
Office of Inspector General

Audit Report

NEW YORK CITY FULTON STREET TRANSIT CENTER: FTA'S SUSTAINED FOCUS ON KEY RISK AREAS WILL BE NEEDED UNTIL THE PROJECT IS COMPLETED

Federal Transit Administration

Report Number: MH-2011-150

Date Issued: August 15, 2011





Memorandum

U.S. Department of
Transportation

Office of the Secretary
of Transportation
Office of Inspector General

Subject: **ACTION:** New York City Fulton Street Transit
Center: FTA's Sustained Focus on Key Risk Areas
Is Needed Until the Project Is Completed
Federal Transit Administration
Report Number MH-2011-150

Date: August 15, 2011

From: Joseph W. Comé *Joe Comé*
Assistant Inspector General
for Highway and Transit Audits

Reply to
Attn. of: JA-40

To: Federal Transit Administrator

The Federal Transit Administration (FTA) is responsible for overseeing the New York Metropolitan Transportation Authority's (MTA) construction of the Fulton Street Transit Center project (Fulton Street project) in New York City (see figure 1, page 2). According to MTA's most recent estimates, total costs to complete the Fulton Street project will be \$1.4 billion, with an expected completion date of June 2014. The project's Federal share, \$1.27 billion, represents approximately 90 percent of the total projected cost, and includes \$847 million in Lower Manhattan September 11 Recovery funds and \$423 million in American Recovery and Reinvestment Act (ARRA) funds. ARRA funding for Fulton Street is the largest single award for any of FTA's ARRA projects. As with all ARRA-funded projects, it must meet the Office of Management and Budget's (OMB) requirements for unprecedented levels of accountability.

Accordingly, we conducted this audit to: (1) evaluate the effectiveness of FTA's oversight of the Fulton Street project, including cost, schedule, funding, and any grantee management issues and (2) assess whether ARRA requirements are being met. We interviewed FTA and MTA officials; reviewed relevant FTA guidance and requirements; assessed FTA and ARRA-related documents, including key documents that described project risks and risk mitigation strategies; and examined ARRA reports MTA submitted to the Federal Government and contractor invoices. We conducted this audit from April 2010 through May 2011, in accordance with generally accepted government auditing standards for

performance audits. Additional details of our audit scope and methodology are described in exhibit A.

Figure 1. Artist's Rendering of the Fulton Street Transit Center



Source: MTA

RESULTS IN BRIEF

FTA has provided sufficient oversight of the Fulton Street project by approving a projectwide recovery plan,¹ identifying specific risks that could negatively impact the project's costs or schedule, and monitoring MTA's implementation of strategies to mitigate the identified risks. As a result, the Fulton Street project's current cost and schedule estimates have remained within the parameters FTA and MTA agreed to in August 2009. However, FTA will need to sustain this level of oversight because the project is approximately 3 years away from its estimated "substantial" completion date,² with complex construction remaining.³ Additionally, FTA and MTA must maintain vigilance in overseeing ongoing risks to the successful completion of the project, including preventing schedule delays; maintaining the project's budget; ensuring the project remains within current

¹ FTA requires a project grantee to develop a recovery plan and submit it for approval. A recovery plan documents a grantee's proposed measures to accomplish new milestones and costs to complete a project when it determines that schedule delays and costs increases or both will occur.

² Substantial completion is when project activities are accomplished, and it is ready for revenue operations.

³ As of March 2011, construction was 46 percent completed, based on expenditures.

committed funding amounts; and combating fraud, waste, and abuse, with a particular focus on Disadvantaged Business Enterprise (DBE) fraud. Events in the past year illustrate the importance of focusing on DBE fraud. Following Department of Transportation (DOT) Office of Inspector General (Inspector General) investigations, two prime contractors agreed to pay approximately \$20 million each to resolve criminal investigations into DBE fraud on federally funded contracts in New York, including an FTA-funded project. These contractors are performing work on Fulton Street, heightening the risk of fraud and the need for proactive mitigation efforts.

FTA's oversight has ensured MTA established controls to comply with ARRA requirements on accounting for ARRA dollars, but FTA did not detect errors in the number of ARRA-funded jobs MTA reported. Our review of sampled transactions and related contractor invoices, cost breakdowns, and inspection reports determined that MTA could account for nearly \$15 million in ARRA-funded transactions. However, our review showed that MTA's June 30, 2010, quarterly report⁴ on the Fulton Street ARRA-funded jobs did not calculate the number of jobs consistent with instructions to estimate the number of jobs funded based on actual hours worked. OMB's guidance⁵ and FTA's instructions to its grantees provide directions for calculating this estimate based on the number of actual hours worked and funded by the Recovery Act during the reporting period. Instead, MTA, in some cases, reported jobs based on estimated hours. For example, MTA overreported approximately 10 of the 27 ARRA-funded jobs one contractor claimed during that period.⁶ Based on our finding, MTA initiated a review to validate the accuracy of all ARRA-funded contractor hours it reported; but as of May 2011, it had not completed its review.

