



U.S. Department  
of Transportation  
**Federal Transit  
Administration**

REGION III  
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Pennsylvania, Virginia,  
West Virginia

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August 16, 2023

Mr. Dan Weand  
Borough Council President  
Borough of Pottstown  
100 East High Street  
Pottstown, PA 19464

**Re: Fiscal Year 2023 Triennial Review – Final Report**

Dear Mr. Weand:

I am pleased to provide you with a copy of this Federal Transit Administration (FTA) report as required by 49 U.S.C. Chapter 53 and other Federal requirements. The enclosed final report documents the FTA's Fiscal Year (FY) 2023 Triennial Review of the Borough of Pottstown in Pottstown, PA. Although not an audit, the Triennial Review is the FTA's assessment of the Borough of Pottstown's compliance with Federal requirements, determined by examining a sample of award management and program implementation practices. As such, the Triennial Review is not intended as, nor does it constitute, a comprehensive and final review of compliance with award requirements.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, a virtual site visit was conducted for this Triennial Review. In addition, the review was expanded to the Borough of Pottstown's compliance with the administrative relief and flexibilities FTA granted and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021.

The Triennial Review focused on the Borough of Pottstown's compliance in 23 areas. Deficiencies were found in five (5) areas: Technical Capacity – Award Management, Procurement, Disadvantaged Business Enterprise (DBE), Section 5307 Program Requirements, and Public Transportation Agency Safety Plans (PTASP).

The Borough of Pottstown had two (2) repeat deficiencies from the Fiscal Year 2019 Triennial Review in the areas of Technical Capacity – Award Management and Procurement.

Mr. Weand

Page 2

Thank you for your cooperation and assistance during this Triennial Review. If you need any technical assistance or have any questions, please do not hesitate to contact Mr. Ben Stoltenberg, Transportation Program Specialist, by email at [Benjamin.Stoltenberg@dot.gov](mailto:Benjamin.Stoltenberg@dot.gov).

Sincerely,

Terry Garcia Crews  
Regional Administrator

**FINAL REPORT**

**FISCAL YEAR 2023  
TRIENNIAL REVIEW**

**of**

**Borough of Pottstown  
Pottstown, PA  
ID: 5556**

Performed for:

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
REGION 3**

Prepared By:

**Calyptus Consulting Group, Inc**

**Desk Review/Scoping Meeting Date: March 1-2, 2023**

**Virtual Site Visit Entrance Conference Date: June 12, 2023**

**Virtual Site Visit Exit Conference Date: June 15, 2023**

**Draft Report Date: July 18, 2023**

**Final Report Date: August 16, 2023**

## Table of Contents

I.	Executive Summary .....	1
II.	Review Background and Process .....	3
1.	Background.....	3
2.	Process .....	3
3.	Metrics.....	4
III.	Recipient Description.....	5
1.	Organization .....	5
2.	Award and Project Activity.....	5
IV.	Results of the Review .....	7
1.	Legal .....	7
2.	Financial Management and Capacity .....	7
3.	Technical Capacity – Award Management .....	7
4.	Technical Capacity – Program Management & Subrecipient Oversight .....	9
5.	Technical Capacity – Project Management.....	9
6.	Transit Asset Management.....	10
7.	Satisfactory Continuing Control.....	10
8.	Maintenance.....	10
9.	Procurement.....	10
10.	Disadvantaged Business Enterprise (DBE) .....	12
11.	Title VI .....	13
12.	Americans with Disabilities Act (ADA) – General.....	13
13.	ADA – Complementary Paratransit.....	14
14.	Equal Employment Opportunity .....	14
15.	School Bus.....	14
16.	Charter Bus .....	14
17.	Drug Free Workplace Act.....	15
18.	Drug and Alcohol Program .....	15
19.	Section 5307 Program Requirements .....	15
20.	Section 5310 Program Requirements .....	17
21.	Section 5311 Program Requirements .....	17
22.	Public Transportation Agency Safety Plans (PTASP) .....	17
23.	Cybersecurity.....	18
V.	Summary of Findings.....	19
VI.	Attendees.....	22

VII. Appendices .....	23
Civil Rights Corrective Action Submission .....	23

## I. Executive Summary

This report documents the Federal Transit Administration's (FTA) Triennial Review of the Borough of Pottstown in Pottstown, PA. The FTA wants to ensure that awards are administered in accordance with the requirements of Federal public transportation law 49 U.S.C. Chapter 53. The review was performed by Calyptus Consulting Group, Inc. (Reviewer). During the virtual site visit, the Reviewer discussed the administrative and statutory requirements and reviewed Recipient documents.

