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# *Office of Inspector General*

# *Audit Report*

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## **FTA CAN IMPROVE ITS OVERSIGHT OF HURRICANE SANDY RELIEF FUNDS**

*Federal Transit Administration*

*Report Number: ZA-2016-077*

*Date Issued: July 21, 2016*





# Memorandum

U.S. Department of  
Transportation

Office of the Secretary  
of Transportation  
Office of Inspector General

Subject: **INFORMATION**: FTA Can Improve Its  
Oversight of Hurricane Sandy Relief Funds  
Federal Transit Administration  
Report Number ZA-2016-077

Date: July 21, 2016

From: Mary Kay Langan-Feirson   
Assistant Inspector General for  
Acquisition and Procurement Audits

Reply to  
Attn. of: JA-60

To: Federal Transit Administrator

In October 2012, Hurricane Sandy caused widespread damage to the transportation infrastructure in the mid-Atlantic and northeastern United States. In response, the President signed the Disaster Relief Appropriations Act (DRAA) in January 2013, which appropriated \$10.9 billion to the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program (ERP) for Sandy-related recovery, relief, and resiliency programs. As of November 30, 2015, FTA had obligated nearly \$4.6 billion and disbursed \$1.16 billion. FTA's top four grantees<sup>1</sup> received \$1.14 billion of the \$1.16 billion in disbursed funds. The Metropolitan Transportation Authority (MTA) received \$821 million, or 70 percent, of those funds. Of MTA's subsidiaries, New York City Transit (NYCT) holds the majority of MTA's DRAA-funded contracts.<sup>2</sup>

DRAA directs our office to support oversight of FTA's Hurricane Sandy relief funds. Accordingly, we conducted this audit to determine whether FTA provides effective oversight of grantees' contracting practices using DRAA funds. We focused our review on NYCT because it was one of the largest recipients of MTA's Hurricane Sandy relief funds.

We conducted this audit according to generally accepted Government auditing standards. To conduct our work, we used a risk-based approach to select 9 out of 37 DRAA-funded NYCT contracts to review NYCT's procurement practices and

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<sup>1</sup> The other grantees are New Jersey Transit, the Port Authority of New York/New Jersey (PANYNJ), and the Port Authority Trans Hudson (a subsidiary of PANYNJ).

<sup>2</sup> For the purposes of this document, we will refer to MTA and its subsidiary, NYCT, collectively as NYCT where appropriate.

FTA's oversight.<sup>3</sup> These 9 contracts represented \$190 million—or 86 percent—of the 37 NYCT contracts, valued at \$220 million. We reviewed Federal requirements, FTA guidance, and MTA and NYCT policies and procedures. We also interviewed FTA, MTA, and NYCT personnel. Exhibit A further details our scope and methodology.

## RESULTS IN BRIEF

FTA's oversight practices do not fully ensure that NYCT uses DRAA funds properly and in compliance with FTA procurement requirements. While FTA responded quickly and effectively to Hurricane Sandy by assessing the damage and assisting impacted transit agencies, our review identified two areas of concern with FTA's oversight. Specifically, FTA lacks the needed controls to verify that NYCT only uses DRAA funds for eligible expenditures and does not ensure that NYCT obtains approval for change orders per FTA policy. For two of the nine contracts we reviewed, NYCT drew down \$17.7 million in DRAA funds for procurement actions that were ineligible for inclusion in a grant. NYCT made these drawdowns even after FTA had determined they were not eligible. In addition, NYCT spent these DRAA funds on out-of-scope work, which is not permissible under FTA policies. FTA was unaware that the funds had been drawn because it lacks processes to follow up on potential risk items, such as expenditures denied for grant inclusion, as they become known. We notified FTA of our findings, and FTA officials issued a letter to NYCT requesting that it return the \$17.7 million in improper payments.

