

**FEDERAL TRANSIT
ADMINISTRATION
COMPLIANCE REVIEW
SOUTHWEST TRANSIT, 2018**
Program Evaluation and Audit



**METROPOLITAN
C O U N C I L**

December 12, 2018

Introduction

According to United States Code, every three years the Federal Transit Administration (FTA) is required to comprehensively evaluate the performance of all grantees. As the direct recipient of federal funds, the Metropolitan Council is required to ensure that subrecipients meet these requirements.

The Triennial Review includes a review of the recipient's compliance in twenty areas. From July to October 2018, auditors from the Metropolitan Council's Program Evaluation and Audit Department conducted a Triennial Review of SouthWest Transit (SWT) to help fulfill the Metropolitan Council's obligation to ensure the federal compliance of our subrecipients.

Background

In operation since 1986, SWT provides transit service to the Southwest Minneapolis suburbs of Chaska, Chanhassen, and Eden Prairie, who have chosen to opt out of the Metropolitan Transit Commission transit system in accordance with Minnesota State Statutes. Under a joint powers agreement between the three cities, they created their own transit system, SouthWest Metro Transit.

Purpose

The Metropolitan Council has an obligation to ensure the federal compliance of subrecipients. Additionally, the audit is based on the *Thrive MSP 2040* principle of *Accountability* to both the public and our federal partners.

Scope

The scope of this review is SWT's most current policies and procedures related to subject areas in the FTA's Comprehensive Guide Fiscal Year 2018 since the last Triennial.

Methodology

This review concentrated on procedures and practices employed during the past three years. However, coverage was extended to earlier periods as needed to assess the policies in place and the grant management. Audit conducted a desk review of procedures and practices to ensure compliance with guidelines stated in the FTA's Comprehensive Review Guide Fiscal Year 2018. A subsequent on-site review consisted of interviews with SWT staff and sampling of records, buses, and practices to ensure compliance with FTA guidelines. Audit also reviewed SWT for compliance with relevant service contracts and agreements with the Metropolitan Council.

This report presents the results of the review and SWT's responses to the FTA's findings. SWT's responses are in *blue*.

If there are questions about the information contained in this report, please contact:

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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.

Findings and Responses

1. Americans with Disability Act (ADA)

Basic Requirement: Recipients must track, resolve, and respond to ADA-related complaints and advertise this process to the public in an easily accessible format for individuals with disabilities.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for ADA.

Finding ADA1-1: 49 CFR 27.121(b) advises that recipients adopt accessible complaint procedures that are advertised to the public. SWT does not advertise their ADA complaint process or contact information for ADA personnel to the public through an easily accessible means, such as their website. (DEFICIENCY CODE ADA1-1: Insufficient ADA complaint process).

Corrective Action(s) and Schedule: By January 12th, 2019, SWT should post their ADA complaint process on their website and submit evidence to the Metropolitan Council that this action has been completed.

SWT Response: SWT will post its ADA complaint process on our website and submit evidence to the Metropolitan Council by January 12th, 2019.

2. Charter Service

Basic Requirement: Except under limited exceptions, recipients may not use FTA assistance to operate or maintain charter bus service.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for Equal Employment Opportunity.

Finding CB1-1: SWT's Special Events transportation service to the State Fair is not classified as charter, despite charging a premium fare of \$8 round trip which is more than the customary fixed-route fare set forth by the Metropolitan Council's Regional Fare Policy. This constitutes a Premium fee, which may only be charged on chartered bus routes. (DEFICIENCY CODE CB1-1: Charter service not operated under exemption or exception).

Corrective Action(s) and Schedule: By January 12th, 2019, SWT must submit to the Metropolitan Council their plan for obtaining an exception with the FTA, or for restructuring their special events fare to be in line with and not exceeding the region's customary fixed-route fare.

SWT Response: SWT staff will work with Metropolitan Council staff and follow the needed process to request an exemption from the FTA that will allow SWT to continue to provide State Fair service at a premium fare. The "premium" fare being charged for State Fair service is in place to ensure service is operated as efficiently as possible. The fare is meant to cover most of expenses related to service. The \$8 fare does not make a profit. If SWT is forced to charge a \$5 fare for State Fair service, it will have to cease

operating State Fair service all together – an outcome that would result in increased roadway congestion with 50,000 State Fair patrons finding alternative forms of transportation to the State Fair.

