



State of New Jersey

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

OFFICE OF THE STATE COMPTROLLER
P.O. BOX 024
TRENTON, NJ 08625-0024
(609) 984-2888

KEVIN D. WALSH
Acting State Comptroller

December 21, 2020

NOTICE OF POSTING

The Office of the State Comptroller had previously provided notification of this report on December 10, 2019, as required by *N.J.S.A. 52:15B-15*. This report is now being made publicly available.



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PHILIP JAMES DEGNAN
State Comptroller

December 10, 2019

VIA E-MAIL

John F. O'Hern, Auditor General
New Jersey Transit Corporation
One Penn Plaza East
Newark, NJ 07105

Dear Mr. O'Hern:

The Office of the State Comptroller (OSC) has conducted a review of New Jersey Transit Corporation's (NJT) administration and oversight of its contracts with private transportation companies that operate certain NJT bus routes. NJT's Private Carrier Affairs (PCA) unit is charged with these tasks. The contracts between NJT and the private transportation companies, referred to as "contract carriers" by NJT, total approximately \$42 million each year. OSC's review found that PCA's oversight of the contract carriers is lacking, PCA does not adequately monitor missed and delayed bus trips, and that certain software utilized by PCA as part of its oversight practices has proven inadequate.

OSC initiated this review after receiving a referral from another state agency alleging that certain contract carriers had supplied NJT with inaccurate self-reports of their on-time performance. In conducting its review, OSC obtained and examined numerous documents to include: NJT internal policies and procedures, contracts between NJT and the contract carriers, reports of dispatching activity, and a contract between NJT and a software company. OSC also conducted interviews of various NJT personnel, including members from NJT's PCA unit, its information technology (IT) office, and its Bus Operations office.

OSC submits this letter for your consideration with recommendations to address the deficiencies identified during its examination.

I. Investigative Findings

OSC's review focused primarily on the ways in which PCA has examined and verified self-reporting information submitted by the contract carriers. During the course of reviewing these practices, OSC also learned that NJT had entered into a multi-million dollar contract with a software company (the Software Company) for the purchase of numerous products, including a software program designed to generate reports comparing a bus' actual on-time performance against its scheduled performance. OSC reviewed this contract to determine whether NJT received the report-generating software to which it was entitled.¹ These issues will be addressed separately below.

A. PCA's Oversight of Contract Carriers

The agreements between the contract carriers and NJT expressly require the contract carriers to self-report their on-time performance and identify any "missed trips."² For every self-reported "missed trip," NJT imposes a penalty of \$150. If, however, NJT learns of a "missed trip" that a contract carrier has not self-reported, NJT imposes a higher penalty of \$300 per unreported "missed trip." As will be discussed fully below, OSC found that PCA does not engage in the oversight necessary to ensure accurate reporting and, as a consequence, does not recover all of the monetary penalties owed to NJT.

1. PCA Does Not Regularly Verify the Contract Carriers' On-Time Performance or Maintain a Schedule of Oversight

OSC's examination revealed that PCA does not regularly verify its contract carriers' on-time performance nor does it maintain a fixed schedule for reviewing such performance. A PCA representative explained to OSC that given current capabilities, the office can only verify the contract carriers' "missed trip" reports by conducting a manual and labor intensive verification process. This process requires PCA to: (1) request dispatch reports from the contract carriers,³ (2) cross-reference the times listed on the reports against a bus' actual performance through a software program that replays a single bus' route at a time, and (3) compare its findings with the report submitted by a contract carrier.

¹ OSC notes that NJT's contract with the Software Company was largely designed to ensure NJT's compliance with the Americans with Disabilities Act. OSC's review focused solely on NJT's acquisition of the report-writing software.

² A "missed trip" is defined as a trip that begins or ends the entire route either 20 minutes before or after its regularly scheduled time.

³ The contract carriers are not required to submit dispatch reports in conjunction with their "missed trip" reports. One PCA employee believed that PCA should require the contract carriers to do so.

