

5. Technical Capacity – Project Management

Basic Requirement: The recipient must be able to implement FTA-funded projects in accordance with the award application, FTA Master Agreement, and all applicable laws and regulations, using sound management practices; and prepare force account plans.

Finding: During this Triennial Review of DTA, one deficiency was found with the FTA requirements for Technical Capacity – Project Management.

The review team found no evidence that the DTA Board of Directors conducts oversight specific to ensuring that its transit management contractor (i.e., First Transit) comply with Federal requirements. (TC-PjM1-3: Inadequate oversight of transit management)

As the recipient of FTA funds, the DTA Board of Directors is responsible for ensuring that its transit management contractor is complying with all FTA requirements. The recipient must have sufficient documentation to support the certifications it makes to FTA that its contractor has met all statutory and program requirements. Although the DTA staff report to the Board regularly, the review team did not find evidence that the Board is regularly checking to ensure that all Federal requirements are being met. Such requirements include financial (e.g., no evidence of board approval of ECHO drawdowns), procurement, maintenance (e.g., documentation of vehicle and facility inspections), Civil Rights, and the requirements specific to the FTA program from which the funds originate – in the case of Duluth Transit Authority this is the Section 5307 Urbanized Area Formula Program. The requirement to conduct such oversight is described in FTA Circular 5010.1E, Chapter II Section 3: Roles and Responsibilities of the Management of Awards.

Corrective Action(s) and Schedule:

No later than December 30, 2019, the DTA Board of Directors must submit to Region 5 copies of all plans or procedures in place demonstrating its technical inspection and supervision of its transit management contractor, First Transit. These plans and procedures may consist of: project management plans, quality control procedures, state/program management plan(s), and agreements with First Transit for administering and monitoring projects. All plans and procedures must comply with Federal requirements described in FTA Circular 5010.1E, Chapter II Section 3.

1. Technical Capacity – Project Management

Basic Requirement: The recipient must be able to implement the Federal Transit Administration (FTA)-funded projects in accordance with the award application, the FTA Master Agreement, and applicable laws and regulations using sound management practices.

Finding: During this Triennial Review of DTA and the City, one deficiency was found with the FTA requirements for Technical Capacity – Project Management.

Deficiency Description:

DTA

TC PJM3-1 Inadequate oversight of transit management contractor

A recipient is deficient if it does not ensure that its transit management contractor complies with Federal requirements.

The DTA has no employees; all employees that operate the transit system work for a subsidiary corporation, ATE Management of Duluth, Inc. (ATED) via a contractual agreement with the DTA. As the recipient of FTA funds, the DTA Board of Directors is responsible for ensuring that its transit management contractor is complying with all FTA requirements. The recipient must have sufficient documentation to support the certifications it makes to FTA that its contractor has met all statutory and program requirements. Although the DTA staff report to the Board regularly, the review team did not find evidence that the Board is routinely checking to ensure that all Federal requirements are being met.

This is a repeat finding from the 2019 Triennial Review. As a corrective action for the 2019 finding, an Interagency Agreement – Public Transit Oversight was developed between the City of Duluth, City of Superior, and DTA, dated February 18, 2020. On October 19, 2022, the DTA purchased stock of ATED, the private contractor, resulting in DTA ownership of ATED. The Interagency Agreement has not been updated to reflect this. During the review, the recipient provided a Summary of Oversight Activities document, but the submission did not show evidence of implementation of DTA oversight over its transit service contractor.

FTA Circular 5010.1E, Chapter II Section 3. Roles and Responsibilities of the Management of Awards

A recipient is responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects.

a. Recipient Role. In addition to FTA responsibility to monitor FTA Awards and the federally assisted projects thereunder, a recipient must monitor federally assisted activities to ensure compliance with applicable Federal requirements. This includes the administration and management of the Award in compliance with Federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for Federal assistance that “passes through” to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, “Audits”, audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient’s Certifications and Assurances (See Chapter V, “Oversight,” of this circular). The recipient’s responsibilities include, but are not limited to, actions that:

- (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;*
- (2) Provide administrative and management support of project implementation;*
- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress.*

- (4) *Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;*
- (5) *Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;*
- (6) *Keep expenditures within the latest approved Award Budget;*
- (7) *Ensure compliance with FTA and Federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;*
- (8) *Request and withdraw federal assistance for eligible activities only in amounts and at times needed to make payments that are due and payable within three (3) business days and retain receipts to substantiate withdrawals;*
- (9) *Account for project property and maintain property inventory records that contain all the elements required;*
- (10) *Demonstrate and retain satisfactory continuing control over the use of project property;*
- (11) *Demonstrate procedures for asset management and adequate maintenance of equipment and facilities;*
- (12) *Ensure that an annual independent organization-wide audit is conducted in accordance with Office of Management and Budget (OMB) guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR part 200, which is incorporated by reference in 2 CFR part 1201, Prepare Force Account Plans and Cost Allocation Plans (CAPs) or Indirect Cost Proposals and submit and obtain approval if applicable, before incurring costs;*
- (13) *Prepare required reports (See Chapter III, Section 3, "Reporting Requirements") for submission to FTA;*
- (14) *Update and retain FTA required reports and records for availability during audits or oversight reviews;*
- (15) *Ensure effective control and accountability are maintained for all Grants, Cooperative Agreements, and subagreements, cash, real and personal property, and other assets. Recipients and subrecipients must ensure that resources are properly used and safeguarded, and used solely for authorized purposes;*
- (16) *Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions; and*
- (17) *Manage roles and responsibilities of the organization's users in TrAMS.*

Corrective Action(s) and Schedule: By February 5, 2024, DTA must submit to the FTA regional office:

- documentation to evidence that oversight activities of transit service contractors are being conducted.
- an updated agreement reflecting the current organizational structure, to ensure procedures to oversee transit management contractor compliance with Federal requirements are in place.