Due to the Coronavirus 2019 (COVID-19) Public Health Emergency, the FTA conducted a virtual site visit for this Triennial Review. In addition, the FTA expanded the review to address the Borough of Pottstown's compliance with the administrative relief and flexibilities that the FTA granted, and the requirements of the COVID-19 Relief funds received through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA) of 2021, and the American Rescue Plan (ARP) Act of 2021. The FTA also requested the Borough of Pottstown share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The FY2023 Triennial Review focused on the Borough of Pottstown's compliance in 23 areas. Deficiencies related to the COVID-19 Relief funds have been clearly identified as part of the deficiency description in the respective review area. There were two (2) repeat deficiencies from the FY 2019 Triennial Review in the following area(s): Technical Capacity – Award Management and Procurement.

Deficiencies were found in the area(s) listed below.

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
Technical Capacity – Award Management	TC-AM2-1 Incorrect FFR reporting*	The recipient has not been reporting Federal cash receipts and disbursements on a cash basis or outlays and unliquidated obligations on an accrual basis of accounting. In addition, the recipient has been incorrectly reporting the unobligated balance of the award as unliquidated obligations.	The recipient must submit to the FTA regional office: <ul style="list-style-type: none"><li>• Revised Q2 2023 FFR that includes the corrected information</li><li>• Procedures for including all required information in future reports.</li></ul> If the recipient is no longer able to submit the reports electronically, it must upload soft copies of the reports to TrAMS and notify the regional office when the revised reports are submitted.	9/21/2023
Procurement	P8-7 Improper time and materials contract	The recipient entered into a time and materials contract for the provision of transit service and the contract does not specify a ceiling price.	The recipient must submit to the FTA regional office: <ul style="list-style-type: none"><li>• Evidence that it has executed a contract amendment to add a ceiling price to the current time and materials contract.</li><li>• Revised procurement procedures that include requirements for the proper use of FTA-assisted time-and-materials contracts.</li></ul>	9/21/2023

Review Area	Deficiency Codes		Corrective Action(s)	Response Due Date(s)
	Code	Rationale		
	P11-1 Missing FTA clauses*	The recipient did not include required clause: Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters in two procurements.	<p>The recipient must submit to the FTA regional office:</p> <ul style="list-style-type: none"> <li>Revised procurement procedures that address inclusion of all FTA-required third-party contract clauses through use of a clause checklist or other mechanism.</li> <li>A procedure for updating the required contract clauses on an annual basis.</li> </ul>	9/21/2023
DBE	DBE9-2 Inadequate good faith efforts determination	The recipient did not document its good faith efforts review prior to awarding a contract that contained a DBE goal.	<p>The recipient must submit to FTACivilRightsSupport@dot.gov:</p> <ul style="list-style-type: none"> <li>Procedures for determining “good faith efforts” in compliance with the regulation.</li> </ul>	9/21/2023
Section 5307 Program Requirements	5307:1-2 Deficiencies in the metropolitan transportation planning agreement with the MPO, the state(s), and the providers of public transportation	The recipient agreement with the MPO does not include all the required elements.	<p>The recipient must submit to the FTA regional office:</p> <ul style="list-style-type: none"> <li>A fully executed agreement that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.</li> </ul>	11/21/2023
Public Transportation Agency Safety Plans (PTASP)	PTASP 3-1 ASP missing required element(s)	The recipient ASP does not address infectious disease exposure.	<p>The recipient must submit to the FTA regional office:</p> <ul style="list-style-type: none"> <li>An updated ASP that addresses all the required elements including infectious disease exposure.</li> </ul>	11/21/2023

