



**Program Evaluation and Audit**

**Metro Mobility Contractors**

*Federal Program Compliance Review*

01 July 2011

# INTRODUCTION

## Background

As the designated Metropolitan Planning Organization, the Metropolitan Council (Council) receives financial assistance from the Federal Transit Administration (FTA) for both regular transit service and paratransit service. The Council administers paratransit service through Metro Mobility Service Center (Metro Mobility). Metro Mobility determines eligibility of riders and contracts with private and county transportation providers, who deliver the service. Ten percent of the funding for paratransit service is provided through FTA funds that are passed through the Council to the providers. Each recipient of federal assistance, along with any contractor of a recipient or sub-recipient, is required to comply with all federal regulations to continue receiving federal assistance.

In its 2009 Triennial Review, the FTA found the Council's level of oversight and monitoring of contractors and sub-recipients to be inadequate. In response to this finding, Metropolitan Transportation Services (MTS) requested that Program Evaluation and Audit hire and supervise teams of graduate school interns to assess the compliance of the sub-recipients and contractors.

## **Purpose**

The purpose of this review is to ensure the compliance of the Council's contracted paratransit providers with U.S. Department of Transportation (DOT) and FTA requirements with regards to policies, documented processes, and procurement contracts content.

## **Scope**

This review included the four largest Metro Mobility contractors: DARTS, First Transit, HSI, and Transit Team.

The review included an assessment of each private paratransit provider's compliance with FTA regulations associated with operations and documented policy requirements in the following areas:

- Americans With Disabilities Act (five sub-areas)
- Drug and Alcohol (18 sub-areas)
- Financial (three sub-areas)
- Maintenance (four sub-areas)
- Safety and Security (two sub-areas)
- Satisfactory Continuing Control (five sub-areas)
- Title VI (three sub-areas)

## **Methodology**

The audit was broken down into 3 parts:

- A desk review of all written plans, policies, training materials and other required documentation.
- A questionnaire covering standard practices and procedures.
- An onsite review consisting of questions of various staff and physical verification of documents and condition of property.

## **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 four Metro Mobility contractors complied with most FTA regulations. There are three areas of FTA regulations in which some or all of the contractors require improvement. The areas in common requiring improvement are: Americans With Disabilities Act (ADA) regulations, Drug & Alcohol regulations, and Maintenance regulations. A misunderstanding on the part of contractors of some federal requirements contributed to the deficiencies identified during the review.

## ADA

- 1. Paratransit Contractors do not maintain a specific log of lift, ramp or other accessibility equipment failures occurring while a vehicle is in-service.*

The FTA requires that transit providers have a system of regular and frequent checks for lifts, ramps and other accessibility equipment that is sufficient to ensure that lifts, ramps and other equipment are operative (49 CFR 37.163). The FTA Triennial Review workbook from 2009 instructs reviewers to gauge the sufficiency of such a system by the reviewing the provider's record of in-service accessibility equipment failures.

Currently, Metro Mobility contractors do not maintain a record of in-service failures separate from overall equipment failures. The overall equipment failure records include failures that are discovered in pre-trip testing or at other times when the vehicle is not in operation. Though the overall rate of equipment failures is important, the FTA requires a separate record for those occurring during service. Knowing the portion of failures that occur while the vehicle is in-service, allows a reviewer to assess the accuracy and consistency of a contractor's pre-trip procedures.

## Drug and Alcohol

- 1. A substantial number of paratransit contractors do not have policies sufficiently accurate regarding dilute specimen test results and test cancellations.*

FTA requires that transit providers must have a Drug and Alcohol Policy that states the various consequences associated with different test results. The policy must specify consequences for a dilute specimen and invalid cancellation as well as the Designated Employer Representative's (DER) required actions. DARTS, HSI, and Transit Team do not cover this in their Drug and Alcohol policy and their DERs do not have concrete understanding about how to handle such test results.

- 2. A substantial number of paratransit contractors do not perform sufficient background checks of prior positive test results, or have sufficient policies regarding written consent to obtain or transfer such confidential information.*

FTA requires that an employer should, in its policy and employee handbook, specify the procedure followed in obtaining positive drug and alcohol test records from previous U.S. Department of Transportation (DOT) covered employers the applicants have worked for or applied to. The policy should also prohibit the release of individual test results or medical information about an employee to third parties without the employee's specific written consent. The employer should have a policy to remove the employee from a safety-sensitive position after 30 days from the date on which the employee first performs safety-sensitive functions, unless it has obtained or made and documented a good faith effort to obtain the information from previous employers. In addition, the employer should incorporate in its policy and employee handbook the procedure to handle an employee's written request to transfer test results to other employers, and should, in those cases, immediately release the requested information to the inquiring entity and maintain a written record.