SWT believes this finding brings an issue to the forefront that should be addressed by Metropolitan Council Regional Fare Policy. The policy currently caps special event service fares using standard passenger fares. A special events fare policy that allows more flexibility in special event fare pricing should be adopted by the Metropolitan Council to ensure transit providers have the flexibility to provide efficient services based on the event being served. SWT requests that the Audit Committee include language in its final findings that recommends to the Metropolitan Council that the Regional Fare Policy should be reviewed and amended to avoid such a finding in the future for any regional transit provider.

Audit response: After reviewing with Metro Transit, Audit has determined that adding a special events fare to the Regional Fare Policy set by the Metropolitan Council would not bring SWT's service in to compliance if such a fare were to exceed the region's customary fixed-route fare. Metro Transit staff has agreed to engage with Southwest Transit staff to seek possible remedies to this deficiency.

3. Drug and Alcohol

Basic Requirement: Recipients of Sections 5307, 5309, 5311, or 5339 funds must have a board-adopted anti-drug and alcohol misuse policy.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for Drug and Alcohol.

Finding DA1-1: 49 CFR 655.15 lists the contents that must be included in drug and alcohol policy statements. SWT's Drug and Alcohol Misuse Policy does not define which employees are covered by their policy. (DEFICIENCY CODE DA1-1: Drug and alcohol policy missing or lacking required elements).

Corrective Action(s) and Schedule: By January 12th, 2019, SWT should develop and submit an amended policy that includes the required elements contained in 49 CFR Part 40, including the definition of a covered employee. Refer to 49 CFR 655.4 for a definition of covered employee. Evidence of completion of this updated policy must be sent to Senior Project Administrator Shelia Williams.

SWT Response: SWT will review its policy statement and make any necessary revisions in accordance with 49 CFR 655.15. However, after reviewing this response, SWT requests that the Audit Department explicitly identify what provisions of 49 CFR 655.15 are not being met with SWT's current Drug and Alcohol Misuse Policy.

Audit Response: Upon further conversation with SWT staff, an agreement was reached that SWT's Drug and Alcohol Policy will be edited to include "the categories of employees that are subject to provisions of" 49 CFR 655.15(b), which defines who is "covered employee."

4. Equal Employment Opportunity (EEO)

Basic Requirement: Recipients are required to submit a full or abbreviated EEO Program based on the number of its transit-related employees and whether it reaches a monetary threshold.

During this Triennial Review of SWT, two (2) deficiencies were found with the FTA requirements for Equal Employment Opportunity.

Finding EEO1-1: FTA Circular 4704.1A Ch. 1.4 states the applicability threshold for developing a full EEO program. SWT has not prepared and submitted a full EEO program, despite meeting the threshold based on the number of full-time, part-time, and temporary staff they employ. (DEFICIENCY CODE EEO1-1: Full EEO program not prepared, maintained, and/or submitted).

Corrective Action(s) and Timelines: By March 1st, 2019, SWT must develop and submit a full EEO program that includes all federal requirements SWT must develop: a policy statement, a policy dissemination plan, an assessment of employee practices, a monitoring and reporting plan (including the name and contact information of designated EEO Officer), a utilization analysis, and goals and timelines. Guidance for developing a full EEO program can be found within the FTA's EEO Circular (4704.1A). Specific questions regarding the development of a full EEO program may be sent to the Metropolitan Council's Office of Equal Opportunity Director Cyrenthia Jordan.

SWT Response: Through discussions with the Metropolitan Council Audit team it was determined that there was a misunderstanding in reporting the number of full- and part-time employees vs. seasonal/temporary employees. FTA Circular 4704.1A does not require including seasonal or temporary employees in the employee count. Without counting seasonal/temporary employees, SWT currently has only 41 full- or part-time employees, which is under the FTA's 50-employee threshold for providing some form of an EEO program to the FTA. Thus, SWT is not required to submit an EEO program to the Metropolitan Council, and therefore will not do so until it reaches the FTA's 50 full/part-time employee threshold.

Audit response: As the Program Evaluation and Audit Department could not verify the actual employee count at SWT, the finding still stands based on the initial count of temporary, full, and part-time employees. Based on the FTA's Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2018 (section EEO1, 13-2), the FTA requires transit-related temporary employees to be included in the employee count for determining the EEO threshold. The Metropolitan Council is ultimately responsible for subrecipient compliance with FTA regulations. The risks of non-compliance with these regulations is significant. Staff from Audit and the Office of Equal Opportunity at the Met Council will continue to work with Southwest Transit to validate employee counts and ensure compliance.