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are: Deficient (D)/Not Deficient (ND)/Not Applicable (NA)

\*Denotes a repeat finding

## **II. Review Background and Process**

### **1. Background**

The United States Code, Chapter 53 of Title 49 (49 U.S.C. 5307(f)(2)) requires that “At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient’s program, specifically referring to compliance with statutory and administrative requirements...” The FTA performs this Triennial Review in accordance with its procedures (published in FTA Order 9010.1B, April 5, 1993).

The Triennial Review includes a review of the recipient’s compliance in 23 areas. The basic requirements for each of these areas are summarized in Section IV. The FTA contracts with experienced Reviewers to lead and conduct the Triennial Reviews, in partnership with the staff of the regional office.

This report presents the findings from the Triennial Review of the recipient. The review concentrated on procedures and practices employed since the recipient’s previous Triennial Review in 2019; however, coverage was extended to earlier periods as needed to assess the policies in place and the management of award funds. The specific documents reviewed and referenced in this report are available at the FTA’s Region 3 office or the recipient’s office.

### **2. Process**

The Triennial Review includes a pre-review assessment, a desk review, and scoping meeting with the FTA regional office, and a site visit to the recipient’s location. The FTA also requested that the recipient share if and/or how it suspended, deviated from, or significantly updated or altered its transit program due to the public health emergency.

The fiscal year (FY) 2023 process began with the regional office transmitting a notification of the review and a Recipient Information Request (RIR) to the recipient on December 2, 2022, indicating a review would be conducted. While the recipient prepared its response to the RIR, the regional office and review team conducted a desk review and a scoping meeting was held on March 1-2, 2023. Regional office staff provided electronic files as necessary to the Reviewer who also accessed recipient information in the FTA electronic award management (TrAMS) and oversight (OTrak) systems. Following the desk review and scoping meeting, the Reviewer and the recipient corresponded and exchanged information and documentation in preparation for the virtual site visit. Prior to the virtual site visit, the Reviewer sent an agenda package to the recipient on March 14, 2023, indicating the issues that would be discussed, records to be reviewed, and interviews to be conducted. The virtual site visit to the Borough of Pottstown occurred from June, 12, 2023 (entrance conference) to June 15, 2023 (exit conference).

The virtual site visit portion of the review began with an entrance conference, at which the Reviewer and regional staff discussed the purpose of the Triennial Review and the review process. The Reviewer conducted additional interviews and reviewed documentation to evidence the recipient’s compliance with FTA requirements.

Upon completion of the virtual site visit, the Reviewer and the FTA regional office staff provided a summary of preliminary findings to the recipient at the exit conference on June 15, 2023. Section VI of this report lists the individuals participating in the site visit.

### 3. Metrics

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are:

- Not Deficient (ND): An area is considered not deficient if, during the review, nothing came to light that would indicate the requirements within the area reviewed were not met.
- Deficient (D): An area is considered deficient if any of the requirements within the area reviewed were not met.
- Not Applicable (NA): An area can be deemed not applicable if, after an initial assessment, the recipient does not conduct activities for which the requirements of the respective area would be applicable.

### **III. Recipient Description**

#### **1. Organization**

Bus service in Pottstown and adjacent communities is a publicly owned and privately operated system. The Borough of Pottstown owns, funds, and administers the system. The day-to-day operations are the responsibility of the Borough's contractor, Pottstown Area Rapid Transit, Inc. (PART).

The service consists of five (5) fixed routes that are oriented around the FTA-funded Charles W. Dickinson Transportation Center in downtown Pottstown. SEPTA Route 93 is available at the transportation center and provides service between Pottstown and Norristown, which allows travel to other parts of Montgomery County and the region. FTA has also funded a bus turnaround at 121 College Drive in Pottstown.