DARTS and HSI do not cover this issue in their policy or employee handbook, thus failing to articulate the obligations and rights clearly to all safety-sensitive employees. Most contractors follow this in procedure but neglect certain parts of the procedure.

*3. Contractors do not have written contracts or agreements with, or sufficient monitoring (regular mock collection, etc.) of, their service agents (collection site, etc.).*

A service agent is any person or entity, other than an employee of the employer, who provides services specified under this part to employers and/or employees in connection with DOT drug and alcohol testing requirements. As an employer of safety-sensitive employees, the provider is responsible for the actions of all its service agents in carrying out the requirements of DOT regulations. All agreements and arrangements between employers and service agents concerning DOT drug and alcohol testing should include DOT regulations as material terms within the agreements.

All contractors obtain services from their service agents on a pay-as-you-go basis, meaning that they pay for services after it is completed by unit of service or unit of time. The absence of written agreements may lead to confusion regarding the assignment of responsibility and potential legal risk. This is exacerbated by the lack of monitoring of the service agents. Issues only arise when they cause severely negative consequences. A regular review of certificates or placing supervisors in the drug and alcohol testing pool is common across the contractors but this may not guarantee the quality of actual service provision, since the detailed, technical aspects are not reviewed by the contractor during those processes.

## **Maintenance**

*1. Paratransit contractors do not maintain accurate documentation of the timely performance of preventative maintenance for vehicles and equipment.*

The FTA requires that each provider have a sound preventive maintenance program to reduce the incidence of unscheduled repairs and extend the vehicles' useful life. The maintenance program

should define the interval between preventive maintenance inspections. Inspections happening no later than 110% of the scheduled interval are considered on time. The FTA considers a contractor compliant if 80 percent or more of the inspections for any vehicle is performed on time (FTA C 5010.1D, Ch. II, Section 3 (a); Ch. IV, Sections 3 (k), (m); and FTA C 9030.1C, Ch. V, Section 5 (e)).

Paratransit contractors do not maintain a record of the percent of preventative maintenance occurring no later than 110% of the scheduled interval. Though each contractor has a preventative maintenance program in place, they do not have documentation to show sufficiency of such system.

# CONCLUSIONS

The Metro Mobility contractors reviewed were largely in compliance with FTA regulations. The contractors commonly had deficiencies in the areas of ADA regulations, Drug & Alcohol regulations, and Maintenance. These deficiencies will require corrective action. Continuous monitoring and assistance from Metropolitan Transportation Services will help identify and correct deficiencies in the future.

# RECOMMENDATIONS

Program Evaluation and Audit recommendations are categorized according to the level of risk of the findings (conditions) they are designed to resolve.

- **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 annually to the Council’s Audit Committee and the Regional Administrator.
- **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 Audit Committee and Regional Administrator.
- **Considerations** – The recommendation would be beneficial, but may be subject to being set aside in favor of higher priority activities for the Council, or it may require collaboration with another program area or division. Considerations are not tracked. Their implementation is solely at the hands of the management.

The recommendations in this report cover two areas: follow-up for the review conducted by Program Evaluation and Audit, and ongoing oversight and review with regards to FTA compliance of contracted paratransit providers.

## Follow-Up Recommendations

1. **(Essential) Metro Mobility personnel should follow-up with each individual paratransit provider to ensure that they have addressed cited deficiencies and are in compliance with regulations.**

Compliance with FTA regulations is essential for all of the Council’s paratransit providers. Enforcement of those regulations in contracts is among the highest priorities for the Council in order to ensure ongoing financial support from the FTA. Therefore, based on the reviews conducted by Audit, Metro Mobility should oversee that corrective actions are promptly enacted by its contracted paratransit providers.

Contracted paratransit providers have been given a list of all deficiencies identified, and responded to each finding. Contractor responses included a timeline for expected corrective actions. Metro Mobility should review the status of such corrective actions at the agreed upon date reflected in the timeline. If corrective action has not occurred or is deemed inadequate, Metro Mobility personnel should work with contractor to address the non-compliant item on a new agreed upon timeline. Continued non-compliance should result in the termination of any contract with the Council.

***Management Response: Metro Mobility staff is in agreement with the recommendations provided by audit in the second paragraph above and will work with the contract providers to***



*ensure they are in FTA compliance. Metro Mobility staff Clay Stenback and Dana Rude will review provider responses to audit deficiencies and develop timelines regarding corrective action. Clay and Dana will work with providers to ensure deficiencies are addressed and document how they have been addressed. These tasks will be completed by the end of 2011.*

## **Ongoing Compliance Recommendations**

### **1. (Essential) Metro Mobility personnel should provide ongoing support and guidance on FTA regulations and expectations for compliance.**

Because FTA regulations can be extremely detailed and unclear to those who are not familiar with these federal requirements, Metro Mobility should continue to monitor and assist contractors in complying with all federal requirements. Most areas of non-compliance were due to a misunderstanding of regulations and expectations for documenting compliance of such regulations. Ongoing communication about operations and documentation associated with the FTA regulations will assist contractors in maintaining compliance.

