



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL

**FTA Has an Opportunity To Improve the
Integrity Monitor Program for
Hurricane Sandy Grantees**

FTA

Report No. ZA2019064

September 9, 2019





FTA Has an Opportunity To Improve the Integrity Monitor Program for Hurricane Sandy Grantees

Mandated by the Disaster Relief Appropriations Act of 2013

Federal Transit Administration | ZA2019064 | September 9, 2019

What We Looked At

To support transportation-related recovery and relief efforts in areas damaged by Hurricane Sandy in October 2012, the Disaster Relief Appropriations Act of 2013 (DRAA) appropriated \$10.9 billion to the Federal Transit Administration (FTA). Recognizing it needed to be especially diligent with DRAA funds, FTA required grantees that received over \$100 million to hire independent integrity monitors as a safeguard against fraud, corruption, and cost abuse. DRAA also directed our office to support oversight of the funds. Accordingly, our audit objective was to assess FTA's policies for the use of integrity monitors and evaluate FTA's oversight of integrity monitors.

What We Found

While FTA performs ongoing collaborative reviews of grantee integrity monitor plans, it lacks formal processes for identifying known risks and determining integrity monitor independence. As a result, internal staff who serve as integrity monitors may have self-interest concerns. For example, integrity monitors participated in settlements that could have included Federal funds and did not always notify FTA of these settlements until late in the process or after the settlements were completed. FTA also has an opportunity to improve the way grantees manage integrity monitor performance. For example, Agency officials did not make sure that grantees resolved integrity monitor recommendations or developed controls to prevent problems from reoccurring—in part because FTA viewed the integrity monitor program as a grantee internal control. Still, FTA recently improved its guidance on the amount of detail grantees should include in their quarterly reports. Until this guidance is implemented by all DRAA grantees, however, FTA may not realize the full benefits of the integrity monitor program, and Hurricane Sandy funds may be at risk.

Our Recommendations

We made eight recommendations to improve FTA's oversight of Hurricane Sandy relief funds, including a recommendation to recover an estimated \$1.1 million in settlement funds. FTA concurred with seven and partially concurred with one.

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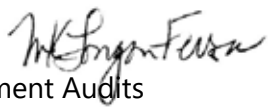
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Memorandum

Date: September 9, 2019

Subject: ACTION: FTA Has an Opportunity To Improve the Integrity Monitor Program for Hurricane Sandy Grantees | Report No. ZA2019064

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

To: Federal Transit Administrator

In October 2012, Hurricane Sandy caused widespread damage in the mid-Atlantic and northeastern United States, particularly to transportation infrastructure. To support transportation-related recovery and relief efforts in the affected areas, the Disaster Relief Appropriations Act of 2013 (DRAA)¹ appropriated \$10.9 billion² for the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program. As of April 2, 2019, FTA had obligated over \$8.3 billion and disbursed \$2.9 billion of the authorized funds, leaving \$5.4 billion of obligated funds yet to be disbursed.³

FTA defines integrity monitors as independent organizations that bring together various disciplines of expertise, including legal, auditing and accounting, investigative, engineering, and environmental.⁴ Agencies use integrity monitors to ensure compliance with relevant laws and regulations and prevent, uncover, and report unethical and illegal conduct. FTA recognized the importance of integrity monitors after they were used successfully during the post-9/11 Lower Manhattan Recovery program. As such, in May 2013 the Agency began requiring grantees that receive over \$100 million in DRAA disaster funds to hire and use

¹ Pub. L. No. 113-2 (January 29, 2013).

² The \$10.9 billion was reduced by \$545 million due to sequestration, which was required by the Balanced Budget and Emergency Deficit Control Act of 2011 (Pub. L. No. 112-25) for fiscal year 2013. Another \$185 million was transferred to another agency of the Department, bringing the total available to approximately \$10.2 billion. Of that amount, \$76.2 million is available for oversight and administrative expenses, bringing the total allocation to approximately \$10.1 billion.

³ Of the \$10.1 billion in allocated funds, \$1.7 billion has yet to be obligated.

⁴ FTA, "Hurricane Sandy Disaster Relief Oversight Plan v3.0," *FTA Grant Making and Grants Management Tool Kit*, appendix F, March 31, 2016.

independent integrity monitors.⁵ Integrity monitors are required as an additional safeguard—separate and apart from project management—to promote compliance with Federal requirements and protect against fraud, corruption, and cost abuse. Aside from the DRAA grantee requirement, FTA does not use integrity monitors, either directly or as a requirement for grantees. Our office has also cited the use of independent private-sector inspectors general (IPSIG) as a best practice on large construction projects in New York and New Jersey. Independent integrity monitors can provide similar outside expertise.⁶

DRAA directed our office to support oversight of FTA’s Hurricane Sandy relief funds. Accordingly, our objective for this audit was to assess FTA’s policies for the use of integrity monitors and evaluate FTA’s oversight of integrity monitors. Specifically, we assessed whether FTA adequately (1) evaluated integrity monitor oversight plans and independence and (2) reviewed integrity monitor performance and followed up on corrective action by grantees. We visited or contacted representatives at FTA Headquarters, FTA Regional Offices 1 and 2, and selected grantee office sites in New York, New Jersey, and Connecticut. We reviewed stratified, random samples of 75 of 145 contracts—25 of 55 contracts at New York City Metropolitan Transportation Authority (MTA), 15 of 27 contracts at Connecticut Department of Transportation (CTDOT), and 35 of 63 contracts at Port Authority of New York and New Jersey (PANYNJ). While onsite, we reviewed the integrity monitors’ work papers for their reports.

We conducted this audit in accordance with generally accepted Government auditing standards. Exhibit A details our scope and methodology. Exhibit B lists the entities we visited or contacted.