FTA's oversight reviews also did not prevent or detect most of the non-compliant change order approvals we identified. Of the 205 change orders we reviewed,<sup>4</sup> valued at \$49 million, 154 change orders, valued at about \$25 million,<sup>5</sup> were not approved per FTA policy. Proper approval by the recipient's authorized officials is required to ensure that all additional work and incurred costs are authorized before work begins.<sup>6</sup> However, we found instances in which NYCT (1) directed the contractor to begin work on change orders without prior management approval, (2) lacked documentation in change order approvals to show compliance with FTA policy, and (3) issued a blanket approval for multiple change orders.<sup>7</sup> Although MTA's integrity monitors and FTA periodically review NYCT's change orders, these reviews do not focus on whether the authorized official approved the change

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<sup>3</sup> As of October 31, 2014.

<sup>4</sup> From the 9 NYCT contracts we selected, we reviewed all of the Hurricane Sandy-related change orders, which amounted to 205 change orders totaling \$49 million.

<sup>5</sup> Of these change orders, 56 change orders, totaling \$14.5 million, are part of the \$17.7 million that NYCT drew down, which FTA determined to be ineligible for inclusion in a grant.

<sup>6</sup> According to FTA grant policy, an authorized grantee official must approve all change orders before they are issued. FTA Circular 4220.1F, II(2)a1.

<sup>7</sup> FTA policy requires appropriate approval before issuing any change order. Though FTA policy does not explicitly restrict blanket approvals, it does not explicitly allow them either.

orders before issuance as required by FTA policy. In general, these reviews focus on scope, reasonableness, and work justifications. As a result of these oversight gaps, FTA risks future improper payments of the remaining Hurricane Sandy relief funds.

We are making recommendations to improve FTA's oversight of NYCT's contracting practices using DRAA funds.

## **BACKGROUND**

In April 2013, FTA issued an ERP Toolkit for FTA staff to use as a reference to ensure successful obligation and expenditure of relief funds. These tools stress performing risk assessments, enhancing oversight that is tailored to specifically identified risks, and reviewing grantee payments (drawdowns). The Toolkit includes FTA's Hurricane Sandy Disaster Relief Oversight Plan, which outlines a risk-based oversight framework for allocating oversight resources and tools. Key goals in FTA's Hurricane Sandy Disaster Relief Oversight Plan include ensuring FTA has adequate internal controls to detect improper payments and ensuring that grantees comply with Federal requirements.

According to the FTA Sandy Oversight Plan, grantees receiving over \$100 million in DRAA funds are required to establish integrity monitors to conduct several project monitoring activities including periodic forensic reviews of payments and change orders.<sup>8</sup> To meet this requirement, MTA established the MTA Independent Monitoring Implementation Plan in November 2013. According to MTA representatives, MTA divided integrity monitoring duties, based on the dollar amount associated with the change orders, between its Office of Audit Services and Office of the MTA Inspector General.<sup>9</sup>

Our initial report on FTA's oversight of ERP and Hurricane Sandy relief funds, issued in December 2013, recognized that FTA responded quickly and effectively to Hurricane Sandy by assessing the damage, assisting impacted transit agencies, and developing oversight plans.<sup>10</sup> However, we noted that FTA's Hurricane Sandy Disaster Relief Oversight Plan lacked specificity in key areas and that FTA needed to put into practice its risk-based framework, outlined in the Hurricane Sandy Disaster Relief Oversight Plan, to ensure relief funds were properly distributed and spent. We made nine recommendations, which FTA has since resolved. In June 2015, we reported that FTA had not fully implemented the processes and internal

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<sup>8</sup> FTA's Federal Register Notice, Second Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy: Response, Recovery & Resiliency, March 29, 2013.

<sup>9</sup> Specifically, MTA Inspector General personnel review change orders valued between \$100,000 and \$1 million, while MTA Office of Audit Services personnel review change orders over \$1 million.

<sup>10</sup> *Initial Assessment of FTA's Oversight of the Emergency Relief Program and Hurricane Sandy Relief Funds* (OIG Report Number MH-2014-008), Dec. 3, 2013. OIG reports can be found on our Web site at: <https://www.oig.dot.gov/>.

controls it established for the award and oversight of Hurricane Sandy funds in response to DRAA and Federal guidelines.<sup>11</sup> We also noted that several factors slowed the pace of fund awards and grantee expenditures. FTA is addressing our recommendations from the June 2015 report.

