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# *Office of Inspector General*

# *Audit Report*

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## **FTA DID NOT ADEQUATELY VERIFY PATH'S COMPLIANCE WITH FEDERAL PROCUREMENT REQUIREMENTS FOR THE SALT MITIGATION OF TUNNELS PROJECT**

*Federal Transit Administration*

*Report Number: ZA-2016-057*

*Date Issued: March 28, 2016*





# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **ACTION:** FTA Did Not Adequately Verify  
PATH's Compliance With Federal Procurement  
Requirements for the Salt Mitigation of Tunnels  
Project  
Federal Transit Administration  
Report No. ZA-2016-057

Date: March 28, 2016

From: Mary Kay Langan-Feirson   
Assistant Inspector General for Acquisition and  
Procurement Audits

Reply to: JA-60  
Attn. of:

To: Acting Federal Transit Administrator

In October 2012, Hurricane Sandy caused widespread damage to the transportation infrastructure in the mid-Atlantic and northeastern United States. In response, Congress enacted the Disaster Relief Appropriations Act of 2013 (DRAA) and appropriated over \$10 billion to the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program (ERP), which is intended to help States and public transportation systems fund recovery, relief, and resiliency efforts in response to an emergency, such as a hurricane. In June 2014, FTA awarded a grant to the Port Authority Trans-Hudson Corporation (PATH)<sup>1</sup>—a rapid transit railroad serving northern New Jersey and Manhattan, NY—for a variety of repair, recovery, and resiliency projects. To date, the total value of the grant, including amendments, is \$678 million—including about \$310 million for the Salt Mitigation of Tunnels Project,<sup>2</sup> which aims to repair salt water damage caused by Hurricane Sandy.<sup>3</sup> PATH is a relatively new FTA grantee and has had limited experience administering FTA-funded projects prior to Hurricane Sandy. FTA Region 2's Hurricane Sandy Recovery Office is responsible for overseeing

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<sup>1</sup> PATH—a rapid transit railroad serving metropolitan northern New Jersey and Manhattan, NY—is a subsidiary of the Port Authority of New York and New Jersey, but FTA considers it a separate entity for grant management purposes.

<sup>2</sup> In the grant documentation, FTA refers to the project we reviewed as the Salt Mitigation of Tunnels Program. However, in FTA's August 2014 project risk assessment identified the program as a major capital project. Therefore, we refer to the Salt Mitigation of Tunnels Program as a project.

<sup>3</sup> While PATH received other Hurricane Sandy related grants from FTA, our review focused only on the grant relating to the Salt Mitigation of Tunnels Project.

PATH and other grantees to verify that they comply with FTA and other Federal requirements, use sound procurement practices, and spend Federal grant funds appropriately.

As part of our DRAA mandate to support oversight of FTA's Hurricane Sandy relief funds, we evaluated whether FTA's oversight was adequate to verify that PATH's procurement practices for the Salt Mitigation of Tunnels Project comply with Federal requirements.

To conduct our work, we reviewed contract files for all 20 of PATH's Salt Mitigation Project awards<sup>4</sup> issued between October 4, 2013, and June 24, 2015, which totaled \$16.8 million. We also assessed FTA's criteria and guidance for its ERP and Hurricane Sandy grant funding; evaluated FTA's oversight reviews of PATH and the Salt Mitigation Project; and interviewed staff at FTA Headquarters, FTA Region 2, Port Authority, and PATH. We conducted our work in accordance with generally accepted Government auditing standards. Exhibit A contains further details on our scope and methodology.

## **RESULTS IN BRIEF**

FTA did not adequately verify that PATH's procurement practices for the Salt Mitigation Project complied with FTA and other Federal requirements. Our assessment of Agency regulations, policies,<sup>5</sup> and other documents determined that FTA did not enforce its requirement that PATH have a project management plan (PMP) for the Salt Mitigation Project before the grantee began drawing down Federal funds. By the time PATH submitted a PMP in September 2015, the grantee had already drawn down about \$10 million in Federal funds for the project. A PMP is intended to enhance a grantee's planning and project implementation by providing a roadmap for how a project will be executed, including procurement of goods and services. However, PATH completed critical work for the Salt Mitigation Project—including engineering and design work, and preparations to award a \$225-million major construction contract—without a PMP. Additionally, although PATH reports frequent communication with FTA Region 2 staff, FTA did not conduct any oversight reviews of PATH (such as a procurement system review) until August 2015, despite rating PATH's procurement area as "high" risk over 2 years earlier. Consequently, FTA missed opportunities to identify and possibly prevent areas of noncompliance with FTA requirements, which our review of PATH's procurement practices for the Salt Mitigation Project identified. For example, although FTA identifies contract type

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<sup>4</sup> This only includes awards that authorize specific work requirements at a defined value.