Service is provided weekdays and Saturdays from 6:00 a.m. to 10:00 p.m. There is no service on Sundays. The Borough's Americans with Disabilities Act (ADA) complementary paratransit service operates during the same days and hours of service as the fixed-route service.

The basic adult fare for bus service is \$2.50. A reduced fare of \$1.25 is offered to persons with disabilities and Medicare cardholders during all hours of operation. Funding from the Commonwealth of Pennsylvania supports the senior citizen free-fare program. The fare for ADA complementary paratransit service is \$5.00.

PART operates a fleet of eight FTA-funded buses for fixed-route service. PART also has two (2) state-funded vehicles used for ADA complementary paratransit service.

#### **2. Award and Project Activity**

Below is a list of the Borough of Pottstown's open awards at the time of the review.

Award Number	Award Amount	Year Executed	Description
PA-2022-043-00	\$2,277,968	2022	Borough of Pottstown FFY20 5307 CARES Act Funding for Operating and Rolling Stock
PA-2023-001-00	\$233,667	2023	FY2018 5307 Operating Assistance

The Borough of Pottstown received Supplemental Funds for operating assistance in award number PA-2022-043-00. This is not the Borough of Pottstown's first time receiving operating assistance from the FTA.

## **Projects Completed**

In the past few years, the Borough of Pottstown completed the following noteworthy projects:

- Purchased and put into service two new buses.
- Installed thermal imaging cameras utilized to check body temperatures in order to identify COVID-19 related symptoms during the height of the pandemic.

## **Ongoing Projects**

The Borough of Pottstown is currently implementing the following noteworthy project:

- Updated signage project. The PennDOT FRITS project will be implemented in 2023.

## **Future Projects**

The Borough of Pottstown plans to pursue the following noteworthy projects in the next three to five years:

- Replace bus shelters that have met their useful life.
- Replace a service vehicle that has met its useful life.

## **IV. Results of the Review**

### **1. Legal**

Basic Requirement: The recipient must promptly notify the FTA of legal matters and additionally notify the USDOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Legal.

### **2. Financial Management and Capacity**

Basic Requirement: The recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates fiduciary authority; and financial management systems in place to manage, match, and charge only allowable costs to the award. The recipient must conduct required Single Audits, as required by 2 CFR part 200, and provide financial oversight of subrecipients.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Financial Management and Capacity.

### **3. Technical Capacity – Award Management**

Basic Requirement: The recipient must report progress of projects in awards to the Federal Transit Administration (FTA) and close awards timely.

Finding: During this Triennial Review of the Borough of Pottstown, one (1) deficiency was found with the FTA requirements for Technical Capacity – Award Management.

Deficiency Description: Incorrect FFR reporting (TC-AM2-1)

The Borough of Pottstown has not been reporting Federal cash receipts and disbursements on a cash basis or outlays and unliquidated obligations on an accrual basis of accounting. In addition, the recipient has been incorrectly reporting the unobligated balance of the award as unliquidated obligations.

#### 2 CFR 200.328 Financial reporting

*Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved government wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more*

*frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting. The Federal awarding agency must use OMB-approved common information collections, as applicable, when providing financial and performance reporting information.*

**FTA Circular 5010.1E, Chapter. III, Section 3. Reporting Requirements**

*a. Federal Financial Report (FFR). FTA's electronic FFR report is consistent with and includes information identified in OMB's Standard Form FFR (SF FFR). A recipient must submit an FFR for each active Award. The FFR accompanies the MPR (described below) and is used to monitor the federal assistance awarded. The purpose of the FFR is to provide a current, complete, and accurate financial picture of the Award. This report is submitted electronically through TrAMS. The first 4 items (A-D) are prepared using cash accounting. The remaining report items (E-U) must be prepared on the accrual basis of accounting; that is, income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid. These items, (E-U) of the FFR, may not be prepared on the cash basis of accounting, even though a recipient may keep its books on the cash basis during its accounting year. If this is the case, at the submission of the FFR, the recipient must prepare the necessary accruals and submit the FFR on the accrual basis of accounting. (See Appendix B, "Federal Financial Report").*

