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May 26, 2016

Mayor Betsy Hodges, City Council Members and Audit Committee Members,

Attached is the City of Minneapolis Internal Audit Department's Transportation Management Organization audit report. The objective of this audit was to evaluate the grant compliance of Move Minneapolis, a grant sub-recipient of which the City is a pass-through of grant funding from the Metropolitan Council.

An important element in how the City can effectively manage risks is to acknowledge, assess and address the risks that third parties impart on the City. This work, and Internal Audit's continual focus on third-party risk, can help the City manage third-party risk by understanding our exposure and identifying methodologies to efficiently monitor the variety of risks that arise when engaging third-parties.

In this audit we found that there were several instances of grant compliance evasion. These instances don't immediately and directly affect the City financially. The work conducted during this audit was not exhaustive and did not cover everything related to the DMTMO and their CMAQ grant activity. Due to time constraints and the large amount of data, the state of the DMTMO's bookkeeping and recordkeeping and the ability to validate transactions and information with the DMTMO's vendors, only a sampling of information was able to be evaluated. The attached report details the results of the work completed by the Internal Audit Department, Stillman Cyber Forensics and Waypoint, Inc.

Sincerely,

A handwritten signature in black ink that reads "Will Tetsell". The signature is written in a cursive, flowing style.

Will Tetsell, City Auditor





# Third Party Audit of the Downtown Minneapolis Transportation Management Organization

City of Minneapolis – Internal Audit Department  
May 24, 2016



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**Date:** May 24, 2016

**To:** Audit Committee, Mayor's Office, City Council, City Coordinator, Public Works and Finance Departments

**Re:** Third Party Audit of the Downtown Minneapolis Transportation Management Organization

### **Background**

Move Minneapolis is the forward-facing name of the Downtown Minneapolis Transportation Management Organization (DMTMO), a 501(c)4 non-profit organization founded in 1991 through City Council action and incorporated in 1992. The DMTMO advocates for a sustainable transit and transportation system that supports a growing and vital downtown Minneapolis. The DMTMO is governed by a board of directors comprised of representatives from the downtown business and residential community, the City of Minneapolis (City), Hennepin County, and Metro Transit, who act in an advisory capacity to Minneapolis City Council<sup>1</sup>.

Move Minneapolis is made possible by a federal Congestion Mitigation and Air Quality (CMAQ) grant in partnership with the United States Department of Transportation, the Metropolitan Council, the City and the downtown Minneapolis community<sup>2</sup>. The Executive Director of Move Minneapolis (previously known as Commuter Connection) during the scope and timeframe of the audit execution was Dan Maclaughlin, who had a small staff that helped him operate the store front and operations of the organization.

The City has a contractual relationship as the grant pass-through between the DMTMO, the grant sub-recipient, and the Metropolitan Council (Met Council), the direct grant recipient. In this contractual structure, Met Council determines the amount of grant funding available to the DMTMO and the City approves the work plan and budget of the DMTMO. As the DMTMO works towards the objective of the CMAQ grant, they were required to submit reimbursement requests to the City for expenses that were both realized and related to the objective of the CMAQ grant. The City was to review the reimbursement request documentation for appropriateness and pass the requests along to Met Council for final approval.

In August of 2014, the Director of Program Evaluation and Audit of the Metropolitan Council contacted us regarding allegations of grant compliance evasion within the Commuter Connection/Move Minneapolis organization. They became aware of allegations regarding grant compliance evasion and employee misconduct that were communicated to the DMTMO Executive Board, the Met Council and a City department. The Met Council Auditor had reported this allegation to the Federal Transit Administration and the Minnesota

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<sup>1</sup> Source: [moveminneapolis.org/about-us/](http://moveminneapolis.org/about-us/)

<sup>2</sup> Source: [moveminneapolis.org/about-us/](http://moveminneapolis.org/about-us/)

office of the State Auditor in March of 2014 and requested that the City conduct an investigation into the allegations. The DMTMO hired an attorney to address the employee misconduct allegations.