We appreciate the courtesies and cooperation of Department of Transportation (DOT) representatives during this audit. If you have any questions concerning this report, please call me, at (202) 366-5225 or Ken Prather, Program Director, at (202) 366-1820.

cc: DOT Audit Liaison, M-1
FTA Audit Liaison, TBP-30

⁵ FTA, “Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery & Resiliency,” *Federal Register* 78, no. 103 (May 29, 2013). These five grantees have met the threshold—Metropolitan Transportation Authority (MTA), New Jersey Transit (NJT), Port Authority of New York and New Jersey (PANYNJ), Connecticut Department of Transportation (CTDOT), and New York City Department of Transportation (NYCDOT).

⁶ *Oversight of Major Transportation Projects: Opportunities To Apply Lessons Learned*, Statement of Joseph W. Comé, Deputy Principal Assistant Inspector General for Auditing and Evaluation, U.S. Department of Transportation, Before the Committee on Oversight and Government Reform, Subcommittee on Transportation and Public Assets, U.S. House of Representatives, June 8, 2015. OIG statements are available on our website: <https://www.oig.dot.gov/>.

Background

FTA views integrity monitors as an important internal control requirement for grantees that receive DRAA funds for large-dollar projects, and included their use as part of its Hurricane Sandy Oversight Plan. FTA requires grantees to administer integrity monitors separate and apart from their usual project management oversight. FTA permits grantees to use both external firms and staff from internal audit teams and offices of inspectors general to implement the required integrity monitor program. In a May 2013 *Federal Register* announcement,⁷ FTA established its expectations for integrity monitors; they include performance-related activities, such as reviewing DRAA grantee procedures and processes to identify susceptibility to fraud, corruption, and cost abuse, and recommending and helping to implement procedures to mitigate identified risks. FTA also expects monitors to perform additional activities, such as conducting unannounced headcounts of workers to discourage the practice of no-show jobs and meeting with prospective contractors and vendors during bid openings to ensure procurements are conducted in accordance with rules and regulations.

FTA relies on the five guiding principles in its Hurricane Sandy Oversight Plan v3.0 to oversee disaster relief funds. Those principles include ensuring that (1) grantees comply with applicable Federal regulations and (2) every effort is made to deter, detect, and report waste, fraud, and abuse. According to FTA, as part of its oversight role, it compares the grantees' plans for integrity monitors to its own established criteria. FTA also reviews the grantees' quarterly status reports and may evaluate how grantees implement their integrity monitor programs during triennial reviews or special reviews, such as financial and procurement assessments.

When developing its oversight plan, FTA recognized a need to be especially diligent with Hurricane Sandy funds, including an awareness of potential instances of fraud in the Disadvantaged Business Enterprise (DBE) Program, among other areas. Through this unique DOT program, socially and economically disadvantaged individuals who own and control small businesses can participate in over \$4.7 billion in Federal transportation contracting opportunities each year. However, this program is one of the Department's highest-risk fraud areas, representing 30.5 percent of our active grant and procurement fraud investigations. Accordingly, FTA's oversight plan explains that monitoring

⁷ FTA, "Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery, and Resiliency," *Federal Register* 78, no. 103 (May 29, 2013), p. 32296.

compliance with the Department's DBE program is part of FTA's expectations for integrity monitors.

While we are making recommendations related to opportunities for improvement in FTA's integrity monitor program, we also provide examples in this report of the positive impact integrity monitors have had on oversight of Hurricane Sandy funds.

Results in Brief

FTA has opportunities to increase the benefits of the integrity monitor program.

Federal laws and regulations state that FTA is responsible for ensuring that its grantees comply with Federal requirements.⁸ FTA's oversight plan for DRAA funds includes directing grantees to hire and use independent integrity monitors to help ensure those requirements are met. FTA has established a practice of performing ongoing collaborative reviews of a grantee's integrity monitor plan even after approval. However, it lacks a consistent and formal process for reviewing and approving plans for known risks, such as potential organizational conflicts of interest and weaknesses in reporting requirements. In addition, FTA does not use any authoritative guidance to review integrity monitor independence. For example, FTA has not analyzed or established formal guidance on whether using internal grantee staff rather than external, private integrity monitors satisfies its requirement to "hire independent integrity monitors," although FTA's Project Management Oversight Contractor (PMOC) expressed concerns about the use of internal staff. In one instance, internal staff working as monitors may have missed an opportunity to identify a potential violation of FTA's third-party contracting requirements, although after we raised the issue, the grantee reported that \$1.8 million would be credited to the grant. In other instances, internal inspectors general who were also performing integrity monitor functions participated in settlements that could have involved federally funded projects and did not always notify FTA until late in the process or after the settlements were completed. As a result, the benefits gained from the integrity monitors' oversight function may be reduced.

⁸ FTA Circular 5010.1E, "Award Management Requirements," chapter 1, Introduction and Background, #1 (March 21, 2017, rev. July 21, 2017, July 16, 2018).

FTA can improve how grantees manage integrity monitor performance.

FTA is responsible for verifying that grantees ensure their integrity monitors meet its seven program expectations, which range from checking for financial improprieties to attending bid openings and scope reviews. Yet, until we informed them, FTA representatives were unaware that two of three integrity monitors⁹ were not performing some of these duties, an indication of the need for improved oversight by FTA. In addition, FTA does not review integrity monitoring work to incorporate newly identified high-risk areas into its program expectations or plans. While FTA requires certain grantees to use an integrity monitor program as an added control, it still bears responsibility for making the program work. FTA does not provide adequate guidance, however, to make sure that grantees resolve monitors' recommendations or take proactive steps to ensure grantees establish controls to prevent problems from reoccurring. For example, when an integrity monitor appropriately documented violations of prevailing wage laws, FTA did not confirm that the grantee had taken corrective actions or inform other grantees about this high-risk area. These weaknesses occurred in part because FTA does not collect specific, detailed information about grantees' integrity monitoring activities because it views the integrity monitor program as a grantee internal control. FTA did not ask grantees to send quarterly reports before early 2016 and still does not require these reports to contain useful details, such as timelines for consideration and resolution of integrity monitor recommendations. While these reports demonstrate the positive benefits of an integrity monitor program, some grantees provide high-level information that does not indicate whether findings have been resolved or identify patterns to share across the program. In December 2018, FTA completed reviews of grantees' integrity monitor programs, which resulted in improved guidance on the amount of detail to include in quarterly reports. While this guidance is a positive step, not all grantees have incorporated it into their integrity monitor programs. Until implemented, FTA may not realize the full benefits of the integrity monitor program, and Hurricane Sandy funds may be at risk.