**The FFR must contain the following elements:**

- (1) *All financial facts (e.g., expenditures and obligations) relating to the Award (scope of work and supporting activities); the purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.*
- (2) *Reported financial data should be accurate to the last Award Budget (this may be the initial Award, or last revision to the Award Budget or amendment to the Award) and the reporting period. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay. Financial data reported may reconcile data included in the prior report, and must be explained in the explanation/remarks section of the report.*
- (3) *Financial reports must be based on the required supporting documentation maintained in the recipient's official financial management system that produces information that objectively discloses financial aspects of events or transactions.*
- (4) *Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.*
- (5) *Reporting terminology used in financial reports to FTA should be consistent with receipt and expense classifications included in the latest Award.*
- (6) *The recipient is responsible for indicating whether or not it is charging indirect costs to the Award at the time of application. If the recipient is charging indirect costs to the Award, the*

*recipient is responsible for having an approved Indirect Cost Rate Proposal or Cost Allocation Plan approved by the cognizant agency on file, and uploading the documentation into their TrAMS “Recipient Profile.” The recipient must report on related indirect expenditures.*

(7) *The recipient must provide financial information related to the FFR categories: Federal Cash, Recipient Share, Unliquidated Obligations, and Program Income.*

Corrective Action(s) and Schedule: By September 21, 2023, the Borough of Pottstown must submit to the Region 3 office:

- Revised Q2 2023 FFR that includes the corrected information.
- Procedures for including all required information in future reports.

If the recipient is no longer able to submit the reports electronically, it must upload soft copies of the reports to TrAMS and notify the regional office when the revised reports are submitted.

#### **4. Technical Capacity – Program Management & Subrecipient Oversight**

Basic Requirement: States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Sections 5310, 5311, and 5339 funds must develop and submit a State Management/Program Management Plan to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards, and ensure subrecipients comply with the terms of the award.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Technical Capacity – Program Management & Subrecipient Oversight.

#### **5. Technical Capacity – Project Management**

Basic Requirement: The recipient must implement the FTA-funded projects in accordance with the award application, the FTA Master Agreement, and applicable laws and regulations using sound management practices.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Technical Capacity – Project Management.

## **6. Transit Asset Management**

**Basic Requirement:** Recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans.

**Finding:** During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Transit Asset Management.

## **7. Satisfactory Continuing Control**

**Basic Requirement:** The recipient must ensure that FTA-funded property will remain available and used for its originally authorized purpose throughout its useful life until disposition.

**Finding:** During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Satisfactory and Continuing Control.

## **8. Maintenance**

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

**Finding:** During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Maintenance.

## **9. Procurement**

**Basic Requirement:** The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to Federal procurements, those policies and procedures must still be compliant with all Federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, the FTA does not require each State DOT to have policies and procedures separate from the state education department.

**Finding:** During this Triennial Review of the Borough of Pottstown, two (2) deficiencies were found with the FTA requirements for Procurement.

**Deficiency Description #1:** Improper time and materials contract (P8-7)

The Borough of Pottstown entered into a time and materials contract for the provision of transit service and the contract does not specify a ceiling price.

2 CFR 200.318 (j)

(j)(1) *The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:*

(i) *The actual cost of materials; and*

(ii) *Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.*

Corrective Action(s) and Schedule: By September 21, 2023, the Borough of Pottstown must submit to the Region 3 office:

- Evidence that it has executed a contract amendment to add a ceiling price to the current time and materials contract.
- Revised procurement procedures that include the requirements for the proper use of FTA-assisted time-and-materials contracts.

Deficiency Description #2: Missing FTA clauses (P11-1)

The contract files for two (2) procurements included in the file sample did not include the required FTA clause: Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters.

FTA Master Agreement (28) Section 39(b).

*Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.*

*(1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.*

*(2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.*

*(3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud,*

waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Recipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

Corrective Action(s) and Schedule: By September 21, 2023, the Borough of Pottstown must submit to the Region 3 office:

- Revised procurement procedures that address inclusion of all FTA-required third-party contract clauses through use of a clause checklist or other mechanism.
- A procedure for updating the required contract clauses on an annual basis.

