



**A SPECIAL PERFORMANCE AUDIT
OF THE
DEPARTMENT OF TRANSPORTATION
*CONTRACT PROCUREMENT PROGRAM***

JANUARY 2011

Bureau of Departmental Audits

January 7, 2011

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, PA 17120

Dear Governor Rendell:

This report contains the results of the Department of the Auditor General's special performance audit of the Pennsylvania Department of Transportation (PennDOT). Specifically, our audit focused exclusively on contracts funded through the American Recovery and Reinvestment Act of 2009 (ARRA). The audit covered the period July 1, 2005 through November 30, 2009, including follow-up procedures concluded as of August 3, 2010. This audit was conducted pursuant to Sections 402 and 403 of The Fiscal Code and in accordance with generally accepted government auditing standards (GAGAS). The aforementioned 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 objectives. We believe that the evidence obtained for this objective provides a reasonable basis for our findings and conclusions.

In reporting on our audit objective pertaining to federal stimulus monies, we found several deficiencies relevant to management's implementation of transportation contracts subsidized with funds from ARRA. These identified deficiencies related to the inadequate verification of Buy America provisions for highway and bridge projects and the inadequate verification of Buy America provisions for \$6.24 million of buses. Moreover, we found deficiencies related to the decision-making process for selecting projects, such as a failure to prioritize funding to economically distressed areas, a lack of documentation to substantiate the selection of certain transit capital projects, and management's approval of \$2.65 million for a roof replacement project that is questionable.

Additionally, we found deficiencies related to management controls in which PennDOT needs to evaluate and strengthen its internal controls due to high risk associated with stimulus funds. Finally, there is a lack of validation by management of the creation or retention of employment opportunities and inaccurate reporting to the federal government.

We offer seven recommendations and an observation that, if implemented properly by management, provide the public with a more transparent government and significantly strengthen PennDOT's policies, controls, and oversight of stimulus monies used for transportation projects.

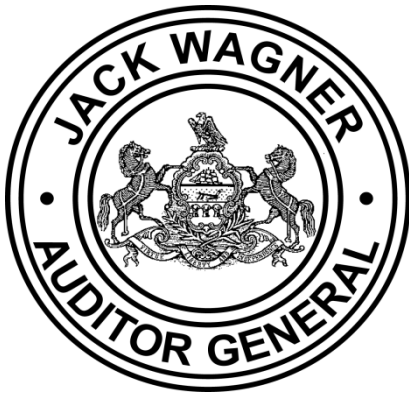
We will follow up at the appropriate time to determine whether and to what extent management has implemented our recommendations.

Sincerely,

JACK WAGNER
Auditor General

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RESULTS IN BRIEF

The Department of the Auditor General conducted a special performance audit of the Pennsylvania Department of Transportation (PennDOT). The audit covered PennDOT contract procurement during the period July 1, 2005 through November 30, 2009, including follow-up procedures concluded as of August 3, 2010. Four draft findings were provided to PennDOT management for response on April 20, 2010. PennDOT provided its response to our draft findings on April 27, 2010 and subsequently provided the auditors with additional information and documentation. Additional audit work was performed based on the information provided subsequent to our draft findings. Based on PennDOT's response to our draft findings and the additional information provided, we revised our findings accordingly. Our audit resulted in four findings with seven recommendations, and one observation.

Finding One

We note that the Federal Highway Administration (FHWA) allows state transportation agencies, including PennDOT, to assume certain oversight roles including ensuring compliance with Buy America provisions in highway and bridge construction projects. Our audit found that PennDOT is not meeting FHWA's policy of ensuring compliance with Buy America provisions. Specifically, we found that PennDOT inspectors are not verifying manufacturer mill certificates for compliance. Both state law and PennDOT's policies require PennDOT inspectors to verify the mill certificates if a steel product is unidentifiable on its face or not stamped indicating that it is made in the USA.

Additionally, our audit found that PennDOT had inadequate verification of Federal Transit Administration (FTA) Buy America provisions for the purchases of 50 buses by rural transit agencies or intercity bus service providers totaling \$6.24 million. Specifically, PennDOT did not obtain and verify the required pre-award and/or post-delivery Buy America certifications to ensure compliance. Therefore, PennDOT did not ensure grantee compliance with Buy America provisions.

We recommend that PennDOT obtain proper Buy America certifications from the contractors and/or manufacturers and ensure that the certifications include required information and independently verify and document that the contractors and/or manufacturers meet Buy American requirements, to include PennDOT inspectors maintaining proper documentation of their verification in their material log books.

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Finding Two

Our audit found that PennDOT failed to prioritize its initial selection of 242 federal stimulus highway and bridge construction projects to economically distressed areas, totaling \$1.026 billion, as required by the American Recovery and Reinvestment Act of 2009 (ARRA). Instead, PennDOT's selection was based on which projects could be initiated and completed quickly. In fact, based on criteria from the FHWA as of March 13, 2009, we found that, out of PennDOT's selection of the initial wave of 242 projects totaling \$1.026 billion, only 144 projects totaling \$406 million, or 40 percent, went to counties considered economically distressed. Therefore, 98 projects totaling \$620 million went to counties not considered economically distressed. If priority were given to selecting projects in economically distressed areas, we would expect the percentage of funds going to economically distressed areas to be higher.

Additionally, we found that PennDOT did not formally document its process of selecting transit capital projects. PennDOT's informal decision-making documentation included no analysis of the number of jobs that these projects would create versus other available projects. Although not required by federal regulations, adequate management controls dictate that this type of documentation be evident to ensure accountability and transparency. Finally, we have concerns about one of these projects that included PennDOT management's approval of a \$2.65 million grant for a roof replacement project on a newly constructed New Castle Area Transit Authority Maintenance Building.

We recommend that PennDOT formally document its decision-making process for selecting and awarding federal stimulus projects, including justification as to why a stimulus project is selected and analysis on the impact that the project will have in meeting the goals of ARRA, such as job creation, economic recovery, and assistance to those most impacted by the recession. Moreover, PennDOT should scrutinize the procurement of goods and services involving federal stimulus funds to ensure that the goals of the ARRA are being met and that job creation/retention and economic recovery are maximized within Pennsylvania to the fullest extent possible.

Finding Three

We discuss that as a condition of receiving federal stimulus funds, state governments were required to evaluate their current systems in place and strengthen management controls accordingly. PennDOT management confirmed to our auditors that it has not implemented any new or additional controls applicable to the management of federal stimulus monies for projects and grants.

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Management indicated that it continues to use existing policies and procedures with regard to project selection, procurement, or procurement management, and that it was satisfied with the system that has been in place for years. However, we believe that the high internal risk associated with the allocation of stimulus funds necessitates a heightened attention to tighter controls, something PennDOT should put into practice immediately. We noted that controls should be improved over project selection, job creation/reporting, and verification of compliance with Buy America provisions.

We recommend that PennDOT immediately evaluate its current systems that are impacted by ARRA funding and strengthen management controls accordingly to mitigate the higher risk of waste, fraud, or abuse associated with these funds.

Finding Four

We discuss that PennDOT is required to submit quarterly reports to the federal government documenting the number of positions on each project that is equivalent to a full-time job. These reports use job figures submitted to PennDOT by contractors each month. However, PennDOT acknowledged, and our auditors confirmed, that errors were made on the monthly employment reports, which were not detected by the PennDOT inspectors' review of completeness and reasonableness of these reports. Consequently, our audit found that PennDOT does not adequately verify the accuracy of the information contained on the monthly employment reports that contractors submit and that PennDOT, in turn, submits to the federal government.

PennDOT management stated that it does perform a review for completeness and reasonableness of the information contained on the monthly employment reports submitted by contractors; however, this review does not include verifying that the number of employees and hours worked match the contractors' payroll records. The review includes only whether the inspector feels that the numbers seem reasonable based on knowing approximately who is working on the project. Additionally, PennDOT could not provide procedures detailing the inspectors' review of the contractors' monthly employment reports.

We recommend that PennDOT develop and implement procedures to verify the accuracy of data collected from contractors. Moreover, PennDOT should scrutinize where the work is being performed and jobs are being created/retained for each federal stimulus-funded project in order to ensure that the goals of ARRA are being met and economic recovery is maximized within Pennsylvania to the fullest extent possible.

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RESULTS IN BRIEF

Observation

With regard to our audit objective to determine if PennDOT's use of staff augmentation and hiring of outside consultants was properly justified and reasonable, we were unable to achieve this objective because PennDOT was unable to provide a list of staff augmentation/consultant contracts. PennDOT management stated that it does not track this information and the Commonwealth's SAP accounting system does not maintain identifying information for staff augmentation/consultant contracts. Consequently, we could not obtain a complete accurate listing of staff augmentation/consultant contracts in order to determine a population and select a sample to test individual staff augmentation/consultant contracts.

We recommend that PennDOT create a way to identify staff augmentation and consultant contracts either within SAP or separately in order to have adequate accountability for these contracts. Additionally, PennDOT should monitor the use of staff augmentation and consultant contracts to ensure they are justified, reasonable, and cost effective.

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BACKGROUND

Pennsylvania Department of Transportation

The Pennsylvania Department of Transportation (PennDOT) oversees programs and policies affecting highways, urban and rural public transportation, airports, railroads, ports, and waterways. More than three-quarters of PennDOT's annual budget is invested in Pennsylvania's state and local highways and bridges. Within the Highway Administration are the Bureau of Maintenance and Operations, the Bureau of Construction and Materials, the Bureau of Design, and the Bureau of Highway Safety and Traffic Engineering. Road and bridge construction, repairs, and preventive maintenance activities are performed by department forces or by private contractors.

