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Vermont State Auditor's Office

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January 2014

Performance Audit  
Recommendations and Corrective  
Actions for Audit: 08-12

Vermont Agency of  
Transportation Rail Section  
Contract Audit

Dated: 12/05/2008

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# Overview

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The SAO makes recommendations designed to improve the operations of state government. For our work to produce benefits, auditees or the General Assembly must implement these recommendations although we cannot require them to do so. Nevertheless, a measure of the quality and persuasiveness of our performance audits is the extent to which these recommendations are accepted and acted upon. The greater the number of recommendations that are implemented, the more benefit will be derived from our audit work.

In 2010, the SAO began to follow-up on the recommendations issued in our performance audits. Experience has shown that it takes time for some recommendations to be implemented. For this reason, we perform our follow-up activities two and four years after the calendar year in which the audit report is issued (e.g., we followed up on recommendations contained in audit reports issued in calendar year 2008 in 2010 and 2012). Our annual performance reports summarize whether we are meeting our recommendation implementation targets.

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Act 155 (2012) required that we post on our website “a summary of significant recommendations arising out of the...audit reports... and the dates on which corrective actions were taken related to these recommendations. Recommendation follow-up shall be conducted at least biennially and for at least four years from the date of the audit report.”

This report addresses the requirements of Act 155 to post the results of our recommendation follow-up work on our website. The report does not include follow-up on recommendations issued as part of the state’s financial statement audit and the federally mandated Single Audit, which are performed by a contractor. However, our new contract for this work requires the contractor to provide the results of its recommendation follow-up in the future. Accordingly, we expect that future reports will contain this data.