## **FTA'S OVERSIGHT PRACTICES DO NOT FULLY ENSURE THAT NYCT USES DRAA FUNDS PROPERLY AND IN COMPLIANCE WITH FTA PROCUREMENT REQUIREMENTS**

FTA's oversight practices do not fully ensure that NYCT uses DRAA funds properly and in compliance with FTA procurement requirements. FTA lacks sufficient controls to verify that NYCT only uses DRAA funds for eligible costs. In addition, FTA oversight does not verify that NYCT's change orders are approved per FTA policy. As a result, FTA risks future improper payments of the remaining Hurricane Sandy relief funds.

### **FTA Lacks Sufficient Controls To Verify That NYCT Only Uses DRAA Funds for Eligible Costs**

NYCT drew down \$17.7 million in DRAA funds for procurement actions even after FTA determined the actions were not eligible to be included in a grant. In addition, NYCT spent these DRAA funds on out-of-scope work, which is not permissible under FTA policies.

Key goals in FTA's Hurricane Sandy Oversight Plan include ensuring that FTA has adequate internal controls to detect improper payments and that grantees comply with Federal requirements. FTA has taken actions to oversee NYCT's use of DRAA funds. These include conducting triennial, financial management oversight, and procurement system reviews and requiring grantees to establish integrity monitors to review payments and change orders. FTA's oversight reviews have found NYCT to be a high-risk grantee in the areas of financial management, procurement, grants management, project management, and construction management.<sup>12</sup>

However, until our review, FTA was unaware that NYCT had used these DRAA funds for ineligible procurement actions. This is because—even when alerted to a potential risk item as in this case—FTA lacks sufficient controls to follow up on potential risk items, such as expenditures that have been denied for grant inclusion, as they become known. This puts FTA at risk of making improper payments with the remaining Hurricane Sandy relief funds.

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<sup>11</sup> *FTA Has Not Fully Implemented Key Internal Controls for Hurricane Sandy Oversight and Future Emergency Relief Efforts* (OIG Report Number ST-2015-046), June 12, 2015.

<sup>12</sup> Hurricane Sandy Disaster Relief: Grantee Risk Assessment, New York Metropolitan, October 1, 2013, and 2013 NYCT Grant Oversight Assessment, July 26, 2013.

### *NYCT Drew Down DRAA Grant Funds for Procurement Actions That FTA Did Not Approve for Grant Inclusion*

In February 2013, FTA issued a Federal Register Notice announcing its intention to reimburse grantees for Hurricane Sandy-related contractual commitments made before January 29, 2013—even if grantees did not comply with FTA procurement requirements.<sup>13</sup> The waiver of FTA procurement requirements was intended to allow grantees to complete response and recovery projects expeditiously. However, for commitments made after this date, FTA procurement requirements apply, and grantees are required to submit requests for waivers, which require FTA approval.<sup>14</sup> Yet, for two of the nine<sup>15</sup> contracts we reviewed, NYCT drew down \$17.7 million in DRAA funds for procurement actions that FTA had determined were ineligible for inclusion in a grant.

Specifically, in December 2013, NYCT asked FTA to determine whether \$17.7 million in procurement actions for work done after January 29, 2013, was eligible for inclusion under a pending DRAA grant. NYCT asserted that the work was eligible for inclusion because it involved continuations of projects initiated before January 29, 2013. However, FTA did not approve these procurement actions because NYCT did not provide sufficient support to show the actions were eligible. According to FTA officials, NYCT agreed to remove the ineligible actions from the pending DRAA grant application after discussions with FTA.

In January 2014, FTA awarded the DRAA grant to NYCT, which FTA officials stated did not include the ineligible actions. Nevertheless, NYCT drew down \$17.7 million for the ineligible actions in 2014 and 2015. According to NYCT officials, the funds were drawn down in error because the procurement actions had not been removed from the project tasks linked to the grant in NYCT's accounting system. We notified FTA of our findings, and FTA officials issued a letter to NYCT requesting that it return the \$17.7 million in improper payments. NYCT repaid the funds in full on April 26, 2016, along with \$325,000 in interest. NYCT also plans to review its internal grant controls to identify other weaknesses and improper payments.