PCA employees explained that they do not regularly, or on any set schedule, conduct this type of oversight because the office lacks the necessary personnel to do so. Specifically, PCA has only one employee who is capable of conducting this specific type of review. That employee told OSC that he is generally too consumed with day-to-day tasks, such as repairing electronic equipment, to verify the accuracy of "missed trip" reports. Another PCA employee reiterated to OSC that PCA could not adequately exercise oversight without additional personnel.⁴

Notwithstanding the above, OSC found that two members of PCA's management team do not prioritize such oversight. One member of the management team claimed that an internal audit of his office's oversight would be a "waste of time." That individual's claim appears to have been colored by a past audit that, in his view, revealed only a handful of non-reported "missed trips" while costing 200 worker hours. The other management team member told OSC he does not believe any contract carriers submitted inaccurate "missed trip" reports. Consistent with the managers' sentiments regarding the unit's oversight responsibilities, OSC learned that PCA has failed to utilize for several years a "spot checking" mechanism it has available to it to assess a contract carrier's on-time performance for a specific bus route.⁵

Moreover, as discussed below, a recent audit conducted by NJT's Internal Audit Department following the commencement of OSC's review revealed numerous unreported "missed trips," contrary to assertions made by PCA management. *See* Section (I)(A)(3).

2. PCA Does Not Comply with its Documented Contract Oversight Policy

In response to OSC's request for all policies and procedures related to PCA's oversight of the contract carriers, NJT provided a document titled "Contract Oversight and Invoice Verification Procedures." With respect to "missed trip" reports, the document sets forth a two-step verification process. First, the document directs a PCA employee to compare the "missed trips" contained in a contract carrier's daily reports to the contract carrier's monthly reports to ensure that the figures match.⁶ Second, the document directs a PCA employee to compare the missed trip reports to NJT's

⁴ According to a 2018 organization-wide audit of NJT, the entity, as a whole, suffers from a lack of qualified personnel. *See* State of New Jersey, Department of Transportation, *Comprehensive Strategic, Financial & Operational Assessment of NJ Transit* (October 5, 2018) (finding that "[NJT] struggles with staffing shortages and an insufficient pool of high-quality candidates. There is no formal workforce planning process to align organizational strategy with workforce needs. Existing HR systems and processes are outdated").

⁵ According to a PCA representative, a "spot checker" is generally an employee of NJT's customer service office who is detailed to assess a carrier's performance on a specific bus route. As such, PCA's personnel issues should not impact the availability of a spot checker for oversight purposes.

⁶ This step confirms that the figure contained in the contract carrier's monthly submission is consistent with the information contained in its daily records.

internal reports (e.g., in-person spot checks, performance checks performed with software, field observations, etc.) in order to verify the monthly “missed trip” reports submitted by contract carriers. However, because (1) PCA management acknowledged that it has not requested an internal report in several years and (2) the only PCA employee with access to the software program necessary to perform oversight is allegedly too engaged with day-to-day tasks, the second step of the directive is not being met. Further, the document is silent as to any established audit schedule. Accordingly, to the extent these procedures seek to ensure proper reporting, PCA cannot meet, and is not meeting, its own standards.

NJT claims that PCA complies with the two-step verification procedure. In so doing, NJT asserts that PCA compares a contract carrier’s “daily report of operation to the monthly summary for accuracy” and “reviews any spot check, on-time performance checks, and in-person checks *if completed for that month* to the contract carrier’s reported submittal . . .” (emphasis added). While OSC does not dispute that PCA satisfies the first step of the verification procedure, its review confirmed that PCA is not complying with the second step. Specifically, PCA’s management team has not requested an in-person spot check in several years, and the only employee capable of performing a software-based performance review is too consumed with other duties to perform such a task. If PCA does not conduct any on-time performance reviews, either by way of software program or in-person spot check, it cannot comply with its two-step verification process.

3. **NJT’s Recent Internal Audit Revealed the Need for Improved Oversight of the Contract Carriers**

Following OSC’s initial contact with PCA, NJT commenced an internal performance audit of certain contract carriers’ “missed trip” submissions. The preliminary findings of this audit challenge the sentiments expressed by PCA management and confirm the need for stringent oversight of the contract carriers. The first portion of NJT’s audit examined the on-time performance of a contract carrier that serviced NJT bus routes in Northern New Jersey (Carrier 1). Carrier 1 was found to have had an on-time performance rate of only 60 percent, despite submitting documentation indicating an on-time performance rate of approximately 90 percent.⁷ In light of these findings, NJT fined Carrier 1 \$300 per unreported “missed trip” and provided it with an opportunity to remedy its operating performance. After Carrier 1 was unable to do so, NJT terminated its contract.

