determine whether payments for Multi-Modal Program projects were for eligible expenditures based on project requirements. The audit covers the period January, 2009 to September, 2011.

Background

The Multi-Modal Program (Program) provides reimbursements for authorized rail, port, airport, fixed ferry, and State and local highway and bridge projects identified by the Governor and the Legislature. All projects must be primarily used for an eligible public transportation purpose and have a continuous service life of at least ten years. Entities that manage and oversee Program projects must maintain public records to support project disbursements. The Department of Transportation (Department) can audit local project disbursement records and disallow unsupported reimbursement claims. As of May 11, 2011, 424 active projects were approved for \$135.2 million in Program funding and had been reimbursed \$58.7 million.

Key Findings

- A \$1-million payment was made for a parking garage at a private university, but the payment was noncompliant because the parking garage had not been made publicly accessible as required as a condition for funding.
- The payments we tested on eight other projects were generally for eligible costs for completed work.

Key Recommendation

- Take action to recover Program funds for the parking garage project.

Other Related Audits/Reports of Interest

[Department of Transportation: Oversight of Grants \(2009-S-78\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

September 6, 2012

Ms. Joan McDonald
Commissioner
Department of Transportation
50 Wolf Road
Albany, NY 12232

Dear Commissioner McDonald:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the *Selected Aspects of Multi-Modal Program Projects and Payments*. The audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

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This report is also available on our website at: www.osc.state.ny.us

Background

The Multi-Modal Program (Program) is authorized by Section 14-K of the Transportation Law and provides capital improvement funding for rail, port, airport, fixed ferry, and State and local highway and bridge projects identified by the Governor and the Legislature. All projects must pertain to eligible public transportation purposes and have a continuous service life of ten or more years after completion. Projects typically have a Sponsor such as local towns and villages, municipal corporations, municipal and privately-owned airports, and operators of freight and intercity passenger railroads.

The Sponsor must provide the Department with a written justification of the nominated project including project specifications and a description of how the project will serve a public transportation purpose. The Department makes the final decision whether a project meets eligibility requirements and will receive Program funding. The Sponsor is responsible for project management and oversight so that the project work meets the agreed-upon specifications. Sponsors submit reimbursement claims to the Department for completed work. The Sponsors certify that the individual items that were claimed agree with the project requirements. The Department's Program Guidelines (Guidelines) require Sponsors to maintain public records to support project disbursements such as copies of checks to vendors and receipts for purchases of materials.

The Department can audit local project disbursement records and disallow unsupported reimbursement claims. As of May 11, 2011, 424 active projects were approved for \$135.2 million in Program funding and had been reimbursed \$58.7 million.

In our prior audit *Oversight of Grants* at the Department of Transportation (Report 2009-S-78), issued June 21, 2011, we made recommendations to improve the monitoring of funded projects. In response to our audit, the Department initiated an audit of one of the projects. Department officials indicated that they tentatively identified significant disallowances against paid reimbursements. In addition, the Department planned to implement a risk-based quality assurance process by July 1, 2011.

Audit Findings and Recommendations

Eligibility of Payments

We tested \$13.3 million of payments made between April 1, 2009 and March 31, 2011 for nine projects that had been allocated \$50.2 million in funding. We found that the payments were generally for eligible costs for completed work on eight of nine projects. The payments for eight projects were supported by invoices, checks, inspection reports, and photos of work-in-progress. We also visited the sites to look at the completed projects. For the one project, which we took exception to, the Department authorized a \$1-million payment for a portion of the construction costs of a parking garage located on the property of a privately-owned university. However, the parking garage did not serve a public transportation purpose during our audit period. The justification for the project stated that the project would provide public access to 178 short-term parking spots and a shuttle service to city and regional mass transit services. When we visited the garage in both August and September 2011, it was not accessible because the garage gate for public access was padlocked and unattended. Subsequent to our visits, Department employees also visited the garage and found that the public access entrance was not open.