Additionally within PennDOT, the Bureau of Public Transportation provides various types of support to the Commonwealth's public transportation providers. In contrast to PennDOT's role as owner, constructor, maintainer, and operator of the Pennsylvania highway system, local governments, public authorities, or private companies generally own the public transportation systems. PennDOT's role is to administer financial assistance grants, provide technical assistance, and serve as an advocate for public transportation providers and users.

PennDOT has internal written procurement policies and procedures in the form of publications for highway construction contracting procurement. For non-highway construction contracting procurement, PennDOT follows the Procurement Code Title 62, the Pennsylvania Procurement Handbook, and additional internal publications and directives.

American Recovery and Reinvestment Act of 2009

On February 17, 2009, the American Recovery and Reinvestment Act (ARRA) was signed into law. The purposes stated in this ARRA are to:

- preserve and create jobs and promote economic recovery;
- assist those most impacted by the recession;
- provide investments needed to increase economic efficiency by spurring technological advances in science and health;
- invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and
- stabilize state and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

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Highway and Bridge Program

The ARRA allocated \$1.026 billion through the Federal Highway Administration to the Pennsylvania Department of Transportation (PennDOT) for restoration, repair construction; for transportation and freight rail transportation; and for eligible port infrastructure projects. Title 23 and Title 49 of the United States Code govern use of these funds. The ARRA requires that when selecting projects to be carried out with these funds, priority shall be given to projects that are projected for completion within a 3-year time frame, and are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C 3161).

Transit Capital Grant Program

The ARRA also allocated \$346 million to Pennsylvania through the Federal Transit Administration for transit capital assistance and fixed guideway infrastructure investment. The Federal Transit Administration will distribute \$307 million of these funds directly to urban and large transit agencies in Pennsylvania. The remaining \$39 million will be distributed to PennDOT, with \$30 million provided for grants under 49 U.S.C. Section 5311 Nonurbanized Formula Grant Program and \$9 million provided for intercity rail projects under 49 U.S.C. Section 5309 Fixed Guideway Modernization Program. The objectives of the Nonurbanized Formula Grant Program are to initiate, improve, or continue public transportation service in nonurbanized areas by providing financial assistance for operating and administrative expenses; for the acquisition, construction, and improvement of facilities and equipment; and for support of rural intercity bus service. The purpose of the Fixed Guideway Modernization Program is to provide funds to rehabilitate and renovate older fixed guideway systems. This includes infrastructure improvements such as track and right-of-way rehabilitation, modernization of stations and maintenance facilities, rolling stock purchase and rehabilitation, and signal and power modernization.

Status as of October 31, 2010

According to Pennsylvania's economic recovery website, as of October 31, 2010, PennDOT has obligated \$1.02 billion of federal highway and bridge funds to 344 projects, with \$688 million spent and 181 projects completed. Out of the federal transit funds to be distributed to PennDOT, PennDOT has obligated \$39 million to 33 projects, with \$27 million spent.

For a more detailed explanation of the American Recovery and Reinvestment Act of 2009 and other provisions relevant to PennDOT's contract procurement program, please see Appendix A.

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AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

The objectives of this special performance audit were to determine whether:

- Contracts were awarded in compliance with the Commonwealth Procurement Code, Procurement Handbook, and other applicable PennDOT policy and procedures (see Findings No. 2, 3, and 4);
- Contracts were appropriately managed and monitored to ensure that PennDOT received goods and/or services of expected quantity, quality, and price (see Findings No. 1, 3, and 4); and
- The use of staff augmentation and the hiring of consultants was properly justified and reasonable (see Observation No. 1).

Scope

Our audit covered PennDOT's duties and responsibilities with regard to contract procurement for the period July 1, 2005 through November 30, 2009, including follow-up procedures performed and concluded as of August 3, 2010. Specifically, our audit focused exclusively on contracts funded through the American Recovery and Reinvestment Act of 2009 (ARRA).

Methodology

The methodology in support of the audit objectives included:

- Reviewing appropriate laws, Office of Management and Budget Memorandums, ARRA guidance, PennDOT Publications, related information from PennDOT's and ARRA websites, and newspaper articles;
- Interviewing and corresponding with PennDOT's management, including staff from highway and transit procurement offices, to assess controls and gain an understanding of policies and procedures used in procuring and managing contracts funded by ARRA;
- Sampling contracts, highway infrastructure monthly employment reports, and steel/iron building materials for detailed testing;
- Reviewing procurement documentation to verify whether contracts were awarded in compliance with Commonwealth procurement laws and policies; and

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- Requesting a list of all staff augmentation and consultant contracts in order to select a sample and review procurement documentation to ensure the contracts were justified and reasonable. PennDOT could not provide this list (see Observation No. 1).

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FINDINGS AND RECOMMENDATIONS

Finding No. 1 – Deficiencies Related to the Buy America Provisions

Inadequate Verification of Buy America Provisions for Highway/Bridge Projects

The U.S. Department of Transportation Federal Highway Administration (FHWA) applies the Buy America provisions and implements applicable regulations and policies, to all ARRA highway construction projects. It is FHWA's policy to expect all state highway agencies to provide sufficient oversight to ensure compliance with the Buy America provisions. PennDOT's foundation for ensuring compliance with Buy America provisions is found in state laws, policies and provisions that include, in part, a certification approach, whereby PennDOT relies on certifications provided by the contractors (see Appendix A for a detailed description of laws, policies and provisions).

Our audit found PennDOT's certification approach lacks adequate verification; therefore, PennDOT is not meeting FHWA's policy of ensuring compliance with Buy America provisions. As part of PennDOT's certification approach, it requires contractors to be responsible for furnishing materials in accordance with specific guidelines and to complete a Certificate of Compliance Form CS-4171 to ensure compliance with Buy America provisions. The contractor certifies on this form that it received a copy of the mill certificate from the steel manufacturer and that Buy America requirements have been met. The contractor is required to maintain the supporting mill certificates in a file and provide this file to a PennDOT inspector upon request. According to PennDOT management, the PennDOT inspector reviews the certifications and materials received to ensure that Buy America provisions have been met. This review and approval by the inspector is to be documented in a materials log book. However, we found no evidence for 13 out of 14 sampled material items that PennDOT inspectors actually verified the respective mill certificates. In fact, PennDOT management acknowledged that PennDOT does not independently verify the mill certificates that support each Certificate of Compliance Form CS-4171 completed by the contractor. Instead, PennDOT relies on the contractor's completion of the Certificate of Compliance Form CS-4171 that it complied with the Buy America provisions.

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FINDINGS AND RECOMMENDATIONS

Finding No. 1

An independent verification of the mill certificate is important especially when a steel product is unidentifiable on its face (e.g., not stamped Made in USA). According to state law and related guidance, PennDOT inspectors are required to verify the mill certificates if a steel product is unidentifiable on its face. However, PennDOT's Certificate of Compliance Form CS-4171 and the material log book forms completed by PennDOT inspectors do not require documentation of whether the steel product is identifiable or unidentifiable. Therefore, PennDOT's response that it relies on the contractors' certification of compliance and does not independently verify the mill certificates is considered inadequate in meeting FHWA's policy of ensuring compliance with Buy America provisions.

Inadequate Verification of Buy America Provisions for Public Transportation Projects

Federal Transit Administration (FTA) Buy America provisions state, in general, that to comply with Buy America provisions for buses and other rolling stock, their component costs shall be greater than 60 percent (60 percent rule) produced in the United States. To substantiate the 60 percent rule, recipients/grantees must maintain on file a pre-award Buy America certification and a post-delivery Buy America certification. These two certifications state that the grantee is satisfied that the rolling stock purchased meets the Buy America requirements. In order to comply with these provisions, PennDOT has procedures, which are documented in its Bureau of Public Transportation (BPT) Procurement Procedural Manual (see Appendix A for a detailed description of the procedures).

Our audit found that PennDOT did not ensure grantee compliance with Buy America provisions by not obtaining the pre-award and/or post-delivery Buy America certifications from the grantees for the purchases of 50 buses totaling \$6.24 million.

For the purchases of 46 buses totaling \$5.41 million, PennDOT did not require the grantees to submit for PennDOT's review/approval the pre-award Buy America certification prior to making the bus purchases and the post-delivery Buy America certification prior to final acceptance of the vehicle. As a result, PennDOT did not verify that these buses met the Buy America requirements.

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FINDINGS AND RECOMMENDATIONS

Finding No. 1

For the remaining four buses purchased totaling \$830,000, the grantee provided a pre-award Buy America certification to PennDOT; however, this documentation did not include all of the information required by federal regulations. It was incomplete because it included only a partial listing of bus components (i.e., engine, transmission, body sections, etc.). The individual cost of each component and the total cost were omitted from the documentation. Therefore, this was not enough information to reasonably verify that 60 percent of the total costs were made in the United States. Additionally, PennDOT did not require the grantee to submit a post-delivery certification for PennDOT's approval prior to final acceptance of the vehicles.

Recommendations: We recommend that PennDOT:

1. Obtain proper Buy America certifications from the contractors and/or manufacturers and ensure that the certifications include required information; and
2. Independently verify and document that the contractors and/or manufacturers meet Buy America requirements, to include PennDOT inspectors maintaining proper documentation of their verification in their material log books.