### *NYCT Spent DRAA Grant Funds on Out-of-Scope Work*

Even though FTA determined that the \$17.7 million was ineligible for grant inclusion, NYCT drew down the DRAA funds and used them for out-of-scope work on two contracts that were awarded before Hurricane Sandy. According to FTA, NYCT could not demonstrate a commitment for the work under those

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<sup>13</sup> FTA's Federal Register Notice, Notice of Availability of Emergency Relief Funds in Response to Hurricane Sandy, Feb. 6, 2013.

<sup>14</sup> FTA's Federal Register Notice, Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy, Mar. 29, 2013.

<sup>15</sup> These nine contracts were valued at \$190 million, as of October 2014.

contracts prior to January 29, 2013, the period when FTA procurement requirements were waived. FTA also told us that had NYCT requested that FTA consider these activities as eligible under FTA's normal procurement rules, FTA would have rejected that request since NYCT would have been in violation of FTA procurement rules.<sup>16</sup> NYCT's procurement actions, which were unrelated to the contracts' original purpose, are known as cardinal changes and would not have been permissible under FTA grant management policy. Furthermore, the \$17.7 million worth of work under these two contracts occurred after January 29, 2013, when Federal rules would have fully applied, which would have required recipients to process a new procurement for cardinal changes. Specifically, out of the \$17.7 million,

- NYCT drew down \$15.1 million for a contract for small construction repairs, which limited work orders to a maximum of \$1.5 million. Yet, under one work order, NYCT ordered \$53 million of emergency cleanup and rebuild work unrelated to the original contract—such as \$16 million for railroad embankment work. Moreover, NYCT used some of the \$15.1 million to correct a contractor's error requiring additional steel sheet piles<sup>17</sup> on the embankment work. Per FTA policy, a contractor error is an activity ineligible for reimbursement.<sup>18</sup> NYCT officials and other contract file documents provided varying, contradictory reasons for why the project needed additional sheet piles as well as varying explanations for the amount paid for the sheet piles.<sup>19</sup>
- NYCT drew down the remaining \$2.6 million for a pre-Hurricane Sandy contract for the Lexington Avenue Line in Manhattan. The contract was for electrical signal system enhancement and track reconstruction. Yet, NYCT used the \$2.6 million for 42 change orders that involved emergency repairs for the Rockaway line in Queens.

### **FTA Oversight Does Not Ensure That NYCT's Change Orders Are Approved per FTA Policy**

FTA's current oversight reviews are inadequate to verify that NYCT's change orders comply with FTA change order approval policy. We reviewed 205 change

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<sup>16</sup> When we brought this to FTA's attention, Agency representatives said that because FTA determined that the \$17.7 million was not an eligible Sandy expense, FTA did not evaluate these procurement actions to determine if they adhered to Federal procurement policy.

<sup>17</sup> The embankment project included a 12,000-foot steel sheet pile wall. According to a NYCT contract document, as the sheets were driven into the ground, they "folded slightly and reduced the overall length." As a result, 450 feet of additional sheet piles were required to complete the wall.

<sup>18</sup> FTA Circular 5010.1D.

<sup>19</sup> According to various NYCT file documents and communications with NYCT representatives, NYCT may have paid around \$386,000 to \$477,000 for the sheet piles. However, NYCT officials have not provided documentation to us to explain the cost discrepancies.

orders and found that 154, totaling \$25 million,<sup>20</sup> were not approved in accordance with FTA policy (see table 1).<sup>21</sup> As a result, NYCT issued non-compliant change orders that created the risk of unapproved work and costs.