We are making recommendations to FTA to take additional steps to enhance its oversight of MTA's DBE program and MTA's training and processes for submitting accurate ARRA required jobs information.

BACKGROUND

Initiated in the aftermath of the September 11, 2001, terrorist attacks, the Fulton Street project is intended to improve access to and connections between 11 New York City subway lines near the World Trade Center site in Lower Manhattan. The project includes a large transit center building, with notable architectural

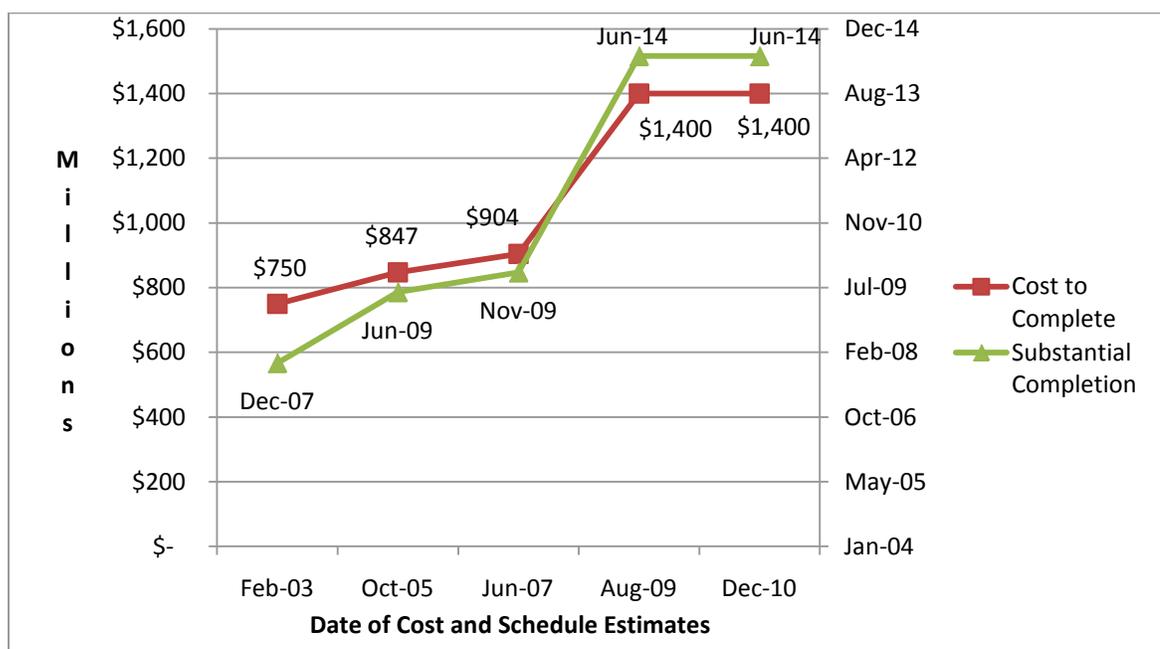
⁴ ARRA section 1512 requires a recipient that received ARRA funds to submit a report each calendar quarter that contains for each funded project: (1) the total amount of recovery funds received; (2) the amount of funds received that were expended or obligated; and (3) the number of jobs funded, expressed as "full-time equivalents" (FTEs).

⁵ OMB Memoranda, M-10-08, "Updated Guidance on the American Recovery and Reinvestment Act – Data Quality, Non-Reporting Recipients, and Reporting of Job Estimates," December 18, 2009.

⁶ After MTA reports its data on www.FederalReporting.gov, FTA reviews the data, and the Recovery Accountability and Transparency Board releases the data on www.recovery.gov.

features, and the restoration of an adjacent historic building. As shown in figure 2, the project's estimated cost at completion has increased by approximately \$650 million, from \$750 million to \$1.4 billion; and its estimated "substantial" completion date has been extended by almost 7 years, from December 2007 to June 2014.⁷ Key factors behind the cost increases and schedule delays were MTA's need to redesign the transit center to address security concerns, a 5-year extension of the project, higher real estate acquisition costs, and higher-than-estimated construction contract bids.

Figure 2. Cost and Schedule History on the Fulton Street Project



Source: OIG analysis.

In 2008, the OIG reported on the major challenges that FTA and MTA, the project's grantee and manager, faced in preventing cost increases and schedule delays.⁸ Initially, Federal funding of \$847 million was committed for the Fulton Street project under the Lower Manhattan Recovery program (funded in the aftermath of the September 11, 2001, terrorist attacks), and that funding was intended to cover all project costs. However, to cover the estimated project cost increases that have occurred since the Lower Manhattan Recovery program funds were committed, in 2009 and 2010 FTA awarded a combined total of \$423 million in ARRA funds for the Fulton Street project.