## 10. Disadvantaged Business Enterprise (DBE)

Basic Requirement: Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.

Finding: During this Triennial Review of the Borough of Pottstown, one (1) deficiency was found with the USDOT requirements for DBE.

Deficiency Description: Inadequate good faith efforts determination (DBE9-2)

The Borough of Pottstown included a 15% DBE goal in one (1) fuel solicitation; however, there was no documentation that the Borough conducted a review of the contractor's good faith efforts to obtain DBE participation prior to making the contract award.

### 49 CFR 26.53(b)(3)(i)

*At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.*

## 49 CFR 26.53

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

(b) (2)(ii) To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

Corrective Action(s) and Schedule: By September 21, 2023, the Borough of Pottstown must submit to [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) (per instructions in Section VII of this report):

- Procedures for determining “good faith efforts” in compliance with the regulation.

## **11. Title VI**

Basic Requirement: The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Title VI.

## **12. Americans with Disabilities Act (ADA) – General**

Basic Requirement: Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the USDOT requirements for ADA – General.

## **13. ADA – Complementary Paratransit**

Basic Requirement: Under 49 CFR 37.121(a), each public entity operating a fixed-route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed-route system. “Comparability” is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with USDOT requirements for ADA – Complementary Paratransit.

## **14. Equal Employment Opportunity**

Basic Requirement: The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program or activity receiving Federal financial assistance under the Federal transit laws.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Equal Employment Opportunity.

## **15. School Bus**

Basic Requirement: Recipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the FTA Administrator under an allowable exemption. Federally-funded equipment or facilities cannot be used to provide exclusive school bus service.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for School Bus.

## **16. Charter Bus**

Basic Requirement: Recipients are prohibited from using the FTA-funded equipment and facilities to provide charter service that unfairly competes with private charter operators. Recipients may operate charter only when the service meets a specified exception defined in rule.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Charter Bus.

## **17. Drug Free Workplace Act**

Basic Requirement: Recipients are required to maintain a drug free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Drug-Free Workplace Act.

## **18. Drug and Alcohol Program**

Basic Requirement: Recipients receiving Section 5307, 5309, 5311, or 5339 funds that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

Finding: During this Triennial Review of the Borough of Pottstown, no deficiencies were found with the FTA requirements for Drug and Alcohol Program.

## **19. Section 5307 Program Requirements**

Basic Requirement: Recipients must participate in the transportation planning process in accordance with FTA requirements and the metropolitan and statewide planning regulations.

Recipients shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

Recipients are expected to have a written, locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

For fixed-route service supported with Section 5307 assistance, fares charged to seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

Finding: During this Triennial Review of the Borough of Pottstown, one (1) deficiency was found with the FTA requirements for Section 5307 Program Requirements.

Deficiency Description: Deficiencies in the metropolitan transportation planning agreement with the MPO, the state(s), and the providers of public transportation (5307:1-2)

The Borough of Pottstown's agreement with its MPO does not include the following required elements: the recipient's responsibilities in carrying out the metropolitan transportation planning process, the development and sharing of information for financial plans, or the development of the annual listing of obligated projects. In addition, the agreement does not address requirements to jointly agree to and develop written provisions for cooperatively developing and sharing performance information.

23 CFR 450.314(a) and (h) Metropolitan Planning Agreement

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement among all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see §450.324) and the metropolitan TIP (see §450.326), and development of the annual listing of obligated projects (see §450.334).

(h) (1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:

- (i) When one MPO serves an urbanized area;
- (ii) When more than one MPO serves an urbanized area; and
- (iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.

(2) These provisions shall be documented either:

- (i) As part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section; or
- (ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

Corrective Action(s) and Schedule: By November 21, 2023, Borough of Pottstown must submit to the Region 3 office:

- A fully executed agreement that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, the development of the annual listing of obligated projects, and requirements to jointly agree to and develop written provisions for cooperatively developing and sharing performance information.

