

# FEDERAL TRANSIT ADMINISTRATION COMPLIANCE REVIEW: METROPOLITAN TRANSPORTATION NETWORK, INC.

*Program Evaluation and Audit*

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October 30, 2019

# INTRODUCTION

## Background

Metropolitan Transportation Network, Inc. (MTN) is a Metropolitan Council contractor. Generally, MTN operates school bus services for local entities. As of December 1, 2018, MTN has operated fixed route services for the 16, 84, 118, and 762 routes. MTN operates its public transportation services out of its Fridley garage.

## Purpose

As a direct recipient of federal funds from the Federal Transit Administration (FTA), the Metropolitan Council is required to conduct oversight of its contractors and ensure that they comply with federal requirements. The Council is also responsible for ensuring that its contract terms are followed and enforced. Program Evaluation and Audit reviews contractors on a periodic basis to help fulfill the Council's obligations as a direct recipient.

## Objective

The objective of the Audit is to determine MTN's compliance with federal requirements of contractors as described in the eight (8) Triennial Manual areas, as well for compliance with the contractual requirements of the service agreement.

## Scope

This review covers activities conducted since the beginning of Council Contract 18P309 on December 1, 2018. It also covers activities and services conducted with FTA or Metropolitan Council funded vehicles subject to the Master Lease Agreement.

## Methodology

Audit conducted its review from July 2019 through September 2019. Audit conducted a desk review of MTN's policies, procedures, and practices for compliance using the FTA's *Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2019*, Council Contract 18P309, and the Master Lease Agreement as criteria. Once the desk review was complete, an onsite interview was held with MTN management. Audit also reviewed 6 vehicles at the Fridley garage for a maintenance review.

Prior to the report's issuance, Audit met with Metropolitan Transportation Services (MTS) and Office of Equal Opportunity (OEO) staff to discuss the findings. Audit also held an exit conference with MTN prior to the presentation to Audit Committee.

# FINDINGS AND RESPONSES

## 1. Americans with Disabilities Act (ADA)

Basic Requirement: Recipients must track, resolve, and respond to ADA-related complaints and advertise this process to the public in an easily accessible format for individuals with disabilities. Contractors must not discriminate on the basis of disability.

During this review of MTN, no deficiencies were found with the FTA requirements for the Americans with Disability Act.

## 2. Charter Service

Basic Requirement: Except under limited exceptions, recipients and contractors may not use FTA assistance to operate or maintain charter bus service.

During this review of MTN, no deficiencies were found with the FTA requirements for Charter Service.

## 3. Drug and Alcohol

Basic Requirement: Contractors and lessees with safety-sensitive employees must administer their drug and alcohol programs in accordance with the requirements of 49 Code of Federal Regulations (CFR) parts 40 and 655.

During this Triennial Review of MTN, **one (1) contract violation was found for Drug and Alcohol.**

1. Finding Contract 18P309, Exhibit A, Part 5, Section E: "Alcohol Misuse and Prohibited Drug Use Testing Program": Council Agreement 18P309 require MTN to establish, implement, and maintain a drug and alcohol testing program that complies with 49 CFR 655 and 49 CFR 40. MTN schedules random tests in predictable patterns, such as on the same or consecutive days or at the beginning and end of driver shifts.

MTN Corrective Action(s) and Schedule: MTN must immediately begin scheduling random tests so that they are evenly distributed throughout the month and occasionally occur during employee shifts. By January 2, 2020, MTN must submit a copy of their Random Test Data Sheet so that the Metropolitan Council can verify that MTN has complied with this corrective action.

*Management Response: MTN will comply by January 2, 2020*

*Status: Open*

## 4. Equal Employment Opportunity (EEO)

Basic Requirement: Contractors that meet a monetary and number of transit-related employee threshold have an EEO Program.

Contractors are required to submit a full or abbreviated EEO Program based on the number of its transit-related employees and whether it reaches a monetary threshold. Given the number of safety sensitive employees submitted for Audit's March 4<sup>th</sup> review of MTN's drug and alcohol program, MTN meets the FTA's threshold for an abbreviated EEO program.