We are making recommendations to improve FTA's oversight of Hurricane Sandy relief funds.

⁹ NYCDOT is not included in this analysis because its integrity monitor program did not begin to operate until May 31, 2017, after we completed our primary integrity monitor program reviews.

FTA Has Opportunities To Increase the Benefits of the Integrity Monitor Program

FTA initiated the Hurricane Sandy integrity monitor program as an internal control to help grantees protect against the risk of fraud, waste, and abuse of Federal disaster-relief funds. While we found examples of the program's positive impact and ongoing benefits, there are areas that could be strengthened. For instance, FTA's process for approving integrity monitor plans does not ensure that grantees comply with program expectations. In addition, FTA lacks guidance to help grantees determine whether integrity monitors are independent, and it inconsistently enforces its requirements for grantees.

A More Consistent Process for Approving Integrity Monitor Plans Could Help FTA Address Risks

FTA's Hurricane Sandy Disaster Relief Oversight Plan v3.0 provides a risk-based framework that is intended to give staff oversight structure and guidance, as well as protect taxpayer funds against waste, fraud and abuse. Specifically, FTA requires grantees to establish integrity monitoring plans that provide safeguards for Federal funds, separate and apart from project management. As part of its oversight framework, FTA is responsible for reviewing and approving these plans to ensure they meet program expectations and support its Hurricane Sandy oversight goals.

Still, FTA does not have a formal process for reviewing and approving integrity monitor plans. For example, FTA noted that three of five grantees had addressed the following critical elements in their integrity monitor plans: (1) maintaining the independence of the monitors, (2) providing monitors with supplemental resources as needed, and (3) identifying the appropriate scope of work for the monitors. However, FTA did not mention these elements when it approved two other grantee plans, which indicates that it performed its reviews and approvals in an ad hoc and inconsistent manner.

FTA also did not address significant risks—such as inadequate reporting and potential organizational conflicts of interest—in all integrity monitor plan approvals. For example, FTA required three of five grantees to address quarterly reporting when it approved their integrity monitoring plans. Yet FTA took 2 years to require one of the two remaining grantees to include quarterly reporting in its plan and, as of July 11, 2019, still had not required the other grantee to do so. Furthermore, FTA did not specify the minimum requirements for quarterly

reporting until May 2016—3 years after the program started—and some reports still lack the details necessary for effective oversight, as we discuss below.

All five Hurricane Sandy grantees proposed using both internal staff and external contractors for integrity monitor work. However, FTA only addressed conflict-of-interest rules for contractors in one of the plans. To ensure grantees using external sources receive unbiased work, FTA’s criteria typically require conflict-of-interest prevention or mitigation,¹⁰ but FTA did not require such assurances from the other four grantees.

When we raised our concerns about plan-approval consistencies with FTA officials, they said that the integrity monitor program is new in terms of Hurricane Sandy disaster-relief grants, and the program is still evolving. FTA independently incorporated the monitors into an existing program to strengthen its overall Sandy Oversight framework. As such, FTA views integrity monitor plans as “living documents,” suitable for revision based on lessons learned during program implementation. Moreover, rather than establish formal procedures, FTA relied on regional staff with prior experience in this area to review the integrity monitor plans. In FTA Region 1, for example, FTA staff, FTA’s Project Management Oversight Consultant (PMOC), and the CTDOT integrity monitor team regularly review CTDOT’s plan. As a result, several improvements have been made to the plan, including a comprehensively defined scope, clearer roles for CTDOT’s internal staff and external firms, and robust directions for addressing integrity monitor requirements.

Since we began our audit, FTA has increased its use of the triennial review process to update integrity monitor plans. While this represents a good practice for making updates and improvements to plans, FTA still does not have consistent criteria for integrity monitor plan approvals.

FTA Guidance Does Not Define Integrity Monitor Independence

FTA’s *Federal Register* Notice for oversight of emergency relief funds states that FTA grantees “will be required to hire and use independent integrity monitors.”¹¹ Grantees use different combinations of internal and external personnel as part of their integrity monitor plans, including investigations and audit staff within

¹⁰ FTA Circular 4220.1F, “Third Party Contracting Guidance,” chapter III, section 3, states that when using outside sources, the grantee should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor’s judgment.

¹¹ FTA, “Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery, and Resiliency,” *Federal Register* 78, no. 103 (May 29, 2013), p. 32302.

internal offices of inspector general (OIG), other internal audit staff, and contractors. One grantee OIG solely directs and oversees integrity monitor performance by others, but does not consider itself a monitor. In this report, we refer to all entities performing, directing, or overseeing this work as “integrity monitors,” although they may have duties outside the program. While the *Federal Register* says grantees must hire and use independent monitors, FTA does not specify how to ensure monitors are, and continue to be, independent. Internal staff who serve as integrity monitors may lack objectivity or familiarity with FTA’s grant requirements or may have self-interest concerns. Such challenges to independence can prevent monitors from effectively safeguarding Federal funds and undermine the effectiveness of FTA’s integrity monitor program.

In particular, FTA’s guidance lacks a definition of “independence.” When asked, FTA Headquarters representatives stated the program’s concept of independence was “whatever findings are made at the field level do not become watered down in reporting up to the highest level of the grantee.” Also, because there were so few plans to approve, they told us the Regions did not need a definition that addressed how to assess independence. One of FTA’s PMOCs expressed concerns about CTDOT’s decision to use its own staff as integrity monitors. Yet FTA ultimately approved this decision.

In the absence of FTA criteria and recognizing that most grantees use internal staff as integrity monitors, we looked to the Government Accountability Office’s (GAO) *Generally Accepted Government Auditing Standards* (GAGAS), which provides extensive guidance for establishing independence in various environments. Using the GAGAS criteria as a benchmark, we identified two situations in which integrity monitors did not identify noncompliance with grant requirements or report potential violations of FTA requirements adequately or timely.