Further, contractors may need additional training in Council-provided technology designed to assist in monitoring and recording practices associated with federal requirements. It is also possible that some software upgrades may be necessary to enable contractors to develop reports necessary for compliance with federal requirements.

*Management Response: Metropolitan Council staff – led by Gerri Sutton, will be conducting two workshops to specifically outline and go through the FTA rules that apply to public transit – both ADA service and Fixed Route. These two part sessions will occur in July and August offering multiple opportunities for contract providers to attend this optional workshop. As part of the workshop, there will be an opportunity to discuss technological solutions to aid in reporting and monitoring federal compliance. This training will be mandatory beginning in 2012.*

*In addition, Metro Mobility staff (Paul Colton, Clay Stenback, Andy Streasick and Dana Rude) will work with providers through regularly scheduled meetings to determine if providers have any questions pertaining to FTA requirements.*

### **2. (Essential) Metro Mobility should conduct a review of a selection of contracted paratransit providers annually to ensure their continued compliance with FTA regulations.**

The number of contractors that hold Metro Mobility contracts would strain available resources if the Council were to conduct an audit/review of their systems on an annual basis. To create a more manageable cycle of reviews, Audit recommends that each year, Metro Mobility conduct federal compliance reviews for a selection of their contractors. The process would be similar to the process described above in *Methodology*. Metro Mobility would request documents and written policies deemed necessary by the FTA as well as a formal Questionnaire for each

contractor. A designated reviewer would then visit the contractor's facilities to verify documentation required to be available onsite as well as the condition of the facilities.

***Management Response: Metro Mobility Staff (Clay Stenback and Dana Rude) will develop a review schedule for all contracted providers of Metro Mobility service. With direction and assistance from internal audit, Clay Stenback and Dana Rude will conduct the compliance reviews and will utilize resident experts for assistance with Drug and Alcohol audits (Sheila Williams) and Maintenance audits (Alex Curtiss). Metro Mobility would like to work closely with audit when reviewing FTA compliance with our contract providers to ensure proper procedures are followed. It is anticipated that staff will complete up to two audits per year (one audit completed in each half of the year – spring and fall). Where opportunities exist and are appropriate, FTA oversight will be incorporated into regular contract oversight activities.***

# APPENDIX A

## Deficiencies Identified

| Metro Mobility Federal Regulation Deficiencies |  |  |  |  |  |  |                                    |
|--|--|--|--|--|--|--|------------------------------------|
| Topic  | Citation   | Finding  | DARTS  | First Transit                                  | HSI  | Transit Team                                   | Prevalence amongst all Contractors |
| ADA  | 49 CFR 37.163  | Paratransit Contractors do not keep a specific log of lift, ramp or other accessibility equipment failures occurring while a vehicle is in-service.  | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | All contractors                    |
| ADA  | 49 CFR 37.131(f).  | Paratransit contractors do not accurately record trip denials  | <input type="checkbox"/> Deficiency            | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | One contractor                     |
| Drug and Alcohol                               | Drug-Free Workplace Act of 1988  | Paratransit Contractors do not have continuous training for employees on Drug-Free Workplace related issues.   | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | Two contractors                    |
| Drug and Alcohol                               | 49 CFR 40.197<br>40 CFR 655.15   | Paratransit Contractors do not have clear policy about dilute test results or test cancellations.  | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | Three contractors                  |
| Drug and Alcohol                               | 49 CFR 40.25   | Paratransit Contractors do not perform sufficiently in background checking in terms of previous non-negative test results, or have sufficient policy regarding written consent to obtain or transfer such confidential information | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | Two contractors                    |
| Drug and Alcohol                               | 49 CFR 40.11   | Paratransit Contractors do not have written contracts or agreements with, or sufficient monitoring (regular mock collection, etc.) of its service agents (collection site, etc.)   | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | All contractors                    |
| Drug and Alcohol                               | 49 CFR 655.43<br>49 CFR 655.71   | Paratransit Contractors do not have appropriate reasonable suspicion test decision making forms to keep written document about reasonable suspicion tests  | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input type="checkbox"/> Deficiency            | Two contractors                    |
| Drug and Alcohol                               | 49 CFR 40.333  | Paratransit Contractors do not keep or check the records from the collection sites of the inspection, maintenance, and calibration of EBTs (Evidential Breath Testing devices)   | <input type="checkbox"/> Deficiency            | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | Two contractors                    |
| Drug and Alcohol                               | 49 CFR 655.44  | Paratransit Contractors do not conduct post-accident testing in a timely and sufficient manner   | <input type="checkbox"/> Deficiency            | <input type="checkbox"/> Deficiency            | <input type="checkbox"/> Deficiency            | <input checked="" type="checkbox"/> Deficiency | One contractor                     |
| Maintenance                                    | FTA C 5010.1D, Ch. II, Section 3 (a); Ch. IV, Sections 3 (k), (m); and FTA C 9030.1C, Ch. V, Section 5 (e)). | Paratransit contractors do not keep accurate documentation of the timely performance of preventative maintenance for vehicles and equipment.   | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | <input checked="" type="checkbox"/> Deficiency | All contractors                    |