During this Triennial Review of MTN, **seven (7) deficiencies were found with the FTA requirements for EEO.**

1. FTA Finding EEO1-2: FTA Circular 47041.A, Ch. 1.4. “Applicability” requires entities with 50-99 employees to create and maintain an abbreviated EEO Program. Abbreviated EEO Programs contain five elements. MTN did not have an EEO program at the time of the audit. MTN is missing a policy statement, dissemination plan, job responsibilities, an employment analysis, and goals. (**DEFICIENCY CODE: EEO1-2.** Abbreviated EEO Program not prepared, maintained, and/or submitted).

MTN Corrective Action(s) and Schedule: By December 2, 2019, MTN must make the required updates to their EEO Program and submit it to the Council’s Office of Equal Opportunity for approval.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

FTA Finding EEO2-1: FTA Circular 47041.A requires entities with 50-99 employees to create an abbreviated EEO Program with the appropriate elements. MTN is missing all elements of an EEO Program. (**DEFICIENCY CODE: EEO2-1.** Abbreviated EEO Program elements missing or incomplete).

MTN Corrective Action(s) and Schedule: By December 2, 2019, MTN must create a compliant abbreviated EEO Program.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

2. FTA Finding EEO3-1: FTA Circular 47041.A, Ch. 2.2.3 “Designation of Personnel Responsibility” requires MTN to establish a direct reporting structure from the EEO officer to the CEO/GM. MTN’s does not have an organization chart. (**DEFICIENCY CODE: EEO3-1.** Inadequate designation of EEO Officer)

MTN Corrective Action(s) and Schedule: By December 2, 2019, MTN must create an organization chart and a policy to indicate that the EEO Officer has a direct, independent reporting relationship to the CEO/GM.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

3. FTA Finding EEO3-2: FTA Circular 47041.A, Ch. 2.2.3 “Designation of Personnel Responsibility” requires specific elements to be included in the description of the EEO Officer’s Program responsibilities and for the Officer to carry out those stated responsibilities. The FTA Circular also requires agencies and senior management to support the EEO officer to carry out the EEO program. MTN did not provide a job

description for the EEO Officer, or properly identify who is responsible for implementing the EEO Program.

Additionally, MTN could not provide sufficient evidence of management support for the EEO Officer and program implementation. (**DEFICIENCY CODE: EEO3-2.** Inadequate designation of EEO officials, supervisors, and managers)

MTN Corrective Action(s) and Schedule: By December 2, 2019, MTN must submit an updated description of EEO Officer's Program responsibilities and a policy describing how management will support the EEO Officer in the fulfillment of the Program.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

4. FTA Finding EEO4-1: FTA C 4704. 1A, Ch. 2.2.2 requires entities to conduct an initial EEO training within 90 days for managers, periodic EEO trainings for employees and managers, and to post official EEO materials in employee common spaces. MTN could not provide evidence of initial or periodic trainings either online or in-person. EEO Policy Statement posters were missing from employee common spaces at MTN's facility. (**DEFICIENCY CODE EEO4-1:** Deficiencies in publicizing and disseminating the EEO Policy Statement.)

MTN Corrective Action(s) and Schedule: By December 2, 2019, MTN must implement EEO trainings, hang the EEO policy statement in employee common spaces, and document and submit evidence that corrective actions were taken.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

5. FTA Finding EEO4-2: FTA C 4704.1A, Ch. 2.2.6 requires MTN to submit a completed narrative and statistical employment practices analysis. MTN is required to narratively review their practices of recruitment and selection, testing, promotions and transfers, seniority, training, compensation and benefits, discipline, and termination. Entities are required to statistically review their hiring, promotion/transfer, discipline, terminations, and training practices by race, gender, and EEO-4 job category. While MTN submitted parts of a Minnesota Department of Human Rights (MDHR) workforce analysis, the MDHR analysis does not sufficiently fulfill this requirement as it does not cover every FTA category. (**DEFICIENCY CODE EEO4-2:** Employment practices analyses deficiencies)

MTN Corrective Action(s) and Schedule: By January 2, 2020, MTN must submit to the Council a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. MTN must submit a plan to routinely conduct this assessment. MTN must complete an employment practices chart that provides all the statistical data in FTA Circular 4704.1A, Attachment 4.

