

Tompkins County
DEPARTMENT OF SOCIAL SERVICES

320 West State Street
Ithaca, New York 14850

**Tompkins County's Responsibilities as a Grantee of the Federal Transit
Administration and its Oversight of TCAT**

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The purpose of this report is to briefly describe the federal transit program including Federal Transit Administration's (FTA) oversight of Tompkins County and the County's oversight of TCAT and other operators.¹ The County's relationship with TCAT is key for the County to meet its responsibilities under the FTA program.

The County is eligible to be a FTA grantee for four transit programs and is a subrecipient of the New York State Department of Transportation (NYSDOT) for one program.

A. Federal Program

The Federal Transit Act, as amended, directs FTA to rely on individual grantee certifications of compliance with many FTA requirements. For all FTA grants, it also establishes a statutory scheme of 1) grantee self-certifications at the grant award phase, 2) annual assessments to ascertain that grantees are carrying out their programs of projects, and 3) triennial reviews by FTA, which address grantee performance regarding self-certifications, project implementation, and compliance with statutory and administrative requirements.

Documents that detail the FTA – Grantee Relationship.

Master Agreement (MA 15), October 1, 2008: Annual master agreement for all FTA grants.

Certifications and Assurances: Annual affirmation by Grantee that it will comply with applicable federal laws and regulations.

- Grant award agreements between FTA and Grantee
- FTA Regulations published in the Federal Register
- FTA Guidance letters

¹ The County has contracts with TCAT, GADABOUT and will likely have a future lease with Ithaca Dispatch.

FTA

Designated Recipient

Grantee/Recipient

Subrecipient

Third Party Contractor

The FTA is the head of "food chain" by which federal funds and regulations flow down to each successive tier.

Tompkins County is both a **Designated Recipient** and a **Grantee**. As **Designated Recipient**, the County has roles in planning how FTA funds will be used. The County consults with local transportation operators and proposes all projects to the Ithaca-Tompkins County Transportation Council (I-TCTC) for approval in their Transportation Improvement Program (TIP). In short, the

County prepares the transit tables for the TIP. If a public transportation operator disagrees with the County's proposal, they are free to appeal directly to the I-TCTC. As Designated Recipient, the County selects all projects from the TIP to be applied for in a FTA grant. Tompkins County is the Designated Recipient, because the County and City of Ithaca asked the Governor of New York to select the County to perform this role in 1993. The City of Ithaca is the only municipality in Tompkins County, other than the County, who is eligible to be a Designated Recipient.

Tompkins County is a FTA **Grantee**. A Grantee receives federal assistance directly from FTA. The FTA and Grantee are the only parties to a grant agreement. There is no Federal obligation to any party other than the Grantee.² The Grantee's primary responsibility is to comply with Federal Requirements.³

The Grantee is to ensure applicable Federal laws, regulations, directives, etc. flow down to subrecipients and contractors, known as lower-tier participants. Regardless of the extent a Grantee delegates any or almost all of its responsibilities to a subrecipient, leasee or contractor, the Grantee is ultimately responsible for compliance with all Federal laws, regulations, etc.⁴

Further, a Grantee "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."⁵

A Grantee agrees to notify FTA immediately, in writing, of any change, disputes, breaches, defaults or litigation, or any other event that may adversely affect the Grantee's ability to fulfill its federal responsibilities, the Federal Government's interests, or the Federal Government's administration of Federal laws or regulations.⁶

TCAT is a **Subrecipient**. A subrecipient receives federal assistance from a Grantee. All applicable federal laws, requirements and directives flow down to TCAT.

The County has three documents to flow down federal requirements to TCAT:

Third Party Lease and Service Agreement for Capital Equipment, Jan. 1, 2005

² FTA Master Agreement MA(15), 10-1-2008, f, p. 16.

³ Ibid, d, p. 14.

⁴ Ibid, d (1), (2), (3), pp 14-15.

⁵ Ibid, e(1), p. 15.

⁶ Ibid, g, p. 16.