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Finding No. 2 – Deficiencies Related to the Decision-Making Process for Selecting Projects

Provisions of the ARRA state that priority for funding of highway infrastructure shall be given to projects that can be completed within a three-year timeframe and are located in economically distressed areas. In order to ensure that funding decisions are appropriate and in accordance with the ARRA and its purposes, management controls should be in place to include a formal methodology of the selection process and documented analysis and justification of the projects to be selected. In addition to ensuring that the project selections are in compliance with the regulations and objectives stated in the ARRA, PennDOT's analysis and project selection methodology should ensure that the projects selected have the greatest benefit to Pennsylvania citizens (see Appendix A for a detailed description of laws, policies and provisions).

Failure to Initially Prioritize Funding to Economically Distressed Areas for Highway and Bridge Projects

Our audit found that when funding for highway infrastructure was made available to PennDOT after the ARRA was signed into law on February 17, 2009, PennDOT failed to have a methodology to initially prioritize funding for 242 projects totaling \$1.026 billion to economically distressed areas. Instead, PennDOT management asserted that its project selection was based predominantly on which projects could be started and completed quickly. According to PennDOT, the U.S. House Transportation and Infrastructure Committee recently ranked Pennsylvania first among the nation's largest states for its speed in starting and completing transportation projects funded with federal stimulus monies.

Although PennDOT has selected and initiated projects in a quick manner, we found that PennDOT management failed to optimize other significant objectives of the ARRA because of the inadequate decision-making process used to prioritize which highway and bridge projects should receive federal stimulus monies.

Specifically, rather than consider the creation and retention of potential employment opportunities as well as the alleviation of economic hardship in distressed regions most impacted by the recession, PennDOT management acknowledged that its project selection method was based on which projects could be initiated and completed quickly. Therefore, PennDOT's selection of projects did not prioritize which distressed regions received a greater allocation of resources. In fact, based on criteria from the Federal Highway Administration as of March 13, 2009, we found that, out of PennDOT's selection of the initial wave of 242 projects totaling \$1.026 billion, only 144 projects totaling \$406 million, or 40 percent, went to counties considered economically distressed. Therefore, 98 projects totaling \$620 million went to counties not considered economically distressed. If priority were given to selecting projects in economically distressed areas, we would expect the percentage of funds going to economically distressed areas to be higher.

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Finding No. 2

For any additional federal stimulus funds that may become available for transportation infrastructure, PennDOT should develop a methodology to prioritize funding projects to areas that are considered economically distressed.

Lack of Documentation Exists to Substantiate the Selection of Public Transportation Projects

Our audit found PennDOT did not formally document its decision-making process to select projects for \$39 million in transit capital grants. While federal regulations may not specifically require formal documentation of the project selection process, adequate management controls dictate that this type of documentation is necessary to ensure that the goals of the ARRA are being met, including accountability and transparency. Without such documentation, it cannot be determined if PennDOT's project selections were justified to most effectively meet the goals of the ARRA and benefit the taxpayers.

With regard to transit capital grants totaling \$39 million, PennDOT's management stated that its process of selecting projects was done informally through telephone calls, e-mails, etc. to the rural transit agencies and intercity bus providers to determine which projects existed that would be eligible for possible funding by the ARRA. Therefore, minimal documentation exists regarding PennDOT's project selection process; this documentation was inadequate to determine if PennDOT's project selections were justified to most effectively meet the goals of the ARRA and benefit the taxpayers. For instance, PennDOT awarded 15 projects for the purchases of 50 buses totaling \$6.24 million. Additionally, another five projects were awarded for bus overhauls, bus signs, and various other equipment totaling nearly \$1 million. PennDOT's informal decision-making documentation included no analysis of the number of jobs that these projects would create versus other available projects. Additionally, the majority of any jobs created/retained from bus purchases were outside of Pennsylvania.

Finally, we have concerns about PennDOT management's approval of a \$2.65 million grant for the replacement of a roof on a newly constructed New Castle Area Transit Authority Maintenance Building. In its documentation for the justification of such spending, PennDOT states that the original roof, constructed in 2004, experienced leaking and condensation from the time that personnel first occupied the facility after initial construction. Roof experts reported that the cause was due to 21 design deficiencies and 22 construction deficiencies. We disagree with the approval of such a grant because the problem was with the design and construction; therefore, the original engineer and architect, not the taxpayers of Pennsylvania, should be liable for the cost of replacing the defective roof. PennDOT must elevate its decision-making process to a level that places an emphasis on prudence rather than haste.

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FINDINGS AND RECOMMENDATIONS

Finding No. 2

Recommendations: We recommend that PennDOT:

3. Formally document its decision-making process for selecting and awarding federal stimulus projects, including justification as to why a stimulus project is selected and analysis on the impact that the project will have in meeting the goals of the ARRA, such as job creation, economic recovery, and assistance to those most impacted by the recession; and
4. Scrutinize the procurement of goods and services involving federal stimulus funds to ensure that the goals of the ARRA are being met and that job creation/retention and economic recovery are maximized within Pennsylvania to the fullest extent possible.

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FINDINGS AND RECOMMENDATIONS

Finding No. 3 – Deficiencies Related to Management Controls

Establishing and maintaining management controls of the highway/bridge and transit capital grant programs are the responsibility of those charged with governance, PennDOT's management. Management controls include the plan of the organization, methods, and procedures adopted by management to meet its missions, goals, and objectives; the processes for planning, organizing, directing, and controlling program operations; and the systems for measuring, reporting, and monitoring program performance. Management control also includes safeguarding assets, preventing and detecting errors and violations of laws and provisions of contracts and grant agreements. PennDOT's management is also responsible for the design and implementation of programs and controls for preventing and detecting fraud and abuse.

Internal Controls Need to be Evaluated and Strengthened Due to High Risk Associated with Stimulus Funds

As a condition of receiving federal stimulus funds, state governments were required to evaluate their current systems in place and strengthen management controls accordingly. PennDOT management confirmed to our auditors that it has not implemented any new or additional controls applicable to the management of federal stimulus monies for projects and grants. Management indicated that it continues to use existing policies and procedures with regard to project selection, procurement, or procurement management and that it was satisfied with the system that has been in place for years. However, we believe that the high internal risk associated with the allocation of stimulus funds necessitates a heightened attention to tighter controls, something PennDOT should put into practice immediately. We have noted that controls should be improved over verification of compliance with Buy America provisions, project selection, and job creation/reporting.

Recommendation: We recommend that PennDOT:

5. Immediately evaluate its current systems which are impacted by the ARRA funding and strengthen management controls accordingly to mitigate the higher risk associated with these funds of waste, fraud, or abuse.

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Finding No. 4 – Deficiencies Related to Job Data Reported to the Federal Government

The American Recovery and Reinvestment Act (ARRA) requires each recipient of recovery funds, which includes the Commonwealth of Pennsylvania, to submit quarterly reports that contain certain employment details about jobs funded. The number of jobs reported should be a calculation of Full-Time Equivalents (FTE), in which the total number of hours worked on a project is divided by the number of hours in a full-time schedule during that reporting quarter. ARRA also expressly outlines the purpose or intent of the new law, such as preserving and creating jobs, promoting economic recovery, assisting those most impacted by the recession, and investing in transportation infrastructure that will provide long-term economic benefits (see Appendix A for a detailed description of laws, policies and provisions).

No Validation of Jobs Funded for Highway/Bridge Projects

PennDOT is required to submit quarterly reports to the federal government documenting the number of positions on each project that is equivalent to a full-time job. These reports use job figures submitted to PennDOT by contractors each month. However, PennDOT confirmed that it does not verify the accuracy of the information contained on the monthly employment reports that contractors submit to PennDOT because it relies on its field inspectors to review for completeness and reasonableness. Additionally, PennDOT could not provide procedures detailing the inspectors' review of the contractors' monthly employment reports.

Subsequent to forwarding our draft findings to PennDOT, management agreed to provide our auditors with additional documentation relevant to the employment reports associated with stimulus-funded projects. While PennDOT management indicates that PennDOT inspectors perform a review for completeness and reasonableness of the information contained on the monthly employment reports submitted by contractors, our auditors found significant discrepancies that raise serious questions about PennDOT's current review procedures and to the accuracy of reports being forwarded to the federal government.

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Finding No. 4

In order to verify the accuracy of the monthly employment reports submitted to PennDOT by the contractors, we requested that PennDOT obtain detailed payroll information, including timesheets from selected contractors for a sample of 25 monthly reports. Before providing the requested payroll documentation to the auditors, PennDOT compared the payroll records that it obtained from the contractors to the monthly employment reports submitted by the contractors to PennDOT and in turn to the federal government. As a result, PennDOT acknowledged to the auditors that errors, inaccuracies, and incorrect numbers were made on the monthly employment reports, which were not detected by the PennDOT inspectors' during their review for completeness and reasonableness. PennDOT indicated that 6 of the 25 reports, or 24 percent, contained errors in the number of employees reported, the number of hours reported, or both. The total error for the six reports was an overstatement of 18,164 hours, or a 33 percent error rate when compared to the total hours of 55,000 reported for our sample of 25 reports.

When we eventually received the information from PennDOT and independently audited the detailed payroll records, we found errors on 14 additional reports beyond the six reports identified by PennDOT as noted above. We concluded that out of the 25 reports sampled, discrepancies were found with either the number of employees, number of hours, or both for a total 20 reports, with a total difference in the number of hours reported of an overstatement of approximately 18,900, or a 34 percent error rate.

Considering the thousands of employment reports that are prepared each month related to federal stimulus projects, a 34 percent error rate could translate into an extremely significant error in the number of hours and full time jobs reported by PennDOT to the federal government.

Therefore, PennDOT's review for completeness and reasonableness of the monthly employment reports is not adequate and does not ensure that the information is accurate. As a result, PennDOT is using inaccurate data from the monthly employment reports in order to report jobs funded by the ARRA to the federal government.