*Management Response: MTN will comply by January 2, 2020*

*Status: Open*

6. FTA Finding EEO4-3: FTA C 4704.1A, Ch. 2.2.7 requires agencies to monitor and report on the progress of their EEO Program. An effective monitoring plan allows the agency to assess the results of action plans, the status of the EEO Program, and produce documentation that supports the EEO Program's implementation. MTN does not have a monitoring program in place. MTN could not produce documentation that the EEO Program's progress is reported on. (**DEFICIENCY CODE EEO4-3**: EEO reporting and/or monitoring system deficiencies.)

MTN Corrective Action(s) and Schedule: By January 2, 2019, MTN must create a monitoring and reporting system that:

- Monitors the implementation of the dissemination plan, utilization analysis, statistical employment practices, goal timeframes, and all identified barriers and the progress of the Program and addressing barriers.
- Holds and documents meetings between the CEO/President/GM and EEO Officer to discuss the EEO Program's progress and the results of monitoring activities.
- Documents the EEO-related meetings held between the EEO Officer and management
- Holds and documents meetings between the EEO Officer, human resources, and hiring officials to review current EEO goals, statistics, and policies.

*Management Response: MTN will comply by January 2, 2020*

*Status: Open*

## 5. Legal

Basic Requirement: Contractors must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

During this review of MTN, no deficiencies were found with the FTA requirements for Legal.

## 6. Maintenance

Basic Requirement: Contractors must keep federally funded vehicles, equipment, and facilities in good operating condition. Contractors must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

During this Triennial Review of MTN, **one (1) FTA violation and four (4) contract violations were found for Maintenance.**

1. FTA Finding M2-1: Contractors are required to follow their program for preventative maintenance (PM)<sup>1,2</sup> and must maintain assets in good condition and operating order. This includes following the scheduled intervals for maintenance in the contractor's Preventative Maintenance Plan. Overall, MTN's preventative maintenance activities were

performed late 48% of the time, including 46% of all “B” PM’s.<sup>1</sup> (**DEFICIENCY CODE M2-1: Late vehicle preventative maintenance**)

Corrective Action(s) and Schedule: MTN must submit to the Manager of Fleet Services and the Project Administrator:

1. By December 20, 2019 Procedures for completing preventive maintenance inspections on-time.<sup>2</sup>
2. Each month, a monthly report signed by the CEO or other senior management designee on preventive maintenance results until the data demonstrates that MTN has met the FTA requirement by conducting 80 percent of its preventive maintenance on time for three consecutive months. For each vehicle that received a preventive maintenance inspection during the month, MTN must include in its submittal to the Council:
  - a report that lists the vehicle number, date of the inspection, mileage of the current inspection, mileage of the previous inspection, and the mileage interval between the two inspections for each vehicle that received a preventive maintenance inspection during the month. List the percentage of the inspections performed on time.
  - back-up documentation for each vehicle (e.g., copy of work order, printout from the maintenance management system) documenting the date and mileage of the inspection.
3. By December 20, 2019, a written plan for how MTN plans on achieving and documenting 80% on-time performance for their preventative maintenance program for three consecutive months. This plan should include specific staff, their responsibilities, and procedures. This plan is separate from the preventative maintenance plan required under Corrective Action 1.

*Management Response: MTN will comply by the stated dates*

*Status: Open*

2. Finding Contract 18P309, Exhibit A, Part 2(A)(C-E) “Collection of Passenger Fares”: MTN is required to collect passenger fares, maintain fare collection equipment, and accurately report fares collected to the Council. Failure to collect fares due is a violation of the contract. Pre-trip inspection forms, direct observation, and the onsite vehicle inspection demonstrated that MTN is consistently and knowingly putting vehicles with inoperable fareboxes into service. MTN is failing to collect fares due per Exhibit A, Part 2(A) and maintain equipment in accordance with Exhibit A, Part 2(C).

