



Program Evaluation and Audit

**Central Corridor Light Rail Transit
Subrecipient Monitoring**

9 April, 2012

INTRODUCTION

Background

The Federal Transit Administration (FTA) dispenses funds for rail projects through its New Starts program and, eventually, a Full Funding Grant Agreement (FFGA). On the Central Corridor Light Rail Transit (CCLRT) project, the Metropolitan Council is the designated recipient of FTA funds. (CCLRT was awarded its FFGA on April 26, 2011.) In a project of this size, however, there are other entities that, because of their unique position to do certain kinds of work, the Council must itself disburse money to. In grant terms, these project partners are called “subrecipients.” The Council, as the grant recipient, is responsible for the administration and management of the grant, in compliance with the grant agreement. It is also responsible for the compliance of those funds that it “passes through” to a subrecipient. In other words, although the subrecipient must abide by FTA regulations for receiving FTA funds, the Council is responsible for assuring the FTA that its subrecipients are abiding by those regulations.

The Council oversees subrecipients in every area of its transit business. It gives money to suburban transit providers who have “opted out” of the Council’s service area. It gives money to cities and regional rail authorities to renovate interchanges and stations. And, to help construct CCLRT, it passes through funds from its FFGA to six subrecipients:

1. City of Minneapolis
2. City of St. Paul
3. Hennepin County
4. The Minnesota Department of Transportation (Mn/DOT)
5. St. Paul Regional Water Services
6. The University of Minnesota

In 2009, the FTA’s 2009 Triennial Review found that the Council did not have a “comprehensive oversight plan to monitor all of the activities” of the first group of subrecipients, the suburban transit providers. In response, Program Evaluation and Audit evaluated the compliance of the opt outs to FTA regulations, and (in a 2011 report) found a need for improvement in the providers’ Drug & Alcohol regulations, Maintenance regulations, and Title VI regulations. The Minnesota State Auditor also delivered a finding about the Council’s subrecipient agreements in its 2010 report. Specifically, the Auditor concluded that, while the Council was clearly relaying federal compliance requirements to the subrecipients of its Federal Transit Cluster (CFDA and ARRA) grants, it could not prove that “all necessary monitoring procedures” of those grants “were applied consistently.”

The Auditor’s finding has sparked additional concern with subrecipient monitoring across the Council. The transit grants that the State Auditor cited have since expired. Of the Metro Transit (not Metropolitan Transportation Services) grants active as of September 2011, the largest is the FFGA for CCLRT. Based on the interest already paid to the issue,

the way that CCLRT monitors its subrecipients will clearly be a focus of external audits from its funders in the future. And because it is such a prominent project, the way that CCLRT monitors its subrecipients can inform the way the Council at large deals with subrecipient monitoring. For these reasons, an audit of CCLRT subrecipient monitoring is timely. This review was also in the 2012 Audit Plan.

Purpose

- To describe how CCLRT is monitoring the compliance of its subrecipients to FTA regulations.
- To evaluate CCLRT's monitoring, using the standards in the FTA Master Agreement and the Council's individual agreements with its CCLRT subrecipients.
- To find greater efficiencies, if any, in the Council's monitoring of its subrecipients, using the CCLRT project as an instance of that monitoring.
- To suggest a framework, if one is needed, for the continuous monitoring of CCLRT subrecipients.

Scope

The scope of the audit is the length of the Central Corridor project, from the start of preliminary engineering on CCLRT on December 13, 2006 to the present. The audit will examine the six subrecipient agreements mentioned in the Background section.

Methodology

This is not an audit of how well the Council's CCLRT subrecipients are complying with FTA regulations. Rather, it is an audit of how well the Council is monitoring the compliance of its subrecipients with FTA regulations. Primarily, the audit was conducted through interviews with project principals and desk reviews of local and federal policies, procedures, and best practices regarding subrecipient monitoring. We wanted to determine whether the monitors were aware of what they should be monitoring, and to evaluate the "robustness" of their monitoring efforts. We verified our findings by examining each of the Council's agreements with its subrecipients, both the "master funding agreements" (MFAs) that outline the terms of the relationship, and the individual "subordinate funding agreements" (SFAs) that state the specifics of scope and budget. Our examination of those agreements constituted the testing phase of the audit.

Assurances

This audit was conducted in accordance with the Institute of Internal Auditors' *International Standards for the Professional Practice of Internal Auditing* and the U. S. Government Accountability Office's *Government Auditing Standards*.

OBSERVATIONS

The regulations that govern CCLRT subrecipient relationships come mainly from two FTA sources:

- The FTA *Master Agreement*, which states that “Recipient” of federal funds, “rather than any other entity, . . . is ultimately responsible for compliance with all applicable Federal laws,” and requires the recipient to “flowdown” federal requirements to subrecipients in written agreements or contracts.
- FTA Circular 5010.1D, *Grants Management*, which lists the responsibilities of grantees to (among many other actions) “Demonstrate legal, financial, and technical capacity to carry out the program,” and “Keep expenditures within the latest approved project budget.”