**DEPARTMENT OF TRANSPORTATION
CONTRACT PROCUREMENT PROGRAM
FEDERAL STIMULUS FUNDING
JANUARY 2011**

FINDINGS AND RECOMMENDATIONS

Finding No. 4

Jobs Procured in Canada for Public Transportation Projects

Another area of particular concern was the awarding of transit grants by PennDOT for projects that shift potential employment opportunities out of the United States. No laws or international trade agreements appear to have been violated; however, we again feel that PennDOT should do a better job of being accountable to the taxpayers of Pennsylvania. Specifically, out of 25 transit stimulus grant projects totaling approximately \$26 million that we reviewed, three projects included significant work totaling \$196,773 either performed or that will be performed by companies located in Canada. PennDOT management could not substantiate whether other companies may have been available to perform the respective work. Management stated that it does not review or approve the procurements prior to the transit agency awarding the contract. Instead, management stated that procurements are monitored for compliance with state and federal regulations during compliance reviews, which occur after project completion.

These three projects include bus overhauls for which a Canadian company performed \$66,955 worth of work. We requested from PennDOT all relevant procurement documentation, including proposals and bids received. However, we received only one estimate faxed to the transit agency from the Canadian company. When questioned by the auditors, PennDOT management did not know how the company was selected. A second Canadian firm is performing the installation of security and vehicle locator equipment for \$125,000. The request for bid for this project was only advertised in a local newspaper. The Canadian company submitted the only bid for this procurement. A third Canadian company is responsible for the application of graphics to a bus for \$4,818. This company was selected due to having a long-term relationship with the bus service provider and the procurement was not competitively bid. We believe that requests for bid should be advertised statewide to give Pennsylvania companies a chance to bid for this work.

Recommendations: We recommend that PennDOT:

6. Develop and implement procedures to verify the accuracy of data collected from contractors and consultants; and
7. Scrutinize where the work is being performed and jobs are being created/retained for each federal stimulus-funded project in order to ensure that the goals of the ARRA are being met and economic recovery is maximized within Pennsylvania to the fullest extent possible.

**DEPARTMENT OF TRANSPORTATION
CONTRACT PROCUREMENT PROGRAM
FEDERAL STIMULUS FUNDING
JANUARY 2011**

OBSERVATION

Observation – Poor Accountability found for Staff Augmentation and Consultant Contracts

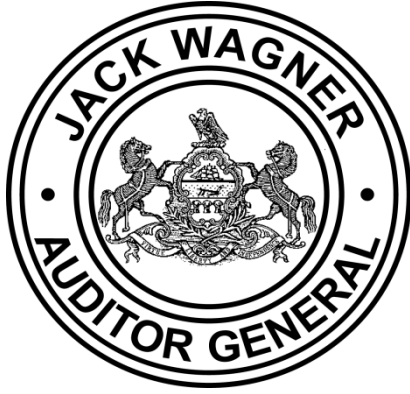
In order to determine if the use of staff augmentation and hiring of consultants was properly justified and reasonable, we initially requested from PennDOT a list of staff augmentation/consultant contracts from July 1, 2005 to June 30, 2009 by bureau, including information such as the dollar amount of the contract, the contract number, and a brief description of the function or purpose of the contract. PennDOT was unable to provide a list of staff augmentation/consultant contracts. PennDOT management stated that it does not track this information and the Commonwealth's SAP accounting system does not maintain identifying information for staff augmentation/consultant contracts. Therefore, PennDOT management stated this requested list could not be provided.

Due to SAP not containing identifying information for staff augmentation/consultant contracts, PennDOT cannot account for all contracts awarded. Consequently, we could not obtain a complete accurate listing of staff augmentation/consultant contracts in order to determine a population and select a sample to test individual staff augmentation/consultant contracts. Therefore, we are unable to complete our objective to determine if the use of staff augmentation and the hiring of consultants were properly justified and reasonable.

During a previous special performance audit of contract procurement, we noted significant issues regarding a lack of documentation of the decision-making process and justification of the need for contracts, along with lack of supporting documentation for bidding procedures. We also noted in the previous audit that PennDOT did not document an evaluation of the cost effectiveness of using a consultant versus performing the work using Commonwealth employees. Since PennDOT lacked accountability over consultant and staff augmentation contracts, we were unable to perform planned audit procedures related to these issues.

For ongoing effective governance and management of staff augmentation/consultant contracts, PennDOT should comprehensively understand its costs and operations. The ability to accurately capture and monitor these costs is essential for ensuring accountability and effective budget practices. This information would allow PennDOT management and decision makers to evaluate trends of consultant usage and plan for the future.

Therefore, we recommend that PennDOT create a way to identify staff augmentation and consultant contracts either within SAP or separately in order to have adequate accountability for these contracts. Additionally, PennDOT should monitor the use of staff augmentation and consultant contracts to ensure they are justified, reasonable, and cost effective.



**DEPARTMENT OF TRANSPORTATION
CONTRACT PROCUREMENT PROGRAM
FEDERAL STIMULUS FUNDING
JANUARY 2011**

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

What follows on subsequent pages is the response of the Pennsylvania Department of Transportation (PennDOT) to our draft findings and recommendations submitted to PennDOT management on April 20, 2010. Subsequent to providing its response to our findings, PennDOT provided the auditors with additional information and documentation. Additional audit work was performed based on the information provided. Based on PennDOT's response to our draft findings and the additional information provided, we revised our findings accordingly. Our revisions were not considered significant and the intent of each finding remained the same. PennDOT's response that follows continues to be relevant to our revised findings and the portions of PennDOT's response that were no longer applicable were deleted from our report. Our auditors' conclusions follow each response submitted by PennDOT.

We are confident that the recommendations that resulted from our findings, if fully implemented by management, will strengthen PennDOT's policies, controls, and oversight of federal stimulus monies and will ensure a responsible allocation of taxpayer dollars.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
HARRISBURG, PENNSYLVANIA 17120

OFFICE OF
SECRETARY OF TRANSPORTATION

April 27, 2010

Randall R. Marchi, CPA, CFE, CGFM
Director
Bureau of Departmental Audits
Department of the Auditor General
225-D Finance Building
Harrisburg, Pa. 17120-0018

Dear Mr. Marchi:

Thank you for the opportunity to respond to the Department of Auditor General's initial recommendations derived from the in-progress review of PennDOT's handling of federal funds made available to Pennsylvania under the American Recovery and Reinvestment Act (ARRA). Frankly, given what PennDOT accomplished with ARRA, your conclusions are unjustified. Instead, the record is clear that PennDOT delivered significant, tangible benefits for the Commonwealth's workers and taxpayers.

As you note repeatedly in your interim report, PennDOT has complied with the provisions of the Act. You also note that the U.S. House Transportation and Infrastructure Committee, in its extensive reviews of how states handled these funds, ranked Pennsylvania as the highest ranking large state and the No. 2 state overall for the delivery of projects paid for by ARRA. Viewed against this background, it is difficult to understand the basis for your tentative conclusions that PennDOT's performance has somehow been deficient.

Congress passed and the President signed ARRA with its numerous requirements and restrictions, requirements and restrictions which PennDOT concededly satisfied. Underlying the legislation was a collective judgment by the federal government that ARRA in its final form best balanced the goal of creating and maintaining jobs with the need to insure that the help to the economy that ARRA was to foster was delivered quickly enough to halt the deepening recession. While the Auditor General may believe that a different program with additional or other standards would be better, that is not the program which Congress passed, the President signed and which PennDOT is obligated to follow.

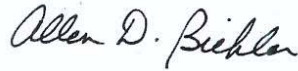
PennDOT staff has worked diligently and tirelessly to ensure that Pennsylvania met and exceeded all ARRA deadlines and delivered this investment for much needed transportation improvements. PennDOT managed the preparation and delivery of more than \$1 billion in highway and bridge projects on top of our base \$1.8 billion contract letting program in 2009 without adding to staff. Plainly, PennDOT's management of ARRA delivered real value for the

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

people of Pennsylvania. To state that our management processes were deficient flies in the face of PennDOT's record of delivering multi-billion dollar construction programs consistently year to year. The record of PennDOT's efficient and effective delivery of tens of billions of dollars of transportation improvements is clear for anyone to see.

Enclosed you will find detailed responses to each of your recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Allen D. Biehler".

Allen D. Biehler, P.E.
Secretary of Transportation

Enclosure

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

[1]. Deficiencies Related to the Buy America Provisions

Recommendation 1: Obtain proper Buy America certifications from the contractors and/or manufacturers and ensure that the certifications include required information; and

Agency Response (Highway):

Disagree. As noted in the draft report, the Department uses a Certificate of Compliance, Form- 4171, to ensure all ARRA projects comply with the Buy American provisions. The Department requires its contractors to complete a Certificate of Compliance for all products covered by the Buy American provisions. By completing the Certificate of Compliance, the contractor certifies that he "received a copy of the Mill Certification Form(s) from the manufacture(s) of any steel or iron materials contained in our product and all manufacturing processes including coating applications (e.g. epoxy, galvanizing, or painting) have occurred in the United States and we are maintaining copy(s)." The Department requires the contractor to keep the certification file, including all mill certifications, for no less than three years from the date of the last shipment. Also, during that period the Department requires the contractor to make the file available for inspection and verification by a Department representative. In short, the certifications are maintained by the contractor.

Agency Response (Public Transportation):

Agree. PennDOT will request proper Buy American post- delivery certifications from the contractors and/or manufacturers for the 50 buses purchased with ARRA funds and we will ensure that the certifications include all required information.