<sup>5</sup> Title 49 Code of Federal Regulations (CFR) 633 Subpart C; FTA's Hurricane Sandy Disaster Relief Oversight Plan, Jan. 31, 2014.

selection as the single most important acquisition decision, PATH did not justify contract types chosen for 8 of 11 Salt Mitigation Project awards. Finally, while FTA relies on a Project Management Oversight Contractor (PMOC) to provide technical oversight of PATH and the Salt Mitigation Project, the Agency lacks effective processes for tracking and following up on grantee and project-specific issues identified by the oversight contractor. As a result, FTA is impeded from holding grantees accountable for addressing these identified issues, which could allow risks to remain and compromise the safeguarding of Federal grant funds.

We are making recommendations to improve FTA's oversight of PATH's procurement practices for the Salt Mitigation of Tunnels Project.

## **BACKGROUND**

In April 2013, FTA issued an ERP Toolkit for FTA staff to use as a reference to ensure successful obligation and expenditure of relief funds. These tools stress performing grantee risk assessments and project risk assessments, enhancing oversight that is tailored to specifically identified risks, and reviewing grantee payments (drawdowns). The Toolkit includes FTA's Hurricane Sandy Oversight Plan, which outlines a risk-based oversight framework for allocating oversight resources and tools. The plan also lists goals to guide FTA as it provides oversight of relief funds—including deploying oversight resources in a proactive, risk-based, and efficient manner; ensuring grantee compliance with FTA and other Federal requirements; and ensuring every effort is made to deter, detect, and report waste, fraud, and abuse. In addition, FTA created a Hurricane Sandy Recovery Office in Region 2, located in New York City, to provide oversight of Federal relief funds. FTA's Hurricane Sandy Recovery Office is responsible for overseeing over \$4.4 billion in Federal grant funds—approximately 20 percent of this amount (about \$894 million) was distributed to PATH.

Our initial report on FTA's oversight of ERP and Hurricane Sandy relief funds, issued in December 2013, recognized that FTA responded quickly and effectively to Hurricane Sandy by assessing the damage, assisting impacted transit agencies, and developing oversight plans.<sup>6</sup> However, we noted that FTA's Hurricane Sandy Oversight Plan lacked specificity in key areas, and that FTA needed to put into practice its Hurricane Sandy Oversight Plan's risk-based framework and ensure that relief funds are properly distributed and spent. We made a number of recommendations in our report, which FTA has since resolved. In June 2015, we reported that FTA had not fully implemented the processes and internal controls it established for the award and oversight of Hurricane Sandy funds in response to

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<sup>6</sup> *Initial Assessment of FTA's Oversight of the Emergency Relief Program and Hurricane Sandy Relief Funds* (OIG Report Number MH-2014-008), Dec. 3, 2013. OIG reports can be found on our Web site at: <http://oig.dot.gov>.

DRAA and Federal guidelines.<sup>7</sup> We also noted that FTA established some controls to reduce the risk of duplicating Federal Emergency Management Agency (FEMA) reimbursements and had allocated most of the \$10.2 billion in DRAA funds, but several factors slowed the pace of fund awards and grantee expenditures. FTA is in the process of addressing our recommendations from the June 2015 report.

PATH—a rapid transit railroad serving metropolitan northern New Jersey and Manhattan, NY—is a subsidiary of the Port Authority of New York and New Jersey. Under this arrangement, the Port Authority manages the procurement process for PATH from solicitation through contract or task order award. After an award is made, PATH assumes the responsibility for administering the contract or task order. In this report, references to PATH’s procurement policies and practices include the Port Authority’s when applicable.