**Table 1. NYCT Change Orders That Were Not Properly Approved**

<b>Problem resulting in improper approval of change orders</b>	<b>Number of improperly approved change orders</b>	<b>Percentage of improperly approved change orders</b>	<b>Dollar value of improperly approved change orders</b>
NYCT directed the contractor to begin work without prior approval	68	44%	\$8 million
NYCT could not demonstrate whether it complied with FTA policy to obtain proper management approval	27	18%	\$910,000
NYCT issued a blanket approval for multiple change orders	59	38%	\$16.4 million
<b>Total</b>	<b>154</b>		<b>\$25.3 million</b>

Source: OIG analysis of FTA and MTA change order data

According to FTA policy, the recipient's authorized official must approve all change orders before they are issued.<sup>22</sup> Proper change order approvals are important to ensure that all additional work and incurred costs are authorized before the contractor begins the work. NYCT also has its own change order approval policies, such as requiring dated signatures, which helps provide evidence that approvals occurred before the change orders were issued.

### *FTA and MTA Reviews Lack the Procedures Needed To Prevent Non-Compliant Change Order Approvals*

While MTA's integrity monitors and FTA are responsible for conducting periodic reviews of NYCT's change orders, these reviews did not prevent or detect the majority of the non-compliant change order approvals we identified.

FTA complied with its Hurricane Sandy oversight requirement to conduct quarterly change order reviews for NYCT.<sup>23</sup> Between April 2014 and October 2014, FTA reviewed nine NYCT change orders as part of its triennial review but

<sup>20</sup> Fifty-six of these change orders are part of the \$17.7 million NYCT draw down, which FTA determined to be ineligible for inclusion in a grant.

<sup>21</sup> From the 9 NYCT contracts we selected, we reviewed all of the Hurricane Sandy-related change orders, which amounted to 205 change orders totaling \$49 million.

<sup>22</sup> FTA Circular 4220.1F, II(2)a1.

<sup>23</sup> FTA Circular 4220.1F, Third Party Contracting Guidance, Rev. 4, Mar. 18, 2013; FTA Circular 5010.1D, Grant Management Requirements, Rev 1, Aug. 27, 2012. Specifically, during the period we reviewed, FTA was required to review at least one change order over \$100,000 or 20 percent of the change orders submitted for a grant (whichever is greater) to test for compliance with FTA requirements. As of March 31, 2016, FTA will review all change orders over \$100,000 for major capital projects.



did not identify issues with the grantee's change order approvals. However, our change order review (of 205) included 7 of the change orders that FTA reviewed, and we found that 3 of these had been issued under a blanket approval. FTA's reviews did not detect these issues in part because they do not focus on blanket approvals or on whether an authorized official approves change orders before issuance as required by FTA policy. Instead, FTA's reviews focused on scope, reasonableness, and work justifications.

MTA's integrity monitors are responsible under FTA's oversight framework for conducting periodic forensic reviews of NYCT's change orders. The integrity monitors use review checklists to conduct the change order reviews. As of September 2015, they reviewed 44 NYCT change orders and identified 5 improperly approved change orders. However, our change order review included 38 of these change orders and found that 28 were improperly approved. MTA's integrity monitor reviews did not detect the improperly approved change orders in part because its review checklists do not include evaluating whether change orders are approved per FTA policy. Specifically, the checklists ask whether the appropriate personnel signed the change order documents but do not ask if the documents were properly approved prior to issuance per FTA policy. Instead, the checklists focus on questions regarding estimates, scope, work justifications, and cost documentation. The five change orders flagged by MTA's integrity monitors for improper approvals were not identified under the checklist items but rather through additional handwritten notes by the reviewers.

Another reason that MTA's integrity monitors may not have found as many issues as we did is that the change orders they reviewed were in process and not complete at the time of their review. After reviewing completed documents for the five change orders flagged by MTA's integrity monitors, we found that some were not dated, and, in one instance, the contractor had signed the change order before NYCT managers had approved it.

Noncompliance with procurement policy and ineffective oversight creates an ongoing risk that Federal dollars, such as DRAA funds, may be used to pay for unauthorized work on future projects. As detailed below, our review of the 205 Hurricane Sandy-related change orders identified numerous examples of such weaknesses resulting from insufficient oversight. These include instances in which NYCT (1) directed the contractor to begin work on change orders without prior management approval, (2) lacked documentation in change order approvals to show compliance with FTA policy, and (3) issued a blanket approval for multiple change orders.

