

**FEDERAL TRANSIT ADMINISTRATION
COMPLIANCE REVIEW
PLYMOUTH METROLINK**
PROGRAM EVALUATION AND AUDIT

DRAFT



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

June 19, 2019

INTRODUCTION

Background

Plymouth Metrolink is a Metropolitan Council subrecipient of federal funds. Plymouth Metrolink was established in 1984 by the City of Plymouth. It is a member of the Suburban Transit Association which aims to provide high-quality suburban transit services. Plymouth Metrolink offers service to both downtown Minneapolis, downtown Saint Paul, the University of Minnesota campus, and Plymouth. The agency contracts with First Transit to operate the service and maintain the fleet. First Transit operates out of two garages, located on Spring Street and Como Avenue.

Purpose

As a direct recipient of federal funds from the Federal Transit Administration (FTA), the Metropolitan Council is required to conduct oversight of its subrecipients and ensure that they comply with federal requirements. Program Evaluation and Audit periodically reviews subrecipients to help fulfill the Council's obligations as a direct recipient.

Objective

The objective of the Audit is to determine Plymouth Metrolink's compliance with federal requirements in eleven (11) areas.

Scope

This review covers activities conducted during the last three years. However, coverage was expanded to earlier periods if necessary. It covers Plymouth Metrolink's transit activities that used FTA or Metropolitan Council funded vehicles subject to the Master Lease Agreement.

Methodology

Audit conducted its review from November 2018 through February 2019. Audit conducted a desk review of Plymouth Metrolink's policies, procedures, and practices for compliance using the FTA's *Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2018* and the Master Lease Agreement. Once the desk review was complete, an onsite interview was held with Plymouth Metrolink and First Transit management. Audit also reviewed 10 vehicles across two garages for a maintenance review. Five vehicles were reviewed at the Como Avenue and Spring Street garages.

Prior to the report's issuance, Audit met with Metropolitan Transportation Services (MTS) and Office of Equal Opportunity (OEO) staff to discuss the findings. Audit also held an exit conference with Plymouth Metrolink prior to the presentation to Audit Committee.

FINDING AND RESPONSES

1. Americans with Disabilities 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 review of Plymouth Metrolink, **one (1) deficiency was found with the FTA requirements for the ADA.**

Finding ADA1-1: 49 CFR 27.121(b) requires that recipients adopt accessible complaint procedures that are advertised to the public. Plymouth Metrolink 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 March 6th, 2019, Plymouth Metrolink should post their ADA complaint process on their website and submit evidence to the Metropolitan Council that this action has been completed.

Plymouth's Responses: Given Plymouth's limited resources we plan to address this by Friday May 31, 2019.

Status: Closed. Plymouth updated their complaint form to be accessible and submitted proof of completion on March 14, 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 review of Plymouth Metrolink, no deficiencies were found with the FTA requirements for Charter Service.

3. Drug and Alcohol

Basic Requirement: The recipient must ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees administer their drug and alcohol programs in accordance with the requirements of 49 CFR parts 40 and 655.

During this review of Plymouth Metrolink, no deficiencies were found with the FTA requirements for Drug and Alcohol.

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 review of Plymouth Metrolink, **four (4) deficiencies were found with the FTA requirements for EEO.**

Finding EEO4-2: Since Plymouth Metrolink does not meet the threshold for developing an EEO Program, their contractor First Transit's Affirmative Action Program, updated in 2018, was

audited. Their Employment Practices data does not cross-reference employment practices by race and sex, per FTA Circular 4704 1A Ch. 2.2.6 requirements for the assessment of employment practices. First Transit's AAP does not include analysis on the employment of veterans and individuals with disabilities. (**DEFICIENCY CODE EEO4-2**: Employment Practices analysis deficiencies).

Corrective Action(s) and Timelines: By May 6th, 2019, First Transit must update their regional Affirmative Action Plan to include an analysis of employment practices using EEO-4 reporting data. Racial data for employment practices analysis must be disaggregated and all statistical assessments, including number of applicants/number hired, number of employees who applied for promotion or transfer, number and types of disciplinary actions, number of voluntary/involuntary terminations, and types of job category training that fosters promotion potential must be cross-referenced by race, sex, and other applicable items as outlined in FTA Circular 4704.1A Ch. 2.2.6. This updated plan must also include analysis on the employment of veterans and individuals with disabilities. Evidence of completion must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Status: Open. First Transit contacted the Office of Equal Opportunity contesting elements of the finding. The Council is asking for FTA guidance on the collection of data on persons with disabilities and veterans.