MTN Corrective Action(s) and Schedule:

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<sup>1</sup> MTN has four preventative maintenance (PM) intervals. An “A” PM is a safety, lift, HVAC, and emergency exit inspection that occurs every 3,000 miles. A “B” PM is an oil change and full inspection that occurs every 6,000 miles. The “C” PM is an exterior inspection that occurs every 24,000 miles. Finally, the “D” PM is a transmission fluid change that occurs every 60,000 miles.

<sup>2</sup> The FTA considers an entity’s preventative maintenance program as “on-time” when 80% of the entity’s fleet has their preventative maintenance activities occurring within 110% of the interval. For example, for an “A” PM to occur on time, it must have been serviced within 3,300 miles of the last “A” service (3,000 + 10%).



1. Immediately cease the practice of putting vehicles with inoperable fare collection equipment (fareboxes or Go-To Readers) into service. However, this corrective action should not impact service. If a vehicle must go into service with inoperable fare collection equipment, MTN will immediately notify the Project Administrator, in writing, and work with MTS to determine how many free rides were distributed.
2. By November 30, 2019, MTN must repair all defective fareboxes. Documented proof (work orders or invoices to a third party) of repairs will be sent to the Project Administrator and Manager of Fleet Services.
3. By December 2, 2019, MTN will train two (2) of its mechanics to fix and maintain fare collection equipment. Alternatively, MTN will develop a written plan for repairing fare collection equipment.
4. By October 30, 2019, MTN will electronically send all pre-trip inspection forms from December 1, 2018 to September 30, 2019 to the Project Administrator and Manager of Fleet Services.

*Management Response: MTN will comply with the dates as stated*

*Status: Open*

MTS Corrective Action(s) and Schedule:

1. By December 2, 2019, MTS will review fare data including, but not limited to: Automated Passenger Counter (APC) reports; Cubic reports; video review; and National Transit Database (NTD) reports for June through November 2019 to determine the estimated amount of missing fares.
2. By December 20, 2019, MTS will pursue and obtain fares due under Council Agreement 18P309, Exhibit A, Part 2(E).<sup>3</sup>
3. By December 2, 2019, the Project Administrator and the Manager of Fleet Services will review and report on the documented issues in pre-trip inspection forms for other fare and safety issues.

*Management Response: It is not possible to determine absolute values but MTS staff will attempt to approximate missing fares by December 2, 2019 and work with MTN to obtain fares due by December 20, 2019.*

*By December 2, 2019 the Project Administrator and the Manager of Fleet Services will review and report on the documented issues in pre-trip inspection forms for other fare and safety issues.*

*Status: Open*

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<sup>3</sup> Council Agreement 18P309, Exhibit A, Part 2(E): "If the Contractor collects less than the total amount of fares due in accordance with the Council's Fare Policy and fare collection procedures for all Transit Services provided by the Contractor during each calendar month, the Council may reduce its payment for the Contractor's Transit Services under this Contract. The reduction in Council payment for such services shall be equal to the difference between (a) the total amount of fares due, and (b) the amount collected by the Contractor for all such service."



3. Finding Contract 18P309, Exhibit A, Part 6 (B)&(D): Contract Agreement No. 18309 Exhibit A Part 6 requires MTN to ensure drivers conduct a pre-trip inspection before starting the trip and all safety items to be functioning properly before leaving the garage. MTN was allowing buses with potentially damaged or inoperable safety items such as the brakes, engine, windows, doors, and lights to enter service. When issues were identified on the Bus Driver's Vehicle Inspection Report form, MTN was unable to adequately demonstrate that a mechanic investigated the issue. Additionally, some drivers were not correctly filling out the pre-trip inspection forms or completing the pre-trip inspections.