## **20. Section 5310 Program Requirements**

Basic Requirement: Recipients must expend Section 5310 funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all subrecipient leases of Section 5310-funded vehicles. Leases of Section 5310-funded vehicles must include required terms and conditions. Either the recipient or subrecipient must hold the title to the leased vehicles.

Finding: This section only applies to recipients that receive Section 5310 funds directly from the FTA; therefore, the related requirements are not applicable to the Triennial Review of the Borough of Pottstown.

## **21. Section 5311 Program Requirements**

Basic Requirement: States must expend Section 5311 funds on eligible projects to support rural public transportation services and intercity bus transportation.

Finding: This section only applies to recipients that receive Section 5311 funds directly from FTA; therefore, the related requirements are not applicable to the Triennial Review of the Borough of Pottstown.

## **22. Public Transportation Agency Safety Plans (PTASP)**

Basic Requirement: Recipients must comply with the Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673) to ensure public transportation providers develop and implement an Agency Safety Plan (ASP).

Finding: During this Triennial Review of the Borough of Pottstown, one (1) deficiency was found with the FTA requirements for PTASP Requirements.

Deficiency Description: ASP missing required element(s) (PTASP 3-1)

The recipient ASP has not been updated to include a section on infectious disease exposure as required under the 2021 Bipartisan Infrastructure Law.

Corrective Action(s) and Schedule: By November 21, 2023, Borough of Pottstown must submit to the Region 3 office:

- An updated ASP that addresses all the required elements including infectious disease exposure.

## **23. Cybersecurity**

**Basic Requirement:** Recipients that operate rail fixed guideway public transportation systems must certify compliance with the requirements for establishing a cybersecurity process under 49 U.S.C. § 5323(v), a new subsection added by the National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 (Dec. 20, 2019).

This section only applies to recipients that operate rail fixed guideway public transportation systems; therefore, the related requirements are not applicable to the Triennial Review of the Borough of Pottstown.

## V. Summary of Findings

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
1. Legal	ND					
2. Financial Management and Capacity	ND					
3. Technical Capacity – Award Management	D	TC-AM2-1	Incorrect FFR reporting*	<p>The recipient must submit to the FTA regional office:</p> <ul style="list-style-type: none"> <li>• Revised Q2 2023 FFR that includes the corrected information</li> <li>• Procedures for including all required information in future reports.</li> </ul> <p>If the recipient is no longer able to submit the reports electronically, it must upload soft copies of the reports to TrAMS and notify the regional office when the revised reports are submitted.</p>	9/21/2023	
4. Technical Capacity – Program Management and Subrecipient Oversight	ND					
5. Technical Capacity – Project Management	ND					
6. Transit Asset Management	ND					
7. Satisfactory Continuing Control	ND					
8. Maintenance	ND					
9. Procurement	D	P8-7	Improper time and materials contract	<p>The recipient must submit to the FTA regional office:</p> <ul style="list-style-type: none"> <li>• Evidence that it has executed a contract amendment to add a ceiling price to the current time and materials contract.</li> <li>• Revised procurement procedure that includes requirements for the proper use of FTA-assisted time-and-materials contracts.</li> </ul>	9/21/2023	

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
		P11-1	Missing FTA clauses*	The recipient must submit to the FTA regional office: <ul style="list-style-type: none"><li>• Revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism.</li><li>• A procedure for updating the required contract clauses on an annual basis.</li></ul>	9/21/2023	
10. Disadvantaged Business Enterprise	D	DBE9-2	Inadequate good faith efforts determination	The recipient must submit to <a href="mailto:FTACivilRightsSupport@dot.gov">FTACivilRightsSupport@dot.gov</a> (per instructions in Section VII of this report): <ul style="list-style-type: none"><li>• Procedures for determining “good faith efforts” in compliance with the regulation.</li></ul>	9/21/2023	
11. Title VI	ND					
12. Americans with Disabilities Act (ADA) – General	ND					
13. ADA – Complementary Paratransit	ND					
14. Equal Employment Opportunity	ND					
15. School Bus	ND					
16. Charter Bus	ND					
17. Drug-Free Workplace	ND					
18. Drug and Alcohol Program	ND					
19. Section 5307 Program Requirements	D	5307:1-2	Deficiencies in the metropolitan transportation planning agreement with the MPO, the state(s), and the providers of public transportation	The recipient must submit to the FTA regional office: <ul style="list-style-type: none"><li>• A fully executed agreement that specifies the cooperative procedures for carrying out metropolitan transportation planning and programming and addresses the recipient’s responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.</li></ul>	11/21/2023	
20. Section 5310 Program Requirements	NA					