⁷ Both estimates were developed during the conceptual design stage of the project.

⁸ OIG Report Number MH-2008-086, "Baseline Report on the Lower Manhattan Recovery Projects," September 26, 2008. OIG reports and testimonies are available on our website www.oig.dot.gov.

FTA's Region II Office in New York City, and its component Lower Manhattan Recovery Office (LMRO), are responsible for overseeing MTA's construction of the Fulton Street project. Due to the urgency of rebuilding high-priority projects in Lower Manhattan after the devastating September 11 terrorist attacks, LMRO worked with the project grantees on streamlined project delivery processes to provide project oversight. A project oversight team consisting of FTA staff and contractors are overseeing MTA's project, financial, and environmental management, as well as procurement systems reviews. FTA developed a "manage to the risk" oversight approach to customize the level and kind of oversight and a risk assessment approach to measure the adequacy of schedule and cost contingencies. As part of this approach, FTA requires that MTA develop a recovery plan that documents measures to meet new milestones, cover increased costs, or both. To date, FTA has approved eight recovery plans for the Fulton Street project.

FTA IS PROVIDING SUFFICIENT OVERSIGHT, BUT A SUSTAINED FOCUS ON KEY RISK AREAS WILL BE NEEDED UNTIL THE PROJECT IS COMPLETED

FTA and its project management oversight contractor (PMOC) are providing sufficient oversight of the Fulton Street project by working with MTA to identify risks that could negatively impact the project's costs or schedule and by monitoring MTA's implementation of strategies to mitigate these risks. As a result, the Fulton Street project's cost and schedule estimates have remained within the parameters FTA and MTA agreed to in August 2009. However, the work is far from complete. Accordingly, FTA will need to sustain a heightened level of oversight because the project is approximately 3 years away from its "substantial" completion date, with complex construction remaining. Specifically, key focus areas to ensure the successful completion of the project are preventing schedule delays; maintaining the project's budget; ensuring the project remains within current committed funding amounts; and combating fraud, waste, and abuse, with a particular focus on DBE fraud.

FTA Has Used Its Oversight Tools Effectively on the Fulton Street Project

FTA has effectively employed several tools to oversee the Fulton Street project. Specifically, FTA has:

- **Employed a PMOC to augment its oversight capabilities.** FTA assigned a PMOC to perform day-to-day oversight of the Fulton Street project, perform risk assessments, forecast revised costs and schedule estimates based on those risks, and monitor MTA's risk mitigation efforts. FTA has provided MTA with the results of the risk assessments and both parties

have discussed mitigation strategies. Based on our analysis and interviews, we determined that FTA and the PMOC were providing sufficient oversight of MTA's implementation of agreed-upon risk mitigation strategies.

- **Required recovery plans to help prevent further cost increases and schedule delays.** FTA requires MTA to submit a recovery plan for FTA approval whenever MTA determines that schedule delays or cost increases will occur. In August 2009, FTA conditionally approved MTA's eighth recovery plan, and in April 2010, formally approved the recovery plan after receiving additional information from MTA. It outlined a revised strategy for procuring construction contracts and revised cost and schedule estimates. We reviewed the project's five ARRA-funded contracts and MTA's procurement strategy for completing the project with multiple, smaller construction contracts. We concluded that MTA's recovery plan mitigated the possibility of higher costs and schedule delays at this time.
- **Ensured sufficient funding sources were committed to cover costs.** The Fulton Street recovery plan proposed the addition of \$423 million in ARRA funding and an increase of \$74 million in local funding. In 2009 and 2010, FTA approved the ARRA funding. FTA's action in response to the recovery plan, essentially solved MTA's dilemma of identifying funds to cover the significant cost increases that had occurred before 2009—after the \$847 million in September 11 recovery funding and \$56 million in local funding were no longer sufficient to cover costs.

A Sustained Focus on Cost, Schedule, Funding, and Fraud Prevention Is Needed Until the Fulton Street Project Is Completed

While FTA's oversight of MTA to date has ensured the project is on schedule and within budget, years of complex construction work remains. Based on our evaluation of FTA and MTA risk assessments, and discussions with FTA and MTA officials, the project will continue to face risks related to cost increases, schedule delays, funding shortages, and DBE fraud. Accordingly, FTA will need to continue focusing its ongoing oversight on these risks.

Preventing further cost increases. The Fulton Street project has already experienced substantial cost estimate increases. According to MTA, the following projectwide risks could result in an increase in costs and, as a result, will need to be managed carefully:

- construction contractors experiencing unforeseen utility costs;
- MTA labor costs increasing due to schedule delays;
- MTA and other stakeholders initiating design changes; and

- contractors improperly installing waterproofing and grouting in the later stages of the project, requiring MTA to pay for corrective actions.