In November 2011, Department officials provided a copy of correspondence sent to university officials advising them to restore public access to the garage. In January 2012, we revisited the garage and it was open to the public. However, university officials told us that the shuttle service to mass transit was discontinued in 2009 due to a lack of ridership. In addition, the public parking was advertised when the garage first opened in September 2006, but there was no evidence it continued afterwards.

Further, we noted that the Department was unaware that the Sponsor, the New York City Department of Small Business Services, had not taken the steps necessary to make sure the garage was open to the public. Instead, the Department relied on the Sponsor's certification that project reimbursement claims were for eligible work without verifying supporting documentation or conducting site inspections.

We followed up with staff working at the university and were informed that new vans were purchased and shuttle service will be restored. We also determined that other items in the project justification still had not been addressed. For example, there were no signs on the garage or nearby roads or highways indicating public parking was available when we visited in January 2012.

On the other project for installation of replacement railroad ties, the Sponsor had documentation of the materials and labor claimed for Program funding totaling \$69,120. However, unlike another railroad project we tested, the Sponsor did not maintain photos of the condition of the sections of track replaced to support the work claimed. We visited the site to determine if the work was completed, however, we could not reach a conclusion because railroad ties have an aged appearance soon after they are installed. Due to the lack of information in the file and the nature of the work, the Department should determine whether specific procedures are needed

to monitor such projects.

We also found that the Department has not implemented a risk-based quality assurance process for monitoring Program grants. In this regard, Department management stated that they are waiting for our audit results as a basis for moving forward. We encourage the Department to promptly complete its risk-based quality assurance process to ensure that Program payments are for eligible expenditures.

Recommendations

1. Take action to recover the Program funds for the parking garage project.
2. Complete the risk-based quality assurance process for monitoring Program grants.
3. Formalize the specific steps needed to monitor rail tie-installation projects.

Audit Scope and Methodology

The objective of our audit was to determine whether payments for Multi-Modal Program projects were for eligible expenditures based on project requirements. Our audit scope was from January 1, 2009 to September 1, 2011.

To achieve our objective, we interviewed Department staff; reviewed Department policies and procedures related to the Program; examined Program project contracts, expenditure data, and supporting documentation; and reviewed and analyzed selected project reimbursements. We judgmentally sampled a total of 13 payments from nine different projects to determine whether the payments were for eligible expenses, the project met Program requirements, and the project work met the project requirements. We selected projects representing a cross section of geographic locations, modes of transportation, and active and inactive projects. The nine projects were allocated a total of \$50.2 million in funding. There were \$13.3 million in payments on those projects during the period April 1, 2009, through March 31, 2011, which we reviewed. Each project sampled received at least \$250,000 of Program funding.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights.

These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

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

Reporting Requirements

We provided a draft copy of this report to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of the report. State Comptroller's Comments to their response are also attached at the end of this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Transportation shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
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JOAN McDONALD
COMMISSIONER

ANDREW M. CUOMO
GOVERNOR

June 7, 2012

Carmen Maldonado
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Re: Draft Report 2011-S-12 – *Selected Aspects of
Multi-Modal Program Projects and Payments*

Dear Ms. Maldonado:

Thank you for the opportunity to respond to the subject report. Below is the Department of Transportation's (NYSDOT) response.

Recommendation 1: *Take action to recover the Program funds for the parking garage project.*

Response: NYSDOT does not agree with this recommendation. Based on information available to NYSDOT and NYCEDC, the University is in compliance with the requirements governing the use of the facility and that there is no contractual basis for NYSDOT to recover funds from the project sponsor.

Open Access to Facility

NYSDOT provided documentation to the audit team on several occasions detailing that any potential non-compliance on the part of Parking Garage with established requirements guiding the use of the facility were unintentional and inadvertent. Furthermore, University staff provided documentation that corrective action had been taken to address the issue. Subsequent site visits by NYSDOT and staff from the New York City Economic Development Corporation (NYCEDC) confirmed the presence of clearly posted signs indicating that the facility was available and open for use by the general public at the posted rate. The University is in compliance with the contractual obligations governing the use of the facility.