Finding EEO3-2: FTA Circular 4704.1A. Ch. 2.2.3 requires agencies to designate an EEO Officer, who does not have conflicts of interest within the agency, and to publicize this individual's contact information. SWT has not made proper EEO personnel assignments. Onsite interview confirmed that SWT's HR Manager is also the designated EEO Officer, creating potential conflicts of interest. (DEFICIENCY CODE EEO3-2: Inadequate designation of EEO officials, supervisors, and managers).

Corrective Action(s) and Timelines: By January 12th, 2019, SWT must submit to the Metropolitan Council's Office of Equal Opportunity evidence that an EEO Officer has been designated, that their organization chart has been updated to reflect their reporting relationship, and a plan for publicizing this information.

SWT Response: See response to Finding EEO1-1 above.

5. Financial Management and Capacity

Basic Requirement: Recipients must have financial policies and procedures to ensure effective financial management of FTA awards and establish a system of internal controls to safeguard against waste, loss, and misuse of federal funds.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for Financial Management and Capacity.

Finding F1-2: SWT's Financial Management policy does not contain adequate written standards of internal control as stated in 2 CFR Part 200.303. Qualifications for SWT financial management staff are not stated in their financial policy, nor are there designated duties for management within the financial management system that ensure internal controls as required by the federal government are being monitored and adhered to. (DEFICIENCY CODE F1-2: Lacking internal controls).

Corrective Action(s) and Timelines: By January 12th, 2019, SWT should update their Financial Management policy so that it establishes the role of senior financial staff in implementing, monitoring, and ensuring compliance with internal financial controls consistent with 2 CFR 200.303.

SWT Response: SWT will update its Financial Management Policy to establish the role of senior financial staff in implementing, monitoring, and ensuring compliance with internal financial controls consistent with 2 CFR 200.303.

6. Legal

Basic Requirement: Recipients must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

During this review of SWT, no deficiencies were found with the FTA requirements for Legal Matters.

7. Maintenance

Basic Requirement: Recipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for Maintenance.

Finding M1-2: SWT does not have an adequate preventive maintenance plan for their FTA-funded facilities, as required by FTA Circular 5010.1E, Ch. IV, Section 4n (4) for the management of federally assisted property. Specifically, they are lacking defined time intervals for performing preventive maintenance on facilities. (DEFICIENCY CODE M1-2: No written facility/equipment maintenance plan).

Corrective Action(s) and Timelines: By January 12th, 2019, SWT should develop written preventive maintenance intervals for the FTA-funded facilities, including specific time intervals and the preventive maintenance work required at each interval. The facilities preventive maintenance plan should be developed in accordance with the FTA Facility Condition Assessment Guidebook's reporting and data requirements.

SWT Response: While discussing this finding with the Metropolitan Council Audit Team, it was determined that SWT needs to only provide the time intervals in which SWT plans to conduct preventative maintenance activities on its facilities to go along with materials already submitted to the audit team. SWT will provide such intervals to the audit team by the requested date.

Additionally, in the long term SWT will be developing a more robust SWT Facilities Preventative Maintenance Plan using the FTA's Facility Condition Assessment Guidebook.

8. Procurement

Basic Requirement: Recipients must have written procurement policies and procedures that reflect applicable State, local, and tribal laws and regulations.

During this Triennial Review of SWT, one (1) deficiency was found with the FTA requirements for Procurement.

Finding P1-2: SWT's Purchasing Policy is missing written references to several applicable Federal laws and standards as identified in 2 CFR part 200. SWT's policy does not include standards regarding general procurement standards, competition, methods of procurement, disadvantaged business enterprise (DBE) participation, cost and price analysis, list of required contract provisions, and bonding requirements. (DEFICIENCY CODE P1-2: Procurement transaction procedures missing or incomplete).

Corrective Action(s) and Timelines: By March 1st, 2019, SWT should update their Purchasing Policy to include missing Federal laws and standards as required by 2 CFR part 200. There should be a distinct section for written standards of conduct, and these standards should be communicated to SWT staff.

SWT Response: SWT will update its Purchasing Policy to include the missing federal laws and standards as required by 2 CFR part 200. These updates will include written standards of conduct and these standards will be communicated to SWT staff.

9. Satisfactory Continuing Control

Basic Requirement: Recipients must maintain adequate property records and submit annual reports on the status of real property in which the Federal Government retains interest.

During this review of SWT, three (3) deficiencies were found with the FTA requirements for Satisfactory Continuing Control.