Internal Staff Who Serve as Integrity Monitors May Be Overly Reliant on State Practices

In the first example, the internal audit staff performing monitor duties stated the grantee followed some FTA requirements but not others, which FTA and the grantee have subsequently addressed. On July 8, 2014—a year and a half after Hurricane Sandy—the CTDOT Commissioner issued a State Emergency Declaration regarding the Norwalk Railroad Bridge, a 118-year-old swing bridge that was failing to close, causing significant travel delays. On March 10, 2015, FTA approved resiliency funding¹² to reimburse a portion of the costs to replace the bridge. CTDOT used sole-source solicitations to award nearly \$1.8 million in

¹² As defined in the Interim Final Rule, a resiliency project is “designed and built to address future vulnerabilities to a public transportation facility or system due to future recurrence of emergencies or major disasters....” *Federal Register* 78, no. 103.

project consulting services. However, CTDOT did not provide a written justification for the sole-source procurements; therefore, CTDOT was not in compliance with Federal rules.¹³ While the integrity monitor appropriately recognized that the bridge replacement did not comply with some State and Federal regulations, it incorrectly concluded that the sole-source solicitations were FTA-compliant and no further action was needed. In part, this was due to a Connecticut law that allows for solicitation in any manner (including sole source) for work to restore a railroad during a declared emergency.¹⁴

A CTDOT representative emphasized that the CTDOT audit culture is organizationally independent. We do not question that independence, but note that an internal integrity monitor that is overly reliant on its knowledge of State practices and rules may neglect to identify Federal requirements. Under the GAGAS independence criteria, long association with an audited entity can pose a threat to objectivity or independence. FTA representatives told us in January 2017 that CTDOT was obligated to comply with Federal contracting requirements as part of its grant agreement. On July 31, 2017, CTDOT indicated that it would refund almost \$1.8 million in Federal funds that had been improperly awarded on the Norwalk Bridge contracts.¹⁵ If left uncorrected, this expenditure would have been considered an improper payment.

Internal Staff Who Serve as Integrity Monitors May Have Self-Interest Concerns

The second independence-related concern involve grantees' integrity monitors that also serve as investigative partners, participating in cases and settlements negotiated by the local New York County District Attorney's Office (DANY). This dual role poses concerns because of the distinct responsibilities associated with each role. As integrity monitors, MTA-OIG and PANYNJ-OIG have the responsibility to protect the Federal interest. Essential to this responsibility is prompt notification about criminal or civil matters that may affect the Government, as FTA's Master Agreement¹⁶ requires grantees to do. However, as DANY's investigative partner, MTA-OIG pointed out that it has a responsibility to consider the restrictions on information that may be shared with non-partners.

¹³ FTA Circular 4220.1F, chapter VI 3i(1)(b).

¹⁴ Connecticut General Statutes, § 13b-4d(a)(1).

¹⁵ CTDOT Integrity Monitor Audit Report# IM-1-2017, *Review of the Norwalk Railroad Swing Bridge (Walk Bridge) Pre Award Process for Compliance with State and Federal Procurement Regulations (April 28, 2017)*. The \$1.8 million, not-to-exceed value of the emergency letter agreement contracts now will be funded by the State and comprises over \$600,000 already billed on these contracts and their remaining value, up to another \$1.1 million.

¹⁶ FTA's fiscal year 2018 Master Agreement contains the standard terms and conditions for FTA grants and other awards authorized by various transit and other laws, including DRAA. Section 39.b(3), states, "If the Recipient [grantee] has credible evidence [of] a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, the Recipient must promptly notify the U.S. DOT Inspector General, in addition to the FTA Chief Counsel or Regional Counsel..."

MTA-OIG also stated that information specifically collected for local investigations may not be sufficient to meet Federal needs. Yet restricted or delayed notification impedes FTA's ability to recover improperly paid funds and protect the integrity of the DBE program by removing bad actors.¹⁷ Additionally, settlements controlled by DANY under State law allocate forfeiture amounts to integrity monitors serving in dual roles. This further complicates the self-interest issue as, under the Master Agreement, FTA retains the right to a proportionate share of proceeds recovered from any third party.¹⁸

Challenges in obtaining timely information about local investigations and settlements have involved Hurricane Sandy and non-Hurricane Sandy projects that predate FTA's integrity monitor program. Our work has identified how even non-Hurricane Sandy settlements can impact DOT programs. For example, in its role as DANY's investigative partner, MTA-OIG, MTA's integrity monitor, investigated a large, New York-area contractor for DBE fraud on a non-Sandy FTA-funded project. However, it did not notify FTA or MTA, the grantee, about the investigation in sufficient time or with sufficient information for FTA to take action against the contractor. This information could have disqualified the contractor from future Federal awards. Instead, it was found to be "presently responsible" and was awarded more than \$64 million in work using Federal Hurricane Sandy funds. Even in cases that do not involve Hurricane Sandy projects, settlements that do not identify the parties involved can affect subsequent federally funded activities—such as responsibility determinations for firms bidding on future Sandy-funded projects.

The previous example involved fraud on a non-Sandy project that later impacted a Hurricane Sandy responsibility determination. However, these settlements are also directly impacting Hurricane Sandy-funded projects. More recently, MTA-OIG participated as a DANY's investigative partner in an investigation of DBE fraud and other crimes. The investigation identified a firm that received \$1.2 million in questionable payments on three Hurricane Sandy funded contracts that involved fraud, as well as \$8.1 million on another 22 non-Sandy contracts. An FTA representative told us that MTA-OIG notified the Agency on April 19, 2018, 1 day after DANY issued a press release publicly announcing the results of the investigation.

¹⁷ There is a significant history of fraud involving the Federal DBE program, including instances of ineligible "front companies" rather than certified DBEs performing the work. Grantees are responsible for ensuring that only firms owned and controlled by socially and economically disadvantaged individual(s) participate in the program. The DBE program's integrity depends in a large part upon the establishment of systematic procedures to ensure that only eligible, responsible, and appropriately certified firms participate in the program and perform the work.