## **FTA’S OVERSIGHT OF PATH’S PROCUREMENT PRACTICES FOR THE SALT MITIGATION PROJECT DID NOT ADEQUATELY VERIFY COMPLIANCE WITH FEDERAL REQUIREMENTS**

FTA did not adequately verify that PATH’s procurement practices for the Salt Mitigation Project complied with FTA and other Federal requirements. FTA did not enforce its requirement that PATH have an approved PMP in place before drawing down Federal funds for the project. It also allowed PATH to complete critical project work without a PMP. In addition, FTA did not provide proactive oversight of PATH’s procurement practices despite the grantee’s elevated risk ratings—especially in the area of procurement. As a result, FTA missed opportunities to identify and possibly prevent the instances in which PATH’s procurement practices for Salt Mitigation Project did not fully comply with FTA requirements. Finally, although FTA relies on a PMOC to provide technical oversight of PATH and the Salt Mitigation Project, the Agency lacks effective processes for tracking and following up on grantee and project-related issues identified by the oversight contractor.

### **FTA Allowed PATH To Draw Down Federal Funds and Complete Critical Work for the Salt Mitigation Project Without a Project Management Plan**

FTA accepted PATH’s overall PMP for its Sandy Recovery and Resiliency Program in 2014. However, our assessment of FTA regulations, policies, and other documents determined that the Agency did not enforce its requirement that PATH

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<sup>7</sup> *FTA Has Not Fully Implemented Key Internal Controls for Hurricane Sandy Oversight and Future Emergency Relief Efforts* (OIG Report Number ST-2015-046), June 12, 2015.

have an acceptable<sup>8</sup> project-specific PMP in place before the grantee began drawing down Federal grant funds for the Salt Mitigation Project. FTA also allowed PATH to complete critical work for the Salt Mitigation Project without an acceptable project-specific PMP.

FTA requires grantees to submit project-specific PMPs for all FTA-funded major capital projects—a designation assigned to the Salt Mitigation Project in FTA’s August 2014 project risk assessment. FTA considers the Salt Mitigation Project to be a major capital project because of the project’s “technically risky elements and complexities unique to the project scope” and because the total project value is expected to exceed \$100 million.<sup>9</sup> Although PMPs are generally required for major capital projects before FTA will approve grant applications, FTA made an exception for projects related to Hurricane Sandy relief efforts—stating that an acceptable PMP is only required before the grantee can draw down grant funds. However, by the time PATH submitted a project-specific PMP for the Salt Mitigation Project in September 2015, it had already drawn down about \$10 million in Federal grant funds for the first phase of the project—contrary to FTA policy.

In technical comments to the draft report, FTA disagreed that a PMP was needed before PATH could draw down funds for the first phase of the project. However, based on our review of FTA’s project risk assessments, Project Management Oversight regulation, Hurricane Sandy oversight requirements, and other documentation provided, the Agency should have required that an acceptable, project-specific PMP be in place prior to any drawdown of funds. On January 28, 2016, FTA granted conditional approval of PATH’s Salt Mitigation Project PMP, which represents the Agency’s initial acceptance of the plan. Although PATH is still required to fully address FTA’s comments and submit a revised PMP within 60 days, FTA officials stated that PATH now meets the Agency’s requirement to draw down Hurricane Sandy-related grant funds.

FTA also allowed PATH to complete critical work and significant procurement activities for the Salt Mitigation Project without a PMP. A PMP is intended to enhance a grantee’s planning and project implementation efforts by providing a roadmap for how a project will be executed through all phases, including the procurement of goods and services. However, PATH completed critical work and

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<sup>8</sup> According to FTA officials, an “acceptable PMP” is one that meets the minimum requirements outlined in Title 49 CFR 633.25.

<sup>9</sup> Title 49 CFR 633 defines a major capital project as a project that (1) involves the construction of a new fixed guideway or extension of an existing fixed guideway; (2) involves the rehabilitation or modernization of an existing fixed guideway with a total project cost in excess of \$100 million; or (3) the Administrator determines is a major capital project because the project management oversight program will benefit specifically the agency or the recipient—such as a project expected to have a total project cost in excess of \$100 million or involves a recipient whose past experience indicates the appropriateness of using Project Management Oversight services.

significant procurement activities for the Salt Mitigation Project without a PMP. Specifically, PATH completed preliminary engineering and final design work for the project, involving the award of eight task orders, and is preparing to award the project's major construction contract, which has an estimated total value \$225 million. Given the project's technical risks and complexities, a PMP would have been an important planning tool to have in place at the onset of the project.

Our prior work on surface transportation projects for FTA supports the importance of PMPs to help grantees effectively manage major projects' schedule, scope, and cost, as well as ensure that projects meet FTA and other Federal requirements. PATH's Salt Mitigation Project has been subject to critical delays, and FTA's oversight contractor has criticized the legitimacy of the project schedule. In our view, having an acceptable PMP in place earlier could have helped plan for, and possibly mitigate, risks of delay and allowed for a more realistic project schedule to be established.