In April of 2015, the City Controller had hired a CPA firm to analyze transactions of the DMTMO related to the CMAQ grant reimbursement requests that the City approves, pays and submits to Met Council for reimbursement. The results of that review were received by the City in October of 2015.

In November of 2015, we met with the Met Council Auditor and the City's Controller to discuss the allegations and the report that the City received from the CPA firm. The City Controller as well as the Met Council Auditor also provided us with information that they had on the DMTMO, and files from the DMTMO. Upon review, it became clear that the issues alleged were perhaps true, but would not all be detectable by the review conducted by the CPA firm at the City's direction in mid-2015. At this time, we determined that a more thorough analysis would be necessary to adequately substantiate the allegations.

In November and December of 2015, we engaged a cyber forensic investigator and a local investigation firm, respectively, to assist in conducting an audit of the DMTMO as it related to the allegations of grant compliance evasion.

### **Objective, Scope and Approach**

The objective of this audit was to substantiate the allegations of grant compliance evasion.

The scope of this audit, November 1, 2012 – December 31, 2015, included the contractual time frames that encompassed the timing of the allegations through the most current contract with the DMTMO.

The audit and investigative approaches taken in this work were methods best suited to each type of allegation. Some allegations were too cost prohibitive to substantiate, but were still addressed in testimony when appropriate.

### **Audit Results and Recommendations**

#### **Finding 1: The DMTMO's staff intentionally destroyed and altered documents required to be maintained under the CMAQ grant and to be supplied to auditors as required by the DMTMO contract with the City.**

The DMTMO is contractually obligated to 'retain all records pertinent to expenditures incurred under this contract' for specified periods of time. The allegations included details of the DMTMO Executive Director destroying documents.

We were able to substantiate that documents were altered. These documents were vendor invoices and neither the vendor nor the City was aware of the alterations. According to the DMTMO Executive Director, his process for retaining documentation was, upon receipt of an invoice, he would scan the original document and then destroy the original, leaving only the digitally scanned copy. The instances where invoices were altered were done using his computer, so copies of invoices maintained by the DMTMO were unreliable and we requested originals from vendors to validate authenticity.

We were also able to substantiate that documents were deleted; we discovered that software named 'Ccleaner' was used to delete 1,179 files from the DMTMO Executive Director's laptop hard drive between February 9 and 12 of 2016. The laptop in question was made available to us for a forensic

copy on the afternoon of February 12, 2016. The version of the software used was released on January 26, 2016 and was designed to delete and erase computer files, including registry files, logs, internet history records, recycle bin files and selected programs; making a complete recovery of deleted files mostly impossible.

**Finding 2: The DMTMO overbilled the CMAQ grant for services from vendors in order to create donations that were reported as part of the grant's required in-kind 20% matching funds.**

As a part of the CMAQ grant, the DMTMO is required to obtain at least 20% of their expense through local sources.

The DMTMO overbilled the CMAQ grant in an amount of at least \$50,151.71 (\$94,007.71 if we include the \$43,856 in profit-sharing payments made to DMTMO staff during the years 2012-2015 – see Finding 5 for more details). This caused an excess reimbursement of \$37,589.69 from the CMAQ grant (not all submitted expenses were paid by the City). These figures are not exhaustive; therefore, the actual overbilled amount could be larger. The DMTMO routinely claimed reimbursement in amounts that exceeded the DMTMO incurred expense and by the DMTMO claiming reimbursement for 100% donated expenses.

The DMTMO included expenses for reimbursement by the CMAQ grant for expenses that the DMTMO had not actually paid. These submissions included expenses related to Loop Parking for monthly bookkeeping services and amounts paid by the City of Minneapolis for printing, postage, and telephone. In addition, there were several instances where the DMTMO was submitting the retail cost of ZAP readers purchased from Dero Bike Rack Company rather than the amount actually paid by the DMTMO. Dero provided the DMTMO with a 20% discount on the cost of readers.

**Finding 3: The DMTMO had a practice of back-dating invoices so that expenses submitted for grant reimbursement were included in the previous contract period.**

On several occasions, the DMTMO requested that vendors backdate invoices. On one confirmed instance, a vendor backdated an invoice so the DMTMO could claim the expense in a prior grant period. On a number of other instances, backdating was done for internal financial reporting reasons.