Review Area	Finding	Deficiency Code(s)		Corrective Action(s)	Response Due Date(s)	Date Closed
		Code	Description			
21. Section 5311 Program Requirements	NA					
22. Public Transportation Agency Safety Plans	D	PTASP 3-1	ASP missing required element(s)	The recipient must submit to the FTA regional office: • An updated ASP that addresses all the required elements including infectious disease exposure.	11/21/2023	
23. Cybersecurity	NA					

The metrics used to evaluate whether a recipient is meeting the requirements for each of the areas reviewed are: Deficient (D)/Not Deficient (ND)/Not Applicable (NA)

\*Denotes a repeat finding

## VI. Attendees

Name	Title	Phone Number	E-mail Address
<b>Borough of Pottstown</b>			
Kourtney High	Grants Administrator	610-970-6512	<a href="mailto:khigh@pottstown.org">khigh@pottstown.org</a>
<b>Contractors - PART</b>			
Jennifer Hovey	COO	610-326-5413	<a href="mailto:jenatcmd@aol.com">jenatcmd@aol.com</a>
Brian Clayton	Driver Supervisor	610-326-5413	<a href="mailto:cmdbrian@gmail.com">cmdbrian@gmail.com</a>
Donna Phillips	HR Manager	610-326-5413	<a href="mailto:cmddonna@gmail.com">cmddonna@gmail.com</a>
<b>FTA</b>			
Tony Tarone	Deputy Regional Administrator	215-656-7100	<a href="mailto:Tony.Tarone@dot.gov">Tony.Tarone@dot.gov</a>
Tony Cho	Director, Office of Program Management and Project Oversight	215-656-7100	<a href="mailto:Tony.Cho@dot.gov">Tony.Cho@dot.gov</a>
Ben Stoltenberg	Transportation Program Specialist	215-656-7100	<a href="mailto:Benjamin.Stoltenberg@dot.gov">Benjamin.Stoltenberg@dot.gov</a>
Anthony Romero	Procurement Specialist (Consultant)	215-656-7100	<a href="mailto:Anthony.Romero.CTR@dot.gov">Anthony.Romero.CTR@dot.gov</a>
<b>Contractor</b>			
Jameson Beekman	Lead Reviewer	617-577-0042	<a href="mailto:jamesonb@calyptusgroup.com">jamesonb@calyptusgroup.com</a>
Trysh Strayhand	Associate Reviewer	617-577-0042	<a href="mailto:tstrayhand@calyptusgroup.com">tstrayhand@calyptusgroup.com</a>

## VII. Appendices

### Civil Rights Corrective Action Submission

All Civil Rights corrective actions should be submitted to [FTACivilRightsSupport@dot.gov](mailto:FTACivilRightsSupport@dot.gov) in the following format:

- A separate email should be sent to address each deficiency separately with attached supporting documentation.

Do not submit MS Word or Excel spreadsheets.

- Supporting documents should be sent as .pdf files in the following format:

Region Number-Grantee Name-TrAMSRcipID-Finding Code.pdf

For example, **Region3- Borough of Pottstown -1419-DBE6-1.pdf**

- **Email Subject Line:** TR FY23 Corrective Action: Grantee Name-Recipient ID, Deficiency Code, and Deficiency Title

For example, **Triennial Review FY23 Corrective Action: Borough of Pottstown - 1419, DBE6-1 DBE Shortfall Analyses**

The body of the email should contain a short summary of the corrective action.