- The Lease describes the relationship between the County and TCAT regarding the use of Federal and NYS funds and flow down of FTA and NYSDOT requirements.

Subrecipient Agreement for 2008 FTA Sec 5307 Grant NY-90-X603, Oct 1, 2008

- This was the first written subrecipient agreement executed between the County and TCAT. All FTA grants require a subrecipient agreement.

Tompkins County's FTA Grant Management Procedures, 7/10/2007

- The FTA Grant Management Procedures were first written in July 2006 for the FTA Triennial review and updated in July 2007. These procedures were incorporated in the subrecipient agreement between the County and TCAT.

Issue: County and TCAT - Grantee and Subrecipient Accountability

How the County fulfills its Grantee obligation to oversee TCAT compliance is a contentious issue.

The Transportation Agreement between the City of Ithaca, Tompkins County and Cornell University that created TCAT, Inc. addresses its governance but also includes their affirmation to comply with all applicable FTA regulations, policies, procedures and directives. Further, TCAT's failure shall to do so constitutes a material breach of the contract.⁷ But, the TCAT Board is used to acting independently in making decisions affecting operations, service strategy, budgets and complying with grant requirements. TCAT has long regarded the County's role as primarily a pass through agency of Federal and State funds, in addition to being a TCAT funding partner.

It is my opinion TCAT Board members are generally uninformed of oversight requirements inherent in the FTA program and County Government's responsibility, as FTA Grantee, that is independent of the County's participation on the TCAT Board of Directors. TCAT staff is generally informed about FTA program requirements, but shields the Board from them. TCAT staff follows their Board's direction. TCAT has a history of outside parties forcing change on the agency.⁸

When I performed my County function inside TCAT, I was a strong advocate for complying with FTA requirements. I knew the County was ultimately responsible for TCAT's compliance. This was a lonely position in TCAT. I learned there is, at times, divergence in the County's and TCAT's perceived interests for compliance.

The issue of Grantee oversight of Subrecipient compliance with FTA requirements is a common topic in FTA training. FTA tells Grantees to create procedures for dealing with this situation. FTA recommends using the subrecipient agreement to implement a Grantee's

⁷ Transportation Agreement Among City of Ithaca, County of Tompkins, Cornell University, of Jan 1, 2005, Exhibit D, 4., p. 3.

⁸ The creation of TCAT, Inc., as a non-profit corporation, was the result of an order by the Commissioner of NYSDOT to suspend all state transit operating assistance effective Jan. 1, 2005.

compliance procedures. Finally, FTA also recommends a Grantee contact FTA, sooner rather than later, to provide clarifying direction to a Subrecipient.

FTA wants Grantees to be effective in oversight.

“FTA defines oversight as a continuous review and evaluation of grantee and FTA processes to ensure compliance with statutory, administrative, and regulatory requirements.”

“FTA evaluates grantee effectiveness in carrying out project obligations under a grant agreement that is signed by FTA and the grantee after project approval.”

“When appropriate, corrective actions are recommended to resolve grantees’ program management deficiencies. FTA monitors the grantee’s performance until compliance with all program requirements is achieved. If needed, FTA can invoke sanctions to assure that grantees act to correct any noted program deficiencies.”⁹

FTA recommends a progressive approach to resolve compliance issues. The first step is fact-finding and seeking voluntary compliance. I think this would be a logical approach for a County policy. If this fails, the next step is to contact FTA.

Recommendation #1

- County to prepare a risk assessment of TCAT of any compliance issues, on an annual basis and also as needed. County to discuss its assessment with TCAT.

Recommendation #2

- County to prepare and include a compliance procedure in its subrecipient agreements with TCAT.
 - The next subrecipient agreement will be needed by May 30, 2009.

Recommendation #3

- Enable training opportunities for TCAT Board, Staff and County.
 - Invite visitors to sit in the upcoming Triennial Review (May 14-15).
 - Request FTA to provide an overview on the federal program and its requirements appropriate for board members, via video conference.

⁹ http://www.fta.dot.gov/publications/reports/other_reports/publications_138.html