The backdating of invoices is not in conformance with generally accepted accounting practices, which the DMTMO is required to adhere to in properly accounting for expenses incurred under this contract. Based on conversations with the DMTMO Executive Director, the backdating of invoices was done to utilize prior grant period funding.

**Finding 4: The DMTMO used erroneous payroll and billing methods to include over-billing for DMTMO staff time submitted under the CMAQ grant.**

The monthly invoices submitted by the DMTMO included payroll detail that showed consistent charges for salaried employees to the grant. If the DMTMO were appropriately splitting time spent on projects outside the DMTMO geographical boundaries, and time spent working on generating the required 20%

match, we would expect to see these payroll amounts fluctuate with respect to these activities. However, 100% of the payroll expenses are consistently charged to the grant.

The DMTMO conducted business in and outside of their defined geographic boundary. The DMTMO would also insert itself/broker transactions that were outside its boundary and fail to carve those hours out of their reimbursement requests. In essence, the DMTMO was being reimbursed by CMAQ grant funds for activities that didn't relate to the grant and could be considered unallowable for reimbursement.

Further, the CMAQ grant disallows the reimbursement of payroll expenses used to generate the local 20% match. It appears that any payroll related to match-generating-activity wasn't removed from the grant reimbursement submittals as 100% of the DMTMO's payroll expenses were charged to the grant for 2012 - 2015.

The DMTMO paid 'profit sharing' bonuses, beyond the 410(k) match, to all employees in each of the years within the scope of the audit (2012 – 2015) totaling \$43,856. These bonuses appear to not be related to a specific CMAQ activities and could result in not being a reimbursable expense under the grant.

Recordkeeping for time worked and time taken off for either sick leave or vacation were 'loose' and we noted several instances of sick and vacation days taken in the time tracking tool, but without any corresponding entry in the payroll records.

**Finding 5: The DMTMO failed to follow third party contracting requirements by not engaging in an open process related to bids and contracts and also failed to obtain contracts for services that contained the required language and rules under the Federal Transit Administration (FTA).**

No DMTMO vendors had contracts in place containing the FTA-required language. The DMTMO had a number of vendors operating without a signed contract. The DMTMO failed to document research purportedly conducted into vendor pricing and failed to obtain bids when required. In one instance, the DMTMO Executive Director asked a vendor to split an invoice into multiple invoices to avoid obtaining bids. The DMTMO also claimed two vendors were "sole source" vendors and, therefore, exempt from bid requirements. The DMTMO failed to document the justification for claiming these vendors were "sole source."

In its review of DMTMO, a CPA firm noted in its September 21, 2015 report to the City of Minneapolis that only one of six of the DMTMO's vendors that were paid \$2,500 or more but less than \$25,000 during 2013 and 2014 met any of the procurement requirements as required by the Sub-recipient agreements. The report detailed that for DMTMO vendors Undertone Music Inc., SideDish Graphics, Creation in Common, Dero, and Webifi, Inc., the DMTMO failed to document its analysis of the estimated cost of the item or service, based on historic costs, vendor information, or other reasonable methods. The DMTMO also did not obtain three written or verbal quotes, did not conduct a documented price analysis, nor did the DMTMO include Met Council's FTA required language to the purchase orders or agreements.

We selected fifteen DMTMO vendors to directly verify the services billed to and paid by the DMTMO and submitted for reimbursement under the CMAQ grant during the review period. The vendors were contacted and asked to provide documentation related to proposals, bids, contracts, invoices and



other payment information related to the DMTMO. In addition, vendors were also asked a series of questions related to their business dealings with the DMTMO's staff as well as questions related to contracts and bid process, as applicable. The vendors selected for third-party verification were identified based on the larger dollar amounts paid by the DMTMO and billed under the various CMAQ grants and/or because the vendor was specifically raised by Complainant in her allegations. Of the fifteen vendors contacted, one vendor, eFrame, which had been providing the DMTMO with its Cloud service for email accounts and data storage, never responded to requests for information. We were able to confirm that eFrame did have issues with its servers that crashed in 2015.