For example, PATH's award of a \$225-million major construction contract has been delayed. PATH had initially intended to award the contract by the third quarter of 2015, but PATH's Salt Mitigation Project PMP shows that the grantee delayed the target date for contract award to the second quarter of 2016. As of March 2016, FTA now reports that award will not occur until the second half of 2017. Additionally, in September 2015 (the same month PATH submitted its project-specific PMP for the Salt Mitigation Project), FTA's oversight contractor provided the Agency with preliminary findings that warned of potential project delays. Specifically, the contractor stated that PATH's schedule for the Salt Mitigation Project did not reflect a logic-driven analysis, as it did not appear to match the project's scope of work or the number of weekend outages needed to complete the work. Moreover, the contractor reported that PATH made changes to design work and added tunnel outage constraints that could further delay the final design and construction phases.<sup>10</sup>

### **FTA Did Not Provide Proactive Oversight of PATH's Procurement Practices Despite the Grantee's Elevated Risk Ratings**

One goal in FTA's Hurricane Sandy Oversight Plan is to "deploy oversight resources in a proactive, risk-based, and efficient manner." However, FTA did not conduct any formal oversight reviews<sup>11</sup> of PATH until 2 years after FTA first identified elevated risks in the grantee's ability to manage and execute FTA-funded projects in compliance with Federal requirements.

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<sup>10</sup> FTA stated that it has not yet validated these draft preliminary findings submitted by the contractor.

<sup>11</sup> FTA's oversight review program includes 15 review areas, such as procurement system reviews, financial management reviews, and triennial reviews.

FTA's Hurricane Sandy oversight approach involves conducting an initial risk assessment of each grantee. These assessments are intended to provide FTA with a baseline on the grantee's ability to manage and execute projects in accordance with Federal requirements. FTA uses the risk assessment results to assign oversight resources—such as technical assistance, oversight reviews, and site visits. In June 2013, FTA conducted the initial risk assessment for PATH, which identified elevated risk ratings in six of nine areas assessed—including a “high” risk rating in the area of procurement and “medium” risk ratings in grants management, financial management, and project management. FTA assigned these elevated risk ratings largely due to PATH's inexperience as an FTA grantee.

Despite assigning PATH a high risk rating in procurement in June 2013, FTA did not conduct a procurement system review (PSR) for PATH until August 2015.<sup>12</sup> According to FTA, a PSR assesses grantee compliance with Federal procurement requirements and is used at the Agency's discretion based on the grantee's risk assessment. FTA officials explained that the Agency did not conduct a PSR sooner because PATH was a fairly new FTA grantee, so the Agency decided to wait until the grantee had completed some procurement work on the project. In addition, FTA officials stated that the Agency has limited oversight resources to conduct these formal reviews and, therefore, must prioritize reviews for its grantees nationwide. We recognize that FTA has oversight responsibility for a large number of projects and various grantees and thus may need to target its resources. However, in its June 2013 initial grantee risk assessment, FTA noted that PATH was inexperienced at managing FTA projects and—unlike FTA's other major grantees receiving Hurricane Sandy relief funds—had never received an oversight review. In our view, FTA's policy and guidance for risk assessments and oversight reviews, as well as the Agency's goal to provide proactive oversight of Hurricane Sandy relief funds, indicate that FTA should have conducted a PSR sooner.

FTA's June 2013 initial grantee risk assessment noted that the Agency would provide technical assistance to PATH in an effort to help mitigate the risks identified. Accordingly, FTA Region 2 offered its grantees, including PATH, various training and workshops in 2013 and 2014—including procurement process training in October 2014. PATH staff also confirmed that they have had frequent communication with FTA Region 2 staff on procurement and project related matters—both in person and through other means. According to PATH officials, FTA has been responsive and helpful regarding their Hurricane Sandy projects and funding-related issues or questions.

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<sup>12</sup> The oversight reviews conducted of PATH in August 2015 included a financial management review as well as the PSR. Although the PSR was conducted in August 2015, the resulting draft report was not completed until February 2016. Therefore, we were not able to assess the results of FTA's PSR of PATH for this report.