The following provides background on why the Buy American certifications were omitted from the DGS small vehicle procurement, which was in effect in 2009 and extended through January 2010. Bids for this procurement were opened in December 2007.

In May 2007, FTA issued Circular 9070.1F, which stated that SAFETEA-LU amended the pre- award and post delivery review requirement so that procurements of twenty (20) vehicles or fewer, purchased for serving rural areas and cities of less than 200,000 in population, are not subject to the review procedure. The circular also stated that in urbanized areas of greater than 200,000 in population, the reviews are not necessary for a purchase of ten (10) or fewer vehicles. Shortly thereafter, the Department ceased requiring pre-award and post- delivery reviews for said procurements.

In October 2008, during a State Management Review of PennDOT conducted by FTA, the Department was informed by FTA that the circular guidance was incorrect. There was no citation because FTA needed to provide formal written clarification. That clarification came in the form of the State Management Review and Combined Review Workbook 2009 received in February 2009. Obviously, at that the point, the award having been made in 2007, it was too late to require the pre-award certification. As noted above, we will obtain the post-delivery certifications.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

The pre-award and post-delivery certification requirements have been included in the new DGS small vehicle procurement, with bids opened in February 2010.

Auditors' Conclusions:

(Highway)

We disagree with management's response to this recommendation. PennDOT states that it requires the contractors to complete the Certificate of Compliance Form CS-4171 in which the contractor certifies that it received the mill certification form and Buy America requirements have been met. PennDOT also states that it requires the contractor to maintain the mill certification form from the manufacturer and make it available for inspection and verification by PennDOT. However, the PennDOT inspectors are not reviewing the mill certificates to ensure that Buy America requirements were actually met.

As stated in our finding, both state law and PennDOT's provisions require PennDOT inspectors to verify the mill certificates if a steel product is unidentifiable on its face. However, PennDOT's Certificate of Compliance Form CS-4171 does not require documentation of whether the steel product is identifiable or unidentifiable. Additionally, on the material log book forms completed by PennDOT inspectors, the steel product is not documented as identifiable or unidentifiable. Therefore, we are unable to determine which of the steel products tested were unidentifiable and should have had the mill certificates reviewed by PennDOT inspectors according to state law but was not. However, based on PennDOT's response that it relies on the contractors' Certification of Compliance and does not independently verify the mill certificates, along with not documenting whether the steel product was identifiable or unidentifiable, we have concluded that PennDOT's procedures are not adequate in meeting FHWA's policy of ensuring compliance with Buy America provisions.

(Public Transportation)

We acknowledge PennDOT's agreement with our recommendation and are hopeful that PennDOT obtains the proper Buy America post-delivery certifications from the contractors and/or manufacturers for the 50 buses purchased with ARRA funds and ensure that all required information is included. However, we reiterate the fact that PennDOT was not following its own procedures, which are documented in its Bureau of Public Transportation Procurement Procedural Manual. If implemented properly, these procedures would ensure compliance with FTA Buy America requirements. Instead, PennDOT did not comply with its responsibilities required in the grant agreements with FTA.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Auditors' Conclusions (Cont.):

Additionally, PennDOT states in its response that FTA issued Circular 9070.1F in May 2007, which stated that SAFETEA-LU amended the pre-award and post-delivery review requirement so that procurements of twenty (20) vehicles or fewer, purchased for serving rural areas and cities of less than 200,000 in population, are not subject to the review procedure. PennDOT further states that it did not receive clarification from FTA until February 2009 that the circular was incorrect and the Buy America certifications are required. PennDOT claims that the Pennsylvania Department of General Services entered into contracts with vendors in December 2007 that were effective through January 2010 for small vehicle procurements, which the rural transit authorities may use to purchase buses. Due to the timing of the DGS contracts awarded prior to the FTA clarification PennDOT received on February 2009, the Buy America certifications were not obtained. However, it should be noted that the purchases of all 50 buses were after February 2009, and therefore, PennDOT should have known that the Buy America certifications were required at the time the bus purchases were made. Furthermore, our review found that FTA Circular 9070 did not amend the Buy America pre-award and post-delivery requirements as PennDOT states. Therefore, PennDOT did not follow its own procedures and did not comply with its responsibilities required in the grant agreements with FTA. Required Buy America certifications were not obtained and verified by PennDOT as required by FTA regulations to ensure that rolling stock purchased complied with Buy America provisions requiring their component costs to be greater than 60 percent produced in the United States.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Recommendation 2: Independently verify and document that the contractors and/or manufacturers meet Buy - American requirements, to include inspectors maintaining proper documentation in their material log books.

Agency Response (Highway):

Disagree. It is the standard responsibility of PennDOT inspectors to maintain proper documentation in their material log books. PennDOT does not independently verify and document the backup data for each Certificate of Compliance submitted. Contractors are legally obligated to comply with contract provisions, which include provisions for Buy America.

PennDOT is currently addressing questions posed by the auditors with respect to the material log books. The PennDOT Materials Form is the proper document for materials.

Agency Response (Public Transportation):

Agree as follows. PennDOT Public Transportation will independently review documentation submitted by the contractors and/or manufacturers in regard to the 50 buses purchased with ARRA funds and verify that Buy American requirements were met. Specifically, PennDOT will verify that the buses contain a minimum of 60 percent domestic products by reviewing the component and subcomponent listing to verify 60 percent domestic product content and review final assembly activities. In regard to the inclusion of inspectors, PennDOT is not required under current FTA guidance to utilize a resident inspector at the manufacturing site in regard to the 50 buses in question, because no single vehicle order placed by these transit agencies exceeded ten (10) vehicles.

PennDOT has never had a single vehicle order which exceeds ten (10) vehicles; therefore, no resident inspectors have been used to date. However, it has always been PennDOT's procedure that should there be a vehicle procurement which exceeds the federal threshold of ten (10) vehicles, resident inspectors will be utilized.

Auditors' Conclusions:

(Highway)

We disagree with management's response to this recommendation. PennDOT states that it is the responsibility of PennDOT inspectors to maintain proper documentation in their material log books; however, PennDOT acknowledges that it does not independently verify the backup data for each Certificate of Compliance Form CS-4171 submitted by the contractor. At the time that our draft findings were submitted to PennDOT, PennDOT was unable to provide 13 of 14 inspectors' material log books requested by the auditors in order to evidence compliance with Buy America provisions. PennDOT eventually provided a materials form for the 13 items in question, after two and a half months passed from the date the documents were requested by the auditors; however, these forms only showed that the PennDOT inspectors verified that the Certificate of Compliance was received, but there was no verification of the mill certificates to ensure Buy America requirements were met. Therefore, PennDOT is not verifying actual compliance with Buy America requirements.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Auditors' Conclusions (Cont.):

As stated in our finding, both state law and PennDOT's provisions require PennDOT inspectors to verify the mill certificates if a steel product is unidentifiable on its face. However, PennDOT's Certificate of Compliance Form CS-4171 does not require documentation of whether the steel product is identifiable or unidentifiable. Moreover, on the material log book forms completed by PennDOT inspectors, the steel product is not documented as identifiable or unidentifiable. Therefore, we are unable to determine which of the steel products tested were unidentifiable and should have had the mill certificates reviewed by PennDOT inspectors according to state law but was not. However, based on PennDOT's response that it relies on the contractors' Certification of Compliance and does not independently verify the mill certificates, along with not documenting whether the steel product was identifiable or unidentifiable, we have concluded that PennDOT's procedures are not adequate in meeting FHWA's policy of ensuring compliance with Buy America provisions.

Additionally, PennDOT states that contractors are legally obligated to comply with Buy America provisions included in the contract and the contractor certifies on the Certificate of Compliance form that the materials purchased comply with Buy America provisions. While we agree with PennDOT that the contractors legally must comply with Buy America provisions, this should not negate PennDOT's responsibility to verify that Buy America requirements were actually met. The PennDOT inspector should review the materials and mill certificates to verify compliance with Buy America provisions and document his or her approval in the materials log book for the project.

(Public Transportation)

While we acknowledge PennDOT's agreement with our recommendation and are hopeful that PennDOT obtains post-delivery certifications for the 50 buses purchased and review this documentation to ensure that the Buy America requirements were met, we reiterate the fact that PennDOT was not following its own procedures, which are documented in its Bureau of Public Transportation Procurement Procedural Manual. If implemented properly, these procedures would ensure compliance with FTA Buy America requirements. Instead, PennDOT did not comply with its responsibilities required in the grant agreements with FTA.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

[2]. Deficiencies Related to the Decision Making process for Selecting Projects

Recommendation 3: Formally document its decision-making process for selecting and awarding federal stimulus projects, including justification as to why a stimulus project is selected and analysis on the impact the project will have in meeting the goals of the Act, such as job creation, economic recovery, and assistance to those most impacted by the recession.

Agency Response (Highway):

Disagree. On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act. Initial implementing guidance from the U. S. Department of Transportation (USDOT) was available in late February 2009. Guidance related to economically distressed areas indicated that priority shall be given to projects that are located in economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161). This was only one of three priorities that were to be considered when selecting projects.

Pennsylvania's initial project selection decisions were finalized in advance of receiving final guidance from USDOT regarding economically distressed areas. This was consistent with USDOT's urging that all states and Metropolitan Planning Organizations (MPOs) be in a position to "vote approval literally hours after the President signs the bill". In fact, Pennsylvania worked with our MPOs and Regional Planning Organizations (RPOs) to have all projects approved for addition to their regional Transportation Improvement Programs by March 9, 2009.

Approximately 40 percent of Pennsylvania's ARRA funding was sub-allocated to urban areas by federal formula, which left no flexibility in where to spend those funds. In fact, several of our MPO/RPO areas do not have an economically distressed county within their region according to the USDOT Economically Distressed guidance.