In addition to these federal sources, the Council has its own policies and procedures for monitoring subrecipients. In response to an earlier review, the Council developed a guidebook for project managers, entitled *Managing Federally Funded Projects that* outlines the responsibilities of project managers for managing federal grants from application to closeout. The manual contains a section “Subrecipient Agreement/Award Process.” At the start of the Central Corridor project, the project office (CCPO) developed a procedure, 240-02 *Funding Agreements*, that defines the Council’s policies for “initiating, managing, and closing funding agreements with project partners.” Finally, each of the Council’s relationships with its six CCLRT subrecipients is governed by a master funding agreement, the written “contract” that the FTA, in its 5010 Circular, specifies each grantee must have with the entities that it dispenses money to. None of these Council guidelines lay out any additional requirements to those contained in the federal guidance and the FTA’s Master Agreement. At most, they detail certain Council practices, like requiring project managers to obtain a signed “Subrecipient Contract Initiation Memo,” or SCIM, from the subrecipient before purchases over \$50,000 can be solicited, that are the Council’s means of tailoring the federal guidance to its own organizational structure.

We developed a checklist of the actions that we deemed necessary for the proper monitoring of subrecipients from these sources, and used it to evaluate how the Council was meeting its oversight responsibilities. Our observations are organized below by topic or functional area. Before we describe what we observed about each topic, however, some general comments about the definition of “subrecipient” may be useful.

What Is A Subrecipient?

We heard three distinct definitions of what constitutes a “subrecipient” in the course of our audit. The most general comes from FTA Circular 5010.1D, which defines a subrecipient as any entity that the recipient of a grant passes money to for the purposes of the original grant. This is the effective definition of the Council’s Contracts and Procurement Unit (CPU), which is charged with fleshing out cooperative agreements into specific contractual documents. Another definition of subrecipient comes from Metro Transit’s Finance Department. Charged with dispensing grant funds and with tracking the physical inventory that those funds build and help to operate, for them a subrecipient is a non-private entity to which the Council passes money for the purposes of improving an asset that it will own in the end. The most complete and authoritative definition of subrecipient comes from Circular A-133 of the Office of Management and Budget, the federal executive department that audits the financial statements of the entities that receive federal grants. The OMB defines a subrecipient relationship by distinguishing it from the contractual relationships that governmental entities enter into with private businesses. Private businesses, for example, provide similar goods or services to many different purchasers, they operate in a competitive environment, and they themselves are not subject to the compliance requirements of the federal program. (That is not to say that the grantee does not have to hold their contractors subject to those requirements.) In contrast, subrecipients, like the grantees who directly receive federal funds to operate a federal program, have their performance measured against whether the objectives of the federal program are met, must adhere to applicable federal compliance requirements themselves, and—in the words of the Circular--use federal funds “to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity.” The definition does not state it explicitly, but the comparison acknowledges that subrecipients do not operate in a competitive environment. Governmental entities enter into subrecipient relationships with other entities because they are often the only entities that can do the work to further the federal program.

The last point of the OMB definition—that subrecipients use the funds that are passed through them to operate their own programs—suggests that the Council’s partners on the CCLRT project may not be subrecipients, as the OMB defines them. The Council has entered into these agreements with these partners because it cannot build the Central Corridor line without them, but the “program” that is the CCLRT project is the ultimately the Council’s. On the other hand, CCLRT subrecipients will have their “performance” on CCLRT measured against the federal program’s, not their own, which suggests that they may be subrecipients after all. This report continues to refer to CCLRT partners as subrecipients, while noting that their status makes a difference to the Council’s oversight of them. (It does not lessen the Council’s DBE responsibilities, for example, but it does change its oversight of planning and public participation.)

Training

CCPO initiated its six subrecipient relationships with a training session that it held in project offices in March 2010. All six subrecipients attended the training except for Hennepin County, which—because it had not yet signed a master funding agreement—was technically not yet a subrecipient. The training sessions were led by the Council’s Director of Transit Procurement, Grants Manager, Director of the Office of Diversity and Equal Opportunity, and Manager of Accounting. These sessions were mandatory, and directed at managers. CCPO also held follow-up trainings sessions on the same topics that were not mandatory, and offered to appropriate sub-administrative staff.

The framework for the training sessions was provided by the Council’s *Managing Federally Funded Projects* manual, and by leaving the manual with its subrecipients at the conclusion of the training, the Council was observing a best practice of subrecipient monitoring, that of distributing published materials to them that detail their responsibilities under the grant.

The Managing Federally Funded Projects manual contains some information that is irrelevant to CCLRT subrecipients, and some inaccurate information.

The *Managing Federally Funded Projects* manual is directed to managing conventional subrecipients on transit projects. It is not specifically directed toward managing CCLRT subrecipients. Primarily, the manual is directed to setting up grants with which conventional subrecipients will operate their own programs. It contains little or no information about monitoring subrecipients that are not operating their own programs, but helping to build a project (like CCLRT) that is managed by the Council. The manual also contains some inaccurate information. For example, the manual states that the Project Manager forwards the SCIM for required approvals from the Council’s Grants, Purchasing, and Office of Diversity and Equal Opportunity (ODEO). In reality, the SCIM is “approved” by the Council’s Project Manager and Grants Manager only. The Council’s Procurement department is not even copied on the SCIM.