Finding EEO4-4: First Transit's program's Employment Practices and Utilization Analysis data are not specific enough to adequately address the requirements of FTA Circular 4704 1A Ch. 2.2.4 for conducting a utilization analysis. The circular requires racial data to be disaggregated by numerous subcategories, yet First Transit's program combines all racial data under one category labeled "min" (standing for "minority"). (**DEFICIENCY CODE EEO4-4**: Utilization incomplete or not completed).

Corrective Action(s) and Timelines: By May 6, 2019, First Transit must update their regional Affirmative Action Plan to include a utilization analysis based on EEO-4 reporting data. Data must be aggregated by race in each subcategory. Evidence of completion must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Status: Open. First Transit contacted the Office of Equal Opportunity contesting elements of the finding. The Council is asking for FTA guidance on the collection of data on persons with disabilities and veterans.

Finding EEO4-5: First Transit's utilization goals are not disaggregated by race, although FTA Circular 4704.1A Ch. 2.2.5 requires the consideration of the current and future projected availability of underutilized groups. First Transit's regional Affirmative Action Plan from 2018 is missing a timetable to correct for underutilization. (**DEFICIENCY CODE EEO4-5**: EEO goals deficiencies).

Corrective Action(s) and Timelines: By May 6th, 2019, First Transit must update their regional Affirmative Action Plan to include a timetable to correct for underutilization. This timetable should specify short term and long-term goals. Evidence of completion must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Status: Open. First Transit contacted the Office of Equal Opportunity contesting elements of the finding. The Council is asking for FTA guidance on the collection of data on persons with disabilities and veterans.

Finding EEO5-1: FTA Circular 4704.1A Ch. 2.2.7 requires that EEO programs must include documented proof of review of subrecipient or contractors' EEO Program. Plymouth did not

provide adequate, documented proof of Plymouth Metrolink's oversight over their contractor's EEO Program. (**DEFICIENCY CODE EEO5-1: Insufficient oversight of subrecipient/contractor EEO Program**).

Corrective Action(s) and Timelines: By June 6, 2019, Plymouth Metrolink must review First Transit's EEO Program for deficiencies and develop a procedure to maintain documentation of program reviews and EEO-related meetings with First Transit for the duration of the program. After completion, documentation of program review must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Status: Open. First Transit contacted the Office of Equal Opportunity contesting elements of the finding. The Council is asking for FTA guidance on the collection of data on persons with disabilities and veterans. Plymouth will review First Transit's EEO Plan after FTA guidance is given.

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 Plymouth Metrolink, **one (1) deficiency was found with the FTA requirements for Financial Management and Capacity.**

Finding F1-2: Oversight of financial management between Plymouth Metrolink and First Transit's Finance Manager is not adequately documented. Monthly invoice reviews between Plymouth Metrolink and First Transit are not documented, therefore not fulfilling Plymouth's oversight requirement. (**DEFICIENCY CODE F1-2: Lacking internal controls**).

Corrective Action(s) and Timelines: By April 6, 2019, Plymouth Metrolink must establish new procedures for establishing internal financial controls consistent with the requirements in 2 CFR 200.303 for financial oversight of contractors. The updated procedure should establish a form of documented oversight between Plymouth Metrolink and their contractor, First Transit. Examples of this documented oversight could include an email memo, a memo to file, or regularly updating the justification field in Plymouth Metrolink's financial management program. Evidence of these new procedures for financial management oversight must be sent to the Metropolitan Council's Metropolitan Transportation Services Grant Manager.

Plymouth's response: Plymouth has developed an invoice review document and sent it for review by the MTS Finance and Administration Grants Manager on February 8, 2019.

Status: Open. Plymouth submitted a form for examining invoices between First Transit and Plymouth Metrolink. After discussions with the Council's Grant Manager, the Council does not believe this document alone is sufficient to address finding F1-2. Plymouth will continue to work with the Council's Grants Manager to develop a procedure for reviewing invoices.

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 Plymouth Metrolink, no deficiencies were found with the FTA requirements for Legal.

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 review of Plymouth Metrolink, **one (1) finding was found with the FTA requirements for Maintenance.**

Finding M5-1: Plymouth Metrolink could not demonstrate adequate oversight of Plymouth Metrolink's contractor First Transit's maintenance activities. (**DEFICIENCY CODE M5-1:** Inadequate oversight of subrecipient, contractor, or lessee maintenance activities).

Corrective Action(s) and Timelines: By March 6, 2019, Plymouth Metrolink must establish an effective mechanism for monitoring First Transit's maintenance activities. Such a mechanism could include periodic written reports on maintenance activities reviewed by subrecipient, documented review of maintenance records, documented shadowing and verification of third party inspection onsite, documented certification of their 3rd party inspection reports, or periodic inspections of FTA-funded assets, with documented evidence of review. Evidence that a mechanism has been established should be submitted to the Metropolitan Council's Fleet Administrator.