## APPENDIX B

### Summary of Topics Reviewed

| No. | Section                         | Description   | Federal Regulation  |
|-----|---------------------------------|---|---|
| 1   | Financial                       | Contractors must demonstrate ability to manage FTA grant funds and conduct an organization-wide audit. 3 types of documents and the following sub-topics are covered in this review: <ul style="list-style-type: none"> <li>• General financial status</li> <li>• Annual single audit or other audit results</li> <li>• Unfunded deficits or liabilities</li> </ul>   | FTA Circular 5010.1D, "Grant Management Requirements"   |
| 2   | Satisfactory Continuing Control | Contractors must maintain control over FTA funded facilities and equipment. 27 types of documents and the following sub-topics are covered in this review: <ul style="list-style-type: none"> <li>• Property general requirements</li> <li>• Equipment inventory and control measure</li> <li>• Rolling stock tracking, replacement and disposal</li> <li>• Record keeping</li> <li>• Post-accident policy and procedure</li> </ul> | FTA Circular 5010.1D, "Grant Management Requirements"<br>FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"             |
| 3   | Maintenance                     | Contractors must keep federally funded vehicles, equipment and facilities in good operating order. 7 types of documents and the following sub-topics are covered in this review: <ul style="list-style-type: none"> <li>• Maintenance policy</li> <li>• Vehicle maintenance</li> <li>• Facility/equipment maintenance</li> <li>• Warranty claims</li> </ul>   | FTA Circular 5010.1D, "Grant Management Requirements"<br>49 CFR 37, "Transportation Services for Individuals With Disabilities (ADA)"                         |
| 4   | Title VI                        | Transit services and related benefits must be distributed in an equitable manner with no discrimination on the grounds of race, color or national origin. 4 types of documents and the following sub-topics are covered in this review: <ul style="list-style-type: none"> <li>• Employee Awareness</li> <li>• Customer Awareness</li> <li>• Recruitment</li> </ul>   | FTA Circular 4720.1A, "Title VI and Title Vi-Dependent Guidelines for Federal Transit Administration Recipients"  |
| 5   | ADA                             | Contractors must not discriminate against persons with disabilities in the provision of transit service. <ul style="list-style-type: none"> <li>• Paratransit eligibility process</li> <li>• Paratransit provision of service</li> <li>• Paratransit meeting demand</li> <li>• Vehicle accessibility and facility accessibility</li> <li>• Maintenance of accessibility features and lift availability</li> </ul>                   | 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"<br>49 CFR Part 38, "ADA Accessibility Specifications for Transportation Vehicles" |
| 6   | Safety and Security             | Contractors should have safety and security plans and document related expenditures. <ul style="list-style-type: none"> <li>• Safety</li> <li>• Security and emergency management</li> </ul>  | TSA/FTA 17 Security and Emergency Management Action Items for Transit   |

|   |                  |   |  |
|---|------------------|---|--|
| 7 | Drug and Alcohol | <p>Contractors should have drug and alcohol testing program for safety sensitive employees, maintain a drug-free workplace and establish an ongoing drug-free awareness program. 31 types of documents and the following sub-topics are covered in this review:</p> <ul style="list-style-type: none"> <li>• D&amp;A Program General Requirements</li> <li>• Employee communication and awareness</li> <li>• Policy Statement and Drug Free Work Place</li> <li>• Drug and Alcohol Training</li> <li>• Pre-employment testing</li> <li>• Reasonable suspicion testing</li> <li>• Post-accident testing</li> <li>• Random testing</li> <li>• Return to duty/follow-up testing</li> <li>• Employer responsibilities upon receiving testing results</li> <li>• Background Check</li> <li>• Testing notifications</li> <li>• Record Keeping</li> <li>• Collection Site Monitoring</li> <li>• Drug testing labs monitoring</li> <li>• Medical review officer (MRO) monitoring</li> <li>• Substance Abuse Professionals (SAP) monitoring</li> <li>• C/TPA monitoring</li> </ul> | <p>Title 49 Part 40, "Procedures for transportation workplace drug and alcohol testing programs"<br/> 49 CFR Parts 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"</p> |
|---|------------------|---|--|