Organizational Capacity

“Organizational capacity” is a measure of an organization’s power to deliver a project on time and at budget. Does it have the systems and the personnel to use the funds that it is granted in a productive and fiscally responsible manner? In general, FTA Circular 5010.1D holds the recipient of a grant responsible to “Demonstrate legal, financial, and technical capacity to carry out the program,” and the grantee is in turn responsible for funds that “‘pass through’ to a subrecipient.” While not a specific requirement of the FTA Master Agreement or the 5010 Circular, best practices for the management of grants across disciplines encourage grantees to assess the organizational capacity of their subrecipients *pre-agreement*, before the grantee passes through funds.

One way to assess organizational capacity is through risk assessment, a best practice recommended by the federal government’s interagency Grant Accountability Project. If

time and resources are limited, risk assessment can help grant monitors decide where to focus their attentions. CCPO assessed risk by focusing on the largest grants, in terms of dollar value; on projects that involved dangerous physical work; and on projects that had the most potential to impact the construction schedule. They also looked at whether a subrecipient had audit findings, and what the findings were, where applicable.

The primary way that CCPO assessed the organizational capacity of its subrecipients pre-agreement was through the mandatory training session that it conducted with them in March 2010. The session qualifies as “pre”-agreement because it was held before the Full Funding Grant Agreement was awarded, in April 2011. At the follow-up sessions, CCPO monitors asked subrecipients how their system for monitoring federal funds lined up with the Council’s. CCPO continues to meet monthly with its subrecipients’ project managers, meetings that include the subrecipients’ Finance managers.

Beyond assessing organizational capacity, the training session was designed to meet the requirements of the FTA Master Funding Agreement “to take appropriate measures necessary to ensure that all Project participants comply with all applicable Federal laws and regulations,” and the requirement of FTA Circular 5010.1D that the recipient “Ensure compliance with FTA and Federal requirements on the part of agencies, consultants, contractors, and subcontractors working under approved third party contracts or inter-agency agreements.” The single training session also emphasized the compliance requirements common to all subrecipients. In the terms of another best practice recommended by the Grant Accountability Project, it “standardized” the grant’s terms and conditions.

CCPO’s assessment of its subrecipients’ organizational capacity did not include site visits.

Training sessions give a measure of insight into a subrecipient’s organizational capacity. But training is essentially one-sided. It delivers information *to* the subrecipient, whereas assessment collects information *from* the subrecipient, and evaluates it independently. To more fully and independently assess organizational capacity, best practices recommend: reviewing organizational charts, evaluating policies and procedures, and/or visiting an organization’s site to inspect its capacity directly. The FTA Triennial Workbook, for example, recommends a site visit to assess a subrecipient’s financial capacity, and suggests that, during the visit, the grantee “review the back-up documentation for at least one invoice to the grantee to ensure that the subrecipient can trace amounts invoiced to source documents.” CCPO monitors did not visit the sites of any project subrecipients.

Hennepin County was not a beneficiary of the March 2010 training session, and has not received the follow-up attention of other subrecipients.

As previously noted, Hennepin County was not included in the March 2010 training session at CCPO for CCLRT subrecipients. They were not included in follow-up sessions either. CCPO monitors explained that the project’s arrangement with Hennepin County was “prescribed,” limited to one subordinate funding agreement or SFA that passed money from the Council to the County for modifications to the Cedar Avenue

Bridge in Minneapolis under the Civil West construction contract. Still, under the terms of that SFA, the Council passed \$325,000 to Hennepin County for the bridge project, and a SCIM was generated for the procurement.

Financial Management

Best practices for the financial management of subrecipients recommend using an electronic system to monitor grant funds, and having specific procedures in place to track requirements for subrecipients and the closing out of grants. Best practices also recommend on-site review of financial systems, pre-agreement review to identify at-risk subrecipients, and standardized grant terms and published material guidelines. Aside from the absence of an on-site review, as noted above, CCPO monitors—with the assistance of other Council departments--applied all these best practices to the financial oversight of subrecipients.

More than a best practice, the OMB's A-133 Circular requires governmental entities that receive more than \$500,000 in federal funds during a given year to have their financial statements audited, in what the OMB calls an A-133 or "single" audit. The FTA's 5010.1D Circular both repeats and modifies this requirement, stating that a "program-specific audit" can substitute for a single audit. It further notes that "Pass-through entities shall keep subrecipients' submissions on file for three years from date of receipt." If that money is passed through by a grantee to subrecipient, the FTA Master Agreement requires the grantee to review those audits for financial viability and keep them on file.

CCPO monitors obtained A-133 audits for four of the six CCLRT subrecipients. Three of these were sent to finance staff to review, and were then approved and returned to be stored in the CCPO document management system. Mn/DOT did not submit an audit to CCPO, but, as it is a state agency and does not pose a risk, no audit was requested. Saint Paul Regional Water Services (SPRWS) submitted an audit, but it was not an A-133 audit. SPRWS has not had a single audit since 2000. SFA #2 passed through \$2,000,000 from the Council to SPRWS for public utility construction inspection and utility materials work in 2011. SPRWS is obtaining a single audit for 2011.

Certifications

The OMB definition has two additional points that distinguish a subrecipient from a contractor: that a subrecipient, unlike a contractor, "Has responsibility for programmatic decision making" and that it "Has responsibility for adherence to applicable federal compliance requirements." A grantee imposes federal clauses on a contractor, but the responsibility for ensuring that the contractor abides by the federal clauses is the grantee's, not the contractor's. In contrast, a grantee "flows down" federal clauses on a subrecipient, and the responsibility for abiding by the requirements is the subrecipient's. In almost every case, that is, the Council does not do the work of complying with federal regulations for its subrecipients. It has the responsibility to inform them of federal regulations and any special rules governing the project, but the master agreement that the

Council has with its subrecipients leaves it to the subrecipients to provide the “assurance” to the FTA that they are doing so.