Finding SCC7-5: SWT does not have an adequate control system in place to prevent future loss, damage, or theft of FTA-funded assets. (DEFICIENCY CODE SCC7-5: Inadequate property control system).

Corrective Action(s) and Timelines: By January 12th, 2019, SWT should submit to the Metropolitan Council's Audit Department a written plan for preventing the loss, damage, or theft of FTA-funded assets. This plan should detail how SWT will remain in compliance with section 3.04 item E of the Master Lease Agreement with the Metropolitan Council (Contract No. 11M042) which states that lessee (SWT) must maintain absolute control and supervision over the operation of Council-owned vehicles. Proof of completion must be sent to the Council's Manager of Fleet Services, Paul Colton.

SWT Response: This finding has already been addressed by a security fence having been erected around the FTA-funded assets in question. This action was approved and deemed satisfactory by the Metropolitan Council's Manager of Fleet Services, Paul Colton.

Audit Response: Program Evaluation and Audit confirmed with Paul Colton that the fence poles had been erected, but he had not confirmed the fence had been completed. Metropolitan Council staff will follow-up to confirm the fence was constructed and meets SCC requirements.

Finding SCC12-2: SWT failed to use awarded vehicles for project purposes and failed to retrieve FTA-funded assets at the end of a lease. SWT had a prior Council-approved lease agreement with Duluth Transit Authority (DTA) for a 2005 Optima Trolley. However, Audit discovered that SWT had entered into a second lease that switched vehicles and sent a 2015 Gillig Trolley to DTA. SWT extended the lease from September 4th to September 28th, 2018 as an amendment. The Metropolitan Council was not informed of the vehicle switch or the lease extension. SWT has violated their Master Lease Agreement with the Metropolitan Council, Section 3.02 which states that lessee shall only use Council-owned vehicles for public transport purposes within the Twin Cities Metropolitan Area and only for purposes that are consistent with the parties' operating agreement.

Audit discovered the vehicle was still in Duluth on October 12th. The vehicle was to have been returned at the expiration of the lease on September 28th. As of October 17th, 2018, while Audit was at SWT conducting an asset inventory, the trolley bus had still not been returned from DTA. The bus could have remained in Duluth for an additional 3 weeks past the expiration of the lease. (DEFICIENCY CODE SCC12-2: Inadequate control of real property).

Corrective Action(s) and Timelines: Effectively immediately, SWT must cease all current agreements and retrieve any other leased assets. SWT must inform the Metropolitan Council, in writing, of all agreements SWT has entered into within the last three years that could impact the purpose of the project award. By January 12th, 2019, SWT must submit to the Metropolitan Council's Manager of Fleet Services Paul Colton revised procedures for control of equipment operated by subrecipients, contractors, or lessees. SWT must also submit an updated procedure for informing and receiving concurrence from the Council for any lease of FTA-Funded assets.

SWT Response: The lease in question has ended. SWT will send the amended lease that was executed as part of the lease in question to the Metropolitan Council's Manager of Fleet Services. If this situation does arise in the future, which is not likely, SWT will work with the Metropolitan Council on developing procedures prior to entering into any agreement involving the lease of FTA-funded assets. Until then, the drafting of the requested procedures is not necessary.

Audit Response: Program Evaluation and Audit confirmed with Paul Colton that the fence poles had been erected, but he had not confirmed the fence had been completed. Metropolitan Council staff will follow-up to confirm the fence was constructed and meets SCC requirements.

Finding SCC12-3: Lease agreements for Council-owned vehicles between SWT and DTA did not contain the required lease provisions referencing the best interests of the public, cleanliness, mechanical soundness, and SWT failed to pass through any of the other federally required clauses of their Master Lease Agreement with the Metropolitan Council. As such, these leases would not be valid. (DEFICIENCY CODE SCC12-3: Lease issues).

Corrective Action(s) and Timelines: By January 12th, 2019, SWT must submit to the Metropolitan Council's Manager of Fleet Services Paul Colton amended leases of FTA-funded assets to public or private operators that include the required federal clauses, along with procedures for ensuring these terms and conditions are included in future leases.

SWT Response: SWT does not have any active leases to submit to the Metropolitan Council but will submit the amended lease agreement referenced above to the Metropolitan Council's Manager of Fleet Services.

10. Security

Basic Requirement: Recipients must maintain control over FTA-funded property and ensure that FTA-funded property is being used for project purposes.

During this review of SWT, no deficiencies were found with the FTA requirements for Security.

11. Technical Capacity

Basic Requirement: Recipients must report progress of projects in awards to the Federal Transit Administration in a timely manner.