NJT then began scrutinizing the on-time performance of a second contract carrier that services NJT bus routes across multiple counties (Carrier 2). The audit similarly uncovered inaccuracies in the on-time performance reports submitted by this contract carrier. While Carrier 2 submitted accurate on-time performance reports for routes serviced in two counties, its submissions reflecting service in a third county were inaccurate. Carrier 2 claimed to have a 90 percent on-time performance rate for the routes it services in the third county; however, the actual rate was approximately eight to ten percent lower. In light of these findings, NJT informed OSC that it has

⁷ A PCA representative informed OSC that NJT obtained this on-time performance data through the process discussed in Section (I)(A)(1) above.

provided Carrier 2 with an opportunity to remedy its performance. If, however, Carrier 2 cannot remedy this issue, NJT may seek to terminate its contract.

In short, following the commencement of OSC's examination, NJT recognized the deficiencies in PCA's oversight practices and implemented corrective measures. These corrective measures revealed significant under-reporting by at least two contract carriers and the termination of at least one contract carrier's contract. While these corrective measures will ensure proper oversight and fee collection by PCA in the future, it is important to note that PCA's past lack of oversight likely left untold "missed trip" fees uncollected.

B. The Report Writer Software

NJT entered into a multi-million dollar contract with the Software Company for a suite of products. According to the Software Company's contract proposal, which was incorporated into the contract, NJT was to receive software capable of generating "Running Time Reports" that "offer a breakdown of the scheduled and actual time difference between time points for a specific route by the time of day." The proposal further states that this "reporting system has a number of on-time adherence reports by route, time period and operator." These reports, the proposal claims, "can be used by NJT to investigate customer comments, i.e. *a bus was late or a no-show.*" (emphasis added).

1. Prior to the Commencement of OSC's Review, NJT Did Not Possess the Proposed Software, Nor Had it Taken Any Affirmative Steps to Acquire it

OSC interviewed an NJT representative responsible for the direction and management of its contracts (the Contract Manager). The Contract Manager confirmed that NJT should possess all software included in the proposal, such as the above-mentioned report writer.

Despite the Contract Manager's statement, NJT does not possess the software described in the proposal. IT staff explained to OSC that NJT received a software program designed to count the number of passengers who board and depart a bus at a specific stop. In terms of using the program to compare actual versus scheduled service as explicitly advertised in the proposal, IT staff noted that a user would have to manually cross-reference the time at which individuals boarded the bus with the established bus schedule – a labor intensive process at odds with the statements set forth in the proposal. Addressing the efficacy of the software to accomplish this goal, one member of the IT staff said, "I don't trust it to provide that data." Ultimately, the IT staff explained that while NJT received a software program, it did not receive the software described in the proposal.

OSC's examination also revealed that NJT did not take any affirmative steps to acquire the correct software. The Contract Manager informed OSC that NJT will typically issue a "cure notice" to a vendor that has failed to fulfill its contractual obligations, such as providing all products or services contemplated by a contract. NJT, however, did not issue a "cure notice" to the Software Company regarding the contracted-for software.

2. **The Software Described in the Software Company's Proposal Could Assist PCA in its Oversight of the Contract Carriers**

As discussed, PCA does not adequately verify the contract carriers' respective "missed trip" reports. The PCA employees pointed to a lack of personnel available to compare the missed trip reports to a bus' actual performance. While OSC does not address the merits of the PCA employees' claims regarding a lack of personnel, it believes that utilizing software akin to that described in the Software Company's proposal could enable the PCA unit to greatly improve its oversight without the need for additional personnel.

Moreover, NJT's performance audit highlights the fact that ongoing oversight is imperative. Two of the contract carrier's audited by NJT underreported their missed trips. If PCA had access to the proposed reporting software, it likely could have quickly identified the inaccurate reporting issues, provided better service to its customers, and collected the fees owed to NJT in a timely manner.

II. Recommendations and Conclusions

During the course of OSC's review, NJT commenced its own examination of the contract carriers' "missed trip" reports. OSC recommends that NJT continue this effort and consider implementing policies and procedures directing PCA to adhere to an oversight schedule designed to ensure accurate reporting by the contract carriers.

OSC also intended to recommend that NJT acquire the software it was promised under the original contract with the Software Company. It appears that NJT anticipated such a recommendation and preemptively took corrective action. To that end, the IT staff advised OSC that it was in the process of acquiring the contracted-for report writing software from the Software Company. OSC commends NJT for taking corrective action, albeit several years after the execution of the contract, and requests that NJT inform OSC when it has acquired the software described in the proposal.

If you have any questions regarding this letter, please do not hesitate to contact my office. Our investigative staff would be happy to meet with you to further discuss the findings contained herein. Thank you again for your cooperation during our review.

Very truly yours,

PHILIP JAMES DEGNAN
STATE COMPTROLLER

By: Nicole Acchione
Nicole Acchione
Acting Director
Investigations Division