Keeping the project on schedule. The project still faces the risk of schedule delays that could result in increased costs. Based on MTA's analysis, the following schedule risks could impede MTA's ability to meet its estimated substantial completion date of June 2014:

- delays due to multiple contractors working simultaneously at the same site;
- failure of contractors to meet project equipment and facilities specifications during the post-construction operational testing period;
- a contractor's failure to meet required quality assurance standards, resulting in the need for repairs or rework of construction; and
- a construction contractor's failure to install required equipment in the expected time frames.

Ensuring committed funding continues to cover project costs in the long-term. Keeping the Fulton Street project within current funding levels is critical, considering MTA is experiencing severe financial difficulties; and the potential of another Federal stimulus like ARRA is unknown. The need to keep the project on schedule is also necessary because MTA must draw down ARRA funds from the Treasury by September 30, 2015. If the project is delayed, MTA might not be able to use ARRA-obligated funds before the expiration date, requiring MTA to make up any difference in costs. In FTA's approval letter for the recovery plan, FTA stipulated that if costs exceed the \$1.4 billion estimate, MTA must identify additional resources to fund the shortfall.⁹

Combating fraud, waste, and abuse. Preventing DBE fraud is particularly challenging on this project. Prior OIG work on DOT's implementation of ARRA, as well as FTA's internal ARRA risk assessment, reported that the possibility of fraud, waste, and abuse occurring on an ARRA-funded project could be significant due to the rapid infusion of billions of dollars into the economy. In our most recent DOT Top Management Challenges report,¹⁰ we noted that within the ARRA program, 50 criminal investigations for alleged crimes were open, of which 30 percent concerned possible DBE fraud. OMB's ARRA implementation guidance directs Federal agencies to be aggressive in preventing fraud on projects like Fulton Street.

⁹ MTA's cash flow projections show that the ARRA funds will be spent before the Treasury cutoff date of September 30, 2015. FTA's PMOC has determined that sufficient budget contingencies remain to cover unexpected costs on the project.

¹⁰ OIG Report Number PT-2011-010, "DOT's Fiscal Year 2011 Top Management Challenges," November 15, 2010.

In addition, the history of malfeasance in the New York construction industry heightens the risk of DBE fraud occurring on the Fulton Street project. For example, on November 29, 2010, the United States Attorney's Office for the Eastern District of New York announced that a prime contractor on MTA projects, including an FTA-funded Lower Manhattan Recovery Project, agreed to pay a \$20 million civil forfeiture to resolve a criminal investigation into DBE fraud. In March 2011, a second Fulton Street project contractor entered into an agreement with the United States Attorney's Office for the Southern District of New York and agreed to pay approximately \$20 million to resolve a DBE fraud investigation. Both of these contractors are working on the Fulton Street project, which underscores the need for FTA to ensure MTA has an effective program in place to certify and monitor DBEs. In January 2011, DOT revised its regulation that requires MTA's DBE program include a written certification that any work committed to a DBE is actually performed by that DBE. FTA conducted a DBE compliance review of MTA in October 2010 and found that MTA's DBE program had not been updated to comply with those revised requirements. On June 15, 2011, subsequent to the release of our draft report, FTA finalized its report on the review—a step that was needed to ensure MTA quickly addressed the weaknesses identified.

Finally, MTA management must ensure its employees know how to identify “red-flag” indicators of fraud and report them to the appropriate authority, such as the DOT Inspector General.¹¹ Renewed vigilance on the part of MTA staff is imperative because, in January 2010, MTA decided to terminate its use of integrity monitors—also known as independent private-sector inspectors general¹²—on the Fulton Street project. Our previous work on major transit projects supports the use of integrity monitors as the “eyes and ears” of management at construction sites. For example, the MTA Inspector General's 2009 annual report cited the former integrity monitor's role in the successful prosecution of a DBE fraud case on the Fulton Street project.¹³

MTA HAD ADEQUATE CONTROLS TO COMPLY WITH ARRA REQUIREMENTS, BUT MTA REPORTED INACCURATE JOBS INFORMATION

FTA's oversight has ensured MTA complied with ARRA requirements related to maintaining accountability for the efficient and effective expenditure of ARRA

¹¹ FTA's grant agreement with MTA requires any credible evidence that a false claim, or criminal or civil violation of law involving Recovery Act funds, be reported to the U.S. DOT Inspector General.

¹² An independent private-sector inspector general is an independent firm with legal, auditing, and investigative skills, employed by an organization to ensure compliance with relevant laws and regulations and to prevent, uncover, and report unethical and illegal conduct.