As part of its Hurricane Sandy oversight approach, FTA is also required to conduct quarterly change order reviews for each grant. Specifically, FTA must review at least one change order over \$100,000 or 20 percent of the change orders submitted for a grant (whichever is greater) to test compliance with Agency requirements.<sup>13</sup> However, FTA has only conducted one change order review for the Salt Mitigation Project grant, which did not occur until July 2015. This is despite the fact that PATH has awarded nine change orders (including four over \$100,000)—the first of which occurred in August 2014. FTA’s July 2015 change order review included only one of the nine Salt Mitigation Project change orders, valued at \$559,682.

According to FTA, the Agency was delayed in conducting the required quarterly change order reviews because PATH was not providing current lists of its change orders, as required. Once PATH started submitting its lists in March 2015, FTA officials stated that they used them as the basis for conducting the Agency’s July 2015 change order review. While the FTA contract specialist who performed the review identified instances of noncompliance, no recommendations or corrective actions were provided to address the identified weaknesses. FTA is still reviewing the contract specialist’s report for the change order review, so PATH has not yet been briefed about the results or provided a copy of the report.

### **PATH’s Procurement Practices for Salt Mitigation Project Did Not Fully Comply With FTA Requirements**

Based on our review of all 20 procurement actions<sup>14</sup> for the Salt Mitigation Project (including 1 contract, 10 task orders, and 9 change orders), which totaled \$16.8 million, PATH did not fully comply with the following FTA requirements.

- **Contract type justification.** FTA identifies contract type selection as the single most important decision in the acquisition process and requires justifications for contract type selections to be documented in the award files. However, PATH did not justify its choice of contract types for 8 of 11 contracts and task order awards for the Salt Mitigation Project, with a total value of \$6.2 million.
- **Cost and price analysis.** FTA requires grantees to perform a cost or price analysis for every procurement action to determine the reasonableness of a proposed award price. However, for 6 out of 20 procurement actions for the Salt Mitigation Project, with a total value of \$2.2 million, PATH did not

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<sup>13</sup> FTA Circular 4220.1F, Third Party Contracting Requirements, Rev. 4, Mar. 18, 2013; FTA Circular 5010.1D, Grant Management Requirements, Rev 1, Aug. 27, 2012. FTA added these requirements in response to a recommendation from our December 2013 audit of FTA’s oversight of Hurricane Sandy relief funds.

<sup>14</sup> These 20 procurement actions represent all awards PATH made for the Salt Mitigation Project as of August 7, 2015.

document the cost and price analysis to clearly show that the final price was evaluated and justified.

- **Independent cost estimates.** FTA requires grantees to develop an independent cost estimate for every procurement action before receiving bids or proposals for an award.<sup>15</sup> Although all 20 Salt Mitigation Project procurement actions included an independent cost estimate, 15 of these estimates were inadequate because they lacked basic information such as the date, methodology, or indirect costs. Without a date, for example, it is unclear whether PATH developed the estimates prior to receiving bids or proposals, as required. Additionally, some of the estimates varied significantly from the actual award amounts, but PATH did not document any explanations for the discrepancies in the award files. For example, PATH's estimate for a sole-source contract to conduct a portion of salt mitigation and desalinization tunnel work was over \$1.9 million more than the actual award.
- **Bid evaluation.** FTA requires grantees to evaluate potential contractors' bids or offers based on the evaluation factors specified in the solicitation. However, when evaluating the bids for each of the eight design task order awards for the Salt Mitigation Project, PATH used four evaluation factors even though the solicitations specified that only three factors would be used.<sup>16</sup>
- **Signature authority for award execution.** To minimize the opportunity for unauthorized or fraudulent acts, FTA requires grantees to ensure that no employee undertakes any procurement function—especially authorization functions—without clear authority. However, two of the nine change orders for the Salt Mitigation Project were signed by an engineering official who did not have written delegation of authority to authorize such awards.

As table 1 shows, if FTA had been more proactive in conducting oversight and quarterly change order reviews to mitigate PATH's elevated procurement risk, the Agency would have had an opportunity to address some of PATH's noncompliance issues earlier. For example, FTA's July 2015 change order review identified some of the same noncompliance issues we identified regarding independent cost estimates and cost and price analyses. However, FTA has yet to issue a draft report or provide any information to PATH about the July 2015 change order review.

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<sup>15</sup> 2 CFR 200.323, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; FTA Circular 4220.1F Chapter VI, Sec 6, Third Party Contract Guidance, Rev. 4, Mar. 18, 2013.