Such assurance is provided when grantees submit a list of signed “Certifications and Assurances” to the FTA annually, as required by the FTA Master Agreement. The Council’s master agreement requires its subrecipients to submit their certifications to the FTA and the Council. Among the assurances that a grantee or subgrantee must provide are that it is not excluded (suspended or debarred) from entering into federal transactions, and that no federal funds have been used for lobbying activities (although most CCLRT subrecipients, except the University of Minnesota, would not be engaged in lobbying activities anyway).

The City of St. Paul has not provided certifications and assurances.

CCPO requests annual certifications and assurances from all its subrecipients, and enters them into the project’s document management system after receipt. It did not receive certifications from the University of Minnesota in 2011, but has already received that document from the University for 2012. It has never received certifications from the City of St. Paul. All other subrecipient certifications have been received.

Mn/DOT is the only other agency in the state that can receive FTA funding directly. As such, it provides its certifications and assurances to the FTA, not to the Council.

Reporting

The FTA has strict reporting requirements for its grantees. The 5010 Circular requires grantees to submit (to the FTA’s automated tracking system, TEAM) on a quarterly basis Milestone/Progress and Financial Status reports. Echoing a requirement of the Office of Management and Budget’s (OMB’s) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, 5010 also says that “Grantees that expend \$500,000 or more in a year in Federal funds from all sources shall have a single audit conducted.” An A-133 or single audit is an organization-wide audit that includes both the entity’s financial statements as well as its federal awards. They are more detailed than the Financial Status reports. Grantees and their subrecipients are also required to submit Disadvantaged Business Enterprise (DBE) reports every quarter. Those reports will be discussed separately.

CCPO asks for Milestone/Progress reports from its subrecipients. They are very general, containing two or three sentences about the subrecipient’s progress on the project. Audit reviewed all the Milestone/Progress reports submitted by CCPO subrecipients, and observed that those filed by the U of M revealed some concerns about schedules and budgets. In theory, progress reports could alert project managers about such concerns. In practice, they are a redundant source of information. If the work enabled by an SFA is taking too long, it will impact other areas of the project, and it cannot go over the budgeted amount without approval of the appropriate authority. Still, the reports offer a record of project activity and it is conceivable that the basic information contained in

them could inform project funders about a problem before the FTA's monthly Progress Review meeting with project managers.

Financial Status reports are again very general, comparing the money actually spent under the SFA to that point to the amount authorized by the SFA. Another "budget to actual" report is produced whenever a subrecipient submits an invoice to the project, because the invoice lists both the amount requested and the amount already paid. CCPO monitors said that, in general, both progress and financial reports were submitted in a timely fashion, although the City of St. Paul tended to lag other subrecipients in invoicing and reporting. They saw nothing in the reports that caused them concern about project progress.

If progress and financial reports indicate whether a subrecipient is staying on schedule and on budget, A-133 audits offer further and ongoing evidence of an entity's financial capacity. For two subrecipients—the City of St. Paul and St. Paul Regional Water Services—CCPO monitors forwarded the annual financial audits that they received from subrecipients to Metro Transit's Finance Department for review. Transit Finance reviewed them, noted their review on the audit's cover page, and sent them back to CCPO for filing. According to both Transit Finance and CCPO monitors, they did not find any financial or compliance issue of concern.

Procurement

One of the federal requirements that flow through from grantee to subrecipient is the requirement to conduct competitive procurements. This is emphasized by the fact that the FTA uses the terms "recipient" and "subrecipient" interchangeably in its Circular on *Third-Party Contracting Guidance*, 4220.1F. It sees no difference between grantees and subrecipients, at least in so far as the rules apply to them. Both, for example, are required to provide full and open competition when soliciting bids or proposals, or, when less than full and open competition is available, to prepare a cost analysis evaluating the cost and profits of the proposal.

Most of the money that has been passed through from Council to subrecipient on the CCLRT project has paid for the labor of the subrecipients themselves (so-called "force account" labor), not the third party procurement of goods or services. But there have been some notable procurements by CCLRT subrecipients. The City of St. Paul, for example, was reimbursed \$1,200,000 by the Council under SFA #4 for the purchase of traffic signal controllers. The City handled this procurement rather than the Council because the City wanted to ensure compatibility with its existing traffic controllers.

As previously noted, the Contracts and Procurement Unit was one of the presenters at the Council's mandatory training session for its subrecipients in March 2010. Procurement is also discussed at length in the *Managing Federally Funded Projects* manual. The manual outlines "Federal Procurement Basics" for federally funded projects, "the minimum requirements to be used by recipients and subrecipients when purchasing goods and services with Federal funds." It adds that "Recipients and subrecipients may follow their

own procurement requirements as long as their requirements are more restrictive than these basics.”

