

**Office of Inspector General  
Robert E. Clift, Inspector General**



Attestation Report No. 13I-1002  
Florida East Coast Railway  
Joint Participation Agreement ANO51

November 7, 2014

## **EXECUTIVE SUMMARY**

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The Florida Department of Transportation's (department) Office of Inspector General (OIG) conducted an examination of Joint Participation Agreement (JPA) ANO51 between the department's District Six (district) and Florida East Coast Railway (FEC). The purpose of the JPA was to provide financial assistance for two phases of a railroad improvement project: the Medley Lead Rehabilitation phase and the Port of Miami Lead Upgrade phase. These state funded projects were primarily for the construction and rearrangement of new and existing FEC railroad tracks to increase the speed and efficiency of moving commodities throughout the Miami, Florida area. We conducted this examination as part of the OIG's annual audit plan.

Our examination of four invoice summaries submitted for department reimbursement concluded that costs charged to JPA ANO51 were reasonable, allowable and adequately supported. District Six carried out the tested administrative requirements specified in the JPA and department procedures with the exception of: 1) maintaining documentation to substantiate written approval of plans and specifications (specs) consistent with Section 15 of JPA ANO51, and 2) maintaining written documentation to substantiate project monitoring activities consistent with the department's Project Management Handbook and best practices as detailed on pages 6-7.

We recommend management of District Six's Intermodal Systems Development Office (ISDO), Freight Logistics and Passenger Operations (FLPO) develop mechanisms to ensure: 1) written documentation is maintained to substantiate the issuance of plans and specs approvals, and 2) site visits and other monitoring and oversight activities are thoroughly documented and that such documentation is properly retained for verification.

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## **BACKGROUND**

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On September 7, 2004, the department's District Six entered into JPA ANO51 with Florida East Coast Railway. The estimated completion date for this state funded agreement was June 30, 2006. The original agreed-upon total cost of the project was \$5,617,100, with maximum department participation of \$2,808,550 (50%). Seven supplemental agreements subsequently changed the estimated project completion date to December 31, 2013, and increased total estimated costs to \$38,328,438 and maximum department participation to \$19,164,219 (50%). As of January 28, 2013, total expended project costs were \$28,699,861 with department participation of \$14,349,931 (50%).

This agreement financed two phases of railroad track construction and rearrangement in the Miami, Florida area, with the overall goal of improving the speed and efficiency (flow) of commodities transportation. The Medley Lead Rehabilitation phase encompassed a one-mile stretch of FEC railroad track impacting a local five-mile corridor with 11 track crossings. On January 24, 2011, The Port of Miami Lead Upgrade phase was added to the project's scope. This phase upgraded over four miles of track and added 19 "Quiet Zone" railroad crossings.

## **RESULTS OF EXAMINATION**

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Our objective was to determine if project invoiced costs were reasonable, allowable and adequately supported. We judgmentally selected Invoice Summaries 16 and 19 for the Medley Lead Rehabilitation (first) phase and Invoice Summaries 35 and 38 for the Port of Miami Lead (second) phase. The four summaries tested totaled \$8,553,378.62 or 33% of the total reimbursable costs incurred up through payment of Invoice Summary 38. We determined that project invoiced costs were substantiated by sufficient backup documentation and were deemed reasonable, allowable and adequately supported. No items warranting further consideration were identified through testing of these four Invoice Summaries.

The following two findings were identified concerning District Six's fulfillment of required administrative and monitoring activities per JPA terms/requirements and applicable department rules and procedures.

**Finding 1 – Compliance with Terms of the Agreement**

<b>Objective</b>	Determine if District Six carried out administrative requirements of the agreement and adhered to applicable regulations and department procedures.
<b>Conclusion</b>	District Six staff fulfilled the requirements of the tested terms of the agreement, regulations and department procedures, with the exception of not maintaining adequate documentation to support written approval of project plans and specs.
<b>Condition (Supporting Evidence)</b>	District Six and FEC project files did not contain written documentation verifying the district’s approval of plans and specs for JPA ANO51. District staff confirmed supporting documentation was not available and could not be provided.
<b>Criteria</b>	JPA ANO51 Agreement Section 15 states: “In the event that this Agreement involves the purchasing of capital equipment or the constructing and equipping of facilities, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the project and comments or recommendations concerning any remainder of the project deemed appropriate.”
<b>Cause</b>	This project, which began September 7, 2004, and concluded December 31, 2013, spanned over nine years and was administered by three different project managers. These circumstances contributed to a lack of continuity regarding internal processes such as Project Manager responsibilities, record keeping and file maintenance.
<b>Effect (Impact)</b>	The lack of approved plans and specifications may put the department at risk of funding projects constructed in a manner inconsistent with the department’s needs and intentions.