<sup>16</sup> This action did not affect the results of the eight awards. The contractors who won the awards would have still been rated the highest if PATH had used the same criteria in the solicitation.

**Table 1. Noncompliance Issues in PATH's Procurement Practices for the Salt Mitigation Project**

Noncompliance issues identified during OIG review	FTA reviews providing opportunities to identify these issues	
	Procurement System Review	Change Order Review
Contract type justification	✓	
Cost and price analysis	✓	✓
Independent cost estimate	✓	✓
Bid evaluation	✓	
Signature authority for award	✓	✓

Source: OIG analysis of all 20 procurement actions for the Salt Mitigation Project

### **FTA Lacks Effective Processes for Tracking and Following Up on Grantee and Project Issues Identified by the Oversight Contractor**

For federally funded major capital projects, such as the Salt Mitigation Project, FTA uses PMOCs to assist with oversight. FTA tasked one PMOC with oversight and reporting for the Port Authority's Hurricane Sandy projects—including oversight of PATH and the Salt Mitigation Project. According to FTA, this PMOC helps FTA accomplish its fundamental oversight role, and provides the grantee with technical oversight to identify and avoid problems, mitigate risks, and meet Federal requirements. In addition, the PMOC is required to submit monthly monitoring reports intended to provide FTA with critical input to take necessary oversight actions and make timely decisions, such as determinations regarding project advancement and funding. These PMOC monthly reports must include recommendations to FTA regarding identified issues with the grantee and project, and a list of key action items, with target due dates, to help address or mitigate potential project vulnerabilities. FTA Region 2 staff then make final decisions on which issues reported by the PMOC are critical and require follow up.

However, FTA Region 2 lacks effective processes for tracking and following up on grantee and project issues identified by the PMOC. For example, FTA's Region 2 does not systematically track the PMOC's recommendations and key action items. FTA's Hurricane Sandy Oversight plan states that the Agency will use OTrak—FTA's system of record for program oversight reviews—to manage, track, record, and follow up on its grantee oversight activities. Yet, FTA does not use this system—or any other system—to track the PMOC's recommendations

and action items pertaining to PATH's Salt Mitigation Project.<sup>17</sup> Instead of a formal tracking process, FTA relies on the PMOC's monthly monitoring reports and regular dialogue with the PMOC. FTA also lacks documented criteria or procedures for making decisions on which PMOC recommendations and key action items are critical and require follow up, and FTA Region 2 does not document the justifications for its decisions. FTA Region 2 officials stated that they consider resource constraints and use their best judgment to determine which issues require follow up.

Without systematic tracking or follow up processes, FTA is impeded from holding grantees accountable for addressing the PMOC's identified issues, which could allow risks to remain and compromise the safeguarding of Federal grant funds. During our review of PATH's Salt Mitigation Project, we identified a history of recurring recommendations and missed deadlines for key action items, oversight reviews put on hold, and miscommunication about critical milestone dates:

- **Recurring recommendations and missed deadlines for key action items.** For example, one key action item in the PMOC's February 2015 report called for PATH to develop a risk register for its Hurricane Sandy program—a tracking tool that lists all risks, summarizes mitigation plans for each risk, and provides the status of mitigation efforts. According to the report, FTA had initially requested that PATH provide a risk register by December 31, 2014. However, FTA extended this deadline twice, and PATH did not submit a draft risk register until April 2015—about 4 months after the original due date. According to FTA officials, Region 2 allowed extensions because the risk register was not required, and FTA officials did not consider it to be a critical action item that warranted follow up. However, PMOC reports contradict FTA's explanation, describing the risk register as a “very high PATH priority” and “very critical” to PATH's ability to determine risk areas, schedule and cost vulnerabilities, and methods to mitigate risks. According to a PMOC report, FTA had also stressed the need for PATH to provide the risk register during a status meeting in March 2015.
- **Oversight reviews put on hold.** For example, the PMOC started reporting in April 2015 that PATH's staffing levels were potentially inadequate, and reported in July and August 2015 that the grantee had a significant backlog of action items and needed to improve its response time for these items. To help address these and other issues, FTA authorized the PMOC in July 2015 to conduct a Technical Capacity and Capability Review to evaluate the

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<sup>17</sup> FTA explained that FTA Headquarters uses OTrak to track formal oversight reviews such as PSRs and recommendations related to grantee noncompliance issues. In contrast, the PMOC's recommendations are more project focused and are often not related to noncompliance issues.

professional qualifications of PATH's staff and their ability to implement, manage, and deliver FTA-funded Hurricane Sandy projects. However, after the PMOC provided preliminary findings to FTA in September 2015, the Agency requested that the review be put on hold to allow FTA and PATH to focus on other priorities such as the August 2015 PSR. As of the date of this report, FTA has not authorized the PMOC to resume the Technical Capacity and Capability Review.