That sentence gets at the essence of the Council’s relationship to the procurement (and most other) functions of its subrecipients. The Council is deliberate in maintaining an “arm’s length” relationship to subrecipient procurement. It passes the rules onto them, notes in the master funding agreement that they are required and expected to abide by the rules, and then lets subrecipients follow their own procurement requirements. Although CCPO managers have reviewed individual procurements by CCLRT subrecipients occasionally, on request, they did not assure the subrecipients that their procurements were compliant. The Council is responsible for monitoring compliance, but the responsibility for executing procurements is the subrecipient’s.

The Council’s own procurements are subject to strict rules of authorization and execution. Council procurements of \$50,000 or more are authorized through the routing and approval of a Contract Initiation Memo, or CIM. By outlining the procurement, its description and amounts, a CIM facilitates the collection of the required approvals. Recognizing the utility of the CIM, the Council’s Grant Manager created the Subordinate Contract Initiation Memo, or SCIM, to track procurements by subrecipients. Although the *Managing Federally Funded Projects* manual is somewhat ambiguous on this point, the SCIM originates with the subrecipient’s project manager. It asks him or her to describe what is being procured and why, and to signify that an Independent Cost Estimate has been “completed and filed” if the purchase is federally funded. It also contains a signature line for the Council’s (CCLRT’s) Project Manager to approve the procurement.

Another signatory to the SCIM is the Council’s Office of Diversity and Equal Opportunity. ODEO does not approve the SCIM, but it does use the information it contains to set DBE goals for the procurement. Neither the Council’s Contracts and Procurement Unit nor the subrecipient’s procurement department signs the SCIM. In reality, the SCIM is only a point of information on the procurement. The SFA authorizes the procurement; the SCIM only notifies the Council that it is being initiated.

CCPO did not review the policies and procedures of its subrecipients regarding procurement.

The FTA Master Agreement and FTA Circular 5010.1D require grantees to ensure that subrecipients “comply with all applicable Federal laws and regulations.” The grantee needs to have a mechanism to ensure compliance. At the least, that mechanism should involve reviewing the subrecipient’s policies and procedures regarding procurement. The subrecipient’s procurement process should meet federal requirements contained in the Master Agreement (including Buy America, debarment and suspension, and lobbying requirements).

Two SFAs authorizing work that involved third party procurement were not accompanied by SCIMs.

Audit reviewed a total of 54 SFAs: 7 for Mn/DOT, 16 for the University of Minnesota, 15 for the City of Minneapolis, 3 for Hennepin County, 9 for the City of St. Paul, and 4 for Saint Paul Regional Water Services. Of those 54, according to Audit’s review, eight authorized the procurement of materials by a subrecipient. Of those eight, two were not accompanied by SCIMs: one for the University of Minnesota and one for the City of Minneapolis. Without a SCIM, the Council is uninformed about the details of a procurement, and, as previously noted, the Council’s ODEO is unable to communicate DBE goals to the subrecipient.

Equal Opportunity: Disadvantaged Business Enterprises

Council policy--in accord with 49 Code of Federal Regulations (CFR) sections 26.3, 26.7, 26.21, and 26.23--is to achieve the goal of equal opportunity for Disadvantaged Business Enterprises (DBEs). By acting affirmatively in the procurement of goods and services, and the awarding of contracts, the Council attempts to “level the playing field” for businesses owned and controlled by socially and economically disadvantaged individuals.

The Council does not leave DBE compliance up to its subrecipients. For one thing, the only CCLRT subrecipient that has a DBE program besides the Council is Mn/DOT. For another, the Council is accountable for meeting DBE goals on the project. Thus, while the Council may leave other subrecipient functions like procurement up the subrecipient (while monitoring their compliance), on the CCLRT project, for all six subrecipients (including Mn/DOT), it administers the DBE program.

On the large CCLRT construction contracts—Civil East, Civil West, the Operations and Maintenance Facility (OMF), and Systems—ODEO has set a goal of 15% DBE participation. The prime contractor must make good faith efforts to meet this goal, usually by employing certified DBEs among its subcontractors. It reports to ODEO on its progress toward the goal through monthly reports. Non-compliance by the contractor with DBE regulations constitute a breach of contract and can result in penalties.

ODEO takes many of the same steps to ensure DBE compliance among its subrecipients, with one additional administrative step. On the large construction contracts, the DBE goal is assigned to the contract as a whole, through the CIM or Contract Initiation Memo. It is well publicized and monitored. On the subrecipient agreements, DBE goals are assigned to individual SCIMs authorized by SFAs. If the work involves the procurement of services, such as outside construction labor, it will be assigned a DBE goal. If the work involves the procurement of materials, the DBE officer will attach a list of certified DBEs to the SCIM and advise the contractor to include the DBEs on the request for bids. The master funding agreement passes through DBE requirements to the subrecipient, but it is the SCIM that signals to ODEO that a DBE review is necessary.

Two SFAs authorizing work that involved third party procurement were not accompanied by SCIMs, and thus were not assigned a DBE goal.

As previously noted, two (of 54) SFAs authorized the procurement of materials by a subrecipient but were not accompanied by SCIMs. Lacking SCIMs, these procurements were not reviewed by ODEO, and thus were not assigned a DBE goal.

DBE documentation for two SFAs was inadequate, and the DBE goal for one of the two was set by Mn/DOT, not the Council.