The USDOT issued Supplemental Guidance on the Determination of Economically Distressed Areas under the Recovery Act on August 24, 2009. At that time, Pennsylvania had already let 245 of 293 ARRA funded projects. Based on the August 24, 2009 revised guidance, Pennsylvania utilized the "Actual Business Closure or Restructuring" tool to aid in identifying economically distressed areas. Specifically, the August 24, 2009 guidance detailed that "for areas with population over 100,000, the actual or threatened dislocation is 500 jobs, or one (1) percent of the civilian labor force (CLF), whichever is greater".

In reviewing and analyzing the data supplied by the Pennsylvania Department of Labor and Industry, 25 of Pennsylvania's 26 counties considered Non-Economically Distressed (by section 301 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. 3161) should be considered Economically Distressed. The one (1) county that still remains Non- Economically Distressed in Pennsylvania is Montour County.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

The Department did, in fact, invest the majority of our ARRA funds in Economically Distressed areas. In fact, 324 of our 326 ARRA funded projects fall within an Economically Distressed area resulting in over 99% of our \$1.026 billion in ARRA funding going to a project in an Economically Distressed area.

Agency Response (Public Transportation):

Disagree. In November 2008, prior to ARRA being passed, PennDOT canvassed all transit systems and grantees with a survey asking what projects they would have that would create or retain jobs and would be ready to go. PennDOT compiled an initial list of projects that had more than 200 projects requiring almost \$800 million in funding. Many of these projects were not ready to go to construction or were not ready to bid. In addition, Pennsylvania had only \$347 million in stimulus funds—compared to \$800 million requested.

After the ARRA legislation passed and the FTA published the federal register weeks later, PennDOT vetted projects for which it would have oversight responsibility—those in rural areas, intercity bus projects and intercity passenger rail projects—based on project readiness and with emphasis on construction projects that would have the greatest impact on Pennsylvania employment. PennDOT verified through telephone calls and on-site project meetings the readiness of each construction project. If a construction project was ready, was valuable to public transportation in Pennsylvania and had sufficient funding (ARRA funding alone was not sufficient to fully fund all proposed and ready public transportation construction projects), PennDOT provided all necessary technical support to advance the project and ensure compliance with ARRA requirements.

PennDOT followed two (2) basic principles when selecting projects for funding—

- 1) Would the project assist in meeting the goals of ARRA to create or retain jobs quickly and would those jobs be created in Pennsylvania.*
- 2) Is the project needed, ready to go by FTA rules, and able to be advanced quickly.*

The vast majority of PennDOT rural transit stimulus dollars were assigned to construction projects that required jobs in Pennsylvania for new buildings or facilities needed for rural transit service in Pennsylvania.

After addressing funding for construction projects, PennDOT directed the remaining available funding to bus purchases. Most of the bus purchase funding was focused on small buses that could be purchased from the state DGS contract. That contract was held by a local Pennsylvania bus manufacturer, again creating or retaining jobs in Pennsylvania. A few larger buses manufactured outside of Pennsylvania were funded in order to maximize all ARRA funding available to Pennsylvania public transportation.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

By focusing our funding on these two (2) types of projects as opposed to just purchasing large buses only that would be manufactured outside Pennsylvania, PennDOT complied with ARRA and did very well by the taxpayers of Pennsylvania, given the rules that had to be followed. PennDOT could have used its rural transit stimulus funding as many other states did, purchasing large buses only because it would have been fast and easy as opposed to working with multiple agencies on multiple construction projects to accelerate them and ensure compliance with all relevant procurement and reporting requirements.

With regard to the selection of the roof replacement project, it was chosen as an ARRA project because it was ready to go, would create jobs and the condition of the roof had deteriorated to the point that it was seriously affecting the operations of the agency. The transit system had been in litigation with contractors for several years and it was uncertain when or if a settlement would be reached.

The transit system used state funds for the first roof. PennDOT approved the replacement of the roof using ARRA funds on the condition that at the conclusion of the litigation, if any proceeds are realized, those proceeds would be returned to the transit system's capital reserve account for future use.

With regard to \$9 million in stimulus for the Keystone Corridor, there was only one (1) project on the Corridor that was ready to go and could use all the funding. That project was the Elizabethtown Station. The station project was bid out quickly and awarded. When USDOT Secretary LaHood and U.S. Senator Arlen Specter participated in the ground breaking for the project, they heralded it as a great project creating jobs.

PennDOT exceeded the ARRA requirement by obligating 100 percent of the funding within the first six (6) months of the Act, a testament to the dedication of the staff of this agency to accelerating processes and maximizing the impact of transit stimulus funding on Pennsylvania's economy.

Auditors' Conclusions:

(Highway)

Although PennDOT acknowledged that it did not have a methodology to prioritize funding to economically distressed areas for over 240 projects, we are pleased that it did initiate a methodology based on supplemental guidance provided by FHWA, albeit not audited by us. Under these new criteria, it appears that PennDOT, by chance, had invested the majority of ARRA funds in economically distressed areas. For any additional federal stimulus funds that may become available for transportation infrastructure, PennDOT should utilize this new methodology to prioritize funding projects to areas that are considered economically distressed.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Auditors' Conclusions (Cont.):

(Public Transportation)

We disagree with management's response to this recommendation. In its response, PennDOT details its process to select projects to be funded by federal stimulus transit capital grants. However, as stated in our finding, PennDOT did not formally document this decision-making process, including analysis and justification as to why projects were selected. PennDOT management indicated in an interview with the auditors that this process was completed informally through telephone calls, e-mails, etc. We requested PennDOT's decision-making documentation for its selection of the 33 transit projects. This documentation contained no analysis of the decision-making criteria for each of these projects or justification as to why these projects were selected. The documentation included mostly informal e-mails and some letters from the transit agencies, but no analysis or justifications for PennDOT's selection of the projects. To ensure accountability and transparency to the taxpayers of Pennsylvania and ensure that the goals of the ARRA are most effectively being met, this decision-making process should be formally documented.

With regard to PennDOT's approval of \$2.65 million for a roof replacement project, which was determined to be caused by design and construction deficiencies of the contractor who constructed the building in 2004, PennDOT claims in its response that it approved the project on condition that if the transit agency realizes any proceeds from litigating the matter with the original contractor, these proceeds will be returned to the transit agency's capital reserve account for future use. However, based on the documentation provided to us, this condition is not included in the written grant agreement between PennDOT and the transit agency, and therefore, may not be legally enforceable.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Recommendation 4: Scrutinize the procurement of goods and services involving federal stimulus funds to ensure that the goals of the act are being met and that job creation/retention and economic recovery are maximized within Pennsylvania to the fullest extent possible.

Agency Response (Public Transportation):

Disagree. The selection of transit projects for ARRA funding was based on meeting ARRA requirements and maximizing economic recovery in Pennsylvania (see response to Recommendation No. 7).

The procurement of goods and services has met all federal procurement requirements. As stated in response to Recommendation No. 3, all ARRA projects are required to follow FTA procurement requirements as well as any additional ARRA requirements. Contracts are awarded to the lowest responsive and responsible bidder. In a few cases, a Canadian firm was awarded the contract based on compliance with FTA requirements. Commonwealth management of FTA grants cannot supersede federal requirements, otherwise bids would be open to protest.

Auditors' Conclusions:

(Public Transportation)

Although PennDOT disagrees with our recommendation to scrutinize the procurement of goods and services, it appears PennDOT has taken corrective action and at least reviewed, after receiving our draft report, the procurements for the three projects cited in our report in which procurements were made from Canadian companies; for one of these three, PennDOT stated that it will deny ARRA funding to this project. Moreover, related to one of the other two projects, we are pleased that PennDOT will encourage future procurements of transit agencies to be advertised statewide. This will give Pennsylvania companies more opportunity to preserve and create jobs. PennDOT should scrutinize all procurements in this same manner. Furthermore, according to PennDOT management, the procurements of transit agencies are not reviewed until after project completion; however, PennDOT should be involved in reviewing these procurements before contracts are awarded.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

[3]. Deficiencies Related to Management Controls

Recommendation 5: Immediately evaluate its current systems which are impacted by the Act funding and strengthen management controls accordingly to mitigate the higher risk associated with these funds of waste, fraud, or abuse.

Agency Response (Highway):

Disagree. PennDOT is using state-of-the-art systems including the Electronic Contracting Management System (ECMS), Multi-Modal Project Management System (MPMS), and SAP to deliver the ARRA projects. PennDOT has taken an aggressive approach to deliver the ARRA projects. This approach clearly adheres to the purpose and intent of ARRA, to preserve and create jobs and promote economic recovery, to assist those most impacted by the recession, and to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

The infusion of an additional billion dollars of projects on top of our \$1.8 billion base program required PennDOT to develop a new strategy to ensure on-time delivery of the projects. In early 2009, PennDOT established a Project Delivery Operations Center (PDOC) to monitor progress of key milestones of every ARRA project and to reduce the time from project advertisement to "shovel in the ground." As part of the PDOC, more than 44 design and construction performance metrics and reports were developed to help ensure quality, timeliness, and policy compliance. With the success of ARRA, the PDOC and associated performance metrics have now become an integral part of project delivery for our base program.

In addition, executive and senior level management have conducted weekly or bi-weekly meetings with the FHWA since January 2009 to ensure the successful planning and execution of the ARRA program. On August 18, 2009, the USDOT, Office of Inspector General (OIG) conducted Fraud Awareness and Prevention training for Central Office and Engineering District Office staff involved with the ARRA projects.