Of the fourteen vendors selected, there was some type of contract or agreement in place for only nine of the vendors. Of those nine vendors who responded and had a contract, agreement, or a proposal in place with the DMTMO, none of them contained the required FTA language. These fourteen DMTMO vendors were paid by the DMTMO and payments were subsequently submitted by the DMTMO for reimbursement under the CMAQ grant.

The three grant agreements between the Met Council and Sub-recipient in effect during the time period of November 1, 2012 through December 31, 2015 all contain an attachment listed as Exhibit D – Federal Procurement Basics. Exhibit D details the procurement requirements for micro-purchases under \$2,500, purchases greater than \$2,500 and less than \$25,000, purchases greater than \$25,000 and less than \$50,000, and purchases \$50,000 and greater.

Federal Acquisition Regulation (FAR) 13.202 states that “Purchases under \$3,000 are considered micro-purchases and are exempt from the requirement to obtain competitive quotes or process a sole source justification.” However, for procurements of \$3,000 or less that do not require competitive quotes, there must be documentation to the file establishing that “the price being paid is fair and reasonable and the basis for the determination.”<sup>3</sup>

FTA Circular 4220.1F states the following procedures apply to micro-purchases:

- (a) Competition. The recipient should distribute micro-purchases equitably among qualified suppliers.
- (b) Prohibited Divisions. The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.
- (c) Documentation. FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

All three of the CMAQ grant Sub-recipient agreements between Met Council and the City of Minneapolis make reference in Section II, subsection 2.02 Eligibility of Costs “All expenses are subject to FTA regulations including: FTA Master Agreement (with web site address), Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18 (with applicable website address), Grant Management Guidelines, FTA Circular 5010.1D (with

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<sup>3</sup> <https://www.transit.dot.gov/funding/procurement/third-party-procurement/micropurchases>

applicable website address), and Third Party Contracting Requirements Circular, 4220.1F (with applicable website address).

FTA Circular 4220.1F “Third Party Contracting Guide” dated November 1, 2008 Appendix D “Federally Required and Other Model Clauses” Section A “Required Third Party Contract Clauses” (excluding micro-purchases, except for construction contracts over \$2,000) requires that all FTA assisted third party contracts and subcontracts contain the following provisions with reference to the section of the FTA Master Agreement noted: No Federal Government Obligations to Third Parties (by Use of Disclaimer) § 2.f; False or Fraudulent Statements or Claims - Civil and Criminal Fraud § 3.f; Access to Third Party Contract Records § 15.t; Changes to Federal Requirements § 2.c(1); Civil Rights (Title VI, ADA, EEO (except special DOL construction clause)) §12; Disadvantaged Business Enterprises (DBEs) § 12.d; Incorporation of FTA Terms § 15.a. In addition, for contracts exceeding \$25,000, Suspension and Debarment §3.b and for contracts exceeding \$10,000 (49 CFR Part 18) Termination § 11. See Ex. 8.

**Requested Items Pending**

There were several items that were requested, but not received as of the date of this report. These items were therefore not included in the analysis of this audit and are listed below.

Requested From	Item(s) Requested
eFrame	vendor request for copies of agreements, contracts, bids, proposals, invoices and payment information related to the DMTMO
The Wedge Coop	vendor request for copies of agreements, contracts, bids, proposals, invoices and payment information related to the DMTMO
St. Paul Smart Trips	vendor request for copies of agreements, contracts, bids, proposals, invoices and payment information related to the DMTMO
car2go	Various questions related to allegations of kick-backs for customer referrals
Metropolitan Council	Email communications between Metropolitan Council and the DMTMO

**Acknowledgments**

The City of Minneapolis Internal Audit team would like to acknowledge the time, effort and partnership put forth from the City’s Public Works, City Attorney and Finance Department, as well as the Internal Audit department and Grant Management department at the Metropolitan Council. Their enthusiasm and collaboration were very helpful in completing this audit.