¹³ According to MTA, as of June 23, 2011, it was in the process of hiring an integrity monitor for the Fulton Street project.

dollars, and reporting timely information to the Federal Government, including the number of ARRA-funded jobs. FTA ensured MTA was aware of ARRA's requirements by notifying MTA of the direct jobs reporting requirements and holding webinars where FTA offered technical assistance on how to report the job data. However, FTA's required data quality review of MTA's job information did not detect some errors our audit later discovered. This indicates the need for FTA to enhance its process for reviewing MTA's submissions and ensuring MTA adheres to OMB's requirements for reporting accurate data.

FTA Ensured MTA Has Controls To Comply With ARRA Accountability and Timely Reporting Requirements

MTA had adequate controls to ensure its ARRA-related expenditures were in compliance with ARRA accountability requirements. To assess compliance, we judgmentally selected five invoices, totaling \$14.5 million, that four of the five Fulton Street project contractors submitted to MTA and that MTA paid for with ARRA funds. Our review included information supporting the selected invoices, such as detailed cost breakdowns and daily inspection reports, and concluded these expenditures were documented and in accordance with contract terms.¹⁴ According to MTA documentation supporting its section 1512 report, as of June 30, 2010, its ARRA expenditures totaled \$30.8 million. Our review of information contained in FTA's Transportation Electronic Award and Management (TEAM) database and contractor invoices confirmed the accuracy of MTA's reported expenditures.

Further, FTA has overseen MTA's efforts to meet ARRA reporting requirements. Specifically, FTA staff administered training webinars on reporting requirements to MTA and reviewed the information in MTA's sections 1201¹⁵ and 1512 reports to ensure it was reasonable and complete. For example, MTA submitted section 1512 reports that identified ARRA grant expenditures, the description of work performed and the types of jobs funded for each of the ARRA contracts, and the number of ARRA-funded jobs. The Recovery Accountability and Transparency Board published the data from the reports on the Federal Government's ARRA website (www.recovery.gov) quarterly, as ARRA mandates. Because each ARRA recipient must continue to submit reports to the Federal Government until they have expended all ARRA funds received, FTA faces an ongoing challenge in providing proactive oversight to ensure MTA's compliance with ARRA requirements for reporting accurate information.

¹⁴ Our review of internal controls did not extend to determining whether each payment should have been made or that each was made in the correct amount. We have ongoing work evaluating whether FTA has adequate internal controls to prevent and detect improper payments to ARRA grant recipients.

¹⁵ ARRA section 1201 requires recipients of DOT's ARRA funds to submit periodic reports containing information tracking, on a cumulative basis on: (1) the amount of Federal funds appropriated, allocated, obligated, and outlaid; (2) the number of projects for which contracts have been awarded and the amount of ARRA funds associated with such contracts; and (3) the number of direct, project hours funded.

FTA's Process for Reviewing MTA's Reports on Jobs Funded by ARRA Did Not Detect Errors

While FTA Headquarters and Region II reviews met OMB's requirement to perform limited data quality reviews of recipient data, these reviews were not sufficient to identify the reporting errors we later discovered. OMB guidance does not require specific documentation; however, it provides instructions for calculating job estimates using the number of actual hours worked. The use of such information is intended to provide a solid basis for ARRA recipients to accurately report estimates. To assess compliance with jobs reporting requirements, we reviewed submissions from one of five ARRA-funded construction contracts and found errors. The reported MTA jobs were calculated based on estimated hours worked by that contractor, rather than on the actual hours worked. FTA's briefings to its grantees on ARRA requirements¹⁶ instruct grantees to collect actual job hours and payroll information in calculating jobs.¹⁷ FTA performed "validation checks" of the information MTA submitted by comparing the number of job hours to the jobs reported, respectively, against the amount of expenditures reported. This not only identified the number of job hours and jobs, it also highlighted expenditures that were inordinately high or low.¹⁸

Our review found errors that were not identified in FTA's reviews. MTA's section 1512 report estimated that 147 jobs were ARRA-funded for the reporting period ending June 30, 2010, but this figure was not supportable based on the documentation MTA provided to us.¹⁹ For example, MTA overreported approximately 10 of the 27 ARRA-funded jobs one contractor claimed. After we found errors in the number of jobs reported, we asked MTA to survey documentation from its construction contractors to determine whether they made similar errors in the September 30, 2010, section 1512, quarterly report. MTA complied with our request and its survey found that in 14 of the 15 contractor submissions, the contractors based the ARRA job hours reported to MTA either on estimates or on incorrect information.

In addition, MTA's reported hours under section 1201 contained errors, dating back to August 2009, when section 1201 reporting began for the Fulton Street project. MTA's survey discovered instances of both underreporting and overreporting of hours. According to the MTA documentation we reviewed, the ARRA-funded hours that MTA contractors reported contained errors. Based on

¹⁶ FTA's Tips for Successful 1512 Reporting, updated June 17, 2010.