- **Miscommunication about critical milestone dates.** For example, FTA staff told us in June 2015 that they expected PATH to complete the Salt Mitigation Project PMP by December 2015. However, during that same month, the PMOC reported that the Salt Mitigation Project PMP's target due date was August 31, 2015—a 4 month difference. The expected timing of PATH's PMP submission was important to determine when the PMOC and FTA would need to make resources available to review the PMP and to establish when PATH can draw down Federal grant funds for the project in compliance with FTA policy.<sup>18</sup>

Our prior work on FTA's oversight of major transportation projects in New York City emphasized the importance of following up on issues identified by the PMOCs. For example, our 2008 review of FTA's oversight of the \$4.55 billion in Federal funds provided for Lower Manhattan Recovery Projects determined that grantees had not sufficiently addressed major risks that PMOCs identified, increasing the risk of cost overruns and schedule delays.

## CONCLUSION

Recognizing the urgency and significant work required to award and oversee Hurricane Sandy funds, FTA responded quickly and effectively by assisting impacted transit agencies and developing plans to oversee recovery projects, such as PATH's \$310-million Salt Mitigation of Tunnels Project. Yet, our work shows that FTA's oversight does not adequately verify that PATH's procurement practices for the Salt Mitigation Project comply with FTA and other Federal requirements—resulting in noncompliant procurement practices going undetected. As PATH's Salt Mitigation Project and other emergency relief projects move forward, FTA needs to follow through on its Hurricane Sandy oversight goals to deploy oversight resources in a proactive, risk-based, and efficient manner to ensure the prudent use of Federal Funds for critical repair, recovery, and resiliency projects.

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<sup>18</sup> PATH submitted its PMP on September 15, 2015, and FTA completed its initial review and conditionally approved the plan as acceptable on January 28, 2016.

## **RECOMMENDATIONS**

We recommend that the Federal Transit Administrator:

1. Require an acceptable Salt Mitigation Project management plan be in place before any further funds are drawn down for the project.
2. Enforce FTA's Hurricane Sandy oversight requirement to conduct quarterly Salt Mitigation Project change order reviews that test PATH's compliance with FTA procurement requirements.
3. Require FTA Region 2 to establish a formal process for deciding which PMOC identified issues warrant follow up, including documenting the justifications for the decisions and any follow-up actions taken.

## **AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL REPPONSE**

We provided FTA with a draft of this report on February 11, 2016, and received its response on March 8, 2016, which is included as an appendix to this report. FTA concurred with all three of our recommendations as written and proposed appropriate completion dates. Accordingly, we consider all recommendations resolved but open pending completion of planned actions.

We appreciate the courtesies and cooperation of FTA representatives during this audit. If you have any questions concerning this report, please call me at (202) 366-5225, or Darren Murphy, Program Director, at (206) 255-1929.

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cc: FTA Audit Liaison (TBP-30)  
DOT Audit Liaison (M-1)

## **EXHIBIT A. SCOPE AND METHODOLOGY**

We conducted our work from May 2015 through February 2016 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 reasonable basis for our findings and conclusions based on our audit objectives.

As part of our DRAA oversight responsibilities, our audit objective was to evaluate whether FTA's oversight was adequate to verify that PATH's procurement practices for the Salt Mitigation of Tunnels Project comply with Federal requirements.

To evaluate FTA's oversight of PATH and the Salt Mitigation Project, we assessed (1) FTA's plans, guidance, and regulations regarding oversight of Emergency Relief Program and Hurricane Sandy relief funds; (2) FTA's risk and oversight reviews of PATH and the Salt Mitigation Project; (3) PMOC reports; (4) FTA's award and Contracting Officer Representative files for its current PMOC contract, including related task orders; and (4) the PMPs for the Hurricane Sandy Program and the Salt Mitigation Project. We also interviewed officials at FTA Headquarters in Washington, DC; FTA Region 2 in New York City; PMOC staff in Denver, CO; and Port Authority of New York and New Jersey; and PATH in New York City and New Jersey.