### *NYCT Directed the Contractor To Begin Work on Change Orders Without Prior Management Approval*

According to NYCT's procedures, management approval is required before the agency can issue directions to authorize the contractor to begin work. However, for 68 of the 205 change orders, totaling \$8 million, NYCT directed the contractor to begin work without prior management approval.<sup>24</sup> For example:

- For one change order, totaling \$238,000, NYCT's management official did not sign the direction to proceed until 17 days after the contractor acknowledged receipt of the direction for the additional work.
- For another change order, totaling \$250,000, NYCT's management official did not sign the direction to proceed until 126 days after the contractor acknowledged receipt of the direction for the additional work.

NYCT representatives informed us that it is their unwritten practice to give directions to proceed to contractors for signature before management approves them, out of concern the contractor could alter the directions while countersigning. However, inappropriate alteration could occur at any point in the execution. By allowing work to begin before management approval, NYCT did not comply with its own or FTA's change order approval policy.

### *NYCT Could Not Demonstrate Whether It Complied With FTA Policy To Obtain Management Approval*

NYCT omitted dates from the approval signatures for 27 change orders, totaling \$910,000—even though FTA policy requires proper management approval prior to issuance and NYCT's procedures require management approvals to be dated. Without dated signatures, it was unclear whether management approvals were granted before or after these orders were issued. For example, for one change order, valued at \$99,000, NYCT documented the date the change order was issued but did not include a date next to the management official's approval signature.

### *NYCT Issued a Blanket Approval for Multiple Change Orders*

In November 2012, NYCT issued a blanket approval memorandum to approve emergency restoration work on the Rockaway Line and used the memorandum to authorize 59 change orders, totaling \$16 million.<sup>25</sup> According to FTA policy, an authorized official must approve any proposed change order before issuance. While FTA policy does not explicitly restrict blanket approvals, it also does not

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<sup>24</sup> Of these change orders, 21 change orders, totaling \$2.5 million, are part of the \$17.7 million NYCT drew down which FTA determined to be ineligible for inclusion in a grant.

<sup>25</sup> Of these change orders, 35 change orders, totaling \$12 million, are part of the \$17.7 million NYCT drew down, which FTA determined to be ineligible for inclusion in a grant.

explicitly allow them or provide parameters for their use. When we brought this to FTA's attention, Agency representatives told us that if State procurement requirements allow blanket procurements, FTA will allow their use. However, NYCT policy also does not clearly address the use of blanket approvals.

NYCT officials stated that individual approval memos would not have been helpful in this case because the executive in charge consistently monitored work and kept senior officials apprised of progress. However, individual approvals may have helped management detect and prevent the out-of-scope change orders we identified.

In addition, NYCT continued to issue change orders under the blanket approval memorandum after its stated purpose was met. According to the blanket approval memorandum, the work was needed to restore service on the Rockaway Line. The November 2012 memo estimated the work to be completed in about 12 weeks, which we estimate would have been in January 2013. Although service was restored on the Rockaway line in May 2013, NYCT continued using the blanket approval memorandum until March 2014—issuing 22 of the 59 changes orders, valued at \$3 million after service was restored to the Rockaway line.

## **CONCLUSION**

Recognizing an urgent need for Hurricane Sandy recovery work, FTA responded quickly to assist impacted transit agencies such as NYCT. FTA has taken actions to strengthen its oversight of ERP and Hurricane Sandy relief funds since our 2013 report—such as putting into practice its Hurricane Sandy Disaster Relief Oversight Plan's risk-based framework. However, our work shows that FTA's oversight does not fully ensure that NYCT's practices comply with FTA's and NYCT's procurement requirements—resulting in an increased risk that DRAA funds are improperly used. As FTA's recipients continue to use DRAA funds, FTA's current oversight practices will inhibit the Agency's ability to ensure that its recipients use emergency funds in accordance with FTA regulations. By improving its oversight procedures to follow up on identified risk items and directing its grantees to implement procedures to ensure proper approval of change orders, FTA will be better positioned to ensure proper use of Federal funds.