Audit No., Name & Date	Rec #	Recommendation	Follow-Up Date	Status & Date	Review Comments
<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	1	The Agency of Transportation (AOT) should competitively bid all major rail projects as required by the State's contracting procedures.	12/31/2010	Implemented 01/01/2010	The SAO has reviewed the AOT Rail Section matrix noting the matrix addresses the procurement process for the different procurement scenarios (mechanisms) utilized by AOT. SAO observed that the matrix included a line for "Bid Contracts" for larger projects larger than \$100,000 as well as "Simplified Bid" projects less than \$100,000 which is consistent with Bulletin 3.5. The SAO reviewed the only two rail contracts issued during FY 2011 (RAIL 5306 and RAIL 5307). Both contacts were greater than \$100,000 and per review of invitation to bid and bidding analysis document the contracts appeared to have been appropriately competitively bid.
	2	Procurement of substantial material and supplies should be delegated to the purchasing group within the Department of Buildings and General Services (BGS).	12/31/2010	Implemented 07/01/2010	The SAO queried and reviewed all expenditures for FY 11 for Rail (Dept. ID - 8100002300) and determined that supply purchases made were not significant during FY 2011. SAO reviewed the blanket delegation of authorities (BDA) approved by BGS authorizing AOT to purchase used rail and railroad ties, not to exceed \$1,500,000 and \$200,000 per year, respectively. Based on this review it appears that AOT, is properly managing its supply procedures through BGS in accordance with the approved BDAs.
	3	The Agency of Transportation (AOT) should ensure that bid documents submitted by its subcontractors for approval by AOT are compliant with State and Federal procurement procedures. If the Railroad is granted the authority and responsibility of soliciting bids on behalf of the State, AOT must provide the oversight to ensure that the process is open and that the bid accepted is in the best interest of the State.	12/31/2010	Implemented 12/31/2010	SAO reviewed the procurements procedures that AOT requested from its subcontractor (Rail America) as part of its review of their procurement procedures. The procedures covered 1) requesting quotations and buying, 2) antitrust compliance, 3) conflict of interest, 4) ethics, and 5) reciprocity. The procedures examined appeared fairly extensive and addressed many components of procurements.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit</u></a> <a href="#"><u>12/5/2008</u></a>	4	Invoices submitted to the Agency of Transportation (AOT) for payment in cases where AOT has not approved the subcontractor should be rejected.	12/31/2010	Implemented 12/31/2010	The SAO selected several payments to subcontractors to verify that the payments were made to approved subcontractors and were reviewed by the Grants Management Section. Based on review of payments in the amount of \$13,484 (PS0087/VC550988) and \$13,375 (C01609/VC547090), the payments were made subsequent to the vendor/contract being approved and they appeared to be appropriately reviewed.
	5	The Agency of Transportation (AOT) must obtain the AOT AF-38 form for any vendors (or subcontractors) qualifying as preferred vendors.	12/31/2010	Implemented 12/31/2010	Form AF38 (Personal Service Contract - Consultant Financial Background Questionnaire) is used by AOT to gain basic cost, accounting and financial information for personal service contracts. Personal service contracts are also subject to the requirements of Bulletin 3.5. This form is not required for construction contracts subject to Bulletin 3.5 as that process includes a rigorous vetting of similar information. The SAO reviewed the AF-38 forms associated with personal service contracts PS0037 and PS0056. The AF-38 form appears properly completed and the agency appears to be properly utilizing the form.
	6	The Rail Section should follow the Agency of Transportation's (AOT) approved contracting plan so that all construction contracts in excess of \$3 million are reviewed and approved by the Secretary of the Agency of Administration.	12/31/2010	Implemented 01/01/2010	Per a review of construction contracts executed during FY 2010 and 2011, there were no RAIL contracts greater than \$3 million issued, however there were several non-Rail construction contracts greater than \$3 million. Since the AOT follows a Contract Plan which applies to AOT as a whole, the SAO selected two contracts greater than \$3 million for verification that the Secretary of Administration approved the contracts. Based on our review of the Pike Industries contract for \$6.1 million executed on 10/26/10 and Frank W. Whitcomb contract for \$3.9 million executed on 7/30/10, both contracts were appropriated approved by the AOT and the Secretary of Administration.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	7	The Agency of Transportation (AOT) should ensure that the Secretary of Administration's approval is indicated in the contract when required by State regulations.	12/31/2010	Implemented 01/01/2010	The Secretary's of Administration's approval was indicated in the contract as required by State regulations.
	8	The Agency of Transportation's (AOT) Contract Administration group and the Assistant Attorney General should work together to develop a standard contract that is annually sent for approval to the Secretary of Administration. Each contract should clearly indicate the procurement regulations, insurance coverage, and performance expectations for carrying out the contract as required by the State's current contracting procedures of the Agency's approved Contracting Plan. AOT should include enforceable penalty or liquidated damages clauses in rail contracts as recommended by Bulletin No. 3.5.	12/31/2010	Implemented 12/31/2010	The SAO reviewed Rail Contracts RA0009, RAIL5306 and RAIL5307 to assess whether the contract contained specific procurement regulations, insurance coverage, and performance expectations clauses. All of these provisions appear to have been met based on the review of these contracts. The agency did not have their standard contract template approved by the Secretary of Administration because they believe they are following all required elements of Bulletin 3.5.
	9	The Agency of Transportation (AOT) should require all subcontractors to show evidence of current coverage by submitting an insurance certificate annually. A copy of the insurance certificate should be included in each project file.	12/31/2010	Implemented	The SAO reviewed the insurance certificates for contracts RAIL5306 and 5307. It appears the agency appropriately obtained the insurance certificates on or before the final approval of the contracts.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	10	The Agency of Transportation (AOT) should withhold approval to commence a project for which a railroad has contracted if the proper proof of insurance coverage has not been obtained.	12/31/2010	Implemented 12/31/2010	AOT inserted an insurance clause into its standard contract language stating, "Before commencing work on this Agreement the Party must provide certificates of insurance to that the following minimum coverages are in effect....". AOT also noted that there were no instances in which insurance certificates were not provided before the start of a project.
	11	Salvage proceeds should be returned directly to the State immediately upon receipt by the Railroad. The Agency of Transportation (AOT) should develop a procedure to record the proceeds as offsets to the expenditure account while the project is still open.	12/31/2010	Implemented 4/23/2009	The SAO reviewed the new AOT policy regarding salvage proceeds indicating that salvage proceeds should be paid directly to the State. The SAO reviewed the 4/23/09 letter from AOT to Vermont Rail Systems (VRS) indicating that the practice of salvage offsets with VRS has been discontinued.