¹⁷ Direct hours worked that are ARRA funded are the data reported in the section 1201 reports and the basis for the data reported in section 1512 reports.

¹⁸ Federal agencies are not required to certify or approve data reported on the Federal ARRA website, but must develop internal policies and procedures for reviewing reported data even to the extent of performing manual reviews.

¹⁹ Documentation we reviewed included payroll records for one construction contractor and its subcontractors, the consultant construction manager, and MTA staff. It included the actual hours worked by a construction contractor for the pay periods covered under the section 1512 reporting period (ending June 30, 2010).

the contractors' actual invoices, these contractors overreported approximately 4,400 of approximately 273,000 ARRA-funded hours from August 2009 through November 30, 2010. These errors impact the job hours on MTA's section 1201 reports, which are calculated based on cumulative direct ARRA-funded hours. As of February 2011, MTA had planned to audit an additional 13,115 of ARRA-funded hours reported for field office and clerical services.

While these error rates were not necessarily significant, because the ARRA funding for Fulton Street is the largest funding FTA has awarded to any one project and because a significant amount remains to be spent, it would be prudent for FTA to increase the level of data quality reviews on the Fulton Street project beyond the OMB requirements. According to OMB guidance, Federal agencies may go beyond basic requirements and extract the reported data elements to validate recipient reports for compliance, accuracy, and consistency. On Fulton Street, this would involve performing reviews on a periodic basis for different data elements in MTA reports. In addition, the errors found in MTA's jobs reports indicate that MTA and its contractors did not fully understand the need to provide information based on actual hours.

CONCLUSION

As a steward of Federal funds, FTA provides oversight to ensure grantees keep their projects on schedule and on budget. After experiencing cost increases and schedule delays in the past, FTA's oversight of MTA, to date, has ensured the project is on schedule and within budget. However, years of complex construction work remain. Ultimately, success in meeting cost and schedule targets will depend on FTA sustaining a high level of oversight to ensure MTA takes effective and timely actions to mitigate risks. Additionally, the infusion of ARRA dollars into the Fulton Street project has magnified the need for FTA to expand its level of oversight so that MTA meets ARRA requirements for full accountability, transparency, and economic impact. Because approximately \$324 million, or 77 percent, of ARRA funds awarded to the Fulton Street project remain unexpended, FTA should continue to ensure that MTA meets ARRA accountability requirements and strives to reduce errors in ARRA jobs reports as it spends the remaining ARRA funds.

RECOMMENDATIONS

To enhance the level of oversight provided, we recommend that the Federal Transit Administrator take additional steps to:

1. Finalize the compliance review of MTA's DBE program and require MTA to develop an action plan to address expeditiously any weaknesses the review identified.

2. Identify steps FTA has taken or will take to increase its level of oversight for:
 - a. Reviewing the ARRA information MTA submits to the Federal Government and
 - b. Ensuring MTA has completed its audit of job data previously submitted, and documented its training plans and processes for complying with ARRA requirements to reduce omissions or errors in MTA's future data submissions.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided a draft of this report to FTA on May 23, 2011. We received a joint response from FTA and the Office of the Secretary of Transportation (OST) on June 20, 2011, which is included in its entirety in the appendix to this report. In the response, FTA concurred with recommendation 1 and has completed the actions required to address the recommendation. Therefore, we consider it closed.

Regarding recommendation 2, FTA and OST stated that we did not correctly interpret OMB guidance in our draft report and that additional oversight by FTA was not needed given the low error rate identified by our review. According to FTA and OST, the Fulton Street contractors complied with OMB guidance²⁰ because the guidance requires ARRA recipients to submit only job estimates.

We disagree. After considering FTA and OST's comments and seeking clarification from OMB staff on the job reporting guidance, we continue to maintain that further FTA action is needed to reduce omissions or errors in MTA's future job data submissions. OMB's guidance and FTA's instructions to its grantees on ARRA job reporting called for the use of actual job hours and payroll information in calculating job estimates. While the error rates we identified are modest, significant funds remain to be spent on the project. As we stated in our report, the Fulton Street project received over \$400 million in ARRA funding, of which approximately \$300 million remains unspent. Accordingly, FTA should ensure that MTA implements its planned actions to reduce the risk of future job reporting errors.

ACTIONS REQUIRED

In accordance with Department of Transportation Order 8000.1C, we are closing recommendation 1. For recommendation 2, we are requesting that FTA reconsider

²⁰ OMB Memorandum "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009," June 22, 2009.

its position based on the additional information provided in this report and provide us, within 30 days, a revised response.

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) 366-5630 or Thomas Yatsco, Deputy Assistant Inspector General, at (202) 366-1302.