Project Service Life

During the review and in the report, OSC staff indicated that one of the contributing factors to this recommendation was the temporary lapse in public access violated the requirement that the project maintain a continuous service life of ten or more years after completion. As noted in discussions with OSC, the ten-year rule is not applicable to the issue of public access. The ten-

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*See State Comptroller's Comments, on page 11.

year rule is clearly stated in the eligibility criteria for the program as well as in the project eligibility requirements on OSC's website (<http://www.osc.state.ny.us/localgov/pubs/releases/multimod.htm>). The requirement is that the project must have a ten-year "bondable" service life. This project meets or exceeds that requirement.

Shuttle Van Services

The audit team also based its recommendation in part on a perceived belief that shuttle van services designed to provide access to nearby Metro North Railroad (MNR) stations were a requirement of the project agreement. This is incorrect. The audit team relied on unofficial e-mails and initial draft discussion documents to formulate such a conclusion. The project justification and the associated contract agreement for Multi-Modal funding did not require that the University provide shuttle van services.

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Recommendation 2: *Complete the risk-based quality assurance process for monitoring Program grants.*

Response: The Department has implemented a risk-based quality assurance process for monitoring Multi-Modal Program Grants. In March 2012, program guidelines were updated to reflect this quality assurance and project monitoring process.

Recommendation 3: *Formalize the specific steps needed to monitor rail tie-installation projects.*

Response: The Department agrees and follows the Manual of Billing Procedure for Submission of Rail Project-Payment Vouchers developed by the Department's Rail Bureau and the Manual of Uniform of Record Keeping (MURK) 105-09 specifications for rail tie-installation. In addition, Multi-Modal program guidelines have been updated as of November 2011 to reflect NYSDOT's project monitoring process. Since a specific project was not identified in the findings, we can not determine which guidelines were followed.

Should you need further information, please contact Diane Kenneally, Director of the Local Programs Bureau, at (518) 485-9959.

Sincerely,



Peter J. Snyder
Assistant Commissioner
Administrative Services Division

cc: Diane Kenneally, Director, Local Programs Bureau, NYSDOT
Ray Hessinger, Director, Freight & Passenger Rail Bureau, NYSDOT

*See State Comptroller's Comments, on page 11.

State Comptroller's Comments

1. The Multi-Modal 2000 Program Guidelines February 2004 state that projects that are not for a public transportation purpose (i.e., a parking lot which serves a municipal purpose such as a school or ball field) are not eligible. The parking lot at the University was for use by individuals visiting the Botanical Gardens, DMV and the Bronx Zoo, and as such did not meet the "public transportation" requirement. In addition, the parking garage agreement, states that Sponsor Project disbursements must be documented and maintained in project records. The agreement also states the Department can recover any monies paid to a Sponsor for Project costs claimed or previously reimbursed that cannot be supported. We found the Sponsor could not support the parking garage served a public transportation purpose during our audit period May 2009 to September 2011 and in January 2012 when we revisited the premises. Furthermore, the Department officials did not verify the use of the parking facility until we brought the issue of public access to their attention.
2. As of January 2012, certain Project requirements still had not been addressed, such as signs on the garage or nearby roads or highways indicating public parking was available, even though the parking garage opened on September 9, 2006. The new signs referred to in the Department's response only redirect motorists to different garage entrances when certain entrance gates are closed and do not specifically state public parking is available.
3. Based on the Department's response we have revised our report and have deleted comments pertaining to continuous service life. However, this does not alter the finding that the garage was not serving the required public transportation purpose during the audit period.
4. The justification for the project prepared by the Department and dated March 18, 2005 states that the project provides the level of transportation services that make it eligible under both the Highway and Rail categories of Section 14k of the Multi Modal Program. The supporting reasons include a section titled Enhanced shuttle van services which on page 3 states that the university will work with Community and City Agencies to improve the existing shuttle van service to meet public demand. On page 4, a section titled Enhanced Access to Inner-city Rail (Metro North) - Shuttle Van Commuter Rail Service states that the university will utilize its shuttle van fleet to provide direct access from the Parking Intermodal Facility to Metro North. Details including days and hours of operation are also specified in the justification.