	12	The State should enforce the contract and have the other track material (OTM) placed under secure conditions. The Agency of Transportation (AOT) Rail Section employees should be performing periodic or random inventory counts and inspections to ensure that a loss of materials has not occurred. The State could consider using existing AOT locations such as the Agency's own regional salt sheds as areas to stockpile or secure these materials.	12/31/2012	Partially Implemented 12/31/2010	One line has been inventoried and a field inspection report written. AOT is working on a geographical information system to identify inventory locations. However, performing an inventory and identifying locations does not address the secure storage element of the recommendation.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	13	The Agency of Transportation (AOT) should implement policies and procedures to ensure that invoices are submitted correctly and on a timely basis. The time period should be stipulated in the applicable clause in the standard rail contract. Invoices should not be accepted if submitted outside of the time parameters established.	12/31/2010	Implemented 08/01/2010	Per review of the payment provision clause from contract RA0009 (attachment B, pg4), the contract language states "following each two week period which the Railroad incurs costs eligible for reimbursement under this agreement, Railroad will submit an invoice to the Vtrans Resident Engineer/Project Manager.....". In addition, AOT created a Grants Management Unit to review each invoice against its contracts and related spreadsheets. Also, AOT developed new payment approval processing sheets to ensure that payments are properly approved. The SAO examined the new organization chart and job duties of the Grants Management Unit which support that these changes have been implemented. In addition, SAO reviewed Vermont Railway invoice 688-08-72 dated 3/24/10 and confirmed that the invoice was for reimbursement of expenses purchased in February 2010, which were submitted timely by the Railroad.
	14	The Business Manager of the Rail Section at the Agency of Transportation (AOT) should be verifying the operating lease rental income from the Railroad on a regular basis. AOT should require its vendor to supply verification of the rent calculation and provide the underlying documentation for calculation.	12/31/2010	Implemented 12/31/2010	The SAO reviewed the lease payments for July 2010 from the Green Mountain Railroad Corporation (\$4,521) and Vermont Railway (\$49,379). The payments were accompanied by a spreadsheet calculating the amount of rent due for July 2010 based on the monthly revenues of the railroad times the rental percentage. The SAO recalculated the rental payments and agreed them to the deposit information without exception.
	15	The Agency of Transportation's (AOT) Finance and Administration Division should put a process in place to annually validate the calculations. If the Railroad does not provide the requested data, AOT should seek suspension of any subsidy or railway maintenance payments until the railway information is made available and verified as to its completeness, accuracy, authenticity and validity. AOT could also enforce the termination clause of the operating lease.	12/31/2012	Implemented 12/31/2012	Railroads are now providing the information necessary to verify the rent calculations. The Rail Section is required to review the information and forward to Vtrans Audit Section.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	16	The Agency of Transportation's (AOT) Rail Section and Audit Section staff should have the appropriate knowledge and information to be able to verify the operating lease rental income from the Railroad.	12/31/2012	Implemented 12/04/2012	The knowledge required by this recommendation is Account 501 of the Uniform System of Accounts for Railroad Companies, which has been made available to AOT staff. The information required is the general ledger report referred to in recommendation 15.
	17	Management at the Agency of Transportation (AOT) should provide the staff with necessary information and ensure that current staff receives adequate on-going training.	12/31/2010	Implemented 04/07/2010	From February through April 2010, a team of agency staff examined the financial process of AOT with an emphasis on the Operations Division and the Finance & Administration division as it relates to operations. The areas of communication and training were identified as areas to improve. A communication plan was developed which addressed office communication/routine meeting, organization structure, job duties, etc. Training was developed which addressed the need for new hires to have accounting and business backgrounds, creating a district liaison position reporting to the business manager to assist in training. The SAO reviewed the Executive Summary, organizational structure charts and summary of job duties for business office and financial operations staff. These materials corroborate AOT's initiative to increase communication, employee information and training.
	18	The Agency of Transportation's (AOT) lease and contract files should have adequate documentation when referencing specific accounting methodologies.	12/31/2010	Implemented 12/04/2012	The 'accounting methodology' is per Account 501 of the Uniform System of Accounts for Railroad Companies, which has been made available to AOT staff.
	19	Although the lease requires financial information to be retained by the Railroad for a period of three years, the Agency of Transportation (AOT) Secretary should require a retention period of seven years to mirror State guidelines.	12/31/2010	Implemented 12/29/2010	Per review of an AOT letter dated 12/29/10 sent to Vermont Rail Systems (all Vermont rail companies), establishing a seven year records retention policy effective immediately.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	20	The Agency of Transportation (AOT) should follow the process laid out in the lease agreements and send invoices estimating revenue, including accrued interest, if applicable, to the Railroad if a payment is not received timely. Vermont Rail Systems (VRS) should continue to send in the actual amount of revenue based on the terms of the lease making adjustments to the estimated amounts where necessary.	12/31/2010	Implemented 09/29/2010	Under the terms of the lease agreements, the monthly installments are due by the 15th of the 3rd succeeding month. The Business Office is now checking the spreadsheet submitted with the payment to verify it was properly calculated. The SAO reviewed the lease payments for July 2010 from the GMRR (\$4,521) and Vermont Railway (49,379), noting that they were received on 11/9/10 within the criteria establish from the terms of the lease. Also, the SAO reviewed new policies on Rail Lease Payments and Interest on Delinquent Payment Processing, and the 10/22/10 interest assessment bills to Vermont Rail (\$34, 000) and GMRC (\$3,000).
	21	The Agency of Transportation (AOT) should strengthen the review of its lease renewals by considering contract goals and performance. AOT Rail Section management should maintain the analysis, interpretation and communication of this review as a part of its documentation that supports the rationale of its decision to renew or not renew this agreement. A procedure on how to assess performance should be developed.	12/31/2010	Not Implemented	AOT thinks that this is not a practical recommendation to implement. They feel that the State is in a tough position given there are so few rail carriers available in the region/county and it would be challenge to negotiate contract goals and performance measures into the contracts. AOT stated that it will be mindful of this going forward.

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<a href="#"><u>08-12 Agency of Transportation (AOT) Rail Report - Vermont Agency of Transportation Rail Section Contract Audit 12/5/2008</u></a>	22	The Agency of Transportation's (AOT) Finance and Administration Division should create a formal corrective action plan to address all current outstanding audit findings. These findings should be resolved within a designated timeframe. The corrective action plan should have all tasks identified, documented and described in adequate detail so that resolution efforts can be effectively monitored. A copy of the plan should be forwarded to the Secretary of Transportation for review. Periodic status reports on corrective actions should go to the Finance and Administration Director. The Division's Audit Section should actively pursue remuneration for actual questioned costs and research and resolve any identified questionable costs. Any settlement agreements should be included in the Rail Section's contract files. Further, AOT should immediately collect the balance due and obtain the required documentation from the Railroad.	12/31/2012	Partially Implemented 10/17/2012	AOT still lacks a formal process for ensuring that A-133 audit findings are addressed. However, the questioned cost issue has been resolved.