#

cc: Lana Hurdle, Deputy Assistant Secretary for Budget and Programs
Martin Gertel, DOT Audit Liaison (M-1)
Angela Dluger, FTA Liaison, TBP-10

EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this performance audit from April 2010 through May 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We evaluated FTA's oversight of the Fulton Street project based on the OIG Framework for Evaluating FTA's Oversight of Major Transit Projects. The key components of this framework evaluated whether:

- baseline cost and schedule estimates are realistic;
- the Federal share of the funding is available and whether reliable local funding source(s) exist to cover the non-Federal share of project costs;
- the project has a clear and transparent organizational structure and the project grantee is exhibiting sound project management practices;
- disagreements about project design have been resolved and any needed third-party agreements have been reached or negotiations are progressing in a productive manner;
- the project meets FTA criteria, guidance, and requirements for federally funded projects;
- project management oversight contractors and financial management oversight contractors have conducted comprehensive, independent reviews of the project in accordance with FTA's guidance and requirements; and
- FTA and the project grantee have agreed to mitigation strategies to address the key project risks identified by FTA's oversight contractors.

We reviewed FTA documents, including criteria, policies, and procedures, related to its oversight of MTA's Fulton Street project. In addition, we reviewed FTA's grant agreements, the PMOC's monthly and spot reports, a Federal Management Oversight Consultant assessment, FTA and MTA Risk Registers, and MTA recovery plans. Also, we reviewed public laws; Federal regulations; OMB and FTA ARRA-related guidance; and MTA's ARRA-related policies and guidance, certifications, contractor expenditures, and reports. MTA's ARRA-related

documentation included payroll records for one construction contractor and its subcontractors, the consultant construction manager, and MTA staff. To test ARRA-related expenditures, we judgmentally selected 5 invoices, totaling approximately \$14.5 million, from a total of 21 invoices that totaled approximately \$37 million. The invoices were selected to include at least one invoice, submitted to MTA for payment and reimbursement, from each of the four ARRA active contracts and covering work performed through June 30, 2010. We traced work items from invoice breakdowns to signed contracts. Based on the testing we performed, we concluded that for the invoices we reviewed, MTA had adequate controls in place to ensure ARRA expenditures were documented and in accordance with contract terms. We performed limited testing to determine whether MTA could provide us with documentation supporting line items invoiced and the invoice contained the proper authorizations.

We conducted interviews with officials from FTA Region II and MTA officials, located in New York, New York, as well as FTA's Headquarters staff. Internally, we consulted with OIG's engineer-advisor and other teams conducting ARRA-related audits. We also consulted our criminal investigations staff on issues related to DBE fraud.

In addition, within the context of the audit objectives, the *Government Accountability Office Government Auditing Standards* for internal controls requires auditors to assess whether the organizations have properly designed and implemented internal controls for protecting its resources against waste, fraud, and inefficiency. MTA maintains a computerized database that identifies ARRA-funded jobs data as reported by its contractors and in-house organizations. This database is the basis for the reports MTA submits to the Federal Government to comply with ARRA. To test the database, we judgmentally selected for review ARRA job hours reported for the 2nd quarter of 2010—4 entries for process controls and 10 entries for documentation supporting job hours reported—out of 34 entries. The entries were selected to include a broad spectrum of ARRA-funded hours reported by outside vendors and MTA-related in-house labor, as of June 2010. Based on our testing, we determined that MTA's database processing system has controls to ensure the integrity of its computer-generated and processed data for the entries we tested. However, the system lacked adequate controls to ensure the contractor data complied with OMB's Updated ARRA guidance of December 18, 2009. Our review of internal controls did not extend to making a determination of whether each payment should have been made or that it was made in the correct amount. We have work ongoing to evaluate whether FTA has internal controls to prevent and detect improper payments across all ARRA grant recipients.

Exhibit A. Scope and Methodology

EXHIBIT B. MAJOR CONTRIBUTORS TO THIS REPORT

Name	Title
Thomas Yatsco	Deputy Assistant Inspector General
George Lavanco	Project Manager
Michael Dzandza	Auditor
Rosa Scalice	Auditor
Joseph Tschurilow	Auditor
Rodolfo Pérez	Engineer Advisor
Harriet Lambert	Writer-Editor

APPENDIX. AGENCY COMMENTS



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

Memorandum

Subject: **ACTION:** Management Response to OIG Draft Report, Date: June 20, 2011
 “Actions Needed to Improve FTA’s Oversight of the
 New York City Fulton Street Transit Center”

From: Peter Rogoff, Administrator Reply to Angela Dluger
 Federal Transit Administration *Peter Rogoff* Attn. of: (202) 366-5303

Lana Hurdle, *Lana Hurdle*
 Deputy Assistant Secretary for Budget and Programs
 and Co-Chair of the DOT Recovery Act TIGER
 Team

To: Calvin L. Scovel III
 Inspector General

FTA Provided Effective Project Oversight

We are pleased to see the OIG report recognize that FTA’s oversight of the New York Metropolitan Transit Authority’s (MTA) Fulton Street Transit Center (FSTC) project has been effective. The Fulton street project provides an important capability for New York City that is also a vital element of the continued healing process from the vicious terrorist attack on the city on 9/11. We are pleased the project remains on the schedule MTA adopted in 2008 and are mindful of the challenges ahead.