## RECOMMENDATIONS

We recommend that the Federal Transit Administrator:

1. Recover the \$17.7 million in ineligible DRAA funds.
2. Implement oversight procedures to follow up on identified risks, such as expenditures denied for inclusion in a grant.
3. Implement procedures to ensure change order reviews conducted by FTA and integrity monitors include steps to evaluate whether change orders are approved in accordance with FTA policy.
4. Direct MTA and NYCT to implement procedures to ensure that change orders have documented management approvals and dated signatures before they are issued, per FTA policy.
5. Revise FTA's change order approval policy to address the use of blanket approvals to clearly state whether they are allowable or not. If allowable, establish parameters for their use.

## AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

We provided FTA with our draft report on June 8, 2016, and received its response on July 8, 2016, which is included as an appendix to this report. FTA concurred with all five of our recommendations and proposed appropriate planned actions and completion dates. As stated in our report, on April 26, 2016, FTA recovered \$17.7 million in improper payments from MTA with an additional \$325,000 in interest. Accordingly, we consider recommendation 1 closed. For recommendation 2, FTA proposed an alternative action—a Financial Management Oversight review of MTA's internal controls related to the improper drawdowns identified in our draft report. Completion of this review will meet the intent of our recommendation. FTA concurred with recommendations 3, 4, and 5 as written. We consider recommendations 2, 3, 4, and 5 as resolved but open pending completion of FTA's planned actions.

We appreciate the courtesies and cooperation of FTA representatives during this audit. If you have any questions concerning this report, please call Mary Kay Langan-Feirson, Assistant Inspector General for Acquisition and Procurement Audit, at (202) 366-5225 or Kenneth Prather, Program Director, at (202) 366-1820.

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cc: DOT Audit Liaison, M-1  
FTA Audit Liaison, TBP-30

## EXHIBIT A. SCOPE AND METHODOLOGY

We conducted this audit between December 2014 and June 2016 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our audit objective was to determine whether FTA provided effective oversight of grantees' contracting practices using DRAA funds.

To conduct our work, we analyzed data provided by MTA of its subsidiaries that received DRAA funds, to identify a universe of contracts. Our audit universe consisted of 37 Sandy funded NYCT contracts—whose contract values totaled \$220 million. From the universe, we selected a risk-based,<sup>26</sup> non-random selection of 9 contracts<sup>27</sup> with a contract value of \$190 million—representing 86 percent of the NYCT's universe amount. In addition, from these 9 contracts we reviewed all of the 205 Sandy related change orders with DRAA funds, valued at \$49,220,841. We validated the accuracy of the data provided by NYCT by comparing the contract numbers and award amounts against those in the contract files and excluded from review any change orders which did not include Sandy funds. We found that the contract numbers of the files matched those identified in our sample and determined that the data was reliable enough for our audit purposes.

Lastly, we tested FTA's internal controls for determining effective oversight of grantees' contracting practices by conducting field visits and interviews. We compared those practices to FTA and NYCT criteria.<sup>28</sup> Also, we interviewed FTA acquisition officials in Washington, D.C. and New York City (Region 2) to determine what oversight policies and procedures were in place for DRAA funds; conducted site visits at MTA's headquarters in New York City to review contract files including change orders, cost estimates, and approvals. We also interviewed contract personnel regarding actual procedures and practices for DRAA oversight. For file reviews, we developed and used a standardized checklist of criteria to compare the contents of contract files to the requirements for contract file documentation; conducted follow-up interviews with the contracting personnel responsible for administering our sample contracts to verify that we obtained all

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<sup>26</sup> We selected MTA and one of its four subsidiaries because they received the largest proportion of DRAA funds.

<sup>27</sup> Seven contracts were selected based on highest dollar amounts, and two additional contracts were selected based on a potential conflict of interest.

<sup>28</sup> Such criteria includes (1) FTA's Federal Register Notice, Notice of Availability of Emergency Relief Funds in Response to Hurricane Sandy, Feb. 6, 2013 ; (2) FTA's Federal Register Notices, Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy, Mar. 29, 2013; (3) FTA Circular 5010.1D, Grant Management Requirements, Rev 1, Aug. 27, 2012; (4) FTA Circular 4220.1F, Third Party Contracting Guidance, Rev. 4, Mar. 18, 2013; and (5) MTA Independent Monitoring Implementation Plan for FTA Emergency Relief Program.

supporting documentation and explanations; and compared the practices that we observed to Federal requirements and FTA's policies, procedures, and guidance. During this audit, we did not evaluate MTA's integrity monitors beyond reviewing MTA's Office of Audit Services reports and MTA's Office of the MTA Inspector General change order reviews.