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**Recommendation**

We recommend management of District Six’s ISDO - FLPO develop a mechanism to ensure required approvals are issued and supporting documentation is maintained.

**Finding 2 – Compliance with Oversight and Monitoring Requirements**

**Objective**

Determine if District Six conducted adequate monitoring of the project.

**Conclusion**

The project files did not contain documented evidence of district project monitoring.

**Criteria**

Chapter Three of the Rail Office Program’s Rail Handbook (which is referenced in the Rail Handbook Procedures - Topic No. 725-080-002) details the responsibilities of district rail coordinators which includes: Conduct a daily inspection or request daily reports from department personnel on construction progress within the railroad’s right-of-way.

The department’s Project Management Handbook, Chapter 4, Monitoring and Control, details the project manager’s responsibility for proper stewardship of state resources; use of resources in a manner consistent with the department’s mission and in compliance with regulations; and with a minimum of waste and mismanagement.

The department’s Project Management Handbook, Chapter 7, Responsibilities and Roles of Project Managers, states that department employees must ensure resources are used efficiently and effectively to achieve the intended results. It also describes the following areas of responsibility for all project managers: scope, contract, cost, time, quality, risk, communication and human resources.

In addition, the Department of Financial Services’ Contract and Grant User Guide, which facilitates programmatic and fiscal accountability, Chapter Five - “Manager Responsibilities” and “Programmatic and Fiscal Monitoring” (pages 24 and 25) states:

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“Performance/compliance monitoring activities should be supported by documentation that identifies:

- The process used for monitoring;
- The specific items selected for review; and,
- What was looked at (source evidence), how it was examined, and the conclusions.”

And, “**Adequate documentation is essential.** Agreement files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the agreement.”

**Cause**

District Six ISDO - FLPO Project Managers’ monitoring processes do not adequately address and emphasize the importance of maintaining written documentation to substantiate monitoring and oversight activities.

**Effect (Impact)**

Without proper oversight, the district risks paying too much for services or paying for services which are not in accordance with applicable requirements.

**Recommendation**

We recommend management of District Six’s ISDO - FLPO develop mechanisms to ensure site visits and other monitoring and oversight activities are thoroughly documented and that such documentation is properly retained for verification.

**APPENDIX A – Independent Accountant’s Report**

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We examined FEC billings and supporting documentation for JPA ANO51 for the period February 1, 2007 through December 31, 2012. The FEC’s management is responsible for the billings for JPA ANO51. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and standards applicable to Attestation Engagements contained in *Government Auditing Standards* issued by the Comptroller General of the United States. Accordingly, this engagement included examining, on a test basis, evidence supporting FEC billings and performing such other procedures as we considered necessary. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the tested billings for JPA ANO51 presented, in all material respects, allowable expenses in conformity with the terms of the contract.

**APPENDIX B – Purpose, Scope and Methodology**

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Section 20.055, Florida Statutes, requires the OIG to conduct audits, examinations, investigations and management reviews related to programs and operations of the department. We performed this examination as part of the OIG’s mission to promote accountability, integrity and efficiency for the citizens of Florida by providing objective, timely audit and investigative services.

The **purpose** of the examination was to assess compliance with the provisions of JPA ANO51 and the reasonableness and allowability of the claimed and reimbursed costs.

The **scope** of our examination consisted of examining documentation relative to the costs invoiced to the department for JPA ANO51 from February 1, 2007 through December 31, 2012.

Our **methodology** consisted of:

- reviewing JPA ANO51 and all change orders;
- reviewing the department’s Project Management Handbook;
- reviewing the Department of Financial Services’ Contract and Grant User Guide;
- reviewing Federal Cost Principle Title 48, Part 31, Code of Federal Regulations (C.F.R.), to determine allowable costs;
- reviewing Federal Cost Principle 23 C.F.R. 140.900-922, which establishes the accounting systems to be used for federal rail projects and state funded agreements;
- examining and testing supporting documentation for the JPA; and
- interviews of appropriate staff.

**APPENDIX C – FEC Response**

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We received responses on September 23, 2014, from Missy Labonte, Assistant Controller, and on September 25, 2014, from Robert Ledoux, Esquire, Senior Vice President and General Counsel, stating the FEC had no comments regarding the draft report.