To determine whether PATH's procurement practices complied with Federal requirements, we reviewed FTA's circulars and best practices related to grantee requirements and responsibilities. Based on review of these criteria, we developed two checklists of FTA's grantee procurement requirements. We used the first checklist when evaluating PATH's procurement policies to verify whether PATH included FTA requirements in these policies. We used the second checklist during our contract files reviews at the Port Authority of New York and New Jersey's Procurement Department in New York City to determine if PATH's procurement practices for the Salt Mitigation Project complied with FTA requirements. We reviewed contract files for all 20<sup>19</sup> Salt project awards reported by PATH as of August 7, 2015. These 20 awards were issued between October 4, 2013 and June 24, 2015, totaled \$16.8 million, and included 1 sole source contract, 10 task orders from 3 indefinite quantity contracts, and 9 change orders to the task orders.

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<sup>19</sup> This only includes awards that authorize specific work requirements at a defined value.

**EXHIBIT B. MAJOR CONTRIBUTORS TO THIS REPORT**

<b><u>Name</u></b>	<b><u>Title</u></b>
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## APPENDIX. AGENCY COMMENTS



U.S. Department of  
Transportation  
**Federal Transit  
Administration**

# Memorandum

Subject: INFORMATION: Management Comments – Office of Inspector General (OIG) Draft Report—FTA Did Not Adequately Verify PATH’s Compliance With Federal Procurement Requirements for the Salt Mitigation Project

Date: March 8, 2016

From: Therese McMillan   
Acting Administrator  
Federal Transit Administration

Reply to: Natalie Wowk  
Attn. of: 202-366-2514

To: Mary Kay Langan-Feirson  
Assistant Inspector General for Acquisition and Procurement Audits

The Federal Transit Administration (FTA) has helped transit agencies recover from Hurricane Sandy by successfully implementing its Public Transportation Emergency Relief Program (ERP). The program helps States and public transportation systems pay for protecting, repairing, and replacing equipment and facilities that may suffer or have suffered serious damage as a result of an emergency including floods, hurricanes, and tornadoes. Under the Disaster Relief Appropriations Act (DRAA)<sup>1</sup> enacted in January 2013, Congress provided an unprecedented \$10.9 billion<sup>2</sup> for FTA’s Emergency Relief Program (ERP) for recovery, relief and resilience efforts in areas affected by Hurricane Sandy. In the three years since Hurricane Sandy, FTA has taken the following actions to ensure that affected transit systems are fully restored and protected from future disasters:

- Allocated approximately \$9.27 billion in multiple tiers for response, recovery, and rebuilding, including \$3.6 billion for competitively-selected resilience projects to reinforce existing infrastructure necessary to support public transportation systems damaged by Hurricane Sandy;
- Allocated \$4.38 billion of the \$9.27 billion solely for recovery and rebuilding, of which approximately 89 percent has been obligated and 24 percent has been liquidated through payments to grantees;

<sup>1</sup> Public Law 113–2

<sup>2</sup> The \$10.9 billion was subsequently reduced to \$10.2 billion due to sequester and transfers.

- Implemented a robust grant review process and also developed a risk-based oversight approach, including examining risks associated with each grantee and associated grant or project;
- Completed damage assessments of the affected transit agencies immediately after the disaster struck, and updated those damage assessments in the summer of 2015;
- Conducted oversight of grantees by participating in project specific risk workshops, executing a project-specific construction agreement for a critical station project, providing technical assistance to grantees, and utilizing Project Management Oversight Contractor (PMOC) resources to perform technical oversight;
- Issued a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA) which outlines responsibilities and the means of collaboration for each agency during a declared emergency or disaster;
- Published an Emergency Relief Manual, which provides guidance for states and transit agencies about FTA's ERP and information on other disaster relief resources available through FTA and FEMA. FTA also issued a Final Rule on the requirements of the ERP; and
- Conditionally approved in January 2016, the required project specific management plan for the Salt Mitigation of Tunnels Program being implemented by the Port Authority of New York and New Jersey – Port Authority Trans Hudson (PATH).

Based upon our review of the draft OIG report, we concur with all three recommendations as written and plan to complete all actions for these recommendations by June 1, 2016. We appreciate this opportunity to comment on the OIG draft report. Please contact Natalie Wowk, Audit Liaison, at (202) 366-2514, with any questions.