Additionally, PennDOT has received various accolades regarding its execution of the ARRA program. The following represent just two (2) of many items of positive feedback received to date:

In a July 20, 2009 ARRA letter to Transportation Secretary Allen D. Biehler, Representative Joseph F. Markosek stated, "I was personally impressed by the dedication and professionalism shown by your staff in tracking and maintaining statistical data regarding the federal spending. Similar comments were echoed by my colleagues. Clearly, the efficiency and organization exhibited by PennDOT, as evidenced and displayed by the many charts and graphs, illustrates the seriousness and preparedness of your organization".

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

In a February 25, 2010 ARRA letter to Secretary Allen D. Biebler, Victor M. Mendez, FHWA Administrator, US DOT, stated "It's my great pleasure to congratulate the Pennsylvania Department of Transportation on meeting that goal. Working together, we obligated ... 100% of the highway funds available to the State. Congratulations on this important achievement and on reaffirming for the people of Pennsylvania that the transportation community knows how to deliver!"

Agency Response (Public Transportation):

Disagree. Public transportation did, in fact, evaluate existing management procedures and determined that in order to address the high risk associated with stimulus funds we would have to strengthen procedures. The following were implemented:

- *Assigned management staff to monitor and oversee federal ARRA requirements and transit system compliance*
- *Secured consultant assistance to provide on-site technical assistance and monitoring of projects and management for all Pennsylvania transit systems regardless if the ARRA funds were administered by the FTA or by PennDOT*
- *Participated in webinars offered by federal agencies to ensure knowledge of and compliance with requirements*
- *Conducted, with FTA participation, webinars for all Pennsylvania transit systems to ensure their knowledge of project management and reporting requirements*
- *Had the Federal Investigator General provide fraud and abuse awareness and identification training to all transit staff and consultants*

PennDOT conducts site visits of every ARRA construction project. The frequency and timing of site visits depend on project activity and needs of the individual transit system. The following are normal site visit activities to support both local project management and PennDOT oversight:

- *Attend and monitor project progress meetings*
- *Review contractor submitted schedules*
- *Review project status for compliance with established and accepted schedules*
- *Review change order status in relation to project funding*
- *Provide guidance during change order evaluations*
- *Verify that wage check logs are being maintained*
- *Verify that certified payrolls are being maintained by transit agency construction managers*

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

- *Provide guidance for construction delay resolution*
- *Provide guidance for contractor claim resolution*
- *Walk the site with the transit agency and their construction manager/inspector and perform construction observation/inspection activities.*

PennDOT conducted formal meetings weekly with the consultants from April 2009 through the end of December 2009. We are now conducting the formal meetings bi-weekly in addition to the regular phone and email communication.

PennDOT developed and maintained spreadsheets to capture information on every project and to facilitate reporting to various agencies.

Auditors' Conclusions:

PennDOT disagrees with our recommendation. PennDOT's response includes areas in which it has implemented additional meetings and procedures with regard to federal stimulus funding. However, these additional meetings and procedures are not adequate to ensure compliance with all ARRA requirements. As we noted in our Findings 1, 2, and 4, PennDOT should improve its controls over project selection, job creation/reporting, and verification of compliance with Buy America provisions.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

[4]. Deficiencies Related to Job Data Reported to the Federal Government

Recommendation 6: Develop and implement procedures to verify the accuracy of data collected from contractors and consultants;

Agency Response (Highway):

Disagree. Quality assurance procedures are already in place to promote accuracy of collected data. Employment reports are required prior to the submission of payrolls and/or invoices. To ensure more detailed validation at the time of reporting, a special provision was added to each stimulus project, to contractually obligate the contractor to provide employment data. The special provision includes the following:

*Submit the form entitled, "Monthly Employment Report American Recovery and Reinvestment Act" to the Inspector-In-Charge within 5 calendar days of the end of the reporting month. If this form is not submitted to the Inspector-In-Charge within 5 calendar days of the end of the reporting month any further estimate payments will be withheld until it is received by the Inspector-In-Charge. An electronic version can be found on ECMS's File Cabinet by selecting ECMS References, and then selecting File Cabinet. The file is in the CTR - Contractor folder and is named **ARRA MONTHLY EMPLOYMENT REPORT**.*

Procedures were established for all contractor reports to be reviewed by the project's Inspector-in-Charge, and by the Bureau of Construction and Materials for completeness and reasonableness. Consultant reports are reviewed by the Bureau of Construction and Materials. The electronic submission of employment reports requires this "chain of custody;" no employment data is added to the database without these reviews.

PennDOT has identified a single point of contact for contractors, consultants and PennDOT personnel to ask questions and obtain guidance. This point of contact reviews each report.

The need and importance of accurate and timely employment reports has been emphasized with the industry on multiple occasions, urging their cooperation. Notices have been placed on the industry (e.g. APC, ACEC) websites regarding such emphasis.

Our procedures allow for the submission of revised reports and the update of our database. That is, data for each month is not "locked down." Corrections determined by PennDOT, various audits, or contractors themselves, can be made at any point after original submission.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Agency Response (Public Transportation):

Disagree. Procedures are in place at an appropriate level--With regard to verifying the accuracy of employment records:

- PennDOT provided Webinars to the public transportation grantees to explain the reporting procedures and instructions.*
- Contractor(s) complete and certify on electronic form with required data and submit to the public transportation grantee.*
- Public transportation grantees complete and certify an electronic form with required data and submit to PennDOT.*
- PennDOT has established procedures to review data accuracy both when submitted to the Department and by placing significant emphasis on on-site inspections, which include verification that wage check logs and certified payrolls are being maintained. On that basis, we accept the information as accurate. Firms put themselves at tremendous risk if they choose to commit fraud in their payroll records.*

Auditors' Conclusions:

PennDOT's review of the monthly employment reports does not include verifying that the number of employees and hours worked agrees to the contractors' payroll records. The review includes only whether the inspector feels that the numbers seem reasonable based on knowing approximately who is working on the project. Additionally, PennDOT could not provide procedures detailing the inspectors' review of the contractors' monthly employment reports. As noted in the finding, while PennDOT claims to have a job tracking system and quality assurance procedures in place, we have found PennDOT's procedures to be inadequate and the number of jobs funded by the ARRA reported to the federal government to be inaccurate.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

Recommendation 7: Scrutinize where the work is being performed and jobs are being created/retained for each federal stimulus funded project to ensure that the goals of the Act are being met and economic recovery is maximized within Pennsylvania to the fullest extent possible; and

Agency Response (Public Transportation):

Disagree. PennDOT knows where work is being performed and where jobs are created and/or retained. We have followed FTA requirements for procurement and project eligibility and have maximized economic recovery in Pennsylvania to the fullest extent possible.

All ARRA projects are required to follow FTA procurement requirements, as well as any additional ARRA requirements. Contracts are awarded to the lowest responsive and responsible bidder. In a few cases, a Canadian firm was awarded the contract based on compliance with FTA requirements. \$196,773 represents less than one (1) percent of the \$26 million in ARRA public transportation projects reviewed by the Auditor General. Commonwealth management of FTA grants cannot supersede federal requirements, otherwise bids would be open to protest. In fact, the Auditor General's draft report concedes that the procurement followed the law.

Regarding the estimate faxed to the transit agency by a Canadian company, during the interview with the Auditor General's staff, PennDOT management did not have detailed information regarding the procurement and wanted to collect accurate information before providing a response. The transit agency in question is Monroe County Transportation Authority (MCTA). MCTA followed the Municipal Authorities Act and FTA requirements for advertising. In addition to advertising in the Pocono Record, MCTA sent RFPs to ten (10) vendors. MCTA received only one (1) bid. The selection of a Canadian firm was in compliance with all procurement requirements.

The transit system that had a Canadian firm apply graphics to a bus did not receive ARRA funds for the graphics. This system is a private intercity bus carrier. The graphics provided by the Canadian firm were paid for using private funds. As far as PennDOT is aware, there is no federal or state law governing how private firms procure goods and services.

With regard to advertising statewide in the future, PennDOT has contacted the Pennsylvania Public Transportation Association (PPTA). Transit systems will be encouraged to post future procurements on the PPTA website so that contract opportunities are advertised statewide.

The report identifies \$66,955 worth of work performed by a Canadian firm for bus overhauls. The grantee who awarded the work to a Canadian company believed they could apply for the funds using ARRA funds. This request has been denied by PennDOT and will not be paid with ARRA funding.

AGENCY RESPONSE AND AUDITORS' CONCLUSIONS

PennDOT maintains a schedule of contracts awarded for public transportation projects using ARRA funding and knows the location of firms receiving awards.

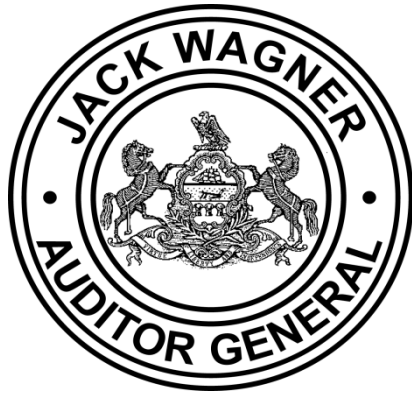
Current Awarded Contracts

<i>Total PA Contractors</i>	<i>Total Other US</i>	<i>Total Canadian</i>	<i>Total Contractors</i>
38	18	2	58
65.52%	31.03%	3.45%	100%

Auditors' Conclusions:

PennDOT disagrees with our recommendation to scrutinize where the work is being performed and jobs are being funded for each federal stimulus-funded project in order to ensure that the goals of the ARRA are being met and economic recovery is maximized within Pennsylvania to the fullest extent possible. However, it appears that PennDOT has at least reviewed, after receiving our draft report, the procurements for the three projects cited in our report in which procurements were made from Canadian companies. For one of these three, PennDOT stated that it would deny ARRA funding to this project. Moreover, related to one of the other two projects, we are pleased PennDOT will encourage all future procurements of transit agencies to be advertised statewide. This will give Pennsylvania companies more opportunity to preserve and create jobs. PennDOT should scrutinize all procurements in this same manner.