**EXHIBIT B. MAJOR CONTRIBUTORS TO THIS REPORT**

<b>Name</b>	<b>Title</b>
Kenneth Prather	Program Director
Aisha Evans	Project Manager
Jerri Bailey	Senior Auditor
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Andrea Nossaman	Senior Writer
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## APPENDIX. AGENCY COMMENTS



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

# Memorandum

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Subject: INFORMATION: Management Comments – Office of Inspector General (OIG) Draft Report—FTA Can Improve Its Oversight of Hurricane Sandy Relief Funds      Date: July 8, 2016

From: Carolyn Flowers *Carolyn Flowers*      Reply to: Natalie Wowk  
Acting Administrator      Attn. of: 202-366-2514  
Federal Transit Administration

To: Mary Kay Langan-Feirson  
Assistant Inspector General for Acquisition and Procurement Audits

The Federal Transit Administration (FTA) has helped transit agencies recover from Hurricane Sandy by successfully implementing its Public Transportation Emergency Relief Program (ERP). The program helps States and public transportation systems pay for protecting, repairing, and replacing equipment and facilities that may suffer or have suffered serious damage as a result of an emergency including floods, hurricanes, and tornadoes. Under the Disaster Relief Appropriations Act (DRAA)<sup>1</sup> enacted in January 2013, Congress provided an unprecedented \$10.9 billion, which was subsequently reduced to \$10.1 billion due to sequester, transfers, and administrative oversight, for FTA’s ERP recovery, relief, and resilience efforts in areas affected by Hurricane Sandy. In the three years since Hurricane Sandy, FTA has taken the following actions to ensure that affected transit systems are fully restored and protected from future disasters:

- Allocated the approximately \$10.1 billion available in multiple tiers for response, recovery, and resilience, including \$5.2 billion solely for response and recovery, of which approximately 75 percent has been obligated and 25 percent has been liquidated through payments to grantees.
- Allocated \$4.9 billion for resilience, to reinforce existing infrastructure necessary to support public transportation systems damaged by Hurricane Sandy, while also providing a process for recipients to use available resilience funds for recovery

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<sup>1</sup> Public Law 113–2



expenses if needed.

- Implemented a robust grant review process and also developed a risk-based oversight approach, including examining risks associated with each grantee and associated grant or project;
- Completed damage assessments of the affected transit agencies immediately after the disaster struck, and updated those damage assessments in the summer of 2015;
- Issued a Memorandum of Agreement with the Federal Emergency Management Agency (FEMA) which outlines responsibilities and the means of collaboration for each agency during and after a declared emergency or disaster;
- Published an Emergency Relief Manual which provides guidance for states and transit agencies about FTA's ERP and information on other disaster relief resources available through FTA and FEMA; and,
- Issued a Final Rule on the requirements of the ERP.

Based upon our review of the draft OIG report, FTA concurs with recommendation 1 and requests that the OIG close the recommendation. On April 26, 2016, FTA recovered \$17.7 million in improper payments from the Metropolitan Transportation Authority (MTA) with an additional \$325,000 in interest. We provided supporting documentation to the OIG on May 23, 2016. FTA also concurs with recommendations 3, 4, and 5 as written, and plans to complete all actions for these recommendations by September 30, 2016.

Regarding recommendation 2, FTA concurs with the intent of the recommendation and proposes the following alternative to address the finding: since MTA's improper payments indicated a failure in MTA's internal controls processes, FTA plans to conduct a Financial Management Oversight (FMO) review of MTA's internal controls related to the improper drawdowns identified in the draft report. FTA will complete the FMO review by July 30, 2017.

We appreciate this opportunity to comment on the OIG draft report. Please contact Natalie Wowk, Audit Liaison, at (202) 366-2514, with any questions.