As previously noted, at the time of this review eight CCLRT SFAs authorized work involving third party procurement. Two of those eight were missing SCIMs, and thus missing DBE reports as well. For one of those two, it was explained that a search had been conducted for a DBE who could conduct the work outlined in the SFA, and none was found. There was no documentation or note to that effect in the file, however. Of the remaining six SFAs with SCIMs, one was also lacking adequate documentation of DBE participation. It was explained that, because of a miscommunication between the Council and Mn/DOT about how the project would be handled, Mn/DOT had assigned the DBE goal, not the Council. As a result, although a single report on the SFA was found, it was in the form used by Mn/DOT, not the Council.

ODEO does not conduct the same monitoring activities for CCLRT subrecipients that it does for CCLRT prime contractors and their subcontractors.

49 CFR 26.37 requires grantees to “implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants.” A grantee’s DBE program “must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award . . . is actually performed by the DBEs to which the work was committed.” One way that ODEO monitors DBE participation on the Council’s contracts is by collecting and reviewing reports. Another way that it ensures compliance is by conducting site visits to observe that DBEs are actually performing the work that the contract commits them to. ODEO has not conducted any of these monitoring activities to verify DBE participation on its agreements with CCLRT subrecipients. Other Council departments, like Contracts and Procurement and Transit Finance, have not conducted follow-up monitoring activities on subrecipients either, but MFAs are more explicit that it is the subrecipient’s responsibility to know the federal rules regarding financial management and procurement and to abide by them. ODEO, however, is equally as explicit that the Council is responsible for ensuring DBE compliance among its subrecipients.

Planning, Public Participation, Title VI, Etc.

Because (as previously noted) the CCLRT project partners discussed in this report are not conventional subrecipients, several aspects of subrecipient monitoring are not applicable to the project. For example, the Master Agreement says that recipients of federal funds must plan their projects in accordance with statewide transportation planning requirements, and the *Managing Federally Funded Projects* manual states that subrecipients must include environmental documentation (environmental impact statements and the like) in their application for the subgrant. CCLRT is different, however, in that the project or program that subrecipients are participating in is the Council's, not the subrecipient's, and the Council has already conducted environmental assessments, invited public participation, distributed federal funds in an equitable manner, and observed other federal regulations as part of its larger planning process for CCLRT. As long as the work that subrecipients do is encompassed by the Council's regional transportation plan, therefore, it is not necessary for them to come up with their own planning, public participation, or Title VI policies.

Satisfactory Continuing Control

The Federal Transit Administration's (FTA's) Master Funding Agreement requires its grant recipients to maintain "satisfactory continuing control" over real property, equipment and supplies that have been acquired with federal funds. FTA Circular 5010.1D also requires recipients to "demonstrate procedures for asset management and adequate maintenance of equipment and facilities."

The "real property" that the Council is acquiring for the CCLRT is the right of way parcels along the route of the line. It was determined early on that Mn/DOT had the technical expertise to acquire that property, and the subrecipient relationship that the Council has with Mn/DOT is primarily dedicated to defining and authorizing that task.

The only "facilities" that are affected by CCLRT construction belong to the University of Minnesota. The MFA between the Council and the University for project work stipulates the following about the University and its facilities:

... the parties acknowledge and agree that while the University Work identified above is a required Project expense, the University is not acquiring real property. Instead, the University is relocating existing University improvements at the Council's request to accommodate the Council's desired Project alignment. As such, the parties believe that the FTA Property Management provisions contained in this Section 5.10 do not apply.

In other words, even if project money is expended to relocate them, the University's property and facilities remain the property of the University.

The last asset class is “equipment and supplies.” FTA Circular 5010.1D defines “equipment” as “nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the government for financial statement purposes, or \$5,000.” To demonstrate continuing control over equipment purchased with federal funds, the FTA requires grantees to maintain equipment records, and to inventory equipment against those records every two years.

Metro Transit’s Finance Department, which manages assets for the CCLRT project, treats equipment and other assets purchased by CCLRT subrecipients differently than it treats assets purchased by the Council and contractors. If Transit Finance knows that a payment made to a subrecipient (or any other entity) has been used to purchase something that will never be the Council’s asset, that payment is recorded in accounts payable with a special “NC9” code. The Asset Management clerk in Transit Finance regularly reviews accounts payable for equipment and other assets. Items with the standard program code are assigned tag numbers and entered into the Asset Management system. Items with the NC9 program code are *not* assigned tag numbers and not entered into the Asset Management system.

The practical outcome of not tagging equipment and other assets that may have been purchased by a subrecipient is that the responsibility for managing those assets—like that of financial management and procurement—flows down to the subrecipient. In fact, the MFAs that the Council signs with its subrecipients require them to “agree that title, acquisition, use, management, and disposition of all property acquired with Project funds under this Master Funding Agreement shall be governed by” FTA regulations. As the subrecipient has the responsibility to do asset management, however, the Council—as it has for other project functions that it maintains an “arm’s length” relationship to—has the responsibility to monitor it.

CCPO does not have a policy or practice to monitor the asset management of its subrecipients.

CCPO and Transit Finance do not monitor subrecipient asset management. They do not verify that the subrecipient can account for project property and maintain property inventory records, or that it can demonstrate and retain satisfactory continuing control over the use of project property, if any. The only record that a subrecipient expenditure may include equipment is the NC9 tag with which Transit Finance classifies expenditures that do not get entered into its asset management system.