Additionally, according to PennDOT management, the procurements of transit agencies are not reviewed until after project completion. PennDOT should be involved in reviewing these procurements before contracts are awarded. For instance, PennDOT stated that, for the bus overhaul project in which \$66,955 of work was procured from a Canadian company, it would not be paid with ARRA funding. However, the documentation provided for this project indicates that PennDOT had already paid the transit authority with ARRA funds on October 26, 2009. If this procurement had been reviewed prior to the contract being awarded, this situation could have been avoided.



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The American Reinvestment and Recovery Act (ARRA) is intended to promote economic recovery through the preservation of existing jobs and the creation of new employment opportunities. Consequently, sections of ARRA prescribe that the recipients of ARRA funds, such as the Commonwealth of Pennsylvania, must adhere to specific Buy America provisions. Moreover, recipients must submit a report to certain federal agencies no later than 10 days after the end of each calendar quarter that contains information pertaining to ARRA funded projects, including an estimate of jobs created or retained because of such projects. The following is an overview of the Buy America provisions and reporting requirement under ARRA:

Buy America Requirement

Highway/Bridge Projects:

Title XII of the ARRA directs that ARRA-funded highway projects be administered in accordance with Title 23, United States Code. Therefore, the U.S. Department of Transportation Federal Highway Administration (FHWA) applies the Buy America provision per 23 USC 313, and implements applicable regulations and policies, to all Recovery Act highway construction projects.

FHWA allows state transportation agencies, including PennDOT, to assume certain FHWA oversight roles and approval responsibilities on specific categories and construction projects. FHWA and PennDOT have traditionally entered into a “Stewardship & Oversight Agreement” in which PennDOT assumes certain FHWA oversight and approval authority for areas such as construction contract administration, which in part is guided by PennDOT’s Publication 408 Construction Specification guidance.

PennDOT’s foundation for ensuring compliance with Buy America provisions are found in state laws, policies and procedures that include, in part, a certification approach. According to the provisions of Act 3 of 1978, as amended by the Act 161 of 1982, and Act 144 of 1984, in the performance of the contract or any subcontract only steel products produced in the United States shall be used. Both the state law and PennDOT’s Publication 408 Construction Specification guidance require that if a steel product is identifiable on its face (e.g. stamped Made in USA), the contractor must submit certification, which satisfies PennDOT that the contractor has fully complied with the law and PennDOT’s Publication 408 guidance. The state law requires that if the steel is unidentifiable or, under Publication 408 is fabricated steel, the contractor must provide the PennDOT Inspector-in-Charge with the following: invoices, bills of lading, and mill certification that the steel was manufactured in the United States.

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Transit Capital Grants:

Federal Transit Administration (FTA) Buy America provisions are cited at Title 49 Part 661. Title 49 part 661.5 states that except for buses and other rolling stock, no funds may be obligated by FTA for a grantee unless all iron, steel, and manufactured products used in the project are produced in the United States. Title 49 Part 661.11 states, in general, that to comply with Buy America provisions for buses and other rolling stock, their component costs shall be greater than 60 percent produced in the United States.

Grantee responsibility for procurement of buses and rolling stock follows the same requirements under Title 49 Part 661.13 as grantees procurement for iron, steel and manufactured products, which requires the grantee to provide a specification notice of the Buy America provision in the RFP. Additionally, rolling stock bidders are required under Title 49 Part 661.12 to submit a certification to the grantee that the bidder will or will not comply with the requirements of Part 661.

Furthermore, rolling stock recipients/grantees must also follow Title 49 Part 663, entitled Pre-Award and Post-Delivery Audits of Rolling Stock Purchases. Part 663.7 states that a grantee must *certify* to FTA that it will conduct pre-award and post-delivery audits. As part of these requirements, the grantee must maintain on file a pre-award Buy America certification and a post-delivery Buy America certification.

These two Buy America certifications state that the grantee is satisfied that the rolling stock to be purchased (pre-award) and purchased (post-delivery) meets the Buy America requirements after having reviewed itself or through an audit prepared by someone other than the manufacturer documentation provided by the manufacturer which lists:

- 1) Component and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
- 2) The location of the final assembly point for the rolling stock and the cost of final assembly.

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Additionally, the Federal Transit Administration Master Agreement FTA MA(15) dated October 1, 2008, which is incorporated into grant agreements between FTA and PennDOT states in Section 2d:

Recipient's [i.e. PennDOT] Primary Responsibility to Comply with Federal Requirements. Irrespective of involvement by any other entity in the Project, the Recipient agrees that it, rather than any other entity, is ultimately responsible for compliance with all applicable Federal laws and regulations, the Grant Agreement or Cooperative Agreement for the Project, and this Master Agreement, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

- (1) Significant Participation by a Subrecipient. Although the Recipient may delegate any or almost all Project responsibilities to one or more subrecipients, the Recipient agrees that it, rather than any subrecipient, is ultimately responsible for compliance with all applicable Federal laws, and regulations, in accordance with applicable Federal directives, except to the extent that FTA determines otherwise in writing.

Furthermore, Section 2e. states that in regard to the recipient's responsibility to extend federal requirements to other entities:

- (1) Entities Affected. Only entities that are signatories to the Grant Agreement or Cooperative Agreement for the Project are parties to that Grant Agreement or Cooperative Agreement. To achieve compliance with certain Federal laws and regulations, in accordance with applicable Federal directives, however, other entities participating in the Project through their involvement with the Recipient, (such as a subrecipient, lessee, third party contractor, or other participant) will necessarily be affected. Accordingly, the Recipient agrees to take appropriate measures necessary to ensure that all Project participants comply with all applicable Federal laws and regulations, and follow applicable Federal directives affecting Project implementation, except to the extent FTA determines otherwise in writing. In addition, if an entity other than the Recipient is expected to fulfill any responsibilities typically performed by the Recipient, the Recipient agrees to assure that the entity carries out the Recipient's responsibilities as set forth in the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement.

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In order to comply with the grant agreement and FTA regulations, PennDOT has procedures that are documented in its Bureau of Public Transportation (BPT) Procurement Procedural Manual. This procedural manual follows the FTA provisions cited at Title 49 Parts 661 and 663 and requires that if purchasing one or more vehicles with FTA funds, the grantee shall submit the pre-award Buy America certification to BPT for concurrence of compliance with requirements before awarding the contract for the purchase of rolling stock. Additionally, the grantee shall submit to BPT after delivery of the vehicle and prior to final acceptance of the vehicle a post-delivery Buy America certification.

Job Reporting Requirement

Section 1512 of the ARRA requires each recipient that receives recovery funds directly from the Federal Government, which includes Pennsylvania, to submit a report to the respective federal agency no later than 10 days after the end of each calendar quarter that contains:

- (1) the total amount of recovery funds received from that agency;
- (2) the amount of recovery funds received that were expended or obligated to projects or activities;
- (3) a detailed list of all projects or activities for which recovery funds were expended or obligated, including:
 - (A) the name of the project or activity;
 - (B) a description of the project or activity;
 - (C) an evaluation of the completion status of the project or activity;
 - (D) an estimate of the number of jobs created and the number of jobs retained by the project or activity; and
 - (E) for infrastructure investments made by state and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under this Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment; and
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109–282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

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For the reporting quarter ended September 30, 2009, the U.S. Department of Transportation provided supplemental guidance, which states that recipients only need to report a single number that includes both jobs created and retained. The number of jobs reported should be a calculation of Full-time Equivalents (FTE), in which the total number of hours worked on a project is divided by the number of hours in a full-time schedule during that reporting quarter. Subsequently, on December 18, 2009, the U.S. Office of Management and Budget issued Memorandum M-10-08, which provided updated guidance regarding job reporting for the period ended December 31, 2009. This updated guidance changed the requirements from reporting jobs created or retained to reporting jobs funded by the ARRA. Additionally, in order to make the FTE calculation more standardized, the new guidance stated that, for the reporting quarter ended December 31, 2009, the FTE calculation should only include job hours worked during the reporting quarter and should not be cumulative since the start of the ARRA.

Economically Distressed Areas

Division A, Title XII of the ARRA, signed into law on February 17, 2009, states that priority for funding of highway infrastructure shall be given to projects that can be completed within a three-year timeframe and are located in economically distressed areas as defined by Section 301 of the Public Works and Economic Development Act of 1965, as amended (PWEDA) (42 U.S.C. 1361). The Federal Highway Administration (FHWA) website included areas considered economically distressed as of March 13, 2009. Additionally, Section 3 of the ARRA outlines its objectives. Several objectives of the ARRA that relates directly to funding provided to PennDOT for highway infrastructure investments and transit capital grants include preservation and creation of jobs, promotion of economic recovery, assistance to those most impacted by the recession, and investment in transportation infrastructure that will provide long-term economic benefits. Moreover, FHWA Supplemental Guidance on Determination of Economically Distressed Areas Under the Recovery Act, issued on August 24, 2009, states that “in ensuring due diligence has been carried out, the state should be able to provide information as to how the state identified, vetted, and examined projects located in economically distressed areas and how the state selected projects based on the priorities, preferences, conditions, and requirements of the Recovery Act.”

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