During this review of SWT, no deficiencies were found with the FTA requirements for Technical Capacity.

12. Title VI

Basic Requirement: Recipients are required to prepare and submit a Title VI Program based on the recipient's transit-related characteristics. Recipients must provide information regarding its Title VI obligations to the public and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients must implement a LAP to address the needs of the populations it serves, and recipients must offer early and continuous participation opportunities for the public, including minority and LEP populations, in the identification of social, economic, and environmental impacts of proposed transportation decisions.

During this Triennial Review of SWT, four (4) deficiencies were found with the FTA requirements for Title VI.

Finding TVI3-1: SWT has posted Title VI notices that are unreadable and untranslated. SWT has placed low-contrast notices against conflicting backgrounds. (DEFICIENCY CODE TVI3-1: Title VI public notification not disseminated).

Corrective Action(s) and Timelines: By March 1st, 2019 SWT must redo their Title VI notices so that they are readable, including the use of high-contrast backgrounds. Title VI notices should be updated to include additional languages per their Language Assistance Plan.

SWT Response: SWT will redo its Title VI notices so they are readable and use high-contrast backgrounds. Notices will be updated to include any required additional languages per its Language Assistance Plan.

Finding TVI2-1: SWT has a Language Assistance Plan (LAP) that has not been implemented or designed correctly to benefit its Limited English Proficiency (LEP) population(s). The LAP was based on outdated American Community Survey data. Additionally, SWT did not include any population density mapping. Parts of the first factor analysis included "race" as a factor. Finally, SWT used the results of a driver survey as part of its Four Factor Analysis that may have only been given in English (DEFICIENCY CODE TVI2-1: Language Assistance Plan deficiencies).

Corrective Action(s) and Timelines: By March 1st, 2019, SWT must update their LAP by redoing their Four Factor Analysis with more current American Community Survey data, remove and redo any analysis that used race or ethnicity as a factor and eliminate Factor 1b, and submit documentation to the Metropolitan Council's Office of Equal Opportunity of evidence of LAP implementation efforts. Assistance with conducting a Four Factor Analysis can be found in FTA Circular 4702.1B.

SWT Response: SWT will redo its Four Factor Analysis with more current American Community Survey data, remove and redo any analysis that used race or ethnicity as a factor and eliminate Factor 1b. These changes will be submitted to the Metropolitan Council's Office of Equal Opportunity.

Finding TVI3-2: SWT has not performed additional research on the service area's Spanish-speaking population (a population that exceeds the Safe Harbor threshold of 1,000 speakers) or translated their TVI notices and other vital documents into additional languages. Their Title VI Plan does not contain a list of vital documents to be translated, and SWT's website uses an online translator to translate documents. The practice of using an online translator is not acceptable by FTA standards as it may produce inaccurate translations, does not translate PDF's or Microsoft Word Documents posted to the website, or may not be accessible by individuals who need translation service. (DEFICIENCY CODE TVI3-2: Title VI public notification translation not provided).

Corrective Action(s) and Timelines: By March 1st, 2019, SWT must translate their Title VI notices and other vital documents in to other languages, pending the results of their Four Factor Analysis. Documentation of completing the above recommendations should be submitted to the Metropolitan Council's Office of Equal Opportunity.

SWT Response: Pending the results of its Four Factor Analysis, SWT will translate Title VI notices and other vital documents into required languages as identified through the Four Factor Analysis. Should translation be required, SWT will send documentation of translation to the Metropolitan Council's Office of Equal Opportunity and Audit Department.

Finding TVI5-1: SWT has a Public Participation Plan that has not been implemented and is lacking documentation of implementation for the 684 and 694 service change. SWT's Public Participation Plan does not incorporate multiple meeting formats and locations and does not discuss how it would involve LEP populations (DEFICIENCY CODE TVI5-1: Title VI Public Participation Plan not implemented).

Corrective Action(s) and Timelines: By March 1st, 2019, SWT must update their public participation plan by revising the plan to include LEP populations, adding additional means of communication and outreach for Title VI-protected populations for major service changes, and devising a system of documentation for public participation activities. Documentation of completing the above recommendations must be submitted to the Metropolitan Council's Office of Equal Opportunity.

SWT Response: SWT will update its public participation plan by revising it to include LEP populations, adding additional means of communication and outreach for Title VI-protected populations for major service changes, and devising a system of documentation for public participation activities. Documentation of these revisions will be sent to the Metropolitan Council's Office of Equal Opportunity and Audit Department.



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