Status: Closed. Plymouth submitted a review form to the Council on March 19, 2019.

8. Procurement

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

During this review of Plymouth Metrolink, **one (1) deficiency was found with the FTA requirements for Procurement.**

Finding P1-2: Plymouth Metrolink is covered by the City of Plymouth's Purchasing Policy, which is missing several applicable federal provisions including those on general procurement standards, competition, cost and price analysis, required contract provisions, bonding requirements, and the prohibition of discriminatory specifications. (**DEFICIENCY CODE P1-2:** Procurement transaction procedures missing or incomplete).

Corrective Action(s) and Timelines: By April 6, 2019, the City of Plymouth's Purchasing Policy must be amended so that includes required federal requirements and standards of conduct for engaging in procurement with federal assistance. Evidence of this updated amendment must be submitted to the Metropolitan Council.

Plymouth's Response: See attached city policies and confirm if they are sufficient.

Status: Closed. On April 5, 2019 Plymouth submitted amended procurement policies. They included the required clauses for non-state entities receiving federal funding and now comply with the General Procurement Standards: 2 CFR § 200.318 through § 200.326. Plymouth's procurement policy is now compliant with the following federal guidance:

- 2 CFR § 200.318 General Procurement Standards
- 2 CFR § 200.319 Competition
- 2 CFR § 200.320 Methods of Procurement to be Followed

- 2 CFR § 200.321 Contracting with Small and Minority Business Enterprises, and Labor Surplus Area firms
- 2 CFR § 200.323 Contract Cost and Price
- 2 CFR § 200.325 Bonding Requirements
- 2 CFR § 200.316 Contract Provisions
- FTA C 4220.1F Ch. III, section 3(a), 1(b)

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 Plymouth Metrolink, no deficiencies were found with the FTA requirements for Satisfactory Continuing Control.

10. 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 Plymouth Metrolink, no deficiencies were found with the FTA requirements for Technical Capacity.

11. 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 review of Plymouth Metrolink, **two (2) deficiencies were found with the FTA requirements for Title VI.**

Finding TVI2-1: Plymouth Metrolink did not perform the required additional analysis for Limited English Proficient (LEP) populations that cross the Safe Harbor Threshold during their Four Factor Analysis in their 2016 Language Assistance Plan. (**DEFICIENCY CODE TVI2-1:** Language Assistance Plan deficiencies).

Corrective Action(s) and Timelines: By May 6th, 2019, Plymouth Metrolink must conduct further analysis of the two summary categories, "Other Indo-European" and "Asian and Pacific Islander", to determine if there are specific Limited English Proficiency communities that meet the 1,000 or 5% thresholds per the Safe Harbor Provision (FTA Circular 4702.1B Ch. III.9(c)). Pending the results of the analysis, Plymouth Metrolink should perform the necessary requirements in the Safe Harbor Provision to provide assistance to these groups. Evidence of completion must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Plymouth's Response: We will work with Metropolitan Council's Office of Equal Opportunity in accomplishing this on time.

Status: Closed. On February 26, 2019, Plymouth's Transit Administrator produced additional analysis to determine if a specific population crossed the threshold, based on United States Census Bureau data. Audit and the Office of Equal Opportunity reviewed Plymouth's submission.

Finding TVI5-1: Plymouth Metrolink has developed a Public Participation Plan that meets the requirements of FTA Circular 4702.1B. However, Plymouth's plan was not implemented prior to the adoption of the city's current Title VI Plan. The rider alert for the public hearing was removed two days before the meeting was held, and the Title VI plan was approved during the same hearing as it was introduced. Plymouth Metrolink did not produce documentation of their outreach to Limited English Proficient or other Title VI-protected communities prior to the hearing. (**DEFICIENCY CODE TVI5-1:** Title VI Public Participation Plan not implemented).

Corrective Action(s) and Timelines: By May 6, 2019, Plymouth Metrolink must draft and implement a plan for public participation activities while planning or making decisions at the local level, including, but not limited to, providing adequate notice of public participation activities as well as early and continuous opportunities for public review and comment at key decision points. Evidence of public participation implementation must be submitted to the Metropolitan Council's Office of Equal Opportunity.

Status: Closed. On February 8, 2019, Plymouth's Transit Administrator produced a plan to adequately inform the public activities for their next Title VI plan submission in 2020. Audit and the Office of Equal Opportunity reviewed Plymouth's submission and believe the submission addresses the finding.

DRAFT

DRAFT



390 Robert Street North
Saint Paul, MN 55101-1805

651.602.1000
TTY 651.291.0904
public.info@metc.state.mn.us
metro council.org