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APPENDIX D – Management Response



*Florida Department of Transportation*

RICK SCOTT  
GOVERNOR

1000 N.W. 111<sup>th</sup> Avenue  
Miami, FL 33172-5800

ANANTH PRASAD, P.E.  
SECRETARY

Robert E. Clift  
Inspector General  
Office of Inspector General  
Florida Department of Transportation  
605 Suwannee Street, MS 44  
Tallahassee, FL 32399

RE: OIG Assignment 13I-1002, JPA ANO51

Dear Mr. Clift:

This letter is to provide the District's responses to the preliminary and tentative findings dated October 3, 2014, regarding the Florida East Coast Railway; Joint Participation Agreement ANO51 audit.

**Finding No. 1:** Compliance with Terms of the Agreement, to determine if District Six carried out administrative requirements and adhered to applicable regulations and department procedures.

**Auditor's Recommendation:** Management of District Six ISDO – FLPO develop a mechanism to ensure required approvals are issued and supported documentation is maintained.

**District Six ISD – FLPO's Response:** We concur with the finding and recommendation.

**ISD - FLPO's Corrective Action:** FLPO Manager will establish a Joint Participation Agreement (JPA) training for all FLPO Program Administrators, outlining the rights and responsibilities included in the agreement. We will also develop a checklist for all required documents and approvals and institute quarterly files review (internal audit) to ensure each files contain all agreement requirements.

**Finding No. 2:** Compliance with Oversight and Monitoring Requirement, to determine if District Six conduct adequate monitoring of the project.

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**Auditor's Recommendation:** Management of District Six ISDO – FLPO develop a mechanism to ensure site visits and other monitoring and oversight activities are thoroughly documented and that such documentation is properly retained for verification.

**District Six ISD – FLPO's Response:** We concur with the finding and recommendation.

**IDS – FLPO's Corrective Action:** FLPO Manager will develop a checklist to include photographs and CEI notes for all project as a method of documenting monitoring and oversight activities for document retention.

We look forward to your final audit report.

Sincerely,



Dionne G. Richardson  
Freight Logistic and Passenger Operations Unit Manager

cc: Gus Pego, District Six Secretary  
Aileen Boucle, District Environment Management Administrator (ISD)  
Harold Desdunes, Director of Transportation Development  
Ana Quero, District Six Rail Administrator

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**DISTRIBUTION, PROJECT TEAM AND STATEMENT OF ACCORDANCE**

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**Action Distribution:**

Gus Pego, P.E., District Six Secretary  
Harold Desdunes, P.E., District Six Director of Transportation Dev.  
Aileen Boucle, AICP, District Six Intermodal Systems Dev. Manager  
Dionne Richardson, District Six Freight, Logistics and Passenger  
Operations Manager  
Ana Quero, District Six Rail/Intermodal Programs Admin.  
Jessie Smiley, District Four Quality Assurance Manager  
Marco A. Incer, P.E., District Six In-House Consultant

**Information Distribution:**

Ananth Prasad, P.E., Secretary of Transportation  
Jim Boxold, Chief of Staff  
Fred Wise, Rail Enterprise Executive Director  
Richard Biter, Assistant Secretary for Intermodal Systems Development  
Juan Flores, State Freight and Logistics Administrator  
Todd Gruenemeier, Rail Office Manager  
Brian Blanchard, P.E., Assistant Secretary for Engineering and Operations  
Brian Peters, Assistant Secretary for Finance and Administration  
Robin Naitove, Comptroller  
James R. Hertwig, President, Florida East Coast Railway  
Heather Braddock, Senior Staff Accountant, Florida East Coast Railway  
Melinda Miguel, Chief Inspector General, Executive Office of the Governor

**Project Team:**

Engagement was conducted by: Melynda Childree, Auditor  
Under the supervision of:  
Intermodal Audit Manager; and  
Kristofer B. Sullivan, Director of Audit  
Approved by: Robert E. Clift, Inspector General

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***Statement of Accordance***

*The mission of the department is  
to provide a safe transportation system that ensures the mobility of people and goods,  
enhances economic prosperity, and preserves the quality of our environment and communities.*

*The mission of the Office of Inspector General is  
to promote integrity, accountability and process improvement in the Department of  
Transportation by providing objective fact-based assessments to the DOT team.*

This work product was prepared pursuant to Section 20.055, Florida Statutes, in accordance with the applicable Principles and Standards for Offices of Inspectors General as published by the Association of Inspectors General and the American Institute of Certified Public Accountants and standards contained in Government Auditing Standards issued by the Comptroller General of the United States.

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