¹⁸ FTA's fiscal year 2018 Master Agreement, section 39.c, states, "The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the Federal share for the Underlying Agreement."

We found the participants in the process have differing requirements for and perceptions of the integrity monitors' role in providing timely settlement notifications. Timely notification about investigative and settlement actions taken against FTA-funded contracts is a requirement specified in the Master Agreement between FTA and the grantee. FTA officials agreed that they should have been promptly notified before the terms were finalized in cases where the grantees knew about the investigations or settlements. When we asked about the delayed and incomplete notification, MTA-OIG provided documentation indicating it did not always know that settlements had been negotiated. However, when MTA-OIG officials were aware of completed settlements, they did not always notify DOT in a timely manner. The Master Agreement requires grantees, but not integrity monitors, to comply with its provisions. In addition, FTA has not developed procedures to require all participants in grantee integrity monitoring activities to promptly notify (1) FTA about current or prospective legal matters that may affect the Federal Government and (2) FTA and the Department of Transportation's Office of Inspector General (DOT-OIG) about potential fraud, waste, or abuse occurring on FTA-funded projects. We believe a grantee that allows or has knowledge of noncompliance by others participating in its approved integrity monitor program significantly undermines the requirements of the Master Agreement.

MTA indicated that it has limited knowledge of these settlements until after they are signed, even when its integrity monitor, MTA-OIG, participates in them. Also, MTA stated that it cannot assess whether MTA-OIG's activities as an integrity monitor comply with the Master Agreement because MTA-OIG is not obligated to follow it. According to MTA, this is because MTA-OIG is statutorily independent from MTA under New York State law. MTA-OIG maintains that the Master Agreement cannot require it to disclose restricted information about an ongoing criminal matter to a non-investigative partner (e.g., MTA or DOT) without authorization from the prosecutorial office leading the investigation. MTA-OIG is accurate when it states that disclosure of information covered by grand jury secrecy rules is limited; however, not all information gathered in an investigation, even one that uses a grand jury, is covered by those rules. In comparison, Federal procedures¹⁹ call for investigators and prosecutors to consider strategies that maximize the Government's ability to share information to the fullest extent appropriate.

There is an additional concern related to entities serving in the dual role of investigative partner and integrity monitor: determining whether settlements have been negotiated and allocated in proper amounts. While performing its role as an integrity monitor, MTA-OIG received over \$1.3 million in forfeiture

¹⁹ U.S. Department of Justice, "Coordination of Parallel Criminal, Civil, Regulatory, and Administrative Proceedings," *U.S. Attorneys' Manual*, chapter 27 (January 30, 2012).

allocations from settlements controlled by DANY under State law. MTA-OIG shared \$718,000 of these allocations with FTA and kept almost \$585,000. However, FTA was not given adequate information to determine whether this amount accurately reflected the Federal share.

The practice of serving in a dual role as integrity monitor and investigative partner is not isolated to MTA-OIG. PANYNJ-OIG, responsible for overseeing the integrity monitors for PANYNJ, also participated in investigations of suspected fraud on federally funded projects without notifying FTA timely or in sufficient detail, contrary to the Master Agreement requirements. In July 2014, after learning about one of these cases, FTA staff reminded PANYNJ about its obligation to report suspected fraud and requested information on any settled or pending cases affecting the Federal Government. However, PANYNJ did not respond, and FTA did not follow up until November 2017. In response to our December 2017 inquiry, PANYNJ representatives stated they intended to discuss a potential return of settlement funds with FTA. In April 2019, PANYNJ and FTA discussed these settlements, which totaled \$6.6 million, with \$1.5 million going to PANYNJ-OIG. According to an FTA representative, PANYNJ plans to send some of its settlement money to FTA. As of August 12, 2019, FTA is in the process of recovering \$1.1 million based on its proportionate share of funding on each of the projects in the settlements.

Lack of settlement notifications by grantees and their integrity monitors challenges the Agency's efforts to promptly identify bad actors. FTA recently revised its Master Agreement notification requirements to enhance grantee reporting; however, according to an FTA representative, the requirements do not extend to integrity monitors. In addition, a lack of training and adequate guidance on certain matters—such as the meaning of prompt notification—has contributed to the situation. For example, some integrity monitors told us they had complied with the Master Agreement's prompt notification requirements, even when they notified FTA after the settlements were completed. However, credible evidence of fraud typically is identified well before the execution of the settlement agreement, and thus should be reported long before that time. FTA does not have explanatory materials and training that could reduce such misunderstandings, help grantees mitigate the risk posed by integrity monitors that serve in a dual role as investigative partners, support compliance, and protect the Federal interest.

FTA Can Improve How Grantees Manage Integrity Monitor Performance

FTA is responsible for ensuring that grantees meet all Federal requirements, and integrity monitors help grantees fulfill those requirements. Yet FTA does not assess whether all grantees verify that integrity monitors meet performance expectations or take corrective action when monitors identify noncompliance with Federal requirements.

FTA Has an Opportunity To Work With Grantees To Enhance Integrity Monitor Performance

FTA does not verify that all integrity monitors meet the Agency’s seven program expectations (see figure 1), which are incorporated in integrity monitor plans.

Figure 1. FTA’s Expectations for Integrity Monitors

<p>Any recipient receiving over \$100 million in Disaster Relief Appropriations Act funds will be required to hire and use independent integrity monitors. It is FTA’s expectation that such integrity monitors will:</p>
1. Conduct an initial review of all existing procedures and processes for susceptibility to fraud, corruption, and cost abuse.
2. Recommend and assist in implementing procedures designed to mitigate all risks identified in its initial review.
3. Conduct forensic reviews of payment requisitions and supporting documentation, payments, change-orders, and review for indications of bid rigging and overcharging.
4. Provide investigative services, as necessary.
5. Conduct periodic, unannounced headcounts of workers to detect and deter the practice of no-show jobs.
6. Attend bid openings, scope reviews, and meetings with prospective contractors and vendors to ensure procurements are conducted in accordance with the recipient’s rules and regulations and that a “level playing field” is being maintained for all involved.
7. Make recommendations to tighten controls on the procurement process.