CONCLUSIONS

1. *For most functional areas, CCPO's monitoring of CCLRT subrecipients has been proactive.*

Because of recent audit findings regarding the Council's monitoring of its recipients, and the resources devoted to the Central Corridor project in general, CCPO monitors—with the assistance of the Council's functional areas—have been proactive about developing a program for monitoring CCLRT subrecipients. The training delivered to CCLRT subrecipients in March 2010 was an example of this. CCPO monitors have been thorough in collecting certifications and assurances and reviewing MFAs and SFAs and quarterly financial and progress reports. They were well informed about FTA requirements for subrecipient monitoring and the differences between CCLRT pass-through entities and more conventional subrecipients.

2. *There is no written Council guidance specifically directed at managing subrecipients on a project like CCLRT.*

While the program that CCPO developed for monitoring CCLRT subrecipients addressed most programmatic areas, there were some gaps. The main Council guidance for developing that program, the *Managing Federally Funded Projects* manual, is directed to conventional subrecipients. The manual offers only limited assistance in monitoring the pass-through entities that the Council has worked with on CCLRT.

3. *CCPO did not independently assess the organizational capacity of its subrecipients, including their financial management, before signing master funding agreements with them.*

Although CCPO monitors anticipated the need for subrecipient monitoring before signing MFAs with the six CCLRT subrecipients, their assessment of their organizational capacity pre-agreement consisted mainly of training. It did not include site visits, a review of procurement policies and procedures, or an assessment of the subrecipient's capacity to demonstrate satisfactory continuing control of its fixed assets. The risk that CCPO may have entered into a relationship with a subrecipient that did not have the capacity to manage the grant responsibly was low, given the recognized public reputations of these six entities, but the monitoring program that CCPO developed should have included the independent assessment of information collected from the subrecipient, pre-agreement.

4. *SFAs were not consistently scrutinized for procurements that could result in SCIMs and thus a DBE review.*

According to the *Managing Federally Funded Projects* manual, a subrecipient's project manager is supposed to initiate a third party procurement by filling out a SCIM and sending it to the Council's project manager. The SCIM informs the Council's ODEO officer to review the work and either assign it a DBE goal or attach a list of certified DBEs to it, and it alerts other Council departments that the work is taking place. The SCIM is informational only, however: the SFA actually authorizes the procurement. If the subrecipient fails to file a SCIM with the project office, a procurement may be missed. The SFA is the only document controlled by the Council that indicates a procurement will be taking place.

5. *Documentation and monitoring of DBE participation by CCLRT subrecipients need improvement.*

The Council retains the responsibility for DBE compliance among its subrecipients. It has the same documentation and monitoring responsibilities for them as it has for its prime construction contractors and their subrecipients. This represents a cost of time and effort, however, and the Council is not compensated by subrecipients for DBE compliance. This may explain why some DBE documentation was difficult to find or interpret.

RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk they pose for the Council. The categories are:

- **Essential** – Steps must be taken to avoid the emergence of critical risks to the Council or to add great value to the Council and its programs. Essential recommendations are tracked through the Audit Database and status is reported twice annually to the Council’s Audit Committee.
- **Significant** – Adds value to programs or initiatives of the Council, but is not necessary to avoid major control risks or other critical risk exposures. Significant recommendations are also tracked with status reports to the Council’s Audit Committee.
- **Considerations** – Recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or may require collaboration with another program area or division. Considerations are not tracked or reported. Their implementation is solely at the hands of management.
- **Verbal Recommendation** – An issue was found that bears mentioning, but is not sufficient to constitute a control risk or other repercussions to warrant inclusion in the written report. Verbal recommendations are documented in the file, but are not tracked or reported regularly.

1. CCPO should continue to require certifications and assurances from its subrecipients on an annual basis. (Essential.)

Although CCPO monitors are diligent about requesting annual certifications and assurances from subrecipients, the City of St. Paul has not provided them. CCPO should work to remedy this situation as soon as possible, and continue to collect annual certifications from subrecipients.

Management Response: *Although CCPO Project Managers are diligent about requesting annual certifications and assurances from subrecipients, the City of St. Paul has still not provided them. CCPO will continue to work with subrecipients to obtain required documentation and pursue elevating the request to higher management levels within the subrecipients’ organizations if necessary.*

Staff Responsible: *CCPO Subrecipient Project Managers, CCPO Senior Management*

Timetable: *Immediately and ongoing*

2. A control should be developed to notify the Council's ODEO of procurements when the subrecipient fails to initiate a SCIM. (Essential.)

At present, CCPO practice is for the Council's ODEO to review SCIMs – which describe contracts being procured by CCLRT subrecipients – for procurements that might require DBE goals. The problem is that CCPO must rely on the subrecipient to initiate the SCIM, and if it does not a procurement may be missed. The only document controlled by the Council that indicates a subrecipient may be undertaking a procurement is the SFA. A possible control is to have the Council's ODEO review the SFA for possible procurements that may result in DBE goals, in addition to continuing to use the SCIM to document those goals.