MTN Corrective Action(s) and Schedule:

1. Immediately cease the practice of sending buses with potential safety-related issues into service. Safety-related items include, but are not limited to, brake, engine, window, light, door, mirror, and ramp problems. MTN will immediately create procedures to investigate the reported potential safety issues, submit proof that the investigation occurred, and submit documentation of the completion of any resulting repairs in the fleet maintenance software.
2. MTN will submit to any Department of Transportation (DOT) inspections at the discretion of the Manager of Fleet Services or Project Administrator. Vehicles that fail the inspection will be pulled from service until MTN has submitted proof that the issue is remedied.
3. By December 2, 2019, submit to the Manager of Fleet Services and Project Administrator a procedure for addressing, documenting, repairing, and reporting potentially broken safety-related items found during pre- and post- trip inspections. This should include procedures for ensuring vehicles with broken safety-related items are not put in service and repairs are properly documented.
4. By December 2, 2019, MTN must submit a plan for how it will ensure drivers complete Pre-Trip Inspections to the Metropolitan Council.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

4. Finding Contract 18P309, Exhibit A, Part 6(B): Vehicle Operation, Maintenance, and Housing: Contract Agreement No.18P309 requires MTN assign an Automotive Service Excellence (ASE) certified mechanic to oversee and approve or perform any repair work regarding driveline components. If there is not an ASE-certified mechanic on staff, they may use a third-party ASE-certified mechanic from an outside vendor and submit documentation to the Council. MTN does not employ ASE-certified staff and has not submitted documentation that they hire a qualify third-party mechanic to perform driveline repair work.<sup>4</sup>

Corrective Action(s) and Schedule: By December 2, 2019, MTN must work with Metropolitan Council staff to address and clarify expectations for maintenance staffing.

MTN must create and submit monthly preventative maintenance reports on the fleet to the Project Administrator, the Manager of Fleet Services, and Audit until the following two (2) items are complete:

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<sup>4</sup> When the contract was awarded, MTN had an ASE-certified mechanic.

1. MTN has assigned ASE-certified staff to the public transit side.
2. Vehicle maintenance and cleanliness are improved and deemed at an acceptable level by the Manager of Fleet Services and the Project Administrator.

*Management Response: MTN will comply with the corrective actions.*

*Status: Open*

5. Finding Contract 18P309, Exhibit A Part 6(B-D) and 29 CFR.1910: Contract Agreement No.18P309 Exhibit A Part 6 requires all buses are maintained in a "neat and clean appearance" and all non-minor body damage to be fixed within 10 days. During the onsite inspection, the exteriors of 3 vehicles were dirty and 3 vehicles' seats and windows had not been cleaned. The 3 operational vehicles that were reviewed had body damage, including dented panels and scratching along the sides of the vehicle.

29 CFR.1910: Bloodborne Pathogens requires that employees at risk of being exposed to bodily fluids be provided a body fluid clean up kit. These kits were not present on all buses.

Corrective Action(s) and Schedule:

1. By December 2<sup>nd</sup>, 2019, MTN must work with Metropolitan Council staff to address cleanliness of buses and determine an action plan.
2. By December 2<sup>nd</sup>, 2019, MTN must repair all damage to the body of vehicles and provide documentation of these repairs to the Metropolitan Council.
3. MTN must immediately add first aid kits and body fluid clean up kits to all buses and send documentation of these actions to the Metropolitan Council.

*Management Response: MTN will comply by December 2, 2019*

*Status: Open*

## 7. Satisfactory Continuing Control

Basic Requirement: Contractors must maintain adequate property records and submit annual reports on the status of real property in which the Federal Government retains interest.

During this review of MTN, no deficiencies were found with the FTA requirements for Satisfactory Continuing Control.

## 8. Title VI

Basic Requirement: Recipients are required to have a Title VI plan. Contractors are required to implement the Title VI programs of the agencies that they contract with. Contractors are required to conduct their services without regard to race, color, or national origin.

During this review of MTN, no deficiencies were found with the FTA requirements for Title VI.

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