Source: *Federal Register* 78, no. 103 (May 29, 2013), p. 32302.

Two of the three integrity monitors we reviewed are not performing all seven program expectations. Specifically:

- CTDOT's integrity monitor does not conduct periodic, unannounced headcounts of workers to detect the practice of no-show jobs and deter the infiltration of organized crime. The integrity monitor stated that it used inspection reports prepared under standard construction procedures to document the workforce, and it is logistically difficult to coordinate unannounced site visits given construction schedules and site security. Moreover, CTDOT explained that the daily presence of an onsite consulting engineering firm minimizes the need for unannounced site visits.
- PANYNJ's integrity monitor told us it does not attend bid openings or scope reviews or meet with prospective contractors and vendors because the grantee uses a unique approach that prioritizes its attendance at those events based on risk.

FTA representatives said they were unaware the integrity monitors were not performing these functions until we informed them, and they have since sought out and accepted the grantees' explanations about why these duties were not fulfilled. However, this indicates that FTA did not conduct a review to determine whether integrity monitors met program expectations. As a result, FTA may not have realized the full benefits of the integrity monitor program—which is an important part of its Sandy Oversight Plan

Furthermore, FTA does not have policies and procedures to monitor for additional high-risk areas that could be incorporated into plans as new program expectations. Identifying risk areas helps ensure that all grantees and monitors address important vulnerabilities. For example, integrity monitors do not review the process to determine contractor responsibility before the award is issued. While FTA's integrity monitor expectations include recommending tighter controls for the procurement process, they do not include assessments of how grantees determine contractors are responsible. Periodic reviews of responsibility determinations could improve the procurement process and prevent bad actors from receiving Federal funds.

Stronger Oversight of Grantees Could Help Ensure Integrity Monitor Recommendations Are Tracked and Resolved

FTA does not provide oversight to ensure grantees resolve issues identified by integrity monitors or establish controls to prevent them from reoccurring. Grantees are expected to maintain sufficient internal controls over federally

funded projects, such as tracking and implementing recommendations from the integrity monitor. FTA's written procedures do not require grantees to track integrity monitor recommendations to resolution or submit reports that describe integrity monitor activities and findings. Since 2016, FTA has improved its requirements for grantee reports, but details are still lacking. As the examples below demonstrate, integrity monitors have a positive effect on Sandy-funded projects and support FTA's oversight in a number of ways. However, for the recommendations to have impact, they have to be tracked and resolved by the grantees.

- For example, one integrity monitor found violations of prevailing wage laws,²⁰ which FTA's grantees are required to follow. MTA's integrity monitor found that 12 of 13 of the contractors it reviewed did not pay prevailing wages to employees for all the hours worked or complete statements of compliance.²¹ The integrity monitor documented these issues in MTA's quarterly reports to FTA, but FTA did not ensure the grantee had taken corrective actions. Instead, we followed up with MTA regarding the 12 prevailing wage violations, which amounted to \$98,900. An MTA representative eventually responded by directing the contractors to pay their employees and subcontractors the prevailing wage. Yet FTA did not identify this violation reported by one integrity monitor as a high-risk area or alert other grantees so they could consider such violations when planning their integrity monitor activities.
- In another instance, an integrity monitor reported a potential Buy America Act violation, but FTA took about 5 months to provide written direction on resolving this violation. On October 5, 2016, CTDOT issued a "stop work" order for the New Haven Rail Yard, and notified FTA, after CTDOT discovered that Turkish steel rebar had been installed in concrete duct banks for the federally funded Hurricane Sandy project. In December 2016 CTDOT lifted the stop-work order after laboratory test results found the Turkish steel's properties were otherwise acceptable.

FTA officials said that they held several phone conversations with CTDOT in early December 2016 in which they concurred verbally with CTDOT's proposed corrective action, but they did not document those discussions. In March 2017, almost 3 months after CTDOT authorized the contractors to resume work, FTA wrote to CTDOT. The letter documented FTA's concurrence with the proposed corrective action, including that all

²⁰ Prevailing wage laws, such as the Davis-Bacon Act (Title 40, U.S. Code §§ 3141–3148), require contractors to pay wages to laborers and mechanics at a rate not less than the prevailing wages in an area, as specified by the Secretary of Labor.

²¹ The statement of compliance attests that the information is accurate and complete and the employee has been paid the full amount earned without rebates or improper deductions.

installed duct banks should remain in place, pending confirmation that the salient material properties (yield strength, metallurgy, etc.) were acceptable to CTDOT and its Engineer of Record. However, FTA did not provide a timeline for monitoring the corrective action or follow-up testing.

On May 16, 2017—2 months after FTA’s letter and about 5 months after the work resumed—the Engineer of Record informed CTDOT that the lab results for the tested steel met or exceeded project requirements. However, the Engineer of Record did not address whether the tested steel represented all the foreign rebar that was installed. CTDOT did not adhere to its typical quality assurance program procedures—which require heat numbers, rebar sizes, and other identification elements—to track the steel to project documents. Instead, CTDOT relied upon a single lab test, which did not examine all of the installed foreign steel.

FTA officials told us that they defer to grantees to determine the testing needed and do not review the test results or analysis, although they had listed that analysis as their condition for accepting the steel in their March 2017 letter to CTDOT.

FTA does not have sufficient information to determine whether grantees take follow-up actions to resolve issues identified by integrity monitors. However, since early 2016, FTA has required all grantees take follow-up actions to resolve issues identified by integrity monitors, including written reports on specific integrity monitor activities, findings, and recommendations. While those quarterly reports list the number of audits and findings, compliance issues, and corrective actions, they lack the details—such as a projected completion date, description of the matter, the grantee’s response—to give FTA a thorough understanding and promote resolution of the situations. Agency officials told us that since they became aware of this issue, integrity monitors have reported positive results in their quarterly reports to FTA. For example, integrity monitors reported they had

- recommended stronger controls for procurement requests for NYCDOT;
- verified controls over certain change orders for NJT; and
- recommended improvements to Buy American Act procedures for MTA.