Management Response: *The CCPO will review the controls that are currently in place to ensure SCIMs are being generated for all applicable SFAs. As reported in the Audit Report, most required SCIMs were in place with the exception of two so current controls should only require minor modifications to ensure no SCIMs are missed. It should be noted that not all SFAs require an SCIM, such as SFAs that are associated with contract Change Orders. However, the Change Order SFAs already have an automated process built into the electronic Project Management System (e-Builder) that requires the contractor to evaluate and address potential DBE participation on each Change Order. For this category of SFAs, ODEO and CCPO had long ago worked out a process to evaluate DBE participation through the Change Order process itself, not the SFA or SCIM processes, and have had success with this methodology. In summary, the actions that will be taken in response to this recommendation are 1) ensure that those SFAs requiring SCIMs are closely monitored and 2) continue to utilize the established process in place to evaluate DBE participation on COs for those SFAs that do not require SCIMs.*

Staff Responsible: *CCPO Subrecipient Project Managers, CCPO Project Controls Manager*

Timetable: *Immediately with completion by the end of Q2 2012*

3. ODEO should develop a plan to monitor DBE compliance among CCPO subrecipients. (Essential.)

Although other Council departments defer to subrecipients to comply with FTA regulations in their functional areas, ODEO has sole responsibility for ensuring the compliance of subrecipients in DBE matters. While it conducts site visits and other monitoring activities for the DBEs of CCLRT contractors and subcontractors, ODEO only collects DBE reports from CCLRT subrecipients. It does not conduct site visits or otherwise verify that subrecipients are committed to DBE goals. Within the limits of its resources, ODEO should develop such a plan for CCLRT subrecipients.

Management Response: *A plan to monitor DBE compliance among CCPO subrecipients is now in place. ODEO will place CCPO Subrecipient construction projects on the DBE On-Site / CUF Tracking Grid. The projects on the DBE On-Site / CUF Tracking Grid receive priority for on-site /CUF monitoring. Paper audits of CCPO subrecipient's construction projects have been occurring.*

CCPO Subrecipient material purchasing projects will be audited annually. The audit shall consist of comparing the subrecipient's confirmed list of firms solicited for procurement with list of presumed eligible DBEs supplied by ODEO. Where a DBE firm was not solicited the reason for exclusion will be sought.

Staff Responsible: *Wanda Kirkpatrick*

Timetable: *Ongoing.*

4. The *Managing Federally Funded Projects* manual should be revised, or additional written guidance developed, to address managing subrecipients on a range of projects, including transit projects like CCLRT. (Significant.)

Much attention is being paid to improving the Council's managing of its different kinds of subrecipient relationships. The practices developed at CCPO for monitoring subrecipients should be codified, and supplemented with the observations in this audit, to develop written guidance specifically directed to managing subrecipients on a Council project like CCLRT.

Management Response: *Council staff will review the current "Managing Federally Funded Projects" manual to determine if this document should be revised or supplemented or if a separate manual for transit projects like CCLRT should be created. After the review, a project plan will be put into place to begin, and work towards completion of, a manual appropriate to these types of projects.*

Staff Responsible: *Mary Gustafson, Wanda Kirkpatrick, Micky Gutzmann*

Timetable: *Complete by December 31, 2012.*

5. CCPO should improve its assessment of the organizational capacity of subrecipients. (Significant.)

CCPO did not assess its subrecipients' capacity to manage federal funds before it signed agreements with them. At a minimum, an A-133 audit should be reviewed before the Council signs a master funding agreement to pass through funds to another entity. Pre-agreement assessment activities could also include reviewing the subrecipient's management plan, interviewing project managers, and reconciling a sample of financial transactions to ensure that figures match and backup documentation is supplied. The subrecipient's policies and procedures regarding procurement should also be reviewed for compliance with appropriate regulations.

Management Response: *The CCPO will plan to review an A-133 audit prior to Council signing a master funding agreement with another entity. It should be noted, however, that the CCPO does not anticipate at this time that there will be any new master funding agreements going forward. Therefore, this recommendation will likely not apply on the CCLRT project. The CCPO will ensure staff working on agreements are briefed on this recommendation and the Project Controls/Agreements staff at the CCPO will follow up with the Project Controls/Agreements staff at the Southwest Project Office (SPO) to share this recommendation.*

Staff Responsible: *CCPO Project Controls Manager, CCPO Subrecipient Project Managers*

Timetable: *Ongoing as needed*

6. CCPO should clarify its policy about asset management with its subrecipients. (Significant.)

Although MFAs hold subrecipients responsible for the management of their own assets, FTA guidance does not excuse grantees from monitoring it. The FTA Triennial Workbook, for example, directs the grantee “to submit to the FTA regional office procedures for controlling the use of FTA funded real property by subrecipients, contractors, or lessees,” states that “A grantee’s records must include equipment purchased or used by subrecipients.” Subrecipient asset management is especially important on the CCLRT project because often the subrecipient will use the opportunity of construction to improve its assets. The Council should address subrecipient asset management in the *Managing Federally Funded Projects* manual, and the Council should clarify what kind of equipment records it requires its subrecipients to maintain.

Management Response: *The CCPO will clarify with its six subrecipients what kind of equipment records it will require its subrecipients maintain. CCPO staff will review FTA policies and procedures for controlling FTA-funded property as well as CCPO procedures for the tracking and disposition of CCPO equipment and real property and use that as a guideline for developing requirements for subrecipients. In the course of developing these requirements, CCPO staff will also review what equipment records are already maintained by the subrecipient and if those records are adequate or not.*

Staff Responsible: *CCPO Project Controls Manager, CCPO Subrecipient Project Managers*

Timetable: *Immediately with completion by the end of Q3 2012*