Although not acknowledged in the report, FTA initiated a number of enhanced oversight actions to manage project specific risks relating to cost, schedule and quality of the FSTC. Since MTA intended to issue four separate contracts to construct the transit center building, FTA recommended that MTA identify an on-staff Integration Manager to identify and quickly address any interface issues between the contracts. When MTA decided to use ARRA funding for the project, FTA worked with MTA to identify and address any compliance measures for Recovery Act requirements, such as Buy America and Disadvantaged Business Enterprise (DBE). To ensure that the project was built to standards when the contract testing facility that was monitoring the project was indicted for faulty testing, FTA proactively required a testing plan which confirmed that the concrete did in fact meet the design criteria. Lastly, to address the potential for fraud, waste and abuse, FTA recommended that MTA reestablish the use of an integrity monitor for capital projects.

Recipient Job Estimates in Accord with OMB Expectations

Appendix. Agency Comments

FTA is in compliance with OMB's guidance for performing necessary checks on grantee reported job data. Based upon review of the information in the OIG draft report by both FTA and the Office of the Secretary, and direct monitoring of the program by the Department, we have determined that the OIG draft demonstrates neither a specific need for additional oversight in this case, nor does it present any documentation that such additional oversight would be a cost beneficial investment of scarce government resources.

The report asserts that Fulton Street contractors based Recovery Act recipient reports on estimates, "in violation of OMB requirements." This is not correct. OMB guidance M-10-08, dated December 18, 2009 in Section 5.1.2 states that "recipients of Recovery Act Funds subject to Section 1512 are required to submit *estimates* of jobs created and jobs retained...in their recipient reports." Section 5.2 further enumerates the key principles of reporting these estimates of jobs created and retained. Specifically, in 5.2.1, the OMB guidance states, that "the Section 1512 reports contain *only estimates* of jobs created and jobs retained."

Neither Congress nor the OMB envisioned the type of pervasive and resource intensive oversight of Recovery Act recipient reporting espoused in the OIG draft report. There is no expectation that Federal agencies would verify grantees' contractors' timecards and other payroll documentation to "validate recipient reports for compliance, accuracy, or consistency," as asserted in the report. To the contrary, the OMB guidance establishes the expectation of reasonable estimates accompanied by written documentation. Section 5.2.10 states, "This guidance does not establish specific requirements for documentation or other written proof to support reported estimates on jobs created or retained; however, recipients should be prepared to justify their estimates. Recipients must use reasonable judgment in determining how to best estimate the job impact of Recover dollars."

Thus, it is clear that there was no intention of creating new compliance requirements, but to establish reasonable methodology, supported by some documentation, for estimating the job impact of Recovery Act spending. The OMB guidance established expectations for Agencies to perform limited data validation checks for grantee reported job estimates. The OIG's analysis in the report demonstrates that FTA ensured MTA reported and provided appropriate controls in place.

Overall, the basis for this recommendation is unclear, as the OIG's own, very detailed analysis of source documentation including individual timecards for at least 273,000 Recovery Act funded hours of work, the OIG identified it found potential errors relating to just 4,400 hours, or just 1.6 percent of the reported hours. This represents an accuracy rate of 98.4 percent, an A by any grading system.

RECOMMENDATIONS AND RESPONSE

Recommendation 1: Finalize the compliance review of MTA's DBE program and require MTA to develop an action plan to address expeditiously any weaknesses the review identified.

Response: Concur. FTA finalized its compliance review of MTA's DBE program on June 15, 2011. The final report contains all of the findings resulting from the review, as well as an action plan from MTA. A copy of the final report and action plan is attached and action pursuant to this recommendation is complete.

Recommendation 2: Identify steps FTA has taken or will take to increase its level of oversight for:

Appendix. Agency Comments

- a. Reviewing the ARRA information MTA submits to the Federal Government and
- b. Ensuring MTA has completed its audit of job data previously submitted, and documented its training plans and processes for complying with ARRA requirements to reduce omissions or errors in MTA's future data submissions.

Response: Non-concur. As described in the section above, FTA has provided adequate validation checks in accordance with the expectations established in OMB guidance. There is neither a need, nor demonstrated cost-effective benefit to such action offered in the OIG draft report. We consider this recommendation closed.