Since FTA views the integrity monitor program as a grantee internal control, it has not required the monitors’ quarterly reports to include complete details. Without detailed reports, FTA cannot follow up with grantees to ensure they are tracking and resolving integrity monitor recommendations. Following up in this manner could provide further assurance that the integrity monitor program is reducing the significant risks associated with administering Hurricane Sandy disaster-relief funds. In late 2018, FTA completed reviews of grantees' integrity monitor

programs, which included clearer guidance about the scope and degree of detail expected in grantee quarterly reports. These reviews represent a positive step for stronger oversight. However, according to an FTA representative, not all grantees have implemented these recommendations.

Conclusion

Given the \$10.9 billion in taxpayer dollars Congress has allocated for Hurricane Sandy-related recovery and resiliency efforts, FTA established the integrity monitor program as an integral extension of its oversight plan to help grantees safeguard against fraud, corruption, and cost abuse. FTA and its grantees have established some best practices and demonstrated that the program is yielding positive results. However, FTA's controls can be strengthened to ensure that approved integrity monitor plans adequately address known risks, all monitors are independent, program expectations are achieved, and identified issues are resolved and shared. By taking steps to strengthen the integrity monitor program, FTA can further demonstrate it is achieving its intended purpose—to safeguard Hurricane Sandy funds.

Recommendations

To improve FTA's oversight of disaster-relief funds, we recommend that the Federal Transit Administrator:

1. Develop and implement procedures for consistently reviewing, approving and periodically updating grantee integrity monitor plans.
2. Develop and implement guidance for determining threats and impediments to independence. The guidance should address criteria for independence, including the use of internal grantee staff and actions required if independence issues cannot be resolved.
3. Develop and implement procedures requiring all participants in grantee integrity monitoring activities to promptly notify the grantee and FTA when they have knowledge of current or prospective legal matters relating to FTA-funded Hurricane Sandy projects that may affect the Federal Government, including defaults, breaches, major disputes, or litigation; and promptly notify the grantee, FTA, and DOT-OIG if they have knowledge about potential fraud, waste, or abuse occurring on FTA-funded projects, including knowledge of a criminal or civil investigation; by a Federal, State, or local law enforcement or other investigative agency,

a criminal indictment or civil complaint; probable cause that could support a criminal indictment; or any other credible information.

4. Recover the estimated \$1.1 million that represents FTA's share of the settlement funds paid to PANYNJ-OIG.
5. Provide guidance or training on Master Agreement notification requirements for grantees and integrity monitors, such as defining what is meant by providing "prompt" notification.
6. Develop and implement procedures for periodically assessing whether integrity monitors are meeting plan expectations, and for taking appropriate corrective actions when integrity monitors are not meeting expectations.
7. Inform integrity monitors about best practices for targeting new risk areas, such as procedures for contractor responsibility determinations, and updating plans accordingly.
8. Develop and implement procedures for grantee oversight of integrity monitors that include a review of quarterly reports that, at a minimum contain information about integrity monitor activities, findings, and recommendations, as well as descriptions of the grantee's response to the recommendations and estimated completion dates for corrective actions, where appropriate.

Agency Comments and OIG Response

We provided FTA with our draft report on July 11, 2019, and received the Agency's formal response on August 12, 2019, which is included as an appendix to this report. In its response, FTA concurred with recommendations 1, 2, and 4 through 8 as written, and provided appropriate planned actions and completion dates.

FTA partially concurred with recommendation 3 that the Agency develop and implement procedures requiring all participants in integrity monitoring activities to promptly notify grantees and FTA when they have knowledge of current or prospective legal matters related to FTA-funded projects that may affect the Federal Government. The Agency indicated it could only require integrity monitors to provide notifications with respect to Hurricane Sandy grants and does not have the authority under either the Hurricane Sandy integrity monitor program or Chapter 53 of Title 49 of the United States Code to impose the notification requirement with respect to projects funded under other FTA programs.

Based on the Agency comment, we clarified recommendation 3 to expressly limit it to only Hurricane Sandy grantees subject to the integrity monitor program. While FTA may not have authority to impose requirements on entities independent of grantees who sign the Master Agreement, it does review and approve the integrity monitor plans that are required by the Agency. FTA could implement the clarified recommendation within its existing Hurricane Sandy integrity monitor program by requiring grantees to submit integrity monitor plans that only include participants who are able and willing to comply with the prompt notification requirement. Therefore, we consider recommendation 3 open and unresolved, and ask FTA to provide additional information on its planned actions in response to our revised recommendation 3.

Actions Required

We consider recommendations 1, 2, and 4 through 8 resolved but open pending completion of planned actions. We consider recommendation 3 open and unresolved. In accordance with DOT Order 8000.1C, we request that FTA provide the additional information for recommendation 3 within 30 days of the date of this report.

Exhibit A. Scope and Methodology

We conducted this audit between September 2016 and July 2019 in accordance with generally accepted Government auditing standards. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective—to assess FTA’s policies for the use of integrity monitors and evaluate FTA’s oversight of integrity monitors. Specifically, we assessed whether FTA adequately (1) evaluated integrity monitor oversight plans and independence and (2) reviewed integrity monitor performance and followed up on corrective action by grantees.

To conduct our work, we visited or contacted representatives at FTA Headquarters, as well as FTA Regional Offices in areas affected by Hurricane Sandy. We assessed FTA’s policy for grantees use and oversight of the integrity monitors. Our criteria were the *Federal Register* Notice dated May 29, 2013, and FTA’s Hurricane Sandy Disaster Relief Oversight Plan v3.0. We interviewed FTA personnel to learn about their oversight practices for the integrity monitor program. We also requested supporting documentation, such as the approved integrity monitor plans for each grantee, as well as correspondence between FTA and grantees during the approval process. We evaluated FTA’s oversight practices for:

- Approving integrity monitor plans;
- Selecting integrity monitors;
- Eliminating potential conflicts of interest between the integrity monitors and grantees; and
- Monitoring, addressing, and tracking findings and recommendations issued by the integrity monitors.

Five FTA recipients (see exhibit B) received over \$100 million in DRAA funds and were required to hire and use independent integrity monitors. We sent a data request to four of the five recipients; one was still in the process of developing its program during our audit and therefore did not warrant a review. We asked for audit findings and recommendations, including the recovery of funds; quarterly reports sent to FTA; and claims, suspected fraud, and suspension and debarment referrals, restitution, litigation settlements and materials related to FTA grants (not only Sandy-related) for the last 5 years.

From this data, we identified settlements reported by each recipient that involved Federal funds, were signed by DANY, with MTA-OIG and PANYNJ-OIG as investigative partners.

We conducted site visits at MTA, PANYNJ, and CTDOT, and conducted a desk review of NJT. While onsite, we reviewed the integrity monitors' work papers for their reports. We also reviewed a stratified, random sample of 75 of 145 contracts—25 of 55 contracts at MTA, 15 of 27 contracts at CTDOT, and 35 of 63 contracts at PANYNJ. We reviewed the contracts to determine if they included the required Federal clauses, as well as the grantee's contractor responsibility checklist for each contract.

Exhibit B. Organizations Visited or Contacted

Facilities

Federal Transit Administration Headquarters, Washington, DC

Federal Transit Administration, Region 1, Connecticut

Federal Transit Administration, Region 2, New York

Other Organizations

Department of Transportation, Connecticut

New York City Department of Transportation, New York

New York City Metropolitan Transit Authority, New York

New Jersey Transit, New Jersey

Port Authority of New York and New Jersey, New York

Exhibit C. List of Acronyms

CTDOT	Connecticut Department of Transportation
DANY	New York County District Attorney's Office
DBE	Disadvantaged Business Enterprise
DRAA	Disaster Relief Appropriations Act of 2013
DOT	Department of Transportation
DOT-OIG	DOT Office of Inspector General
FTA	Federal Transit Administration
GAGAS	<i>Generally Accepted Government Auditing Standards</i>
GAO	Government Accountability Office
IPSIG	Independent Private-sector Inspector General
MTA	New York City Metropolitan Transportation Authority
MTA-OIG	MTA Office of Inspector General
NJT	New Jersey Transit Corporation
NYCDOT	New York City Department of Transportation
OIG	Office of Inspector General
PANYNJ	Port Authority of New York and New Jersey
PANYNJ-OIG	PANYNJ Office of Inspector General

Exhibit D. Major Contributors to This Report

KENNETH PRATHER	PROGRAM DIRECTOR
ANN WRIGHT	PROJECT MANAGER
ALLISON CLEVELAND	SENIOR AUDITOR
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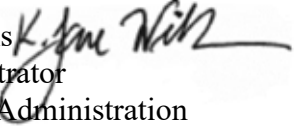
Appendix. Agency Comments



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

Memorandum

Subject: INFORMATION: Management Comments – Office of Inspector General (OIG) Draft Report— FTA Has an Opportunity To Improve the Integrity Monitor Program for Hurricane Sandy Grantees Date: **AUG 12 2019**

From: K. Jane Williams 
Acting Administrator
Federal Transit Administration Reply to
Attn. of: Chris Paul
(202) 366-6076

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

The Federal Transit Administration (FTA) is committed to safeguarding Disaster Relief Appropriations Act of 2013 (DRAA) funds through robust oversight. On its own initiative, FTA established the integrity monitor requirement as an additional safeguard to ensure that Hurricane Sandy grantees comply with Federal laws and regulations. Specifically, FTA required grantees receiving more than \$100 million in DRAA funds to establish and use independent integrity monitors as an additional internal control to uncover, report, and prevent fraud, waste, and abuse. The OIG acknowledges in its draft report the positive impact integrity monitors have had on the oversight of Hurricane Sandy funds. The following are examples of FTA’s successful use of integrity monitors:

- The New York Metropolitan Transportation Authority (MTA) Integrity Monitor uncovered weak internal controls that allowed the billing of hourly rates to exceed the average contract hourly rate, which the MTA then took appropriate action on prior to future payments;
- The MTA Integrity Monitor, which oversees New York City Transit (NYCT) as an umbrella integrity monitor, also uncovered improper procurement practices at NYCT, finding that independent cost estimates did not include required details such as prices and quantities for line items, which NYCT then corrected; and,
- The Integrity Monitor for the Port Authority of New York / New Jersey (PANYNJ) took numerous steps to deter improper and illegal conduct on the World Trade Center Transit

Hub project by improving PANYNJ's internal controls, including creating sign-in/sign-out sheets, conducting site visits, interviewing workers; and conducting a prevailing wage review/ Disadvantaged Business Enterprise review, and head counts of on-site contractors.

Based upon our review of the draft report, FTA concurs with recommendations 1, 2, 4, 5, 6, 7, and 8, as written; and partially concurs with recommendation 3. We partially concur with recommendation 3 regarding the development and implementation of procedures requiring all integrity monitoring participants to notify grantees and FTA when they have knowledge of legal matters related to FTA-funded projects, and to notify FTA and DOT OIG if they have knowledge about potential fraud, waste or abuse occurring on FTA-funded projects.

FTA only can require an integrity monitor to provide notifications with respect to Hurricane Sandy grants. Where a participant in an integrity monitor program is not a Hurricane Sandy grantee, FTA has no authority under either the Hurricane Sandy integrity monitor program or Chapter 53 of Title 49 of the United States Code to impose the notification requirement with respect to projects funded under other FTA programs. We plan to complete actions to implement all recommendations by July 31, 2020.

We appreciate this opportunity to comment on the report. Please contact Chris Paul, FTA's Audit Liaison, at (202) 366-6076 with any questions.

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OIG conducts audits and investigations on behalf of the American public to improve the performance and integrity of DOT's programs to ensure a safe, efficient, and effective national transportation system.

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